

**Walnut Creek Associates 2, Inc. d/b/a Walnut Creek Honda and Machinists Automotive Trades District Lodge No. 190 of Northern California for and on behalf of Automotive Machinists Lodge No. 1173, International Association of Machinists and Aerospace Workers and Teamsters General Truck Drivers and Helpers Local No. 315.** Case 32-CA-12783

January 27, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND COHEN

On September 2, 1994, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Walnut Creek Associates

<sup>1</sup> No exceptions were filed to the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(3) and (1) of the Act by discharging the strikers on August 3, 1992.

In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(5) and (1) of the Act by insisting to impasse on its proposal to modify the existing bargaining unit by merging it into a multiemployer bargaining unit, we also note the following. The dominant issue in the negotiations between the parties was the Respondent's proposal to join the New Car Dealers of Contra Costa (the Association) and to adopt the Association's contract. Although only five bargaining sessions were held, this issue was discussed at each of the bargaining sessions, and the Respondent continued to insist on its proposal despite the Union's repeated objections. Further, the Respondent gave no indication of any willingness to compromise its position on this issue, even after being informed that the employees had voted to authorize a strike in protest of the Respondent's position. After being informed of the employees' vote on June 30, 1992, to reject the Respondent's "best and final offer" and to authorize a strike effective the next day, the Respondent's attorney and chief negotiator, Charles Waud, told the Union that he could not offer anything else. The Union asked Waud to give them something to take back to the employees so that a strike could be avoided, and Waud refused. The Union then proposed that the Respondent join the Association the following year, after the multiemployer bargaining was completed, and Waud replied that such a proposal would not be acceptable to the Respondent's owner. Waud made these statements with full knowledge that the employees had voted to commence a strike the next day in protest of the Respondent's proposal to join the Association. Thus, in view of the above, as well as the findings discussed by the judge in his conclusions, we agree with the judge that the Respondent insisted to impasse on its proposal to merge the existing bargaining unit into a multiemployer unit.

2, Inc., d/b/a Walnut Creek Honda, Walnut Creek, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*George Valestegui, Esq.*, for the General Counsel.

*Charles B. Waud*, of San Mateo, California, for the Respondent.

*David A. Rosenfeld (Van Bourg, Weinberg, Roger & Rosenfeld)*, of San Francisco, California, for the Union.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Oakland, California, on June 22 and 23, 1994. On October 14, 1992, Machinists Automotive Trades District Lodge No. 190 of Northern California for and on behalf of Automotive Machinists Lodge No. 1173, International Association of Machinists and Aerospace Workers and Teamsters General Truck Drivers and Helpers Local No. 315 (the Union) filed the charge alleging that Walnut Creek Associates 2, Inc. d/b/a Walnut Creek Honda (Respondent) committed certain violations of Section 8(a)(5), (3), and (1) of the National Labor Relations Act (the Act). Thereafter, on December 29, 1992, the Regional Director for Region 32 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent alleging that Respondent violated Section 8(a)(5), (3), and (1) of the Act. The complaint was amended on December 30, 1993. Respondent filed a timely answer to the complaint, denying all wrongdoing.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs of the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a California corporation with an office and principal place of business located in Walnut Creek, California, where it is engaged in the selling and servicing of new and used automobiles. Respondent in the course and conduct of its business operations, annually derives gross revenues in excess of \$500,000 and purchases and receives goods valued in excess of \$5000 which originate outside the State of California. Accordingly, Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

Respondent operates an automobile dealership and service department in Walnut Creek, California. It has had a collective-bargaining relationship with the Union for at least 10 years. The most recent collective-bargaining agreement was effective from July 1, 1989, until June 30, 1992. The 1989-

1992 bargaining agreement covered the employees in Respondent's parts and service department.

In June 1992, the parties met in four or five bargaining sessions in an unsuccessful attempt to negotiate a new contract. The parties did not reach agreement, an impasse occurred and the bargaining unit employees went on strike on July 1, 1992.

Within this factual framework, the General Counsel alleges that Respondent unlawfully bargained to impasse on the definition or scope of the bargaining unit. More specifically, that Respondent bargained to impasse on its proposal that the unit merge with a multiemployer bargaining unit. The General Counsel argues that since Respondent insisted to impasse unlawfully, it follows that the strike was caused in part and prolonged by Respondent's unfair labor practices. Thus, the General Counsel contends that the strike was an unfair labor practice strike and that Respondent was obligated to reinstate the strikers upon their unconditional offer to return to work notwithstanding that the strikers had been replaced. The General Counsel further contends that Respondent discharged and/or threatened to discharge the strikers in August 1993.

Respondent contends that the Union never objected to its proposal to join the multiemployer bargaining group and that the strike was an economic strike concerning the length of the contract. Further, Respondent contends that the strikers were not discharged but were permanently replaced and are only entitled to reinstatement upon the opening of a position.

#### B. Facts

Dave Robb, the principal owner of Respondent, owned a controlling interest in two other dealerships which were represented by the New Car Dealers of Contra Costa (the Association), a multiemployer bargaining group. Robb wanted Respondent to join the Association and have all his dealerships covered by the same bargaining agreement. While the Respondent-Union agreement was to expire in June 1992, the Association-Union agreement was not set to expire until June 1993. Robb applied for membership in the Association for Respondent prior to the June 1992 bargaining and was continuing to seek membership throughout 1992 and 1993.

When negotiations began in June 1992, Respondent proposed to join the Association<sup>1</sup> and have the Association-Union agreement in effect until its expiration in June 1993. Respondent, represented by Charles "Ben" Waud, attorney, stated that Respondent had been accepted as a member of the Association and that Robb wished to have all his dealerships covered by the same contract. Further, both Respondent and the Union recognized that the Respondent-Union contract was more favorable to employees than the Association-Union contract. Prior to bargaining, the union officials did not protest Respondent's desire to join the Association. However, at the first negotiating session, the Union's negotiating committee clearly stated its objection to becoming part of the multiemployer group.

<sup>1</sup> Respondent had applied to be a regular member of the Association. According to the Association's bylaws, a regular member, upon joining the Association, gives the Association the power of attorney to act for the member in any and all matters having to do with labor relations. A regular member further agrees not to bargain collectively with organized labor other than by and through the Association.

On June 18, the parties met to negotiate a successor agreement to the 1989-1992 agreement. The Respondent was represented by Waud and the Union was represented by Bernie Tolentino, business manager, and employees Gene Cordoza and Mike Mitchell. Waud stated that Respondent wanted to be part of the Association and covered by the Association agreement. He stated that Robb had applied for membership in the Association. Cordoza stated that the employees wanted to be under an independent contract and did not want the 1-year contract remaining under the Association agreement. Cordoza stated that "things that are good for the Association aren't particularly good for the dealership that you work in." Cordoza said the employees did not want to be forced to strike in 1 year when the Association agreement expired. He told Waud that the employees would go on strike if Respondent forced them into the Association. Waud attempted to convince the Union of Respondent's need to join the Association. He stated that Respondent and the Union would have only one set of negotiations and that the contracts at all three dealerships would be the same. However, the Union continued to object to multiemployer bargaining and maintained its position that the employees wanted to retain their independent status. The Union desired a 3-year independent contract.

Waud testified at the hearing that the Union never objected to Respondent joining the Association. That assertion is contradicted by the documentary evidence, the credible testimony of Tolentino and Cordoza, and Waud's own testimony. Waud admitted that the employees did not want to be part of the Association's multiemployer bargaining group. He admitted that the negotiating committee opposed the Association agreement. While arguing here that the Union did not oppose multiemployer bargaining, Waud sent a letter dated February 18, 1993, to the Association stating that the strike was "in protest of the Employer's proposal that the Unions accept the 1989-1992 agreement and the 1992-1993 extension thereof, that the Union had with the [Association]." Waud attempted to reconcile the conflict in his testimony by alleging that the union officials such as Tolentino did not oppose Respondent's joining the Association rather it was the employees that opposed joining the Association.<sup>2</sup> However, this distinction confuses the roles of principal and agent. The Union is the bargaining agent of the employees. The negotiating committee was the agent of the Union through which the employees bargained with the Respondent. Thus, if the negotiating committee (the agent) and the employees (the principal) opposed Respondent's proposal to join the Association and merge this bargaining unit into the multiemployer group, it is logically impossible to argue that the Union did not oppose the proposal. Waud admitted that the purpose of joining the Association was to be a party to the multiemployer agreement and not to remain an independent employer.

The positions of the parties were the same at the June 22 meeting and Waud submitted a written proposal to Tolentino to take back to the bargaining unit employees. The written proposal stated inter alia, that Respondent had been approved

<sup>2</sup> Notwithstanding Waud's argument to the contrary, the credible evidences shows that Tolentino stated on various occasions that the employees wanted to maintain their independent status and their individual agreement.

as a member of the Association and proposed that Respondent and the Union adopt the Association contract. That evening, the bargaining unit employees unanimously voted against accepting this proposal. Tolentino notified Waud that the proposal had been rejected and that the employees had authorized a strike. The parties met again on June 26. Waud stated that Robb wanted Respondent to be covered by the Association agreement. Tolentino stated that the Union wanted to maintain a 3-year independent contract. Tolentino emphasized that "economics were not an issue."

At the final negotiation session on June 30, Waud made a minor change in his wage proposal but otherwise submitted the same offer as his "best and final offer." Tolentino said that the Union wanted an independent contract and a 3-year contract. He said that he would bring the proposal to the membership for a vote. On that evening, the employees voted to reject the Respondent's proposal and to go on strike the following day. In rejecting the Respondent's proposal, the employees made specific reference to not wanting to be part of a multiemployer bargaining unit, wanting a 3-year agreement and not being forced to strike by the multiemployer group. Tolentino and Cordoza called Waud and told him of the strike vote. Waud responded that he could not offer anything else. Cordoza asked Waud to give him something to take back to the employees so that a strike could be avoided. Waud answered, "You've shaken all the nuts from the tree." Cordoza asked Waud, if he could convince the employees to agree to become part of the Association, could Waud guarantee that the employees would not be forced to go on strike when the Association agreement expired the following year. Waud answered, "If they strike, you got to strike." Cordoza proposed that Respondent join the Association the following year, after the multiemployer bargaining was over. Waud answered that such a proposal would not be acceptable to Robb. Cordoza answered, "We'll see you on the sidewalk."

The Union commenced its strike against Respondent on July 1, 1992. During the strike, the employees distributed leaflets to the public and to Respondent's supervisors indicating that the employees were protesting Respondent's insistence that they join the multiemployer bargaining unit. Shortly after the strike began, Respondent commenced hiring permanent replacements for the striking employees. After the strike began, Michael Day, directing business representative, began negotiating with Waud to settle the strike and to reinstate the strikers. Both Waud and Day testified that discussions centered around the reinstatement of the strikers. Respondent refused to reinstate the strikers and took the position that the strikers were only entitled to placement on a preferential hiring list.

On August 3, Respondent sent identical letters to all the strikers. The letters stated:

This is to advise you that effective August 3, 1992, you have been permanently replaced from your position at Walnut Creek Honda. Should you wish to make application for re-employment with the Company, please contact me.

On August 20, Cordoza had a conversation with Ken Fuss, Respondent's general manager, in which Cordoza asked whether Fuss had told a newspaper that Respondent would take back the strikers if the employees were willing to nego-

tiate. Fuss answered that he had made such a statement. Cordoza said that the employees were willing to negotiate and go back to work. Fuss replied that he would have to consult with Respondent's attorney.

Thereafter, on October 23, the Union, on behalf of all the striking employees, made an unconditional offer to return to work. Respondent, treating the employees as economic strikers, did not return any employee to work until January 4, 1993. The striking employees were placed on a preferential hiring list. As of the instant hearing, approximately four employees had still not been offered reinstatement. Further, the striking employees that have been reinstated have not received the same terms and conditions of employment they enjoyed prior to the strike.

Respondent treated the strikers as economic strikers. When the strikers offered to return to work they were placed on a preferential hiring list. When a position opened, Respondent recalled employees from the preferential hiring list. The employees were reinstated with seniority dating back to their initial hiring dates. It appears that Respondent had no intent of discharging employees in August 1992. However, vacation payments were prepared for employees in the same manner such checks are prepared for terminated employees. As stated earlier, approximately four employees have still not been offered reinstatement.

After Respondent hired permanent replacements, the Union's paramount concern was reinstatement of the unfair labor practice strikers. It's position against Respondent joining the Association weakened. Respondent relies on a letter written by the Union's attorney, after the strikers had been replaced, stating that the Union did not object to Respondent joining the Association and stating that the strike was over the length of the contract. However, scrutiny of the letter reveals that the Union while not objecting to Respondent becoming a member of the Association or having the Association serve as Respondent's bargaining representative, objected to having the independent bargaining unit merged into the multiemployer group prior to the execution of an agreement to succeed the multiemployer agreement set to expire in June 1993. The Respondent and the Union reached agreement on a new collective-bargaining contract prior to the instant hearing.

#### Analysis and Conclusions

By definition, an impasse occurs whenever negotiations reach that point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless. *Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete*, 484 U.S. 539, 543 (1988). In *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958), the Supreme Court held that insistence to impasse is available to a party only with respect to a mandatory subject of bargaining. Insistence to impasse on a permissive subject of bargaining violates the statutory duty to bargain in good faith. An employer cannot lawfully insist to impasse on a modification of an existing bargaining unit description because the definition of an existing bargaining unit is not a mandatory subject of bargaining. *NLRB v. Borg-Warner Corp.*, supra; *Antelope Valley Press*, 311 NLRB 459, 460-461 (1993); *Newspaper Printing Corp.*, 232 NLRB 291, 292 (1977), enfd. 625 F.2d 956 (10th Cir. 1980), cert. denied 450 U.S. 911 (1981); *National Fresh Fruit & Vegetable Co.*, 227

NLRB 2014 (1977). Multiemployer bargaining is consensual. Neither an employer nor a union can require the other party to bargain on a multiemployer basis. *Charles D. Bonanno Linen Service*, 454 U.S. 8 (1982).

Respondent argues that it did not insist to impasse on its proposal that it join the Association and that the Union adopt the Association's existing collective-bargaining agreement, thereby merging Respondent's independent bargaining unit into the multiemployer group. I find that Respondent sought to change the scope of the bargaining unit to a multiemployer unit. The facts establish that the real dispute between the parties concerned the Respondent's attempt to join the Association and impose the Association agreement on its employees. The facts clearly establish that the dominant issue in negotiations was Respondent's proposal that it join the Association and that the Union accept the multiemployer contract. The Union's negotiating committee through Tolentino and Cordoza made it very clear to Waud that the employees wanted to maintain their independent status and independent contract. This could mean nothing other than the employees objected to being forced into a multiemployer group. Cordoza made it perfectly plain that the employees did not want the multiemployer group deciding whether they would go on strike. Respondent's "final and best offer" undoubtedly indicated Respondent's intent to be in the multiemployer group and be bound by the multiemployer contract. In answering a question posed by Cordoza, Waud told Cordoza and Tolentino that if the Association employees went on strike, Respondent's employees would also have to go on strike. Waud made this statement with full knowledge that the employees were going to strike the next day "in protest of the Employer's proposal that the Union accept the 1989-1992 agreement, and the 1992-1993 extension thereof, that the Union had with the Association."

The fact that the Union's main concern changed during the strike, to seeking reinstatement of the unfair labor practice strikers, does not change the nature of Respondent's unfair labor practice. Respondent should not be able to parlay the economic success of its unlawful impasse into a waiver of its statutory violations.

Thus, I find that Respondent insisted to impasse on the Union's agreement that it join the multiemployer Association and adopt the Association's agreement. It is no defense that the parties were also in disagreement over the length of the contract. The nonmandatory term need not be the sole issue remaining unresolved. *National Fresh Fruit & Vegetable*, supra; *Westvaco Corp.*, 289 NLRB 301, 306 (1988). Moreover, Respondent's offer of a 1-year contract was part and parcel of its proposal that the parties adopt the multiemployer agreement. The employees' opposition to a 1-year contract was based on the fact that they did not want to be forced to go on strike in 1 year if the Association's employees chose to strike. Accordingly, Respondent's argument to the contrary, the issue of the term of the contract was inextricably tied to the issue of multiemployer bargaining.

An unfair labor practice strike exists where unfair labor practices are a contributing cause of a strike. *Decker Coal Co.*, 301 NLRB 729 (1991). In order to make this causation determination the Board has paid special attention to statements made during negotiations and strike vote meetings. *Northern Wire Corp. v. NLRB*, 887 F.2d 1313 (7th Cir. 1989); *North America Coal Corp.*, 289 NLRB 788 (1988).

Here the evidence is clear that the employees struck to protest Respondent's attempt to merge them into a multiemployer group where they would lose their independence and be bound by the multiemployer group. The objections of the employees were expressed to Waud at every negotiating session. Further, these objections were voiced at both strike authorization votes. The employees' reasons for voting down Respondent's proposals were then relayed to Waud by Tolentino and Cordoza. Tolentino and Cordoza clearly informed Waud that the employees would strike if Respondent insisted on forcing the employees into the multiemployer group. Finally, during the strike, the employees handed out leaflets which stated their objections to being forced into a multiemployer group. Accordingly, I find that the strike which took place on July 1, 1992, was caused by Respondent's unlawful insistence to impasse that the employees become part of the multiemployer group and accept the multiemployer bargaining agreement.

It is well settled that unfair labor practice strikers cannot be permanently replaced, but instead must be offered immediate and full reinstatement on submission of an unconditional offer to return to work. *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375, 379 fn. 5 (1967); *Decker Coal Co.*, supra. A corollary to this principle is that Section 8(a)(1) of the Act is violated whenever unfair labor practice strikers are warned that they will be permanently replaced if they do not return to work. *Decker Coal Co.*, supra at 748. Here, Respondent not only told the striking employees that they were permanently replaced, but it also told them they had to apply for reemployment, implying that the employees had been terminated. By sending such letters to the unfair labor practice strikers, Respondent violated Section 8(a)(1) of the Act. This second violation prolonged the unfair labor practice strike already in progress. Respondent insisted on treating the unfair labor practice strikers as economic strikers and resisted returning the employees to their prestrike jobs. While I find that Respondent unlawfully threatened the unfair labor strikers with loss of employment in the August 3 letters, I do not find that by such letters Respondent actually terminated the employees. Put in context, the letters represented Respondent's position that the strikers were economic strikers who were permanently replaced. Consistent with that position Respondent placed employees on a preferential hiring list and recalled employees to fill openings. When openings arose, employees were reinstated as economic strikers. Thus, I find that the employees were not discharged and were not entitled to reinstatement until they made unconditional offers to return to work.

On October 23, 1992, however, the unfair labor practice strikers made an unconditional offer to return to work. Respondent continued to treat the strikers as economic strikers and merely placed them on a preferential hiring list. By not returning the unfair labor practice strikers to their former positions of employment upon their unconditional offer to return to work, Respondent violated Section 8(a)(3) and (1) of the Act. *Chesapeake Plywood*, 294 NLRB 201 (1989), enfd. 917 F.2d 22 (4th Cir. 1990). The employees' rights to reinstatement and backpay arose at that point. Respondent compounded its errors by changing the terms and conditions of employment of the returning unfair labor practice strikers when it began returning strikers to work.

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(5) and (1) of the Act by insisting to impasse on its proposal to modify the existing bargaining unit by merging it into a multiemployer bargaining unit.

4. Respondent violated Section 8(a)(1) of the Act by threatening employees with the loss of employment or other reprisals for engaging in an unfair labor practice strike.

5. Respondent violated Section 8(a)(3) and (1) of the Act by permanently replacing the unfair labor practice strikers and failing and refusing to reinstate them immediately upon their unconditional offer to return to work.

## REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate policies of the Act.

I shall recommend that Respondent offer all its employees who engaged in the unfair labor practice strike which commenced July 1, 1992, full and immediate reinstatement to the positions they held prior to the unlawful refusal to reinstate them. Further Respondent shall be directed to make the strikers whole for any and all loss of earnings and other rights, benefits and emoluments of employment they may have suffered by reason of Respondent's discrimination against them, with interest. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); see also *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 139 NLRB 716 (1962).

Respondent shall also be ordered to transmit the fringe benefit trust fund contributions on behalf of the unit employees to the appropriate trust funds, with any interest or other sums applicable to the payments to be computed in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979). I shall also recommend that Respondent make the unit employees whole for any losses they may have suffered as a result of its failure to make the contractually required fringe benefit trust fund contributions, *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), and with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

<sup>3</sup> All motions inconsistent with this recommended order are denied. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended

## ORDER

The Respondent, Walnut Creek Associates 2, Inc., d/b/a Walnut Creek Honda, Walnut Creek, California, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Threatening employees with the loss of employment or other reprisals for engaging in an unfair labor practice strike.

(b) Failing and refusing to reinstate employees upon their unconditional offer to return to work from an unfair labor practice strike.

(c) Refusing to bargain collectively by insisting to impasse on its proposal to modify the existing bargaining unit by merging it into a multiemployer bargaining unit.

(d) In like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer immediate employment to the unfair labor practice strikers to the positions they would have held, but for Respondent's unlawful failure to reinstate them.

(b) Make whole the strikers for any and all losses incurred as a result of Respondent's unlawful refusal to reinstate them, with interest, as provided in the remedy section of this decision.

(c) Transmit all fringe benefit trust fund contributions which have been unlawfully withheld, with interest pursuant to the collective-bargaining agreement and make whole the employees in the unit for any losses directly attributable to the withholding of those contributions, plus interest.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at it Walnut Creek, California location copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
 POSTED BY ORDER OF THE  
 NATIONAL LABOR RELATIONS BOARD  
 An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with the loss of employment or other reprisals for engaging in an unfair labor practice strike.

WE WILL NOT fail and refuse to reinstate employees upon their unconditional offer to return to work from an unfair labor practice strike.

WE WILL NOT refuse to bargain collectively with Machinists Automotive Trades District Lodge No. 190 of Northern California for and on behalf of Auto motive Machinists Lodge No. 1173, International Association of Machinists and Aerospace Workers and Teamsters General Truck Drivers and helpers Local No. 315 by insisting to impasse on a proposal to modify the existing bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer immediate employment to the unfair labor practice strikers to the positions they would have held but for our unlawful failure to reinstate them.

WE WILL make whole the strikers for any and all losses incurred as a result of our unlawful refusal to reinstate them, with interest.

WE WILL transmit all fringe benefit trust fund contributions which have been unlawfully withheld, with interest pursuant to the collective-bargaining agreement and make whole the employees in the unit for any losses directly attributable to the withholding of those contributions, plus interest.

WALNUT CREEK ASSOCIATES 2, INC. D/B/A  
 WALNUT CREEK HONDA