87-10 51st Avenue Owners Corp. *and* Local 670, Retail, Wholesale, Department Store Union, AFL–CIO. Case 29–CA–17729

March 22, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Questions presented in this case[1] are whether the judge correctly found that the Respondent was the employer of unit employees represented by the Union, and that the Respondent committed several violations of Section 8(a)(1), (3), and (5) of the Act but did not refuse to sign a collective-bargaining agreement with the Union or withdraw recognition from the Union in violation of Section 8(a)(5). The Board has considered the decision in light of the exceptions and briefs and has decided to affirm the judge's rulings,[2] findings, and conclusions, except as discussed below.

1. The judge found that there was insufficient evidence to establish that the Respondent withdrew recognition from the Union as representative of employees working in the Respondent's apartment building.[3] We disagree. The record shows that Union Business Agent Cono D'Alora sent the Respondent's attorney, Ethel Fitzgerald, a letter dated November 8, 1993. In the letter, D'Alora asked to meet with the Respondent to resolve outstanding problems with the Union's attempt to conclude a new collective-bargaining agreement. D'Alora testified that, in a subsequent telephone conversation on November 18, Fitzgerald told him that the Respondent had never had a contract with the Union and that he should negotiate with Spire Management, a separate employer that the Respondent had terminated as manager of its apartment building.

In accord with the judge's analysis, we find that the Respondent, not Spire, has been and still is the employer of the unit employees represented by the Union. We further find that Fitzgerald's refusal to deal with the Union and her assertion of the claim that the Union should negotiate with Spire about the unit employees constituted an unequivocal repudiation of the Respondent's bargaining relationship with the Union. The Respondent thereby withdrew recognition from the Union in violation of Section 8(a)(5) of the Act.

2. The judge credited the testimony of employee Theodore Conte about a July 1993 conversation with Paul Arena, the Respondent's property manager. Based on this testimony, the judge found that Arena violated Section 8(a)(1) of the Act by threatening to fire Conte if he continued to support the Union. We affirm this finding.

The General Counsel has excepted to the judge's failure to discuss and find merit in complaint allegations of additional 8(a)(1) violations during the same conversation. In this regard, Conte credibly testified that Arena said that ''there was no union, no benefits,'' that he did not want union representatives in the building, and that, if he caught a union representative on the premises, Arena would have him locked up. The record shows that until July 1993 the parties had an established practice of permitting union visits to the apartment building. Based on the foregoing evidence, we find that Arena violated Section 8(a)(1) by informing employees that they would no longer receive any union benefits, by advising employees that the Respondent did not want any union representatives on its premises, and by threatening to arrest union representatives on its premises.

3. The Respondent has excepted to the judge's finding that it unlawfully made several unilateral changes in unit employees' wages and working conditions in July 1993 and afterwards. We affirm the judge's findings, with the exception of the finding as to the Respondent's failure to deduct and remit dues to the Union. An employer's duty to check off and remit union dues is extinguished upon the expiration of the collective-bargaining agreement. *Robbins Door & Sash Co.*, 260 NLRB 659 (1982). In this case, the parties' collective-bargaining agreement expired on December 31, 1992. Although the General Counsel has contended that the parties agreed to extend the contract until they signed a successor agreement, we find that there is insufficient proof of any extension agreement. The record indicates only that the Respondent's agent requested an extension of the negotiating period and assured retroactive application of any contract subsequently negotiated. The Respondent therefore did not violate the Act by failing to deduct and remit dues after the contract's expiration. We shall modify the recommended Order and notice language to accord with this finding.[4]

[1] On November 21, 1994, Administrative Law Judge James F. Morton issued the attached decision. The General Counsel, the Charging Party, and the Respondent each filed exceptions and supporting briefs.

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

[2] We deny the Respondent's renewed motion to reopen the record.

[3] We reject the Respondent's contention that Spire was, and is, the employer of the unit employees. The Respondent is the owner of the building. Prior to July 1993, Spire Management was the manager of the building. The contract between the Respondent and Spire provided that the employees were the Respondent's employees. Although there may have been some indicia of joint-employer status, there is no contention that the Respondent and Spire were joint employers. Accordingly, when the Respondent terminated Spire in July 1993, the Respondent remained the sole employer of the unit employees.

[4] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the *Continued*

ORDER

The National Labor Relations Board orders that the Respondent, 87-10 51st Avenue Owners Corp., New York, New York, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Warning its employees that they could be discharged if they remained as members of and continued to support Local 670, Retail, Wholesale, Department Store Union, AFL–CIO.

(b) Threatening termination of union benefits, threatening termination of an existing practice of permitting representatives of the Union access to the Respondent's premises, and threatening to cause the arrest of any union representative found on the premises.

(c) Discharging its employees because they remained as members of and continued to support the Union.

(d) Failing and refusing to bargain collectively with the Union prior to cessation of unit employees' benefit fund payments, failing to pay unit employees accrued vacation pay, and changing the work hours of a unit employee.

(e) Withdrawing recognition from and refusing to bargain with the Union as the exclusive representative of an appropriate unit of the Respondent's employees.

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

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

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if understandings are reached, embody the understandings in a signed agreement. The appropriate unit is:

> All employees employed as superintendent and porters at the building located at 87-10 51st Avenue, Brooklyn, New York.

(b) Offer Theodore Conte, Fernando Cruz, and Francisco Palma immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(c) Remove from its files all references to the unlawful discharges of Theodore Conte, Fernando Cruz, and Francisco Palma, and notify those employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Make whole all unit employees in the manner set forth in the remedy section of the judge's decision for any losses ensuing from its unlawful failure to adhere to certain existing terms and conditions of their employment, and rescind unilateral changes that resulted in such losses.

(e) Make whole the unit employees' pension, welfare, and annuity funds in the manner set forth in the remedy section of the judge's decision.

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

(g) Post at its facility in Brooklyn, New York, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 29, 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.

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

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.

Respondent will reimburse the employee as provided in the remedy and Order, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[5] 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.''

WE WILL NOT warn our employees that they could be discharged if they remain as members of and continue to support Local 670, Retail, Wholesale, Department Store Union, AFL–CIO.

WE WILL NOT threaten termination of union benefits, threaten termination of an existing practice of permitting representatives of the Union access to the Respondent's premises, and threaten to cause the arrest of any union representative found on the premises.

WE WILL NOT discharge our employees because they remain as members of and continue to support the Union.

WE WILL NOT fail and refuse to bargain collectively with the Union prior to cessation of unit employees' benefit fund payments, failing to pay unit employees accrued vacation pay, and changing the work hours of a unit employee.

WE WILL NOT withdraw recognition from and refuse to bargain with the Union as the exclusive representative of an appropriate unit of the Respondent's employees.

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

WE WILL recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if understandings are reached, embody the understandings in a signed agreement:

> All of our employees employed as superintendent and porters at the building located at 87-10 51st Avenue, Brooklyn, New York.

WE WILL offer Theodore Conte, Fernando Cruz, and Francisco Palma immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole, with interest, for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL remove from our files all references to the unlawful discharges of Theodore Conte, Fernando Cruz, and Francisco Palma and notify them in writing that this has been done and that their discharges will not be used against them in any way.

WE WILL make whole all unit employees and their benefit funds for any losses resulting from our unlawful failure to adhere to existing terms and conditions of employment and WE WILL rescind unilateral changes that resulted in such losses.

87-10 51ST AVENUE OWNERS CORP.

Amy S. Krieger, Esq., for the General Counsel.

Stuart Weinberger, Esq., of Ardsley, New York, for the Charging Party.

Robert S. Nayberg, Esq. (Law Offices of Martin H. Scher), of Carle Place, New York, and *Ethel Fitzgerald, Esq.*, of Brooklyn, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The amended complaint alleges that 87-10 51st Avenue Owners Corp. (the Respondent) has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by having discharged three of its employees because they were members of Local 670, Retail, Wholesale, Department Store Union, AFL–CIO (the Union) and that it engaged in further unfair labor practices within the meaning of Section 8(a)(1) of the Act by having threatened its employees respecting their support for the Union and by having informed them that the Union no longer represents them. The complaint also alleges that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by having refused to honor the Union's request to sign a renewal collective-bargaining agreement on which accord was reached, by having withdrawn recognition from the Union as the exclusive collective-bargaining representative of a unit of the Respondent's employees, and by having failed to comply with various provisions of the renewal agreement and those of the previous agreement, including the Respondent's obligation to contribute to various benefit funds and to pay accrued vacation monies to unit employees. The complaint alleges further violations of Section 8(a)(1) and (5), by the Respondent in having unilaterally changed terms and conditions of employment of unit employees.

The Respondent's answer places those allegations in issue along with allegations that the Respondent's operations meet the Board's standard for asserting jurisdiction and that the Union is a labor organization under the Act.

I heard this case in Brooklyn, New York, on August 1, 2, and 3, 1994. Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent owns the Continental, a cooperative building located in Brooklyn, New York, and which has 150 residential apartments.

In *30 Sutton Place*, 240 NLRB 752 (1979), the Board held that it would assert jurisdiction over residential cooperative and condominium apartment buildings which have a gross annual revenue in excess of $500,000. In *Imperial House Condominium, Inc.*, 279 NLRB 1225 (1986), the Board asserted jurisdiction over an association of individual residential unit owners which grossed over $500,000 in 1980 and which, in that same year, purchased utilities from Peoples Gas System in the amount of $39,427; Florida Power & Light, $189,790; and Southern Bell Telephone Co., $10,476; and paid $168,050 to companies for maintenance, repairs,

and supplies, including $8,480.62 to Otis Elevator. Of $26,339 spent for insurance in that case, Equitable Insurance Co. received $2,074.23.

The Respondent did not furnish extensive records as to its operations which the General Counsel subpoened. It reported that many of those records were not in its possession but were in the possession of its ''auditor.''

The Respondent, in the period July 1, 1993, to June 30, 1994, received gross revenues exceeding $500,000 from rental and maintenance fees. Respecting its purchases, the records available at the hearing disclose the following:

Supplier	*Service or Product*	*Value*	*For the Period*
Prudential Insurance Co.	Various policies	$38,501	Jan-June 15, 1993
Home Savings of America (Palatine, IL)	Mortgage	90,997	Jan-Jul, 1993
Brooklyn Union Gas	Utilities	1,291	Jan-Jul, 1993
Original Commercial Oil	Heating oil	81,596	1990

I find that Respondent's operations meet the criteria set out in *30 Sutton Place*, supra, and in *Imperial House Condominiums*, supra, and that it will effectuate the policies of the Act for the Board to assert its jurisdiction in this case.

II. LABOR ORGANIZATION

The Union has represented, for the purposes of collective bargaining, the superintendent and porters employed at the Continental for some years for purposes of collective bargaining. The uncontroverted testimony of the Union's business agent discloses that the Union is an entity which fulfills the requirements set out in Section 2(5) of the Act, defining a labor organization.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Title to the apartment building in this case, the Continental, was transferred, shortly before June 21, 1988, from Summit House Associates to the Respondent. There is in evidence a copy of a collective-bargaining agreement in effect from January 1, 1990, to December 20, 1992, between the Union and ''87-10 51st Avenue Owner's, Inc., Spire Management c/o Birchwood.'' Spire Management Corporation (Spire) is engaged in the business of managing apartment buildings and is part of an organization referred to as Birchwood Associates.

Another document in evidence is a contract between the Respondent and Spire, for the period May 1, 1992, to April 30, 1995, whereby the Respondent appointed Spire as its agent to hire, pay, and supervise all persons necessary to maintain the Continental and which provided that such persons be the Respondent's employees, not Spire's. Spire was authorized via that document to enter into maintenance contracts, to arrange for appropriate insurance coverages, to bill and collect rents and related charges, to file tax returns, to arrange for board of elections' meetings, and ''to perform any act or do anything necessary or desirable in order to carry out'' the foregoing commitments. Pursuant to that authority, Spire policed the collective-bargaining agreement, noted above, which it had signed on behalf of the Respondent and which covered the superintendent and porters working at the Continental.

On September 30, 1992, the Union wrote Spire, as the Respondent's agent, for a meeting to discuss the terms of a contract to be effective after December 31, 1992. Spire advised the Union by letter of December 2, 1992, that there was a matter ''regarding the make-up of [the Respondent's] board of directors'' and requested ''an extension [of] the negotiation period'' until that matter is resolved. (The shareholders of the Respondent were then in litigation as to who would sit on the board of directors.) Spire, in that letter, assured the Union that, when the new contract is negotiated, everything will be retroactive to January 1, 1993. On February 19, 1993, Spire wrote the Union to report that the makeup of the board had still not been determined and repeated its assurance that the new contract will be retroactive to January 1, 1993. On June 24, 1993, the Union wrote Spire for an ''update'' on the situation. Spire replied by letter of July 2, 1993, stating that it expects to be able to negotiate a new contract with the Union on behalf of the Respondent within the ensuing 3 to 4 weeks. In fact, however, the Respondent terminated its relationship with Spire soon after in circumstances that appear to have been not too amicable. The Respondent then hired an individual, Paul Arena, as its property manager to supervise the porters. As discussed further below, it did not then or thereafter deduct union dues from the wages of its porters, as Spire had done previously on its behalf, or remit those moneys to the Union. It also ceased making contributions to various benefit plans for those employees, set out in the collective-bargaining agreement referred to above.

B. *The Alleged Unlawful Statements by Arena in July 1993*

Theodore Conte, a porter who worked at the Continental for 13 years and has been a member of the Union, testified that, in July 1993, he met Arena who informed him that he was Conte's ''boss,'' that there was ''no union, no benefits,'' that he could fire Conte anytime he wanted to'' and that, if he caught the Union's delegate on the premises, he would have him locked up. On another occasion, according to Conte, Arena asked him if the Union's delegate had visited the building and, when Conte replied that he had not seen any delegate there, Arena stated that he did not want any delegate around.

Arena testified that, at various times, he was asked by the porters about union benefits and that he responded by stating that he was ''not aware of any union contract at this time in the building.''

I credit Conte's account. It was, in good part, uncontroverted and to some extent even corroborated by Arena.

Arena's statement to Conte—that he could fire Conte anytime, when taken in context with his other statements then that there was no union or contractual benefits at the Continental and that he would bar a union representative from visiting the building when the contract provided for visitation rights, and when those statements are viewed in context with Conte's having long been a union member covered by a contract providing for various benefits—was a patent warning to Conte that he would be discharged if he continued to support the Union.

Later that summer, Arena in substance repeated the threat to Conte.

The uncontroverted testimony of another porter, Fernando Cruz, established that, on November 5, 1993, Arena similarly unlawfully threatened him with discharge when he told Cruz that he can fire all three porters just after he had stated that he does not want the Union in the building.

C. *The Alleged Unlawful Refusal to Bargain*

On August 4, 1993, the Union was informed by Arena that he was the new management agent for the Respondent.

The Union's business agent, Cono D'Alora, testified as follows as to ensuing negotiations. On August 25, 1993, he met with Arena and with Robert Valdez, the president of the tenants' association at the Continental, and that they reached an accord on the terms of a 3-year renewal contract which provided for a number of modifications from the terms of the expired contract. Valdez asked D'Alora to type up the ''new proposal . . . so that he can get the Respondent's board (of directors) to agree on it.'' D'Alora prepared the documents, labeled it as a contract proposal, and sent it to Arena which he received on September 2, 1993. On September 15, 1993, the Union sent a copy of that document to the Respondent and asked it to sign and return it. Arena informed him on September 20, 1993, that the Respondent's board had approved the contract. In November 1993, D'Alora wrote the Respondent's counsel and renewed the request to sign but to no avail.

Arena testified that D'Alora had presented him with a contract proposal and wanted it signed. He related that he told D'Alora that he would give the proposal to the Respondent's board of directors. Arena further testified that D'Alora later asked as to the board's decision and that he informed D'Alora that the Respondent was ''not in the position to [sign a contract] at this time.''

I am not persuaded that the Respondent had agreed to the terms of a renewal contract. In light of Arena's earlier coercive statements to Conte, a porter as recounted above, the Respondent's conduct in having ceased deducting union dues and having ceased contributing to contractual benefit funds, and in the context of its later conduct, discussed below, it is unlikely that Arena would have casually informed D'Alora, as D'Alora's account would have it, that the Respondent's board of directors accepted the Union's proposed contract. Further, D'Alora's account was not persuasively offered. It was adduced by direct reference to a copy of the proposed agreement. Essentially, D'Alora related that Arena ''agreed'' to most items, that, as to others, Arena ''wanted'' changes as noted on the proposal to which he, D'Alora, agreed and that, as to the remaining items, Arena accepted those proposals when D'Alora objected to changing them. After having observed Arena, I find it difficult to believe that there were such perfunctory negotiations. He impressed me as one who would not be so accommodating to the Union's proposals as D'Alora's account suggests. It is more likely that Arena took the proposal from D'Alora and passed it to the Respondent's board of directors which proceeded to ignore it. I find that the evidence is insufficient to establish the allegation of the complaint that the Respondent has refused to sign a contract after it had agreed as to its terms.[1]

The General Counsel has contended, as an alternative, that the Respondent unilaterally changed the existing contract terms by having failed to continue to make contributions to welfare, pension, and annuity funds and by effecting other changes noted below. This alternative contention, as presented by the General Counsel, is premised on either of two bases—first, that Spire had extended, on behalf of the Respondent, the 1989–1992 agreement until a renewal was signed, and second, that the terms of the prior agreement continued in effect unless changed as a result of subsequent negotiations. The Respondent has argued against the first asserted basis by denying that Spire extended or even had authority to extend the 1989–1992 agreement. It is unnecessary to pass upon that assertion in view of my findings below as to the second basis urged by the General Counsel.

It is well settled that an employer is obliged to continue to follow the terms and conditions of employment set out in a collective-bargaining agreement until a new agreement is reached or until good-faith bargaining leads to an impasse. See *R.E.C. Corp*., 296 NLRB 1293 (1989). The Respondent contends however that, as of July 1993, it did not have to follow the agreement that expired on December 31, 1992, because a new board of directors took control of its operations; it argues that the Respondent was thereby ''reconstituted'' and as such was obligated only to negotiate with the Union, but as a ''successor employer'' it did not have to follow the terms of the expired agreement. There is no precedent to support the contention that, when stockholders vote in a new board of directors, a successor employer is thereby created. A stock sale may, under certain circumstances, be a factor in establishing successorship. Compare *Hendricks-Miller Typographical Co*., 240 NLRB 1082, 1083 at fn. 4 (1979), with *Holly Farms Corp*., 311 NLRB 273, 275–280 (1983). There is, however, no authority to support a finding that a change in corporate directors creates a new corporation.

In August 1993, Arena changed the working hours of Francisco Palma, one of the porters at the Continental. This change was effected without notice to the Union and thus done in derogation of the Respondent's duty to bargain collectively with the Union.

The complaint alleges that the Respondent has unlawfully withdrawn recognition of the Union. The evidence thereon is ambivalent. While Arena told unit employees that they have no union, he nonetheless met later with D'Alora to receive the Union's contract proposal and, later informed D'Alora, in substance, that the Respondent did not accept that proposal. In its brief, the Respondent has professed that it is obligated

[1] The Respondent filed a posthearing motion to reopen the record in order that it may adduce evidence that the Respondent's board of directors had never authorized Arena to negotiate with the Union. The Union and the General Counsel opposed the motion on the ground that the evidence to be offered is not newly discovered. The motion is denied. The motion and the statements of opposition are received in evidence as ALJ Exh. 1.

to bargain with the Union but is not, as noted above, bound to the terms of the expired agreement. I find the evidence insufficient to establish that the Respondent has withdrawn recognition of the Union as the representative of the unit employees at the Continental.

I find then that the Respondent had in July 1993 unlawfully changed existing terms and conditions of the unit employees. It has unlawfully failed to continue to make monthly contributions to welfare, pension, and annuity funds as required by the contract referred to above; it has also failed to deduct and remit union dues; it changed the work hours of one of its porters, without notice to the Union; it rescinded the requirement whereby the Union had access to the Respondent's premises; and it modified the vacation provisions. It has not, however, withdrawn recognition from the Union as the exclusive collective-bargaining representative of the employees in the unit involved herein.

D. *The Alleged Unlawful Discharges*

As noted above, the Union represents the Respondent's porters. When the porters made inquires of Arena as to contract benefits, they were told that they had none and that they could be discharged at any time. In November 1993 one of the porters told Arena that he would go to the ''labor department'' when Arena rejected his request for overdue vacation pay. A little over a week later, all three porters were discharged. On November 19, 1993, they were each given a letter by the Respondent informing them Spire is their real employer and that they should apply to Spire for work.

In view of the porters' membership in and activities supporting the Union, the Respondent's union animus and the obvious pretextual basis of the reason proffered by the Respondent for their discharge, I find that the General Counsel has established, prima facie that the Respondent discharged these three employees because of their membership in, and support for, the Union. *Wright Line*, 251 NLRB 1083 (1980). I further find that the Respondent has offered no evidence to demonstrate that it, nonetheless, discharged these employees for a lawful reason. In these circumstances, the Respondent has not met its burden under *Wright Line*, and I therefore find that it discharged the three porters because they supported the Union.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall offer immediate and full reinstatement to employees Theodore Conte, Fernando Cruz, and Francisco Palma and to make them whole for any losses resulting from their unlawful discharge as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also remove from its files any reference to the unlawful discharges and to advise the discriminatees in writing that this has been done and that their discharges will not be used against them.

The Respondent shall restore all terms and conditions of employment to the status quo as they existed as of December 31, 1992, and shall make whole unit employees for any loss of wages or benefits resulting from the Respondent's failure to continue these terms, in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also reimburse its unit employees for any expenses ensuing from the Respondent's unlawful failure to make the required benefit payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), with interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also remit all fringe benefit amounts which have become due. Any additional amounts due the employee benefit funds shall be paid as prescribed in *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also forward to the Union the union dues it should have deducted from employees' wages, with interest as prescribed in *New Horizons for the Retarded*, supra.

CONCLUSIONS OF LAW

1. The Respondent is an employer employed in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization as defined in Section 2(5) of the Act.

3. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by having:

(a) Warned its employees in substance that they would be discharged if they remained as members of the Union, sought benefits available to them under its contract with the Union, or failed to accept its prohibition against the Union's exercising its contractual visitation rights.

(b) Committed the acts described below in paragraph 4 and 5.

4. The Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(3) of the Act by having discharged Theodore Conte, Fernando Cruz, and Francisco Palma because of their membership in, and support of, the Union.

5. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act by having:

(a) Ceased deducting union dues from the wages of its employees and forwarding those dues to the Union.

(b) Failed since August 6, 1993, to make payments to pension, welfare, and annuity funds provided.

(c) Failed to pay unit employees accrued vacation pay.

(d) Unilaterally changed the work hours of a porter.

6. The unfair labor practices described in paragraphs 3, 4, and 5 affect interstate commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]