

Armored Transport, Inc. and Currency and Security Handlers Association (CASHA) and United Plant Guard Workers of America Amalgamated Local No. 100, affiliated with the International Union of Plant Guard Workers of America. Cases 31-CA-23504, 31-CA-23505, 31-CA-23624 (formerly 32-CA-16841), 31-CA-23625 (formerly 32-CA-16879), 31-CA-23908 (formerly 21-CA-33003), 31-CA-23728, 31-CA-23732, 31-CA-23748 (formerly 32-CA-17245), and 31-CA-23749 (formerly 32-CA-17426)

May 29, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS
LIEBMAN AND TRUESDALE

On March 7, 2000, Administrative Law Judge Clifford H. Anderson 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, 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, Armored Transport, Inc., Bakersfield, Santa Maria, Fresno, Merced, and Temecula, California, its officers, agents, successors, and assigns shall take the action set forth in the Order.

Nathan Laks, Atty., for the General Counsel.

Neil O. Andrus and Stephen N. Yang, Attys. (Jeffer, Mangels, Butler & Marmaro), of San Francisco, California, for the Respondent.

Scott A. Brooks, Atty. (Gregory, Moore, Jeakle, Heinen, Ellison, Brooks & Lane), of Detroit, Michigan, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard this case in trial on August 23, 24, and 25, 1999, in Los Angeles, California. The matter arose as follows.

On August 17, 1998, Currency and Securities Handlers Association (CASHA) filed charges docketed as Cases 31-CA-23504 and 31-CA-23505 against Armored Transport, Inc. (the Respondent). On June 24, 1998, CASHA filed a charge docketed as Case 32-CA-16841 against the Respondent, which was thereafter transferred and designated as Case 31-CA-23624. On July 16, 1998, CASHA filed a charge docketed as Case 32-CA-16879 against the Respondent, which was thereafter trans-

ferred and designated as Case 31-CA-23625. On October 15, 1998, CASHA filed a charge docketed as Case 21-CA-33003 against the Respondent which was thereafter transferred and designated as Case 31-CA-23908. The Regional Director for Region 31 of the National Labor Relations Board (the Board) issued an order consolidating cases, consolidated complaint and notice of hearing respecting these cases on December 29, 1998.

On February 11, 1999, the United Plant Guard Workers of America Amalgamated Local No. 100, affiliated with the International Union of Plant Guards Workers of America (Local 100 and, with CASHA, the Charging Parties) filed a charge docketed as Case 31-CA-23728 against the Respondent. On February 12, 1999, Local 100 filed a charge docketed as Case 31-CA-23732 against the Respondent. On February 16, 1999, Local 100 filed charges docketed as Cases 32-CA-17245 and 32-CA-17246 against the Respondent which were thereafter transferred and designated as Cases 31-CA-23748 and 31-CA-23749. On April 29, 1999, the Regional Director for Region 31 of the Board (the Regional Director) issued an order consolidating cases, second consolidated complaint and notice of hearing respecting these cases. On July 20, 1999, the Regional Director issued an order consolidating cases, third consolidated complaint and notice of hearing respecting these cases. The Respondent filed timely answers to the complaints.

The consolidated complaint alleges that the Respondent's employees in appropriate bargaining units at each of its Bakersfield, Santa Maria, Fresno, Merced, and Temecula, California facilities had been represented by independent labor organizations until March and April 1998 at which time those labor organizations affiliated with CASHA so that CASHA became the individual labor organizations' designated representative for the purpose of collective bargaining. The complaint further alleges that CASHA on or about December 10, 1998, affiliated with International Union of Plant Guards Workers of America becoming Local 100, the designated collective-bargaining representative of the individual labor organizations representing the Respondent's unit employees at its Bakersfield, Santa Maria, Fresno, Merced, and Temecula, California facilities.

The complaint alleges that the Respondent was requested to recognize CASHA and thereafter Local 100 as the designated representative of the five independent labor organizations representing the Respondent's unit employees at each of its Bakersfield, Santa Maria, Fresno, Merced, and Temecula, California facilities by May 1988 and that at all times, on and after June 11, 1998, the Respondent has failed and refused to so recognize first CASHA and later, on and after February 10, 1999, Local 100, as such a representative thereby violating Section 8(a)(5) and (1) of the Act.

The complaint further alleges that on or about June 10, 1998, the Respondent bypassed the Armored Transport Temecula Employees Association and dealt directly with the Temecula facility unit employees by soliciting the employees to sign a contract between the Respondent and the Armored Transport Temecula Employees Association and by entering into an agreement purporting to be a contract between the Respondent and the Armored Transport Temecula Employees Association for the period June 1, 1998, through May 31, 2001.

By amendment to the complaint at the hearing the General Counsel further alleged that on about March 18, 1999, the Respondent bypassed the Armored Transport Temecula Employees Association and Local 100 and dealt directly with the unit by entering into an agreement purporting to be a collective-bargaining agreement between Respondent and the Armored Transport Temecula Employees Association for the period April 1 1999, through March 31, 2002.

The Respondent in its answer denies that it has violated the Act as alleged.

FINDINGS OF FACT

On the entire record herein, including helpful briefs from the Respondent, the Charging Parties, and the General Counsel, I make the following¹

I. JURISDICTION

The Respondent, a corporation, with offices and places of business in Bakersfield, Santa Maria, Fresno, Merced, and Temecula, California, has been engaged in the transportation of cash and valuables for its customers. The Respondent in the course and conduct of its business annually purchases and receives goods at its California facilities valued in excess of \$50,000 directly from points outside the State of California.

Based on the above, there is no dispute and I find the Respondent is and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

There is no dispute and I find that at all relevant times the Armored Transport Bakersfield Employee Association, Armored Transport Santa Maria Employee Association, Armored Transport Fresno Employee Association, Armored Transport Merced Employee Association, Armored Transport Temecula Employee Association, CASHA, and Local 100 are, and each of them is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent operates a multistate armored car company engaged in the business of transporting and warehousing cash and other valuables for banks, retail stores, and similar businesses. At relevant times its president and chief executive officer was Richard Irvin and its director of labor relations was Joel (Bud) Curnutt.

The Respondent has maintained facilities in Bakersfield, Santa Maria, Fresno, Merced,² and Temecula, California. Each of these facilities employed at all relevant times employees in the following individual facility bargaining units (the units):

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent excluding all other employees and supervisors as defined in the Act.

There was no dispute and I find that the five individual facility bargaining units were appropriate for collective bargaining within the meaning of Section 9(a) of the Act. The Merced facility has since closed.

The Respondent at various times in the 1990s, but in all cases more than 6 months before the filing of any of the charges in this proceeding, recognized and entered into separate collective-bargaining agreements with the Armored Transport Bakersfield Employee Association, Armored Transport Santa Maria Employee Association, Armored Transport Fresno Employee Association, Armored Transport Merced Employee Association, and Armored Transport Temecula Employee Association respecting the unit at each particular facility. There is no dispute and I find, each of the five facility Employee Associations became and thereafter continued to be the exclusive representative of the Respondent's unit employees at each respective facility.

The record establishes that the Employee Associations were not so much formed by employees as created by announcement by the Respondent who presented the employee complements at each facility with documents styled as collective-bargaining agreements and obtained the agreement or acquiescence of the employees to the documents in the name of the Association. The Employee Associations were paradigms of informality. There was no dispute that none of the Associations at any time had ever had a constitution, bylaws, elected officers, initiations fees, union dues, financial resource or obligations, or a membership different from or determined by other than unit employee status. The Associations never have had their own offices, other locations or even storage areas, never maintained records of any kind, never had a telephone or even acquired letterhead stationary.

In addition to being amorphous, or as the General Counsel contends "ghostly," it is clear that the Associations had no active ongoing role in workplace relations or even a coherent or continuous existence. Testimony establishes that no formal grievance was ever initiated, processed or supported by an Association. No formal or structured election or representative selection process seems to have ever existed prior to the affiliation procedures described, *infra*.

Seemingly the Associations were historically invoked or brought into being by the Respondent in the period before each triennial contract in each unit. The Respondent announced its intentions respecting the terms of a new agreement to the employees and with some interemployee communication and limited negotiations with the Respondent the terms were agreed on. In this manner, a contract was agreed to and the Associations, such as they were, disappeared or became quiescent until the next contract cycle.

The most recent contracts between the Respondent and the respective Employees Associations for the units noted below are:

¹ As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

² The Merced facility was apparently closed in or around June 1999 and the staff was transferred to a facility of the Respondent not involved herein in Modesto, California.

Bakersfield—July 1, 1997, through June 30, 2000
 Santa Maria—October 12, 1997, through October 31, 2000
 Fresno—June 1, 1997, through June 2000
 Merced—June 1, 1997, through June 2000
 Temecula—June 30, 1996, through July 31, 1999³

On or about March 23, 1998, the Armored Transport Santa Maria Employees Association validly, and while observing due process and preserving substantial continuity of the Association, designated CASHA as its agent for collective bargaining. On or about March 27, 1998, the Armored Transport Temecula Employees Association validly, and while observing due process and preserving substantial continuity of the Association, designated CASHA as its agent for collective bargaining. On or about April 1, 1998, the Armored Transport Fresno Employees Association validly, and while observing due process and preserving substantial continuity of the Association, designated CASHA as its agent for collective bargaining. On or about April 2, 1998, the Armored Transport Merced Employees Association validly, and while observing due process and preserving substantial continuity of the Association, designated CASHA as its agent for collective bargaining. On or about April 3, 1998, the Armored Transport Bakersfield Employees Association validly, and while observing due process and preserving substantial continuity of the Association, designated CASHA as its agent for collective bargaining. CASHA during 1998 represented the Respondent's employees a several California facilities other than those in issue herein. On about December 10, 1998, CASHA, while observing due process and preserving substantial continuity of representation, affiliated with the International Union, United Plant Guard Workers of America and became Local 100 of the United Plant Guard Workers of America.⁴

B. Events

1. Demands for recognition and refusal to recognize

On April 6, 1998, David Troy Nelsen, then-president of CASHA, sent a letter on CASHA letterhead to the Respondent's president, Irvin, with the following text:

On March 27, 1998 the Armored Transport Temecula Employees Association voted to affiliate with the Currency and Securities Handlers Association.

Please be advised that CASHA is now the bargaining representative for the Armored Transport Temecula Employees Association.

CASHA will honor the existing contract between the Armored Temecula Employees Association and Armored Transport, Inc.

CASHA requests Armored Transport, Inc. to recognize CASHA as the representative of the Armored Temecula Employees Association.

³ Two subsequent contracts in Temecula are in contention, see the discussion of Temecula events, *infra*.

⁴ The facts respecting the affiliations set forth in this paragraph were stipulated by the Parties either on the record or in written stipulations entered into evidence as Joint Exhibits.

Armored Transport, Inc. will conduct future bargaining with the same representatives of the Armored Transport Temecula Employees Association who conducted such bargaining in the past.

Please respond to this request for recognition by April 20, 1998.

Nelsen sent on the same day similar letters to Irvin for the Fresno and Santa Maria Associations varying the text only to refer to slightly different election dates respecting those units.

By letter dated May 18, 1998, Nelsen again wrote to Irvin noting CASHA's earlier demand for recognition and the Respondent's failure to respond. The letter added that "CASHA is also demanding recognition for the following [Respondent] branches for Merger Elections also held: Bakersfield and Merced." The letter threatened to file NLRB unfair labor practice charges alleging the Respondent's refusal to bargain if a response was not received by May 29, 1998.

On June 11, 1998, Nelsen and other CASHA agents met with Irvin respecting collective-bargaining units of the Respondent's employees represented by CASHA not relevant herein. During these meetings, Nelsen asked Irvin for a response to CASHA's April 6 and May 18, 1998 letters. Irvin told Nelsen that there was no reason for the Respondent to recognize CASHA for those units because there were no contracts due to expire.

On February 10, 1999, Nelsen, now president of Local 100, sent Irvin a letter on CASHA—Local 100, United Plant Guard Workers of America letterhead, with the following text:

On May 18, 1998 CASHA demanded recognition for the following [Respondent] branches due to Merger Elections held:

- 1- Bakersfield
- 2- Fresno
- 3- Merced
- 4- Santa Maria

[The Respondent] did not respond.

As you know, CASHA has voted to affiliate with the United Plant Guard Workers of America and is now CASHA Local #100.

CASHA LOCAL #100 is now officially demanding recognition in the following [Respondent] locations:

- 1- Bakersfield
- 2- Fresno
- 3- Merced
- 4- Santa Maria

Please respond a.s.a.p. with the Company's position at [telephone number of Local 100 omitted].

On or about the same date, the Respondent's director of labor relations, Curnutt, told Nelsen by telephone that the Respondent's position was unchanged, that the Respondent would not recognize CASHA nor Local 100 in any capacity at any of the facilities at issue herein absent an election conducted by the National Labor Relations Board. Following that communication, the Charging Parties have received neither a change of position regarding recognition from the Respondent nor a re-

quest for clarification of or questions regarding the demands of CASHA and Local 100 as described above.

2. The events at the Temecula facility

On March 27, 1998, in the vote noted supra, eight Temecula unit employees and hence Armored Transport Temecula Employees Association members cast their secret ballots unanimously for affiliation with CASHA. At that time there was in place a Temecula agreement between the Respondent and the Armored Transport Temecula Employees Association, which was effective by its terms from June 30, 1996, through July 31, 1999.⁵

On April 23, 1998, 13 Temecula unit employees signed and submitted to the Respondent a letter or petition with the following text:

We the employees of Armored Transport Temecula, as a collective bargaining group, would like to open our current wage agreement to facilitate negotiations of a wage increase.

In apparent response, a mandatory meeting was held by the Respondent at the Temecula facility on May 20, 1998, attended by the Regional Vice President Carl Logrecco and Director of Labor Relations Curnutt and the great majority of unit employees—the sign in sheet for the meeting bears 13 employee signatures.

Phillip Williams, an employee of the Respondent employed at the Temecula facility as a messenger/driver until just before the hearing herein, testified respecting the meeting. He recalled that Curnutt mentioned that the Respondent knew that there had been an outside source contacting employees with information that was not true. They had been telling employees what they could do for the employees, but they cannot provide anything to the employees, only the Respondent could.

Williams recalled Curnutt told them that it would probably not be a good thing for the employees if they “went with CASHA” because only the Respondent could give the employees more money. Curnutt discussed the fact that associating with outsiders could involve a strike and that the employees should know that a strike would be unsuccessful and be worse for the employees than the Company.

Williams testified that Curnutt told the employees he was prepared to offer them a contract. He stood before the employees with a document in his hand flipping through its pages explaining the terms to the employees. Curnutt told the employees:

I’d like you guys to go ahead and look it over, and this is as good as it gets. It will be our last, best, and final, whatever.

Williams recalled that after Curnutt asked the employees to take a minute and look at the contract, Williams asked if it would be possible for the employees to take a day or two and look at the contract and get back to Curnutt. Williams recalled that Curnutt said: “[N]o, this is it right now because I wouldn’t want this to get in to the wrong hands.”

⁵ Based on the terms of the contract received into evidence, the General Counsel moved to conform the complaint to the terms of the contract. The motion is granted.

The employees were afforded a few minutes to consider the contract offer. Carl Logrecco and Curnutt left the room and the employees voted unanimously to accept the new contract and 12 employees and Curnutt signed it. The contract that had been in place until that point had a term of June 30, 1996, through July 31, 1999. The new contract offered higher wages, an additional paid holiday and extended through May 31, 2001.

Some 10 months later on March 18, 1999, the Temecula employees attended a preannounced mandatory meeting at the facility conducted by the Respondent’s vice president, Carl Logrecco, Facility Manager Sean Logrecco, and Assistant Facility Manager Goldwurm. Carl Logrecco, in Williams’s recollection, introduced himself to the employees many of who were recent hires. Williams recalled further that Carl Logrecco:

Wanted to know if anybody had any problems in the branch with management, employees, or anything, any complaints. And talking about the Company recognizes you guys work hard and blah, blah, blah. And would like to offer you guys yet another contract. He said it’s out of the ordinary that we do this, open a contract before it expires, but we would be willing to open the contract for you people. And I have one here, if you guys want to look at it and see if it something you like . . . He took it out of his—had actually had it in his hand and said you guys can look this over and, you know, if there’s any questions I can explain to you about what’s in there. Anything you don’t understand and this is a good thing for you guys and you don’t need a union to get anything from the Company. All you have to do is ask us.

Carl Logrecco explained, in Williams testimony, that the new contract would immediately increase starting wages by \$2 per hour. Some employees complained to him about being part time and Logrecco instructed the facility manager to: “Look into it, make them full-time.” The employees were generally pleased by these events. Williams recalled: “After [Carl Logrecco] gave us the contract, everyone looked it over. There was a brief discussion. And we all signed the contract, and gave it back to him.” The new contract extended by its terms to March 31, 2002.

Respecting CASHA, Williams recalled that Carl Logrecco said:

There are so many of you people here that are new and I basically would like to let you know that there is a union out there by the name of CASHA. Don’t be fooled by anything they tell you, and pretty much what Bud Count had reiterated on. We can give you what it is that you want. They can’t. So don’t be fooled by it.

C. Analysis and Conclusions

1. The issue of the Respondent’s refusal to recognize CASHA and Local 100 as the collective-bargaining agent of the respective Associations regarding the units

a. Narrowing the issue and the arguments of the Parties

As a result of the pleadings and the stipulations and positions taken at the hearing by the parties, the issue respecting the Respondents obligations, if any, to recognize first CASHA and

thereafter Local 100 is quite narrow. It is appropriate to initially note the matters that are not in dispute herein.

There is no dispute, the parties stipulated, and I have found, supra, that the five individual Armored Transport Employee Associations involved herein as well as CASHA and Local 100 are now, and have been at all relevant times, labor organizations. There is no dispute that the five individual Armored Transport Employee Associations involved herein each have and continue to represent the Respondent's employees in the units described supra. The appropriateness of each unit under Section 9(a) of the Act is likewise not under dispute.

There is no dispute that each of the five individual Armored Transport Employee Associations properly designated CASHA as its agent for purposes of collective bargaining with the Respondent regarding the unit it represented. Further there is no dispute that CASHA properly affiliated with the International Union, United Plant Guard Workers of America, and thus became Local 100. Finally, there is no dispute that first CASHA and thereafter Local 100 demanded that the Respondent recognize them as agents of the individual Armored Transport Employee Associations for purposes of bargaining regarding the units each represented and that the Respondent refused and continues to refuse to so recognize the Charging Parties as such representatives.

From the above agreements and stipulations, counsel for the General Counsel and the Charging Parties argue a violation is established. More specifically they argue as follows. There is no dispute that the individual Associations at all times material have each represented a unit of the Respondent's employees. Those labor organizations are entitled under the National Labor Relations Act to designate another labor organization to act for them in collective bargaining and each did so with respect to CASHA. Therefore, on the dates noted above, CASHA became each Association's agent for bargaining. Thereafter, consistent with the requirements of the Act, CASHA became Local 100 and Local 100 then became the Associations' bargaining agent. The Respondent was therefore obligated to recognize and bargain with first CASHA and thereafter with Local 100 when asked to do so. The Charging Parties and the General Counsel argue the Respondent well knew or should have known all the above at the times that CASHA and Local 100 demanded recognition of it as the Associations' bargaining agent. Since the Respondent, at all times since those demands were made upon it, has failed and refused to so recognize first CASHA and thereafter Local 100, argue the Charging Party and the General Counsel, the Respondent has wrongfully withheld recognition in violation of Section 8(a)(5) and (1) as alleged in the complaint.

The Respondent argues that at no time did it receive notice from any, let alone all, of the five Associations that have represented its unit employees, that CASHA or Local 100 had become that Association's, or the Associations' agent for bargaining. Rather to the contrary, argues the Respondent, it received subsequent information that such an agency designation was being withdrawn. The Respondent specifically asserts that the purported agents CASHA and Local 100 simply could not under traditional rules of agency, and therefore did not, create their own agency by informing the Respondent that the Asso-

ciations had designated them. All this being so, argues the Respondent, at no relevant time did the Respondent have actual knowledge nor could the Respondent be charged with constructive knowledge of the agency designations of the Associations and therefore no obligation to recognize such agents ever came into being. There being no obligation to recognize the existence of such an agency relationship or designation, there was no impropriety in the Respondent's refusal to recognize either CASHA or Local 100 at any material time as such an agent.

The Respondent offers as instructive *Newell Porcelain Co.*, 307 NLRB 887 (1992), petition for review denied sub nom. *Electrical Workers v. NLRB*, 986 F.2d 70 (4th Cir. 1993). In *Newell*, the employer was privileged to suspend bargaining with a labor organization pending further clarification of the identity of the party purporting to be the employees' representative. The Respondent points out that the letters CASHA sent to the Respondent asked that CASHA be "recognized" and that it was seeking "recognition" based on "Merger Elections." The Respondent argues, on brief at 25:

These communications are not demands that [the Respondent] bargain with the Employee Associations, affiliated with CASHA. The[y] demand that CASHA be "recognized" and aver that the Employees Associations have "merged" with CASHA. As such, they are as ineffective to trigger a bargaining obligation as were the communications in *Newell Porcelain*.

The General Counsel and the Charging Party meet this argument in several ways. They both argue at some length that the asserted "no knowledge" defense of the Respondent is simply a sham defense to cloak its bad-faith refusal to recognize the Charging Parties. Each argues that the Respondent's entire course of conduct in this matter reveals that the Respondent was seeking to subdue the employees involved and avoid having to bargain with their designated bargaining agent.

The Charging Party argues that, when faced with an ambiguous demand for recognition of the type the Respondent argues it was presented with, an employer may not as the Respondent has done simply refuse to recognize the union citing *Parkview Manor*, 321 NLRB 477 (1996). In *Parkview* the Board found an employers reliance on the doctrines of *Newell Porcelain*, supra, inadequate noting at footnote 2, page 477: "By contrast, the Respondent here made no attempt to clarify the ambiguity and ascertain the relationship between [the two Unions involved]." See also *RTP, Co.*, 323 NLRB 15, 22 fn. 15 (1997). The General Counsel also argues that the Respondent could easily have approached the unit employees at its facilities who were by definition the members of the Associations involved and inquired about CASHA's demand. The General Counsel further asserts on brief at 19: "That the Respondent failed to do so, in even a single instance, speaks volumes about the credibility of its position. [Footnote omitted.]"

The General Counsel argues further that the Respondent was not ignorant of the situation at all relevant times. At each facility involved herein there were election notices, employee discussions and post election result conversations of employees. In essence the General Counsel and the Charging Party argue that under a "small shop" type theory the Respondent may easily be

found to have been aware of what had transpired respecting the Associations' relationship to CASHA.

The General Counsel advances the testimony of Candelario Carrizales, a unit employee with over 25 years service at the Bakersfield facility. Carrizales testified that he was, in essence, the Bakersfield Employees Association representative and in late June 1999, the Respondent's regional manager, Kurt Eimer, and Curnutt asked him: "Is the Union going to be your representative or represent you?" and he told them: "[Y]es." Thus, argues the General Counsel, even when the Associations did in fact tell the Respondent's agents that the Union was their agent for bargaining, the Respondent continued to deny Local 100 recognition as such. The Charging Party emphasizes on brief at 5 that the Respondent, even after it had stipulated at the hearing to the facts of the Union's selection as the Associations' agent, continued and continues to withhold recognition from and refuses to bargain with Local 100 as the Associations' designated agent.

b. Analysis and conclusions

It is appropriate to deal initially with the government's opening argument. The General Counsel asserts, in effect, that the individual Employee Associations were sham unions created by the Respondent as "ghostly" entities without more than the vaguest amorphous identity. They were created and maintained, argues the General Counsel, to serve the Respondent's desire for simple rubber-stamping of the Respondent's desired schedule of wages and working conditions in the form a purported contract. Thus, the Government at least at some level challenges the Respondent's conduct as a continuing course of illegal or improper domination.

I reject the argument to the extent that it seeks to challenge the legitimacy of either the Associations, the recognition afforded them or the conduct of the Respondent which occurred more than 6 months before the filing of the charges herein. The Associations—as alleged in the compliant and stipulated by all the parties—meet the statutory definition of the term labor organization. The Respondent's recognition of the Associations and entrance into collective-bargaining agreements with them⁶ occurred more than 6 months before the filing of the charges herein. These two facts together simply defeat the General Counsel's claim. *Bryan Mfg. v. NLRB*, 362 U.S. 411 (1960); *Garment Workers (Bernhard-Altmann Tex. Corp.) v. NLRB*, 342 U.S. 731 (1969). The Associations are labor organizations properly recognized as representing certain units of employees, no more, no less.

The General Counsel has pled and the parties have stipulated that the Associations remain the 9(a) representatives of unit employees and that they had selected CASHA as their agent for collective bargaining and that CASH later became Local 100. If the Respondent knew or may be charged with knowledge of these facts, it would clearly have been obligated to recognize CASH and later Local 100 as such an agent. I reject the General Counsel's argument however that the Respondent had to take CASHA's and Local 100's word for the agency designa-

tion because the "Employee Associations were Headless and Inoperative" (the GC Br. at 22). An organization that could take the action of designating a bargaining agent could take the further action of notifying the Respondent that it had done so. There is no basis for finding that the Associations could act, but could not announce the actions it had taken.

Thus, I find the Employee Associations were not simply by virtue of their highly informal nature relieved of the traditional obligation to notify the Respondent of their agency designations before holding the Respondent to an obligation to bargain with their designated agent. Repeating, I do not find that under some doctrine of necessity, the actions of CASHA and Local 100 informing the Respondent of the agency designation must be taken as sufficient notice of the event simply because of the headless or radically informal nature of the Associations involved. Rather, the entire factual circumstances as they pertain to the Respondent's knowledge and the actions it took in that setting must be considered to fairly determine if the Respondent received sufficient actual or constructive notice of the Associations' bargaining agent designations to create in it a duty to recognize and bargain.

Considering the entire series of events, including the history of the relationship—as limited supra, the occurrence of elections at each facility and the fact that the Respondent and CASHA and later Local 100 were engaged in bargaining respecting other units and facilities of the Respondent, I find that the written notification of the Respondent by CASHA, quoted supra, of the agency designation and its request for recognition did not rise to the level of charging the Respondent with actual knowledge of the fact of designation.

Rather, I find that the entire circumstances created on behalf of the Respondent a duty to inquire further of CASHA and the Associations regarding any questions it had or ambiguities it perceived, before it could properly deny or withhold recognition based on such a lack of clarity or ambiguity. Such a further inquiry would not have been difficult. The Respondent knew and had regular contacts with CASHA agents. Agents of the Respondent were supervising each Association facility. Contact and communications with the employee/Association members was possible on virtually any workday. The Respondent argued on brief at footnote 17, page 28: "The record is clear that the Employees Associations were in fact perfectly capable of communicating with Armored Transport when the need arose." Inquiries would thus have been quite simple to make. The record is clear that at least initially, the Respondent did not make any.

It is also true that the Associations did not initiate such contacts with the Respondent. In the situation and circumstances presented herein however, the Respondent's naked reliance on the proposition that an agent cannot create his own agency does not support or justify its refusal to recognize CASHA and thereafter Local 100 without the Respondent making further inquiry. Thus, I find it was constructively charged with the knowledge that its inquiry would have provided, i.e., that the agency designations and the subsequent transmutation of CASHA to Local 100 had occurred and were proper and legally correct and sufficient.

⁶ Again deferring the Temecula contracts for further discussion, *infra*.

The Respondent argues further that the answer of its agent Irvin to CASHA and later Local 100's president, Nelsen, that there was no reason for the Respondent to recognize CASHA because there were no contracts due to expire was not a refusal to bargain because there was nothing to bargain about. I reject that argument however because the role of a bargaining agent is not limited to that of negotiating new collective-bargaining agreements. Indeed in the quoted demand, Nelsen made it clear that contracts would be honored, but sought recognition nonetheless. The Respondent's consistent pattern of conduct was a specific and ongoing refusal to recognize or bargain with CASHA or Local 100.

Having found the Associations had a right to designate a bargaining agent, that each did so and that the Respondent was obligated under the Act to recognize and bargaining with the agent, but did not do so, it follows that the Respondent's failure to do so violated the Act. I find therefore that the Respondent's failure and refusal to timely recognize and offer to bargain with CASHA in response to CASHA's letters of April 6 and May 18, 1998, and subsequent communications by Local 100 violated Section 8(a)(5) and (1) of the Act.

The Respondent argues that, even if its initial refusals to recognize and bargain with CASHA and Local 100 were improper, the subsequent actions of the Associations in Fresno and Temecula validly rescinded whatever bargaining authority had been delegated. Temecula is discussed, *infra*.

The Respondent introduced a petition submitted to it by a majority of the unit employees in Fresno represented by the Fresno Employees Association dated June 6, 1999, the text of which reads:

To whom it may concern: We are not represented by CASHA or United Plant Workers Association nor do we intend to join, We are A.T. I/ Fresno Employees Association.

We intend to represent our members now as we have in the past. Attached is a list of our members that represent the majority.

The Respondent argues that this document constitutes a withdrawal or rescission by the Fresno Employees Association, at all time the recognized representative of the Fresno unit employees, of any earlier agency designation of either CASHA or Local 100 as its agent for purposes of bargaining. Thus, argues the Respondent, on and after that June 6, 1999, there was no longer an obligation to deal with CASHA or Local 100 respecting Fresno unit employees and no bargaining order remedy should lie respecting that unit since the Respondent has at all times recognized the Associations, including the Fresno Association, as the statutory representatives of the unit employees in their respecting areas.

The General Counsel and the Charging Party argue that there were factual circumstances which tainted the efforts of the employees in Fresno reflected in the above quoted memo and renders the memo an inadequate defense to the Respondent's obligation to recognize CASHA and Local 100 as the representative of the Fresno Association. The Respondent challenged this assertion.

The General Counsel also argued however, that as a matter of law, if the Respondent had been wrongfully failing to bargain with the Fresno Association by refusing to recognize the Fresno Employees' designated bargaining agents, first CASHA and thereafter Local 100, as alleged in the complaint, for over a year before the June 1999 events at issue here, the Fresno Association could not rescind its agency appointment and the Respondent could not rely on a rescission occurring during such a period citing *Hearst Corp.*, 281 NLRB 764 (1986), *enfd.* 837 F.2d 1088 (5th Cir. 1988), and *Fabrick Warehouse*, 294 NLRB 189 (1989), *enfd.* 902 F.2d 28 (4th Cir. 1990).

The General Counsel argues that the cases stand for the proposition that employees may not seek to decertify a union that was wrongfully being denied recognition and bargaining by an employer during the period of the employer's wrongful refusals. The principle to be applied to the instant case, argues the Government, is that an employer should not be able to defend against its own wrongdoing based on employee actions taken as a result of its own earlier wrongdoing in failing to comply with the provisions of Section 8(a)(5) of the Act. The employer may not properly so thwart employees in their lawful right to designate a labor organization to represent them the employees abandon their seemingly futile efforts to the employers benefit.

The Respondent challenges the General Counsel's and the Charging Parties' theory as fundamentally flawed for it confuses the institutional rights of labor organizations with the Section 7 rights of employees and mischaracterizes the nature of the dealings of the Respondent with the employees who constitute the Fresno Association. Thus, the Respondent argues it is always proper for an employer to contact the union that is the representative of its employees and that a labor organization must be free to govern its own affairs within its statutory mandate including the right to change its earlier designations of agents. The cases cited by, the arguments advanced by and the analysis suggested by the General Counsel, argues the Respondent, treat the constituent body that is the Fresno Association incorrectly as if it was simply statutory employees and this produces an absurd and improper result.

These arguments are set forth in greater detail respecting the Temecula Employees, *infra*. Based on my analysis and conclusions set forth there, I find that the Respondent's argument is without merit within the factual setting presented herein and further find that the line of cases cited by the General Counsel above, is applicable to the facts presented by the record as a whole. I ruled at the trial, and reaffirm that finding here, that the Fresno Association could not rescind its agency designation in June 1999 in the manner described in the record—the existence of tainting conduct or no—if the Respondent was improperly and in violation of the statute failing and refusing to recognize and bargain with that designated agent of the Association. I further ruled at trial and again reaffirm here that it is therefore unnecessary to inquire into the contested facts respecting the events and circumstances of the Fresno rescission. I simply find the June 1999 events do not provide the Respondent with a defense to its earlier incurred bargaining obligation or its wrongful withholding of such recognition and bargaining.

2. The issue of the subsequent Temecula events

The General Counsel's complaint, as amended at the hearing, alleges that the Respondent's entrance into collective-bargaining contracts with the employees at the Temecula facility in the spring of 1998 and the spring of 1999 was conducted improperly by bypassing the Temecula Association and its designated agents CASHA and Local 100 and therefore violated Section 8(a)(5) and (1) of the Act. On brief, the General Counsel contends further that the actions also rise to the level of independent violations of Section 8(a)(1) of the Act which, although unalleged in the complaint, were fully litigated at the hearing and should therefore also be found to be violations of that section of the Act.

The Respondent emphasizes that the Temecula employees were the Temecula Association—one and the same—and therefore it was dealing at all relevant times with the Association—the labor organization that it has at all relevant times recognized at the exclusive bargaining agent of its employees—not simply the employees represented by a labor organization. As such, argues the Respondent, it was at all times privileged to contact, propose, negotiate and reach agreement with the Association. The agreement of the Association to consider, negotiate and reach a new bargain with the Respondent respecting a modified collective-bargaining agreement was in and of itself a rescission of its earlier agency designation, however temporary, of CASHA and Local 100 as their agent.

It is absurd, even bizarre, argues the Respondent, and stands the doctrine of agency on its head, that the principal—the Temecula Association here—was somehow limited in its rights and authority to negotiate or to put in abeyance its earlier agency designation by virtue of that earlier designation of an agent. The Respondent may not be fairly criticized for bargaining with the representative of its employees. Thus there could not be any possible violation of Section 8(a)(5) of the Act. Further, in such a setting, the Act's protections of employees simply do not apply and the Government's allegations of wrongful conduct in that respect should be dismissed.

Counsel for the Respondent is correct when he argues in effect that, had the actions the Respondent is accused of in the complaint regarding the Temecula Association been undertaken in a meeting with a more traditional labor organization at its union hall, the Government's theory of a violation of Section 8(a)(5) would be unsustainable. Thus, the decisional law is clear that an employer does not violate Section 8(a)(5) of the Act by making threats or promises of benefit to labor organization officials. And, as the Respondent argues, *supra*, a labor organization, which represents an employer's employees, should always be approachable about taking action respecting the employees it represents.

However, the Respondent was not dealing with a labor organization in an institutional sense separate and apart from employees. The Board has long interpreted the Act to protect employees who act both as employees and as agents of the representing labor organization. For example, the case law is replete with holdings finding violations of the Act when employers improperly deal with employee job stewards in their roles as agents of such labor organizations.

What is relevant to the analysis herein, in my view, is that the Respondent did not deal with the Temecula employees as the representing Association or labor organization. Rather the Respondent at all times material herein treated the employees as employees. Thus, it commanded attendance at mandatory meetings, offered financial gain conditioned on the employees not having continued dealings with CASHA or Local 100, and in effect corralled the employees and rushed them to approve the offers the Respondent advanced. In such a setting, the Respondent clearly treated the group as employees and its conduct will be judged in that context. In this setting the asserted defenses of the Respondent fail on the facts.

Further, as I found in the case of the Fresno Employees Association, *supra*, the fact that the Respondent's failure to recognize the Temecula Association's agency designation occurred before the alleged rescission by the Temecula employees renders the employee conduct unavailable to the Respondent as a defense to its continuing refusal to recognize the original agency designation.

Given that the Respondent clearly bypassed the designated representative of the Temecula Association by its actions described above, I find as alleged in the complaint that the Respondent has violated Section 8(a)(5) of the Act.

The General Counsel moved on brief to amend the complaint to allege violations of Section 8(a)(1) of the Act by the Respondent's agents at the Temecula meetings. The posthearing amendment is advanced in part because the General Counsel contends that the issues were fully litigated. I do not agree. The issues of an employer violating Section 8(a)(1) of the Act during bargaining with employees who constitute the association that represents its employees in the context presented here are in some ways similar to those discussed regarding Section 8(a)(5) of the Act. They are not identical, however, nor are they similar to the other issues raised by the pleadings. The complaint is otherwise free from independent 8(a)(1) allegations.

Given this context, the Respondent may not be said to have had an opportunity to consider the General Counsel's theory of a violation at the trial and adduce any and all evidence it felt material to its defense on the issue. Certainly, the Respondent was afforded no opportunity to brief the issue. Further the counsel for the General Counsel at the hearing amended his complaint after the facts at issue were adduced, but limited his proposed amendments to augmenting the 8(a)(5) allegations of the complaint. Given all the above, I find it inappropriate to grant the General Counsel's motion on brief to amend the complaint. I therefore deny the motion. The amendment having been denied, there is no need to determine if the Act was violated by the conduct alleged in the rejected amendment.

REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action necessary to effectuate the purposes and policies of the Act including the posting of a remedial notice consistent with the Board's decision in *Indian Hills Care Center*, 321 NLRB 144 (1996). I shall leave to the compliance stage the determination of the

proper application of the directed remedy to the closed Merced facility.

The remedy for the Respondent's failure to bargain with the designated agent of the Temecula Association and its wrongful direct dealing with the Temecula employees in the renegotiation of the contract in 1998 and 1999 shall include rescission of the wrongfully extended agreements and restoration of the previous contract terms save that all increases in wages and benefits and other conditions of employment implemented shall be maintained by the Respondent until it has notified and bargained with the Temecula Association's designated agent and reached agreement or valid impasse in bargaining respecting new contract terms.

CONCLUSIONS OF LAW

On the basis of the above findings of fact and on the entire record herein, I make the following conclusions of law.

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

2. The Armored Transport Bakersfield Employee Association, Armored Transport Santa Maria Employee Association, Armored Transport Fresno Employee Association, Armored Transport Merced Employee Association, Armored Transport Temecula Employee Association, CASHA, and Local 100 are, and each of them is, labor organizations within the meaning of Section 2(5) of the Act.

3. The following labor organizations represent the Respondent's employees in the unit following their names, each of which is appropriate for bargaining within the meaning of Section 9 of the Act:

(i) Armored Transport Bakersfield Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Bakersfield facility excluding all other employees and supervisors as defined in the Act.

(ii) Armored Transport Santa Maria Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Santa Maria facility excluding all other employees and supervisors as defined in the Act.

(iii) Armored Transport Fresno Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Fresno facility excluding all other employees [] and supervisors as defined in the Act.

(iv) Armored Transport Merced Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Merced facility excluding all other employees and supervisors as defined in the Act.

(v) Armored Transport Temecula Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Temecula facility excluding all other employees and supervisors as defined in the Act.

4(a) CASHA since on or about March and April 1998 was designated by the Associations as their agent for purposes of collective bargaining with the Respondent respecting the above-described units. On or about December 10, 1998, CASHA became Local 100. CASHA from March and April 1998 until its transmutation to Local 100 in December 10, 1998, and Local 100 thereafter was at all times the designated agent of the Associations for purposes of collective bargaining with the Respondent respecting the above described units.

(b) At all times on and after April 1998 respecting CASHA and at all times on and after February 10, 1999, respecting Local 100, the Respondent knew or should have known of the agency designations of the Associations described above.

(c) At all times since on or about April 1998 respecting CASHA and at all times on and after February 10, 1999, respecting Local 100, the two labor organizations have demanded recognition of the Respondent as the designated agent of the Associations for purposes of collective bargaining respecting the units described above.

5. The Respondent violated Section 8(a)(5) and (1) of the Act on or about April 1998 respecting CASHA and at all times on and after February 10, 1999, respecting Local 100 when it failed and refused to recognize these entities as agents of the Associations for purposes of collective bargaining regarding the Respondent's employees in the above described units...

6. The Respondent violated Section 8(a)(5) and (1) of the Act on May 20, 1998, and on March 18, 1999, by dealing directly with the Temecula unit employees bypassing Local 100 the designated agent of the Armored Transport Temecula Employees Association by negotiating and entering into purported collective-bargaining agreements with the employees.

7. The unfair labor practices described above is an unfair labor practice affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

On the forgoing findings of fact, conclusions of law, and the entire record, I issue the following⁷

ORDER

The Respondent, Armored Transport, Inc., Bakersfield, Santa Maria, Fresno, Merced, and Temecula, California, its owners, agents, successors and assigns shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with CASHA and Local 100 as properly designated agents of the following labor organizations who are the recognized exclusive collective-bargaining representatives of the employees in the

⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

bargaining units appearing below each labor organization's name:

(i) Armored Transport Bakersfield Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Bakersfield facility excluding all other employees and supervisors as defined in the Act.

(ii) Armored Transport Santa Maria Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Santa Maria facility excluding all other employees and supervisors as defined in the Act.

(iii) Armored Transport Fresno Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Fresno facility excluding all other employees and supervisors as defined in the Act.

(iv) Armored Transport Merced Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Merced facility excluding all other employees and supervisors as defined in the Act.

(v) Armored Transport Temecula Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Temecula facility excluding all other employees and supervisors as defined in the Act.

(b) Cease and desist from dealing directly with the unit employees of the Temecula facility bypassing CASHA and Local 100, the designated representative of the Armored Transport Temecula Employee Association, which represents the unit employees.

(c) In any like or related manner violating the provisions of the Act.

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

(a) Recognize and meet and bargain on request with Local 100 as the designated agent for purposes of collective bargaining of the Armored Transport Bakersfield Employee Association, the Armored Transport Santa Maria Employee Association, the Armored Transport Fresno Employee Association, the Armored Transport Merced Employee Association, and the Armored Transport Temecula Employee Association respecting the bargaining units set forth above.

(b) At the Local 100's request, acting as agent of the Armored Transport Temecula Employees Association, restore the terms of the original June 30, 1996, through July 31, 1999 contract save for the increased wages and other terms and conditions of employment currently in effect, and continue to main-

tain such conditions unless and until agreement has been reached with Local 100 respecting their modification or discontinuance or a new contract has been reached or until proper changes have been made following a genuine impasse in bargaining.

(c) Within 14 days after service by the Region, post at each of its Bakersfield, Santa Maria, Fresno, Merced, and Temecula, California facilities and any other facilities at which unit employees are regularly employed, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 31, in English and such other languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 the notices are not altered, defaced, or covered by other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed a facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facility any time after March 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that 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.

Currency and Security Handlers Association (CASHA) had been the designated agent for purposes of collective bargaining of the listed labor organizations respecting the listed bargaining units until CASHA became United Plant Guard Workers of America Amalgamated Local No. 100, affiliated with the International Union of Plant Guard Workers of America (Local 100).

Local 100 is now the designated agent for purposes of collective bargaining of the below listed labor organizations respecting the listed bargaining units each of which is appropriate for bargaining within the meaning of Section 9 of the Act:

⁸ If this Order is enforced by a judgment of the 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."

(i) Armored Transport Bakersfield Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Bakersfield facility excluding all other employees and supervisors as defined in the Act.

(ii) Armored Transport Santa Maria Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Santa Maria facility excluding all other employees and supervisors as defined in the Act.

(iii) Armored Transport Fresno Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Fresno facility excluding all other employees and supervisors as defined in the Act.

(iv) Armored Transport Merced Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed by the Respondent at its Merced facility excluding all other employees and supervisors as defined in the Act.

(v) Armored Transport Temecula Employee Association,

All full-time and regularly scheduled part-time driver/messenger guards and vault-driver messenger guards employed

by the Respondent at its Temecula facility excluding all other employees and supervisors as defined in the Act.

Based upon all the above, we give you the following assurances:

WE WILL NOT fail and refuse to recognize and bargain with CASHA and Local 100 as properly designated agents of the listed labor organizations for the noted bargaining units.

WE WILL NOT bypass Local 100, the designated agent of the Armored Transport Temecula Employee Association, by dealing directly with the unit employees of the Temecula facility.

WE WILL NOT in any like or related manner violate the Act.

WE WILL recognize Local 100 as the designated agent for purposes of collective bargaining of the listed labor organizations respecting the listed bargaining units they represent.

WE WILL at Local 100's request acting as agent of the Armored Transport Temecula Employees Association, restore the terms of the original June 30, 1996, through July 31, 1999 contract save for the increased wages and other terms and conditions of employment currently in effect, and continue to maintain such conditions unless and until agreement has been reached with Local 100 respecting their modification or discontinuance or a new contract has been reached or until proper changes have been made following a genuine impasse in bargaining.

ARMORED TRANSPORT, INC.