

**United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 1384 and Emma T. Hartley and Ex-Cell-O Corporation, Party to the Contract. Case 25-CB-4201**

30 September 1983

**DECISION AND ORDER**

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

On 27 May 1981 Administrative Law Judge Wallace H. Nations issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent Union filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

This case concerns the granting of preferential seniority for the purpose of shift preference to Respondent Union's recording secretary. The facts are fully set forth by the Administrative Law Judge and are largely undisputed.

The elected executive officers of the local Union work in the plant and conduct union business either on their own time or on a lost time basis when they take time off from work and are paid by the Union. The Union employs no secretarial or clerical employees.

Prior to 1978, the parties' collective-bargaining agreement contained no shift assignment provision concerning union officers. During the term of that contract the union president worked on the day shift and the recording secretary on a different shift. This situation made it difficult for the president to communicate with the recording secretary and resulted, *inter alia*, in missed posting deadlines regarding notices for strike votes and union officer elections. The union president began relying on the financial secretary, who worked on the day shift, to perform the recording secretary's duties in addition to her own.

In negotiations for the 1978-81 collective-bargaining agreement, the Union proposed a contractual provision assigning the recording secretary to the day shift. The Employer agreed and the clause was included in the contract. In May 1980, Respondent Union exercised the provision and the Employer transferred the recording secretary to

the day shift, bumping a more senior employee, Hartley, to a shift which Hartley found less desirable.

The recording secretary's duties are outlined in the UAW's constitution as follows:

It shall be the duty of the recording secretary to keep the correct record of the proceedings, of the Local Union, sign all orders on the treasury authorized by the Local Union, read all documents and conduct the general correspondence received by the Local Union which does not pertain directly to the duties of other officers of Local Union and keep same on file for future reference. He shall bring to the attention of the membership of the Local Union any correspondence upon which the membership must take action. He shall comply with the provision of Article 50, Section 2. He shall furnish the Research Department of the UAW and to his Regional Director, every six (6) months (in January and July): (1) Three (3), copies of the existing contract(s); (2) a complete revised list of all classifications and rates for the plant or plants covered by the contract(s); (3) any additional information gained through negotiations with the respective plant management that may be useful to the other Local Unions in their collective bargaining.<sup>1</sup>

Additionally, the constitution designates the recording secretary as the union officer to whom appeals from actions of the Local are to be submitted, and as the officer who must send strike notices to all union members. She also must prepare a statement of unresolved contract issues to be submitted to the International Union in the course of contract negotiations.<sup>2</sup>

In this regard, the recording secretary testified that she takes minutes at union membership meetings and executive board meetings; handles all correspondence with the International Union, other locals, and outside parties; prepares notices to unit employees; requests reconsideration on insurance claims where necessary; types copy for the union newspaper and mails it to retired employees; prepares membership cards for new members; and keeps the official list of members. The recording secretary is not involved in the grievance procedure at any stage, although on one occasion she typed up a list of grievances which she had no part in preparing.

In finding that the provision for superseniority and the exercise thereof were lawful in the instant

<sup>1</sup> Art. 40, sec. 3.

<sup>2</sup> See art. 33, sec. 5, and art. 50, secs. 1 and 2.

case, the Administrative Law Judge relied on, *inter alia*, *Electrical Workers UE Local 623 (Limpco Mfg.)*, 230 NLRB 406 (1977), *enfd. sub nom. D'Amico v. NLRB*, 582 F.2d 820 (3d Cir. 1978). The Board recently overruled that decision in *Gulton Electro-Voice*, 266 NLRB 406 (1983). In *Gulton Electro-Voice* the Board concluded that the grant of superseniority to those who do not perform steward or other on-the-job contract administration functions is not justified. The Board thus rejected the standard of "effective and efficient representation of employees," which had been set forth in *Limpco* and cases which followed it, as insufficient justification for the inherently discriminatory effect of superseniority provisions.

Thus, the Board concluded in *Gulton Electro-Voice* that, since the grant of superseniority is inherently discriminatory, the recipient's union position must require the maintenance of an on-the-job presence at specific times necessary to ensure the enforcement of the collective-bargaining agreement and prompt processing of grievances. The recording secretary's functions in the instant case do not meet these criteria. While it is clear that affording the recording secretary superseniority for shift preference would make Respondent Union's operations more efficient and effective, the Board is not in the business of promoting such concerns at the expense of Section 7 rights. Thus, since the recording secretary's on-the-job presence is not essential to ensuring the enforcement of the collective-bargaining agreement, the contractual superseniority conferred on the recording secretary is unjustified and unlawful.

In view of the foregoing, we find that by maintaining and enforcing a superseniority clause with respect to the recording secretary, Respondent Union has violated Section 8(b)(1)(A) and (2) of the Act.

#### THE REMEDY

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

We have found that the superseniority clause here in dispute is unlawful and we shall therefore order that Respondent Union cease and desist from maintaining and enforcing such clause in its bargaining agreement with the Company. We have also found that the unlawful superseniority clause was applied to transfer employee Emma Hartley, on or about 19 May 1980, to a shift Hartley found less desirable and that Hartley would not have been transferred but for the illegal discrimination

depriving her of seniority. Consequently, we shall order that Respondent Union notify Ex-Cell-O Corporation, in writing, and furnish a copy to the above-named individual, that it has no objection to the transfer of Emma Hartley back to the shift from which she was unlawfully transferred. We shall also order that Respondent make Emma Hartley whole for loss of pay or other benefits, if any, she may have suffered by reason of the discrimination against her from the date of Respondent's unlawful conduct until 5 days after Respondent notifies the Company that it has no objection to Hartley's transfer. Backpay shall be computed in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *Florida Steel Corp.*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962). Finally, we shall order that Respondent Union cease and desist from restraining or coercing employees it represents from exercising rights guaranteed by Section 7 of the Act.

#### CONCLUSIONS OF LAW

1. Ex-Cell-O Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By maintaining and enforcing a seniority clause in its collective-bargaining agreement according Respondent Union's recording secretary superseniority, Respondent Union has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, and, by causing the Company to discriminate against a unit employee when the Company transferred that employee to a different shift, an employee who would not have been affected if the collective-bargaining agreement had not accorded the recording secretary superseniority, Respondent engaged in further violations of the aforesaid sections of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 1384, Elwood, Indiana, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Maintaining, enforcing, or otherwise giving effect to those clauses in the collective-bargaining agreement with the Company, Ex-Cell-O Corporation, according to the Union's recording secretary superseniority with respect to shift preference.

(b) Causing or attempting to cause the Company to discriminate against employees in violation of Section 8(a)(3) of the Act.

(c) In any like or related manner restraining or coercing the employees of the Company in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make Emma Hartley whole for any loss of earnings she may have suffered by reason of the discrimination against her, such lost earnings to be determined in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Notify the Company in writing that it has no objection to reassignment of the affected unit employee to the desired shift who but for the unlawful assignment of superseniority would not have been transferred.

(c) Post at its office and meeting halls used by or frequented by its members and employees it represents at the Company's Elwood, Indiana, facility copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, on forms provided by the Regional Director for Region 25, shall be posted by Respondent Union after being duly signed by Respondent Union's representative immediately upon receipt thereof. The aforesaid notice shall be maintained by Respondent Union for 60 consecutive days after posting in conspicuous places where notices to the above-described members and employees are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps Respondent Union has taken to comply herewith.

<sup>3</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

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

WE WILL NOT maintain and enforce any clause in our collective-bargaining agreement with Ex-Cell-O Corporation, according to the recording secretary superseniority with respect to shift preference.

WE WILL NOT cause or attempt to cause Ex-Cell-O Corporation to discriminate against any employees by requiring that the collective-bargaining agreement be enforced so as to transfer them to a less desirable shift so that the recording secretary can be on the day shift when the recording secretary does not in fact have top seniority in terms of length of employment.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights protected by Section 7 of the Act.

WE WILL notify Ex-Cell-O that we have no objection to reassignment of the affected unit employee who but for the unlawful assignment of superseniority would not have been transferred.

WE WILL make the unlawfully transferred unit employee whole for any loss of earnings she may have suffered as a result of the discrimination against her, with interest.

UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, UAW  
LOCAL 1384

## DECISION

### STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge: Emma T. Hartley filed a charge against United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 1384 (Respondent or the Union), on June 25, 1980. The Regional Director issued a complaint on July 28, 1980, alleging that Respondent and Ex-Cell-O Corporation (the Employer), by entering into a collective-bargaining agreement which, *inter alia*, gives preferential seniority for the purpose of shift preference to Respondent's recording secretary, and by exercising this provision, have impermissibly discriminated against Emma Hartley in violation of Section 8(b)(1)(A) and (2) of the Act. Respondent denies that it has violated the Act. The hearing was held before me at Indianapolis, Indiana, on February 17, 1981. Briefs were received from

both Respondent and the General Counsel on April 13, 1981.

Upon the entire record in this case and from my observation of the witnesses and their demeanor, I make the following:

#### FINDINGS AND CONCLUSIONS

##### I. THE BUSINESS OF THE EMPLOYER

Ex-Cell-O Corporation manufactures jet engine compressor blades at its Elwood, Indiana, plant. During the year proceeding issuance of the complaint, the Employer had direct inflow in excess of \$50,000. Ex-Cell-O Corporation is an employer within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction in this case.

##### II. RESPONDENT LABOR ORGANIZATION

United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 1384, is a labor organization within the meaning of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICE

###### A. *The Facts*

###### 1. Background of the shift assignment provision

As noted, Ex-Cell-O Corporation is engaged in the manufacture of jet engine compressor blades at its Elwood, Indiana, plant. The Company employs approximately 500 production and maintenance employees who are represented by UAW Local 1384 for the purpose of collective bargaining.

The executive officers of the Local Union are elected by the membership. All the officers work in the plant and conduct union business either on their own time or on a lost-time basis in which they take time off from work and are paid by the Union. The Local employs no clerical or secretarial employees. Instead, the recording secretary is responsible for performing all the clerical duties for the Local Union.

The Employer and Respondent have been parties to successive collective-bargaining agreements, the most recent of which was entered into on May 8, 1978, and which is scheduled to expire on May 7, 1981. The collective-bargaining agreement preceding the current one contained no shift assignment provision relating to the recording secretary. As it happened, the recording secretary at the time did not work the day shift. The fact that the recording secretary did not work the same shift as the union president created problems for the Local Union.

The evidence establishes that, because the president and recording secretary worked different shifts, there was a breakdown in communications between them that adversely affected the functioning of the Local Union. Because the president could not readily communicate with the recording secretary, posting deadlines on notices relating to strike votes and the election of union officers were violated.

As a temporary solution to the problem, the president began relying on the financial secretary, who held a day-

shift position by virtue of her natural seniority, to perform the responsibilities of the recording secretary. Thus, the financial secretary was asked to prepare notices for posting on the union bulletin board containing information for the employees, to handle correspondence, and to prepare the draft of local union bylaws for presentation to the International Union for approval. The work this person performed in this period in connection with local union correspondence, notices, etc., which was work properly falling within the domain of the recording secretary, consumed 3 to 4 hours each week. This work had to be performed in addition to her work as financial secretary.

To remedy this problem permanently, Respondent proposed during the 1978 negotiations a contractual provision assigning the recording secretary to the day shift. The Employer agreed, and it was incorporated in the current agreement.<sup>1</sup> Respondent contends, and the evidence supports the contention, that the agreement served the purpose for which it was designed. On or about May 19, 1980, Respondent exercised the provision and the Employer transferred the recording secretary to the day shift bumping Emma Hartley, a slightly more senior employee, to a shift which was less desirable from Hartley's standpoint. The financial secretary noted that, when the recording secretary began working the day shift on which she could readily communicate with the union president, the additional work that the financial secretary had been performing was transferred back to the recording secretary.

###### 2. The recording secretary's responsibilities

The core functions of every UAW recording secretary are outlined in article 40, section 3, of the UAW constitution. That provision states:

It shall be the duty of the recording secretary to keep the correct record of the proceedings, of the Local Union, sign all orders on the treasury authorized by the Local Union, read all documents and conduct the general correspondence received by the Local Union which does not pertain directly to the duties of other officers of Local Union and keep same on file for future reference. He shall bring to the attention of the membership of the Local Union any correspondence upon which the membership must take action. He shall comply with the provisions of Article 50, Section 2. He shall furnish the Research Department of the UAW and to his Regional Director, every six (6) months (in January

<sup>1</sup> The contract provision in question which establishes preferential seniority for shift assignment for the financial secretary and the recording secretary is as follows:

4. (a) The company shall recognize a union committee of five (5), one of whom shall be the chairman of the committee. Such committee shall be recognized for matters relating to collective bargaining and in Step 3 of the Grievance Procedure. Four (4), of the union committee including the chairman, will be assigned to the day shift and one (1), member of the union committee will be assigned to the afternoon shift. In the event the afternoon shift is discontinued the afternoon shift committeeman shall be transferred to days. Also, the financial secretary and recording secretary will be assigned to the day shift.

and July): (1) Three (3), copies of the existing contract(s); (2) a complete revised list of all classifications and rates for the plant or plants covered by the contract(s); (3) any additional information gained through negotiations with the respective plant management that may be useful to other Local Unions in their collective bargaining.

In addition to this provision, article 33, section 5, and article 50, sections 1 and 2, also outline specific responsibilities of UAW local union recording secretaries.

Article 33, section 5, designates the recording secretary as the officer to whom members' appeals are submitted for handling by the local union. Under the governing interpretation of article 50, section 1, it is the responsibility of the recording secretary to send a notice to each member of any strike vote to be taken in the local union. Article 50, section 2, imposes on the recording secretary the further responsibility during contract negotiations of preparing a statement of unresolved contract issues for submission to the International Union in order to obtain strike authorization.

The constitution further provides that the recording secretary is an executive officer and equal voting member of the local union's executive board. The bylaws of Local 1384 provide that the executive board shall have the highest authority of the Local Union between membership meetings.

The recording secretary testified concerning specific duties she performs within the context of her constitutionally delegated responsibilities. She takes minutes of all regular union membership meetings, all regular executive board meetings, and all special executive board meetings. She is responsible for all correspondence and communications of the Local Union, including the handling of correspondence with the International Union, other local unions, and outside parties, as well as for the preparation of notices conveying information to unit employees. In addition, she has been assigned responsibility for requesting reconsideration from Blue Cross-Blue Shield on insurance claims that are not paid in full when submitted by employees. She also types copy for the union newspaper, which is published monthly, and she addresses and mails the newspaper to local union retirees. Further, she is responsible for preparing membership cards for new members and for compiling and keeping current the official list of members. She does all the typing for the Local Union. The scope of her duties makes her an important link in the Local Union's communications system. In order to perform her functions properly, she must frequently confer with the local union president and other local officers. The recording secretary confers with the local president several times a week in the plant concerning union business in general and her specific responsibilities in particular.

The local union president often finds if necessary to have informational notices posted in the plant and/or correspondence prepared and sent. He and the recording secretary discuss these matters in the plant and the recording secretary then acts in accordance with the discussion. The insurance claims to be handled by the recording secretary are given to her by the president when

they meet in the plant. The president also frequently tells her in the plant that notices have to be prepared for posting on the bulletin board. She normally prepares them the same evening at home and brings them back for the president, who posts them on the following day. The recording secretary frequently converses with the financial secretary in the plant concerning union business.<sup>2</sup> Under the present practice, meetings between the president and the recording secretary during the day shift occur two to three times a week either at the lunch break or during shorter coffee-type breaks.

The recording secretary is not involved in the grievance procedure at any stage except to the limited extent that 1 week prior to the hearing date in this case she typed a list of grievances which she had no function in preparing. Only members of the bargaining committee handle grievances and the recording secretary is not a member of that committee.

No complaint has been registered with respect to the shift provision insofar as it assigns the financial secretary preferential seniority from the standpoint of shift.

### B. Conclusions

The Board has held that a recording secretary with duties substantially similar to the duties of the recording secretary in this case is entitled to preferential seniority. *Electrical Workers UE Local 623 (Limco Mfg.)*, 230 NLRB 406 (1977), *enfd. sub nom. D'Amico v. NLRB*, 582 F.2d 820 (3d Cir. 1978).

In *Limco*, the Administrative Law Judge agreed with the General Counsel and held that the recording secretary's involvement in the grievance process "was on a purely voluntary basis" and, as the recording secretary did not perform any steward-type functions, she should not be entitled to preferential seniority. The Board disagreed and held (230 NLRB at 407-408):

Thus, *Dairylea* was not intended to circumscribe which union representatives could be recipients of superseniority, but, rather, it articulated what the appropriate objectives of such provisions were, in light of the legitimate statutory purpose of facilitating the effective administration of the collective-bargaining agreement on the plant level.

In this regard, we do not consider that the administration of the collective bargaining agreement is limited solely to the grievance processing or other "steward-type" duties performed at the workplace. What is at stake is the effective and efficient representation of employees by the collective-bargaining representatives. Certainly, the representational activities carried out by union officials involved in the administration of the collective-bargaining agreement on behalf of employees extend beyond the narrow confines of grievance processing. These encompass at the very least a functioning local to assert the presence of the union on the job.

<sup>2</sup> For example, when the current recording secretary received charges filed by a union member against the Local's president, she consulted with the financial secretary as well as other executive officials concerning the manner in which the charges should be handled.

The Act guarantees employees the right to be so represented through the collective-bargaining process. In fact, perhaps the most important union officer, the president, is usually not involved in grievance proceedings. We shall not therefore presume, as did the Administrative Law Judge, that union officers, even though they may not perform steward-type duties, are not as involved as stewards in the administration of the collective-bargaining agreement. On the contrary, we believe that, once it has been initially demonstrated that the official responsibilities of the union officer in question bear a direct relationship to the effective and efficient representation of unit employees, then this officer is entitled to the benefit of the same presumption afforded to the union stewards.

There are many factual similarities between the instant case and *Limpco*. As in *Limpco*, the recording secretary is on the local union executive board. In *Limpco*, the primary responsibility of the recording secretary was to maintain records of membership and executive board members. The recording secretary here performs identical functions. As in *Limpco*, the recording secretary handles all correspondence of the Local Union, and is involved in posting notices to the membership and in other administrative tasks. There are two differences between the functions of the recording secretary in *Limpco*, and in the instant case which must be considered, particularly in light of the court's decision in *D'Amico*. In the earlier case, the recording secretary was the only union official at the involved plant and, as such, occasionally engaged informally in the grievance process, interpreted the collective-bargaining agreement for plant employees, and attended meetings to help formulate bargaining ideas. In the instant proceeding, the recording secretary does not, at least as far as the evidence reflects, participate in the grievance process nor does she advise plant employees on contract interpretation.

The Board has expressly declined to rest its *Limpco* decision on participation in the grievance process as is seen in its subsequent decision in *Otis Elevator Co.*, 231 NLRB 1128, 1129 (1977):

[I]n *Limpco*, we approved superseniority for the recording secretary—not because of her informal participation in grievances—but because we found that her official responsibilities bore “a direct relationship to the effective and efficient representation of unit employees . . . .” Similarly, the officers here were entitled to superseniority because in their official capacities they contributed to the ability of the Union to represent the unit efficiently and effectively.

In *Otis Elevator*, the Board approved the grant of preferential seniority to all executive officers, relying on the importance of their individual duties and their functions as executive board members to establish each officer's essential role in the local union's effective administration of the collective-bargaining agreement for the benefit of all employees.

The Third Circuit Court of Appeals in *D'Amico*, however, was swayed by the recording secretary's special duties noted above, including informally participating in the grievance process. The court stated that the official duties explicitly assigned to the recording secretary in the constitution and bylaws of the involved union did not constitute justification for applying the superseniority provisions. It held that the Union was obligated to produce credible proof that the individuals involved in the superseniority provision were officially assigned duties which helped to implement the collective-bargaining agreement in a meaningful way. Further, it held that any less rigid interpretation of the Board's ruling would substantially erode the statutory neutrality principle without the requisite collective-bargaining justification.

In *American Can Co.*, 244 NLRB 736 (1979), the Board cited, with approval, the *Limpco*, *Otis Elevator*, and *D'Amico* decisions. The case involved a grant of preferential seniority for purposes of layoff and recall to a local union trustee and guide. The evidence of record showed that the trustee had constitutional responsibility to have charge of the hall and all property of the local union, and that the guide's sole duty was to take charge of the doors to see that no one entered the meetings who was not entitled to do so. On this record, citing the above cases, the Board held that a grant of preferential seniority to these two officers violated the Act's prohibition against discrimination on the basis of union activity.

It is difficult to determine precisely Board policy on superseniority based upon the *American Can* case. Two Members of the Board stated that the grant of preferential seniority to all union officers was unlawful on its face because it was not limited to union stewards and others who perform in their official capacity direct grievance handling functions. This view was not the majority view in *Otis Elevator*, and *Limpco*. Two Members of the Board adhered to their dissenting views in *Dairy-leaf*, rejecting any limitations on the grant of preferential seniority to union officers. The decisive concurring opinion in *American Can* recognized that the preferential seniority clause was valid on its face and adopted the presumption of validity for job retention preferential seniority provisions for union officers, including layoff, recall, and shift assignment. However, on the evidence of record, this Board Member concluded that the presumption of validity had been rebutted by the General Counsel's showing that the officers in question did not perform duties which relate to the “general furthering of the bargaining relationship.” Accordingly, the contractual provision was held to be unlawful as applied.

The facts in the instant case are different from those in *American Can* and more strongly support the conclusion that superseniority is justified. They are not as strong in this regard as the facts in *Limpco*, but do establish the importance to the effective and efficient representation of unit employees of employing the recording secretary on the same shift as the Union's president.

The recording secretary's responsibilities involve her in work that is related to collective bargaining. Under article 50 of the constitution she is responsible for preparing notices to be sent to each employee advising of any

strike vote that the Union may take. In addition, when the Local decides to seek strike authorization from the International Union, she is delegated under article 50 the duty to prepare a report of submission to the International outlining the areas of dispute that have arisen during negotiations. This last responsibility requires her to stay abreast of the progress of contract negotiations and, as she is not on the negotiating committee, she must obtain this information through conferences with her president or other bargaining officials. Therefore, it is best that she have ready access to those individuals who work on the day shift, and assigning her to the day shift accomplishes this goal.

Because of the Local's size and limited resources, the recording secretary also performs the function of a secretarial staff for the Local. Thus, not only are her own constitutional responsibilities at issue, but so are the responsibilities of the other officers, particularly those of the local union president, as he relies on her to perform secretarial work. If she is not available to prepare notices to the membership or type correspondence, the work is either not done or is shifted to another officer who already has his or her own responsibilities.

It has been demonstrated to my satisfaction that, when the two officers are on different shifts, communications breakdowns can and have occurred with adverse results to the functioning of the Union. I find that these duties bear a direct enough relationship to the general furthering of the bargaining relationship and to the effective and efficient representation of the Local to justify the shift preference provision here in question. The Board has found preferential seniority which goes beyond layoff and recall, i.e., shift preference, to be permissible where justified by the circumstances. *Union Carbide Corp.*, 228 NLRB 1152 (1977); *Hospital Service Plan*, 227 NLRB 585 (1976). Under the circumstances of this case,

it appears to me that granting of superseniority for shift preference purposes should require a lesser burden of proof for justification than one that grants superseniority for purposes of layoff and recall. The inconvenience of being bumped from one shift to another is far less serious than being laid off or not recalled from a layoff with resulting loss of income.

Based on the foregoing, I conclude that the presence of the recording secretary on the day shift substantially promotes the effectiveness and efficiency of the Local Union in fulfilling its representational obligations and justifies the shift assignment provision of the collective-bargaining agreement. Accordingly, I conclude that such provision and the exercise thereof does not violate Section 8(b)(1)(A) or (2) of the Act. Inasmuch as the complaint alleges no other violations of the Act by Respondent, my Order will provide for its dismissal.

Upon the foregoing findings and conclusions and the entire record in this case, I make the following:

#### CONCLUSIONS OF LAW

1. Ex-Cell-O Corporation is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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

3. Respondent has not engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) or (2) of the Act by agreeing to and implementing a provision in the collective-bargaining agreement affording shift preference of a superseniority basis to the Union's recording secretary.

[Recommended Order for dismissal omitted from publication.]