American Stevedoring Company *and* Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 385. Case 12-CA-9346

24 June 1986

DECISION AND ORDER

BY MEMBERS DENNIS, JOHANSEN, AND STEPHENS

On 22 October 1981 Administrative Law Judge George Norman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering 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 briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified and to adopt the recommended Order as modified.

We agree with the judge that the Respondent continued the same employing industry formerly operated by Metropolitan Contract Services, Inc. (Metro), and that it was the successor to Metro with respect to the latter's bargaining obligation. We so find despite the fact that, of Respondent's initial work force of 21, only 9 employees from the Metro bargaining unit applied for jobs and none was accepted. In the circumstances here, the lack of a majority showing does not preclude a finding of successorship.

The record establishes that the Respondent specifically refused to hire any unit employees because they were represented by the Union.[2] Because the Metro employees were blacklisted, their applications would have been futile. Moreover the Respondent not only failed to inform them that it was hiring employees to perform their former jobs, but also furthered its scheme by seeking applicants through newspaper ads that concealed the Respondent's identity. The Respondent thus unlawfully foreclosed applications from former Metro drivers, applications which almost certainly would have been routinely made had not the Respondent's misconduct misled the drivers. Absent such misconduct, there is no reason to believe there would not have been a substantial union majority in the new complement of employees. Because the Respondent's wrongful actions are the cause of any uncertainty about the Union's majority, the uncertainty must be resolved against the Respondent, who unlawfully created it. Therefore, we find that the Union's majority status presumptively would have continued. *Love's Barbeque Restaurant No. 62*, 245 NLRB 78, 81–82 (1979), enfd. in pertinent part 640 F.2d 1094 (9th Cir. 1981); *C.J.B. Industries*, 250 NLRB 1433 (1980). Because the other elements of successorship are present, the Respondent is the successor to Metro and violated Section 8(a)(5) and (1) of the Act by refusing to recognize the Union.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, American Stevedoring Company, Orlando, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified.

1. Substitute "Region 12" for "Region 32" in paragraph 2(e).

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd 188 F.2d 362 (3d Cir 1951). We have carefully examined the record and find no basis for reversing the findings.

As we adopt the judge's finding that the Respondent's representative Welch coercively interrogated employee Woolery about his union membership, we find it unnecessary to pass on the cumulative allegation that Welch unlawfully interrogated employee Singleton.

[2] The credited testimony of Melvin Nensel, a former vice president of the Respondent, established that normally the Respondent would have hired the employees who had been performing the work taken over by the Respondent from those employees' former employer. Although the official who generally hired drivers for the Respondent told Nensel that "the best applicants we had obviously were the Metropolitan Services drivers," these officials had instruction from their superiors not to hire them because the union which represented them was organizing the employees in the warehouse of the Respondent's client, Jefferson Stores.

WE WILL NOT interrogate any applicants for employment concerning their union activities.

WE WILL NOT refuse to hire or otherwise discriminate against employees to avoid bargaining with a union.

WE WILL NOT refuse to recognize Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 385 as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> All truckdrivers and helpers employed by us at our 901 West Landstreet Road, Orlando, Florida location, excluding office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT make changes in the rates of pay and benefits of the employees in the above unit without notice to and consultation with the Union.

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

WE WILL offer immediate and full reinstatement to Luther D. Brown, Kenneth A. Bryant, Frank Caprio, Robert F. Cowart Jr., Cecil C. Danley, Douglas W. Fernandez, Charles F. Heagy, Ronald L. Heagy, Jimmy R. Holmes, Danny Richards, Gerald G. Jones III, Timothy D. Ketchum, Michael P. Lane, John E. McAdams, Edward Thomas Nearly, Kenneth W. Seibert, Bill N. Singleton, Christopher T. Smith, and Paul Woolery to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary employees hired from sources other than Metropolitan Contracting, Inc., to make room for them, and WE WILL make them whole for any loss of earnings they may have suffered by reason of our unlawful failure to hire them, with interest.

WE WILL, on request, bargain with the above Union as the exclusive representative of all the employees in the above unit concerning their terms and conditions of employment and, if an understanding is reached, embody it in a signed contract if asked to do so.

WE WILL, on request of the above Union, cancel changes in rates of pay and benefits that existed immediately before our takeover of the services previously performed by Metropolitan Contracting, Inc., and make the employees in the above unit whole by remitting all wages and benefits that would have been paid absent such changes from 24 June 1980, until we negotiate in good faith with the Union to agreement or to impasse, with interest.

AMERICAN STEVEDORING COMPANY

Harold S. Richman, Esq., and *Johnnie L. Mahan, Esq.*, for the General Counsel.

William C. Lynch, Esq., and *William C. Bruce, Esq. (Lynch, Traub, Keefe and Marlowe)*, of New Haven, Connecticut, for the Respondent.

Mr. Larry D. Parker, of Orlando, Florida, for the Charging Party.

Ronald L. Giangiorgi, Esq., of Chicago, Illinois, for Jefferson Stores, Inc., and Jefferson Ward, Inc.

DECISION

STATEMENT OF THE CASE

GEORGE NORMAN, Administrative Law Judge. This case was tried before me at Orlando, Florida, on March 9 and 10, 1981. The complaint, which issued October 1, 1980,[1] is based on a charge filed September 10 against American Stevedoring Company (Respondent) by Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 385 (the Charging Party or Union), alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by discriminating against certain individuals due to their activities in and on behalf of Teamsters Local 385, and alleging violation of Section 8(a)(5) of the Act. On September 24, an amended charge was filed.[2]

On October 7, Respondent filed a timely answer denying all the substantive allegations and asserting as a special defense that the NLRB had failed to conduct an investigation prior to filing the complaint in this case in violation of Board practice and procedure.[3]

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally. The General Counsel and Respondent filed briefs.

On the entire record, including my consideration of the briefs and careful observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is an Ohio corporation with its principal office and place of business located in Atlanta, Georgia, where it is engaged in the business of furnishing drivers, warehousemen, and freight handlers to various businesses

[1] All events herein occurred in 1980 unless otherwise stated.

[2] On July 11, the Union filed simultaneous unfair labor practice charges alleging violations of Sec 8(a)(1) and (3) of the Act against Respondent and Jefferson-Ward Stores (Cases 12-CA-9268, 12-CA-9269) About September 9, those charges were withdrawn

[3] I consider Respondent's special defense as lacking merit inasmuch as the filing of the complaint and the adducing of evidence at the hearing would not have been possible without some investigation of the charges Furthermore, it is well settled that neither the type nor the scope of the Board's investigation is a proper issue in unfair labor practice proceedings

throughout the United States. During the past 12 months, a representative period, Respondent has provided services for various employers throughout the eastern United States, valued in excess of $50,000 and presently has a contract with Jefferson Stores, Inc. to provide labor services at its Orlando, Florida facility during a 12-month period commencing July 1, 1980, which contract will exceed $50,000. Respondent is an employer engaged in commerce and in an operation affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 385 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Jefferson Stores, Inc. (Jefferson) is in the business of retail merchandise sales in the State of Florida and has a warehouse facility located at 901 West Landstreet Road, Orlando, Florida. American Stevedoring Company provides delivery service for Jefferson pursuant to a contract with it. Prior to July 2, deliveries from the Jefferson Orlando warehouse were made by Metropolitan Contract Services, Inc. (Metro). Metro had made these deliveries pursuant to a contract with Montgomery Ward, and when the warehouse and surrounding stores were transferred to Jefferson as a subsidiary of Montgomery Ward, the Metro employees continued making those deliveries for several months.

The Union was certified as the collective-bargaining representative of the Metro drivers and helpers working at the Jefferson warehouse on March 28. At the time that Metro's contract was canceled, there were 19 employees in the bargaining unit. Metro performed the delivery services under its contract with Ward and later with Jefferson with trucks that it had originally bought from Ward. When Jefferson canceled Metro's contract, it (through its parent company) bought back those trucks pursuant to the Montgomery contract. Jefferson then contracted with Respondent for the supply of drivers and to make the deliveries from the Orlando warehouse.

At the time Respondent entered into the contract with Jefferson, it advertised on June 15 in the Orlando newspaper seeking to hire truckdrivers and helpers. John Welch, Respondent's personnel and safety manager, came to Orlando and, on June 25 and 26, at the Howard Johnson's Motor Lodge, interviewed applicants who responded to the newspaper ad. Although no separate notice was given to the employees of Metro, several applied. The applicants were told during the interview that a requirement for being hired was the passing of a driver's test to be given by Welch, who in fact gave driver's tests in Orlando on June 28 and 29. Although passing the driver's test was a condition precedent to being hired, Welch did not schedule any of the Metro employees interviewed by him for a driver's test.

Respondent hired 21 persons to deliver Jefferson goods, which deliveries previously had been performed by Metro employees. Thus, Respondent's employees were making the same deliveries with the same trucks that the employees of Metro had previously made.

Jefferson representatives testified that it based the decision on terminating its contract with Metro on the high cost and poor quality of the Metro delivery service. Jefferson determined that Metro was nonproductive and too expensive to continue the service for Jefferson. In that connection, Jefferson had prior experience with Metro at its Miami, Florida location, which it stated had led to the cancellation of Metro's contract with Jefferson in Miami.

Upon taking over the Orlando operation from Montgomery in January, Jefferson solicited bids from other transportation service companies for an alternative to the Metro operation. After the solicitation of bids began, Metro made futile attempts to retain its contract in Orlando by contacting officials of Montgomery, the parent corporation of Jefferson. Jefferson decided that it would be more profitable to run as a private carrier operation by hiring drivers from a labor broker. As a result, they selected Respondent, a supplier of such labor services on a nationwide basis.

In February a petition for an election was filed by Teamsters Local 385. An election was held for the Metro unit in March. The Union won. Thereafter, Metro signed a contract with the Union covering the employees in the Jefferson Orlando location.[4] In June, Jefferson notified Metro in writing that Jefferson was taking over its own transportation operations as a private carrier and Metro would no longer be used. Metro then offered its employees jobs at the Houston, Texas operation, which offer they declined.

Nine of the former Metro drivers were interviewed by Respondent pursuant to the newspaper ad referred to above, and none was hired. Respondent's witnesses testified that the reasons for not hiring those individuals were: (1) They had been advised by Jefferson officials that the cost and productivity of the Metro operation had been unsatisfactory and, therefore, Respondent should not hire these individuals; and (2) Respondent had no desire to repeat the mistakes in the area of cost and productivity that the Metro operation had by employing the same employees with productivity and cost problems in the new operation; it was a "marketing problem."

An employee of Metro testified that when he was interviewed by Welch, he was asked why the Metro employees had gone union. Another employee of Metro testified that when interviewed, Welch asked whether he belonged to the Union.[5]

Melvin Nensel, a vice president of Respondent at the time Respondent hired the employees to drive for Jefferson, testified, without contradiction, that Respondent did not hire the Metro employees because they were represented by the Union. Nensel said that "Welch made the observation that the best applicants we had obviously were the Metropolitan Services drivers that we were told not to hire." Nensel further testified that it was Respondent's standard policy, without exception, to hire the employees who were employed by the company they

[4] That collective-bargaining agreement was not offered into evidence.

[5] These witnesses testified in a consistent and forthright manner I credit them

"were taking over from" whether they were union or nonunion. He said that in the past Respondent hired all of the employees previously employed by a predecessor company. He said that in "a union operation Respondent met with the unions and with the men, informed them there would be successorship, continuity of their pension benefits, and health and welfare benefits—all of those things—seniority, whatever."

Welch testified that a driver's test was required before hire and that he did not give or schedule a driver's test for any of the applicants who were formerly Metro employees because they were not available and were working. The days he gave those driver's tests, June 28 and 29, were a Saturday and Sunday.

Welch further testified that the drivers for Metro were not eliminated for consideration for hire, but were kept in reserve and were not hired because he chose other applicants whom he felt were better qualified. However, Respondent ran another ad for drivers and helpers in the Orlando newspaper in July 4, 5, and 6. Several of the persons hired by Respondent did not file their applications until July. Thus, one is forced to conclude that Respondent, after its June interviews and driving test, had not hired enough employees to meet its needs and therefore sought further applicants, while the former Metro employees remained unhired. Welch further testified that he did not ask Jefferson whether the reason for the cost increase was the lack of ability or poor production of the former Metro employees. He merely *assumed* that was a factor. Welch also testified that he did not inquire of the Jefferson representative, William E. Nester, about the quality of the Metro drivers and that Nester did not give him any recommendations concerning the performance of those drivers. Nester confirms that he neither recommended Metro drivers to Respondent nor was he asked by Respondent about their work performance. He said that in February he had a meeting with the Metro employees and told them that they were doing good work, and that their jobs would be protected by Jefferson.

When the Union learned that Respondent was going to perform the work that had been performed by Metro employees, it notified Respondent concerning its representation and requested that Respondent accept their status and current collective-bargaining agreement.

Discussion

Respondent contends that it is not a successor of Metro because Metro was a licensed carrier that supplied full carrier service and owned vehicles that were making deliveries, while Respondent has a contract only to supply drivers for Jefferson's trucks and is not a carrier. The General Counsel argues that although this may be a significant difference under transportation law, the important question for the Board is whether the employees of Respondent are performing essentially the same work under the same conditions that was performed by the employees of Metro. I find that the drivers of Respondent are performing the same work, making the same deliveries, and using the same vehicles as were the Metro drivers.

In *Victor Ryckebosch, Inc.*, 189 NLRB 40 (1971), the Board found that a successorship existed in circumstances similar to those in this case. In *Ryckebosch*, respondent "successor" operated a truck without a California public utility permit whereas his predecessor operated with such a certificate. The respondent hauled only his own products whereas the predecessor operated as a contract carrier for hire but 80 percent of the predecessor's load involved the carrying of respondent's goods, whereas the "successor" respondent carried 100 percent of his own goods. Furthermore, with the transfer of the equipment, the respondent performed the same duties, engaged in the same functions, and the employing industry remained essentially the same, despite the change in ownership. The Board found that despite the fact that the predecessor operated with a public utility permit while the respondent did not, the respondent was a successor within the meaning of *Ranch-Way, Inc.*, 183 NLRB 1168 (1970); *Suffolk Mack, Inc.*, 183 NLRB 433 (1970), and *Burns Detective Agency*, 182 NLRB 348 (1970).

The 8(a)(1) Allegations

As previously noted, former Metro employee Billy Singleton testified that during the interview, Respondent's representative Welch asked him "why we went Union." Singleton continued, "He asked my why we went, and I told him I would discuss it, tell him, whenever I seen him in person."

Another former employee of Metro, Paul Woolery, testified that during the interview, Welch asked him whether he belonged to the Union. Woolery testified as follows: "And we sat down, shook hands, sat down, and the first thing he asked me, if I belonged to the Union, and I told him 'yes.'"

It is well settled that such interrogation of applicants for employment concerning their union activities is a violation of their Section 7 rights under the Act and therefore a violation of Section 8(a)(1).

Here Jefferson, who had been using the services of a contract carrier, as was the parent Montgomery Ward, determined that the cost of that contractual relationship was too high. Therefore it decided to terminate the relationship and to buy back the trucks sold to the contract carrier at the inception of the contractual arrangement. When the contract carrier and its employees learned of Jefferson's decision to terminate the contractual relationship, those employees, as would be expected, took whatever steps they thought necessary to protect their jobs, such as making inquiries of Jefferson concerning their future, and organizing a union. All this took place following their being informed that their jobs were in jeopardy and prior to the actual cessation of the contractual relationship between Metro and Jefferson. The Union negotiated a collective-bargaining agreement with Metro and, although the agreement was not introduced in evidence, it presumably covered wages and other terms and conditions of employment.

Although Jefferson complained that the cost of doing business with Metro was too high, Jefferson officials, not long before terminating its relationship with Metro, praised the Metro employees' work performance. In the circumstances, one cannot escape the conclusion that the

high cost of doing business with Metro was not due to the poor performance of its employees. *Other factors*, such as the way Metro managed its employees or the remuneration Metro received for performing the services under the contract were probably the cause of the high costs. The fact that those employees were at the time of the changeover represented by a union compels belief that it was the reason for not hiring Metro employees pursuant to Jefferson's instructions.

Respondent, having been selected by Jefferson to perform services previously performed by Metro certainly did not wish to incur the displeasure of Jefferson by ignoring Jefferson's request not to hire any former Metro employees. Accordingly, Respondent "went through the motions" of interviewing all applicants, including former Metro employees with the specific intention of not hiring any of Metro's former employees. Contrary to its past practice, Respondent neither informed those employees directly of the job opportunities nor scheduled for driver's tests any of those employees, admittedly the most qualified applicants.

Based on all the credible evidence in this case, I am convinced that the former Metro employees were blacklisted, albeit at the request of Jefferson, because they were represented by a labor organization. When the Union learned that Respondent was going to perform the work that had been performed by Metro employees it notified Respondent concerning their representation and requested that Respondent accept their status and the current collective-bargaining agreement. Respondent embarked on an elicit scheme of not hiring the former Metro employees to ensure that it would not have to bargain with the Union as the representative of the majority of its employees. The purpose of this scheme was to avoid the implications of the Board's successorship doctrine and the obligation to recognize and bargain with the Union.

I find that Respondent discriminatorily refused to hire former Metro employees who applied for jobs with it and that Respondent became the legal successor to Metro and, as such, was obligated to recognize and bargain with the representative of the predecessor's employees. I find further that the employees who applied would have been hired but for the Respondent's discriminatory conduct. When a successor employer destroys the Union's majority by unlawfully refusing to hire the former employees, the Board remedy includes the granting of recognition and bargaining in good faith; *Love's Barbeque Restaurant No. 62*, 245 NLRB 78 (1979); *K. B. and J. Young's Supermarkets*, 157 NLRB 271 (1966), enfd. 377 F.2d 463 (9th Cir. 1967), cert. denied 389 U.S. 841 (1967); *Houston Distribution Services*, 227 NLRB 960 (1977), enfd. 573 F.2d 260 (5th Cir. 1978), cert. denied 439 U.S. 1047 (1978).

CONCLUSIONS OF LAW

1. American Stevedoring Company is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 385 is a labor organization within the meaning of Section 2(5) of the Act.

3. All truckdrivers and helpers employed by the Employer at its 901 West Landstreet Road, Orlando, Florida location, excluding office clerical employees, guards and supervisors as defined in the Act, constitute an appropriate collective-bargaining unit under Section 9 of the Act.

4. About March 19, 1980, a majority of the employees of Metropolitan Contracting, Inc., in the unit described above, designated or selected the Union as their representative for the purpose of collective bargaining.

5. At all times since about March 19, 1980, and continuing to date, the Union has been and is now the representative for the purpose of collective bargaining of the employees in the unit described in paragraph 3 above and by virtue of Section 9(a) of the Act has been and is now the exclusive bargaining representative with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

6. By interrogating employees and/or job applicants concerning their union activities and desires, Respondent interfered with, restrained, or coerced, and is interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

7. By refusing to hire the following named employees: Luther D. Brown, Kenneth A. Bryant, Frank Caprio, Robert E. Cowart Jr., Cecil C. Danley, Douglas W. Fernandez, Charles F. Heagy, Ronald L. Heagy, Jimmy R. Holmes, Danny Richards, Gerald G. Jones III, Timothy D. Ketchum, Michael P. Lane, John E McAdams, Edward Thomas Nearly, Kenneth W. Seibert, Bill N. Singleton, Christopher T. Smith, and Paul Woolery, because those employees joined or assisted the Union, or engaged in union activity or other concerted activities for the purpose of collective bargaining and/or mutual aid or protection, Respondent discriminated and is discriminating regarding hire or tenure and terms and conditions of employment of its employees thereby discouraging membership in a labor organization, and Respondent did thereby engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act

8. Respondent, by failing and refusing to recognize and bargain with the Union in good faith as the exclusive collective-bargaining representative of its employees in the unit described above, did refuse, and is refusing to bargain collectively with the representative of its employees and thereby did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

9. The aforesaid unfair labor practices affect commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

10. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

11. American Stevedoring Company has not violated the Act in any other manner.

THE REMEDY

Having found that Respondent American Stevedoring Company discriminatorily refused to offer employment to the former employees of Metropolitan Contracting, Inc., I shall recommend that their employment status be restored to what it would have been but for the discrimination against them, and that Respondent offer them immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, employees hired from sources other than Metropolitan Contracting, Inc., to make room for them and make them whole for any loss of earnings that they may have suffered because of the discrimination practiced against them, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[6] Backpay is to be based on either rate structure prevailing under Metropolitan Contracting, Inc., or the new rate structure established by Respondent American Stevedoring Company, whichever results in a higher pay to the individual employees.

Further, I shall recommend that Respondent bargain with the Union, on request, concerning any terms and conditions of employment on which it would have been required to bargain had the Union's lawful status been acknowledged on June 24, 1980, the date Respondent commenced performing services for Jefferson. In addition, I shall recommend that Respondent be ordered to cancel, on request by the Union, changes in rates of pay and benefits unilaterally effectuated and to make the employees whole by remitting all wages and benefits that would have been paid absent Respondent American Stevedoring Company's unlawful conduct as found herein from June 24, 1980, until Respondent American Stevedoring Company negotiates in good faith with the Union to agreement or impasse.[7]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER

The Respondent, American Stevedoring Company, Orlando, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating applicants for employment concerning their union activities.

(b) Refusing to hire or otherwise discriminating against employees to avoid bargaining with the Union.

(c) Refusing to recognize Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 385 as the exclusive collective-bargaining representative of its employees in this appropriate unit:

All truckdrivers and helpers employed by the employer at its 901 West Landstreet Road, Orlando, Florida location, excluding office clerical employees, guards, and supervisors as defined in the Act.

(d) Making changes in rates of pay and benefits of the employees in the above unit without notice to and consultation with the Union.

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

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

(a) Offer immediate and full reinstatement to Luther D. Brown, Kenneth A. Bryant, Frank Caprio, Robert E. Cowart Jr., Cecil C. Danley, Douglas W. Fernandez, Charles F. Heagy, Ronald L. Heagy, Jimmy R. Holmes, Danny Richards, Gerald G. Jones III, Timothy D. Ketchum, Michael P. Lane, John E. McAdams, Edward Thomas Nearly, Kenneth W. Seibert, Bill N. Singleton, Christopher T. Smith, and Paul Woolery to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed, discharging, if necessary, employees hired from sources other than Metropolitan Contracting, Inc., to make room for them and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) On request, bargain with the above Union as the exclusive representative of all employees in the above unit concerning their terms and conditions of employment and, if an understanding is reached, embody it in a signed contract if asked to do so.

(c) On request of the above Union, cancel any changes in the rates of pay and benefits that existed immediately before its takeover of the services previously performed by Metropolitan Contracting, Inc., and make employees whole by remitting all wages and benefits that would have been paid absent such changes from June 24, 1980, until it negotiates in good faith with the Union to agreement or to impasse, in the manner set forth in the remedy section of this decision.

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

(e) Post at its Orlando, Florida facility, copies of the attached notice marked "Appendix."[8] Copies of the notice on forms provided by the Regional Director for Region 32, after being signed by Respondent authorized representative, shall be posted by it immediately upon receipt and be maintained for 60 consecutive days in con-

[6] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962)

[7] The remission of wages is to be applied consistently with the make-whole remedy set forth above with respect to the discriminatees.

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

secutive places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER RECOMMENDED that in all other respects the complaint is dismissed.