

Achilles Construction Co., Inc. and Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 29-CA-12015

26 February 1987

DECISION AND ORDER

BY MEMBERS JOHANSEN, BABSON, AND STEPHENS

On 26 August 1986 Administrative Law Judge Thomas D. Johnston 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,¹ 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, Achilles Construction Co., Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ In adopting the judge's finding that the Respondent lacked a good-faith and reasonably grounded doubt that the Union enjoyed majority support when it refused to bargain with the Union on 8 August 1985, we emphasize that majority support is determined with reference to the unit's size at the time of the Respondent's refusal. There were then four employees in the unit.

Beatrice Kornbluh, Esq., for the General Counsel.
Stanley Israel, Esq., of New York, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

THOMAS D. JOHNSTON, Administrative Law Judge. This case was heard at Brooklyn, New York, on 27 June and 22 July 1986 pursuant to a charge filed on 20 August 1985¹ by Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (the Union) and a complaint issued on 9 April 1986.

The complaint alleges that Achilles Construction Co., Inc. (the Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (the Act) by withdrawing its recognition of the Union as the exclusive bargaining representative of the unit employees and refusing to recognize and bargain with the Union.

¹ All dates referred to are in 1985 unless otherwise stated.

The Respondent in its answer filed on 21 April 1986 denies having violated the Act and asserts as an affirmative defense the Union is not the representative for the purposes of collective bargaining of any of the unit employees.

The issues involved are whether the Respondent unlawfully withdrew recognition of and refused to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees thereby violating Section 8(a)(5) and (1) of the Act.

On the entire record in the case and from my observations of the witnesses and after due consideration of the oral argument made by the General Counsel and the brief filed by the Respondent² I make the following³

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a New York corporation with its principal office and place of business located at Brooklyn, New York, is engaged in the manufacture, sale, distribution, and installation of various products made by iron, steel, and other metals and related products. During the 12-month period preceding 9 April 1986, a representative period, the Respondent in the course of its operations purchased and received iron, steel, metal products, and other goods and materials, valued in excess of \$50,000, which was transported and delivered to its Brooklyn, New York facility in interstate commerce directly from States located outside the State of New York.

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

II. THE LABOR ORGANIZATION INVOLVED

Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background and the Bargaining Unit

The Respondent operates a facility located at Brooklyn, New York, where it is engaged in the manufacture, sale, distribution, and installation of various products made of iron, steel, and other metal and related products.

Mora Braunstein is the president of the Respondent and she has operated the Company since her husband died in 1983. Up until his death he was in charge of Respondent's operations.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of Respondent, including plant clerical employees, em-

² The General Counsel and the Union did not submit briefs.

³ Unless otherwise indicated the findings are based on the pleadings, admissions, stipulations, and undisputed evidence contained in the record which I credit.

ployed at the plant, exclusive of office clerical employees, guards and supervisors as defined in the Act.

On 30 September 1980 the Board issued its decision in *Kuno Steel Products Corp.*, 252 NLRB 904 (1980), in which it found the respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the union as the exclusive bargaining representative of the unit employees. It ordered the respondent to cease and desist from refusing, on request, to recognize and bargain with the union and ordered it, on request, to recognize and bargain with the union as the exclusive collective-bargaining representative of the unit employees. The Board, in finding the respondent violated the Act, reversed the administrative law judge's finding that the respondent had a rationally grounded belief that the union no longer represented a majority of respondent's unit employees at the time of the union's request to bargain in July 1978 because of the lapse of time, the lack of picketing, and the fact two of the seven employees retired on pension during the strike and two other employees had terminated their membership in the union.⁴

On 7 June 1982 the Board's decision was enforced by the United States Court of Appeals for the Second Circuit. *Koenig Iron Works*, 681 F.2d 130 (2d Cir. 1982).

Commencing in July 1982 and continuing thereafter including 1983, 1984, and 1985 the Union requested the Respondent to bargain collectively with it as the representative of the unit employees for a collective-bargaining contract covering those employees. During 1982 and 1983 the Respondent and the Union met at various times for purposes of negotiating the collective-bargaining agreement. These negotiations were unsuccessful. Union President William Colavito was the chief negotiator for the Union. Colavito's reasons given at the hearing for not having Respondent's employees present at the bargaining sessions were that they were working under conditions substandard to those in existence prior to the strike and having the employees present would not serve the purpose of bolstering negotiations because the employees were insecure and he did not know whether they would even come.

On 20 March the Board issued its Order in *Achilles Construction Co.* in Case 29-CA-10585 adopting the decision of Administrative Law Judge Raymond P. Green issued on 30 January, to which no exceptions had been filed, in which he found the respondent had violated Section 8(a)(1) and (5) of the Act by unilaterally granting wage increases to employees without prior notice to and consultation with the union during the collective-bargaining negotiations. The respondent was ordered to cease and desist from refusing to bargain collectively with the union by unilaterally granting wage increases to employees during the course of collective-bargaining negotiations, without prior notice to and consultation with the union, and in the event the respondent and the union resumed negotiations respondent was to notify the union as to all proposed wage increases to unit employees and

not to implement such wage increases absent an impasse in negotiations or consent by the union.⁵

B. *The Respondent's Withdrawal of Recognition of the Union as the Exclusive Collective-Bargaining Representative of the Unit Employees*

About 29 March, Union President Colavito had a meeting with Respondent's attorney, Stanley Israel, who also represented certain other companies including Koenig Iron Works, Inc. (Koenig), Roman Iron Works, Inc. (Roman), and Peelle Company (Peelle). During this meeting, as described by President Colavito, Attorney Israel informed Colavito that he did not feel Roman, Koenig, or Peelle had any obligation to bargain with the Union. Upon Colavito asking Israel about a meeting with the Respondent, Israel said he would contact the Company and get back to them. Attorney Israel did not testify and I credit Colavito's undisputed testimony regarding this conversation.

Following this meeting Colavito stated Attorney Israel did not get back to him about a meeting with the Respondent as promised. Colavito then sent Israel a letter dated 24 July requesting Israel on receipt of the letter to call him to set up a negotiating session regarding the Respondent.

Colavito's explanation given at the hearing for the delay in sending this letter was because the Union had filed charges in April against Koenig and Roman for their withdrawing recognition of the Union and the Union was awaiting action on the charges which resulted in complaints being issued against those companies on 28 June by the Regional Office.

Attorney Israel responded to Colavito's request by letter dated 8 August advising Colavito as follows:

In light of the recent decision of the Board and the further fact that all prior offers made by this Company have been rejected and are no longer applicable, and in fact have been revoked, and in light of the further fact that this Company does not believe that Local 455 currently represents the employees of the Company, I believe it would be inappropriate and indeed unlawful to schedule any new negotiating session.

President Colavito denied there was any further contact with Attorney Israel after receiving his letter.

C. *Respondent's Defense*

Respondent's president, Braunstein, testified she made the decision not to bargain with the Union. She stated it was made in July or August when Attorney Israel contacted her, informed her he had received a letter from the Union, and asked if she was interested in bargaining with the Union on behalf of the men in their shop. She informed Israel the Union was not representing them, there were no union members working there, and she was definitely not interested.

⁴ Louis Doua was identified as one of the two employees who had terminated his union membership

⁵ An allegation alleging the Respondent bargained in bad faith with no intention of reaching an agreement was dismissed

At the hearing Braunstein described that the basis for her decision was they had no representation of any union members and the employees were not interested in the Union. Her knowledge that the employees were not interested in the Union was based on statements made to her by Louis Douda that he felt no loyalty to the Union, wanted no part of the Union, and was not interested⁶ and a statement by Charles Douda⁷ that he was not interested in becoming or being a member of the Union. On being asked when these conversations with the Doudas occurred, Braunstein said it was an ongoing discussion with the Doudas since the beginning of the strike. According to Braunstein the Doudas initiated those conversations.

Braunstein, who stated that in the summer of 1985 the Respondent employed a maximum of five employees, acknowledged she did not have any discussions with any of the other three employees concerning the Union.

Although Braunstein stated Louis Douda was a union member prior to the strike and worked during part of the strike, she denied that Charles Douda, who started work after the strike began, was ever a union member. Union President Colavito denied knowing whether either Louis Douda or Charles Douda was a union member in 1985 or whether the Union collected dues from any of Respondent's employees in 1985.

Louis Douda stated he was a member of the Union when the strike started. However, he ceased paying dues and drew a pension from the Union, but his pension was stopped after he returned to work during the strike. Douda did not resume paying his dues while he worked for the Respondent.

Although Braunstein denied any of Respondent's employees were members of the Union in 1984, she acknowledged she had assumed this because no one spoke about the Union at all. Braunstein also claimed the only former employee of the Respondent who she had seen around the premises the last couple of years was Joe Chopko, who lived in the area and occasionally came in to say hello. Chopko had worked there up until the strike. Braunstein acknowledged Chopko's name was listed in a backpay specification hearing at which she testified. According to Braunstein, Chopko had been ill a number of years and had also stated he was not interested in working.

Respondent records reflect that in July the Respondent employed four unit employees. They were Louis Douda,⁸ Charles Douda, Lancelot Brotherson, and Joseph Prusein. Louis Douda was hired during the early 1970s and his son, Charles Douda, was hired about 1976. Lancelot Brotherson began work in 1984 and Joseph Prusein started about June 1985. During August these same four unit employees worked there along with another unit employee, Ras Singh, who began work on

August 26. From January to July there were four unit employees employed each week except for 6 weeks in May and June when there were only three. During August through November 1984 the Respondent also employed four unit employees each week except for 3 weeks in August 1984 when it employed five. After August 1985 the Respondent continued to employ five unit employees up through the week beginning 6 November except for 1 week in October when it employed seven. From 13 November up until the week beginning 19 March 1986 the number of unit employees varied from four to six, after which the number of unit employees dropped to three or four up until 25 June 1986.

The records also reflect Charles Douda last worked for the Respondent during the week beginning 18 December and Louis Douda last worked the week beginning 19 February 1986. According to President Braunstein, Joseph Prusein is also no longer working for the Respondent while Lancelot Brotherson is still employed there.

Respondent's attorney, Israel, in a letter to the Regional Office dated 18 September regarding the Respondent's position on the charge in the instant case stated as follows:

As previously advised, we have absolutely no reason to believe that Local 455, in fact, represented the employees of the above-named company in August 1985. In *none* of the numerous bargaining sessions commencing in 1982, was a member of the bargaining unit present. Inquiries addressed to the Union on this point have been responded to with such comments as "the men don't have to be here" or "we represent the people" or "that is not a matter for your concern."

While the Union is correct in asserting that no law requires the presence of bargaining unit members at negotiation sessions, it is nevertheless apparent to any objective observer that the Union has no contact with the employees, the employees do not regard the Union as their representative and most significantly the employees have not had any participation (or even say in the bargaining process). The Company even doubts that they know anything about the bargaining.

Surely, at this point, the Region must realize that the Company has a good faith doubt of representation status. In light of the fact that this Company was not one which signed with Local 810 I.B.T. and has at the Administrative Law Judge level been absolved of the surface bargaining charges, the new charges should be dismissed.

Union President Colavito denied Attorney Israel ever informed him to the effect that because Respondent's employees were not present at the negotiating sessions it proved they did not want the Union.

The strike by the Union against the Respondent began on 1 July 1975. According to both Respondent's president, Braunstein, and Union President Colavito the last

⁶ Louis Douda demed remembering whether he discussed the Union with President Braunstein after she took over the Company.

⁷ Charles Douda did not testify.

⁸ Although the General Counsel on rebuttal contended for the first time that Louis Douda was a supervisor under the Act, an earlier stipulation entered into by her at the hearing, which I find is binding, places him in the unit. Moreover, Douda stated he was a working foreman and "working foremen" were included in the unit.

time picketing actually occurred at Respondent's premises was 5 or 6 years ago.

D. *Analysis and Conclusions*

The General Counsel contends the Respondent violated Section 8(a)(1) and (5) of the Act by unlawfully withdrawing recognition of and refusing to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees. The Respondent denies having violated the Act and asserts as an affirmative defense the Union is not the representative for purposes of collective bargaining of the unit employees. It argues in its brief that the evidence supports both a finding of a loss of majority status as well as a good-faith objectively based doubt of majority status.

Section 8(a)(1) of the Act prohibits an employer from interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act. Section 8(a)(5) of the Act prohibits an employer from refusing to bargain collectively with the representative of its employees. The findings *supra* establish the Union represented Respondent's unit employees and had a collective-bargaining agreement covering them which had expired. On 30 September 1980 the Board issued its decision, enforced by the court on 7 June 1982, in which it found Respondent had violated the Act by unlawfully refusing to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees and ordered it to recognize and bargain with the Union as the exclusive collective-bargaining representative of its unit employees. The Board also rejected a finding that the Respondent had a rationally grounded belief the Union no longer represented the unit employees. Thereafter, the Respondent and the Union entered into negotiations for a new collective-bargaining agreement. These negotiations were unsuccessful. However, on 20 March the Board issued its Order adopting an administrative law judge's decision finding the Respondent during those negotiations violated the Act by refusing to bargain with the Union by unlawfully granting wage increases to the unit employees without consulting or bargaining with the Union. An allegation the Respondent also engaged in bad-faith bargaining was dismissed. It ordered the Respondent to cease and desist from such unlawful conduct and ordered that if the Respondent and the Union resumed negotiations the Respondent was to notify the Union as to all proposed wage increases to the unit employees and not to implement such wage increases absent an impasse in negotiations or consent by the Union. Although about 29 March, shortly after the Board's Order issued, the Union requested a bargaining meeting with the Respondent, but the Respondent did not respond as it had promised to do. Upon the Union renewing its bargaining request on 24 July the Respondent, by a letter dated 8 August, denied this request claiming it would be both inappropriate and unlawful. Its reasons contained in the letter were the Board's recent Order; the fact all prior offers made by the Respondent had been rejected, were no longer applicable, and had been revoked; and that the Respondent did not believe the Union currently represented the unit employees. Respondent in its 18 September response to the charge in the instant case

claimed the Union did not represent the employees by asserting no employees were present at the negotiation sessions and claimed the Union had no contact with the employees, employees did not regard the Union as their representative, and the employees did not have any say in the bargaining process and it doubted the employees knew anything about the bargaining.

Respondent's president, Braunstein, who made the decision not to bargain with the Union, based her decision on statements made to her by Louis Douda that he felt no loyalty to the union and wanted no part of the union and was not interested, and statements made by Charles Douda that he was not interested in becoming or being a member of the union. Braunstein placed these statements as ongoing discussions with the Doudas since the beginning of the strike which was in July 1975.

When the Respondent questioned the Union's majority status on 8 August it employed four unit employees including Louis and Charles Douda. However, on 26 August it hired an additional employee, and its work force, which consisted of seven unit employees during the time of the initial Board Decision referred to above, varied in number from three to seven unit employees during 1985.

A union enjoys a rebuttable presumption of majority status upon the expiration of a collective-bargaining agreement. However, an employer who refuses to bargain with an incumbent union may rebut the presumption of majority status by establishing either (1) that at the time of the refusal to bargain the union in fact did not enjoy majority status, or (2) that the refusal was predicated on a good-faith and reasonably grounded doubt supported by objective considerations of the union's majority status. *Burger Pits, Inc.*, 273 NLRB 1001 (1984), *enfd.* 785 F.2d 796 (9th Cir. 1986). An employer may not question a union's majority status in the context of certain types of unfair labor practices. *Colonial Manor Convalescent & Nursing Center*, 188 NLRB 861 (1971). The principles applicable to those cases are set forth in *Celanese Corp. of America*, 95 NLRB 664, 673 (1951), as follows:

And, secondly, the majority issue must *not* have been raised by the employer in the context of illegal antiunion activities, or other conduct by the employer aimed at causing disaffection from the union or indicating that in raising the majority issue the employer was merely seeking to gain time in which to undermine the union.

Both the Board's decision and its most recent Order recognized the Union, which also enjoyed a presumption of majority status, as the collective-bargaining representative of Respondent's unit employees. The evidence presented here fails to show that at the time of Respondent's admitted refusal to recognize and bargain with the Union that the Union did not enjoy majority status or that Respondent's refusal was predicated on a good-faith and reasonably grounded doubt of the Union's majority status supported by objective considerations.

President Braunstein in questioning the Union's majority status relied on statements made by only two unit em-

ployees out of a work force that fluctuated between three and seven unit employees. One of those two employees only stated he was not interested in becoming or being a member of the Union. The Board has held that such statements by employees about their not wanting to join the union fail to distinguish between wanting to be a union member and desiring to have union representation. *Club Cal-Neva*, 231 NLRB 22, 24 (1977), enf. 604 F.2d 606 (9th Cir. 1979). Thus, such statement cannot be relied on to support a good-faith and reasonably grounded doubt of the Union's majority status. Moreover, President Braunstein placed such statements as occurring since the beginning of the strike in July 1975, which would have included the period of the prior unfair labor practices found against the Respondent. As they were raised during and in the context of unfair labor practices and were of a nature sufficient to cause disaffection from or to undermine the Union, the Respondent cannot now rely on such statements to support its doubt of the Union's majority status. Insofar as the Respondent also hired new unit employees, they are presumed to support the Union in the same ratio as those employees whom they replaced. *W & W Steel Co.*, 232 NLRB 74, 75 (1977), enf. denied on other grounds 599 F.2d 934 (10th Cir. 1979).

The other reasons advanced by the Respondent for refusing to recognize and bargain with the Union also lack merit. The fact the Respondent was absolved of bad-faith bargaining in the most recent Decision adopted by the Board and the Union had rejected Respondent's prior contract offers would not relieve the Respondent of its legal obligation to continue to recognize and bargain with the Union. The claim no employees were present at the negotiation sessions showed the Union did not represent them is rejected. The general rule is the parties have the right to select their own representative for bargaining and negotiations and the duty to deal with the chosen representative of the other party. *Fitzsimons Mfg. Co.*, 251 NLRB 375, 379 (1980), enf. 670 F.2d 663 (6th Cir. 1982). The Respondent's further assertion the Union had no contact with the employees and the employees did not regard the Union as their representative is unsupported by any probative evidence.

For those reasons stated I am persuaded and find the Respondent about 8 August unlawfully withdrew recognition of and refused to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees and thereby violated Section 8(a)(5) and (1) of the Act.

Additionally, even assuming the Union had lost its majority status I would find under the circumstances presented here the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition of and refusing to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees. The law is well settled that in cases involving certifications, Board orders, and settlement agreements the parties must be afforded a reasonable time to bargain. *Brennan's Cadillac, Inc.*, 231 NLRB 225, 226 (1977). Here the withdraw of recognition occurred without any bargaining although requested by the Union, only shortly after the Board had issued its Order adopting the administra-

tive law judge's decision finding the Respondent had violated the Act by refusing to bargain with the Union by unlawfully granting wage increases to employees during the course of collective-bargaining negotiations and ordered that in the event negotiations resumed the Respondent shall notify the Union as to all proposed wage increases and not implement them absent an impasse in negotiations or consent by the Union. To now permit the Respondent to question the Union's majority status without first affording the Union a reasonable time to bargain would violate those principles of law and render the effect of the most recent Board's Order against the Respondent a nullity.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Achilles Construction Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees of the Respondent, including plant clerical employees, employed at its plant, exclusive of office clerical employees, guards, and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. The Union at all times material herein has been, and is now, the exclusive representative of all the employees in the above-described appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By withdrawing recognition from the Union about 8 August 1985 and thereafter refusing to recognize and bargain with the Union as the exclusive bargaining representative of its unit employees, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
6. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

To remedy the Respondent's unlawful withdrawal of recognition and its refusal to recognize and bargain with

the Union, I shall recommend that the Respondent recognize the Union and, on request, bargain collectively with the Union as the exclusive representative of all the employees in the aforesaid appropriate unit and, if an understanding is reached, embody such understanding in a signed written agreement.

The General Counsel's request that the remedial order include a visitatorial clause authorizing the Board to engage in discovery under the Federal Rules of Civil Procedure to enable it to monitor compliance with the Board's Order as enforced by the court of appeals is rejected on the grounds the Board does not provide for discovery procedures in its proceedings and there is no showing that under the circumstances presented here such a clause is necessary.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Achilles Construction Co., Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition of and refusing to recognize and bargain collectively with Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO as the exclusive representative of its employees in the following appropriate unit concerning wages, hours, and other terms and conditions of employment.

All production and maintenance employees of the Respondent, including plant clerical employees, employed at its plant, exclusive of office clerical employees, guards and supervisors as defined in the Act.

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

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

(a) Recognize and, on request, bargain collectively with the Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO as the exclusive representative of the employees in the above-described appropriate unit with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the terms of such understanding in a signed written agreement.

⁹ 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 to them shall be deemed waived for all purposes

(b) Post at its facility located in Brooklyn, New York, copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint is hereby dismissed insofar as it alleges unfair labor practices not specifically found herein.

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

WE WILL NOT withdraw recognition of and refuse to recognize and bargain collectively with Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO as the exclusive bargaining representative of our employees in the bargaining unit described below.

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

WE WILL recognize and, on request, bargain with Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, as the exclusive representative of our employees in the appropriate unit described below with respect to wages, hours, and other terms and conditions of employment and if an understanding is reached, embody such understanding in a signed written agreement. The appropriate unit is:

All production and maintenance employees of the Respondent, including plant clerical employees, employed at its plant, exclusive of office clerical employees, guards and supervisors as defined in the Act.

ACHILLES CONSTRUCTION CO., INC.