

Bridgeway Oldsmobile, Inc. and Automobile Salesmen's Union, Local 1095 United Food and Commercial Workers, AFL-CIO. Case 32-CA-7184

August 5, 1988

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND CRACRAFT

On October 15, 1986, the Board issued a Decision and Order in this proceeding¹ adopting the findings of the administrative law judge that the Respondent violated Section 8(a)(1), (3), and (5) of the Act, including, in pertinent part, that the Respondent retained an employee who wished to retire so that the employee could vote against the Union in the representation election and hired three employees for the purpose of undermining the Union's support in the election. Subsequently, the Union petitioned the United States Court of Appeals for the Ninth Circuit to review the Board's Order for failure to include, as part of the remedy, backpay to the employees who lost commissions as a result of the Respondent's unlawful unit packing. On February 24, 1988, the court issued a decision granting the petition for review and remanding the case to the Board to consider the Union's contention.²

On April 11, 1988, the Board accepted the court's remand and notified the parties that they could file statements of position concerning the issue on remand. The General Counsel and the Union filed statements of position.

In compliance with the court's remand, and in light of the statements of position filed by the General Counsel and Union, which were unopposed by the Respondent, we have reconsidered our original decision and find it appropriate to require the Respondent to make whole its employees for any commissions lost as a result of the Respondent's unlawful unit packing. See *Suburban Ford*, 248 NLRB 364 (1980). Accordingly, we will modify our prior Order to provide this additional relief.

AMENDED REMEDY

We shall order the Respondent, in addition to the relief prescribed in our original Order, to reimburse its employees for commissions lost as a result of its hire of employees Simpson, Decker, and DePolo on March 5, 1985, and the retention of employee Harper on March 28, 1985, to undermine support for the Union in the election held April 10,

1985. Loss of earnings shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*.³

ORDER

The National Labor Relations Board modifies its order previously issued in this proceeding at 281 NLRB (1986), as set forth below:

1. Insert the following as paragraph 2(d) and re-letter the subsequent paragraphs accordingly.

"(d) Make its employees whole, plus interest, for commissions lost as a result of hiring and retaining employees for the purpose of undermining support for the Union in the election held April 10, 1985."

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

³ In accordance with our decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), interest on and after January 1, 1987, shall be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest on amounts accrued prior to January 1, 1987 (the effective date of the 1986 amendment to 26 U.S.C. § 6621), shall be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).

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 discharge employees or deny their leave requests because we know or suspect they are engaging in union activities.

WE WILL NOT coercively interrogate our employees about their own union membership, activities, or sympathies or the union membership, activities, or sympathies of their fellow employees.

WE WILL NOT threaten our employees with loss of employment, closure of the dealership, unspecified reprisals or with the futility of organizing a union because they engaged in union activities.

WE WILL NOT solicit our employees or applicants for employment to withdraw from membership in the Union.

WE WILL NOT make statements to employees giving them the impression that their union activities are under surveillance.

WE WILL NOT tell an employee not to come in unless he intended to vote against the Union.

WE WILL NOT employ salespersons for the purpose of undermining support for the Union.

¹ 281 NLRB 1246 (1986).

² *Food & Commercial Workers Local 1095 v. NLRB*, No. 87-7127 (unpublished).

WE WILL NOT retain an employee who desired to retire so that employee could vote against the Union.

WE WILL NOT deny any employee's leave request and subsequently terminate that employee because he engaged in union activities.

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

WE WILL make Thomas Roberts whole for any earnings he might have lost as a result of his unlawful discharge, with interest.

WE WILL offer Thomas Roberts immediate employment to his former position or, if that position no longer exists, to a substantially equivalent one, without prejudice to his seniority rights or any other rights or privileges of employment, and make him whole or any earnings he may have lost as a result of our unlawful refusal to reemploy him, with interest.

WE WILL remove from our files any reference to the unlawful discharge of Thomas Roberts and notify him, in writing, that such has been done and that our unlawful actions will not be used as a basis for future personnel action against him.

WE WILL, on request, recognize and bargain with Automobile Salesmen's Union Local 1095, United Food and Commercial Workers Union AFL-CIO as the exclusive representative for purposes of collective bargaining of our employees in the following appropriate unit:

All full-time and regular part-time salespersons employed by Bridgeway Oldsmobile at its 25715 Mission Blvd., Hayward, California facility; excluding all mechanics, parts, lubrication, lot employees, employees currently covered by a collective bargaining agreement, financial and insurance employees, office clerical employees, guards, and supervisors as defined in the Act.

WE WILL bargain with the above-named labor organization with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody such on in a written, executed contract.

WE WILL make our employees whole, with interest, for commissions lost as a result of hiring and retaining employees for the purposes of undermining support for the Union in the election held on April 10, 1985.

BRIDGEWAY OLDSMOBILE, INC.