

**Wells Fargo Armored Service Corporation and
International Guards Union of America, Local
66. Case 27-CA-10116**

August 19, 1988

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND CRACRAFT**

On February 3, 1988, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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 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, Wells Fargo Armored Service Corporation, Boulder, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ We agree with the judge that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union since April 23, 1987. In doing so, we do not rely on the judge's finding that the Respondent demonstrated a lack of good faith by failing to arrange for bargaining to begin following the termination of bargaining in the ATM unit on March 27, 1986. On December 23, 1985, the Respondent agreed, at the Union's request, to defer bargaining until after the ATM negotiations had terminated. There was no discussion at that time about which party would be responsible for initiating bargaining following the ATM negotiations. Under the circumstances, we do not believe that the Respondent's failure to take the initiative and affirmatively request bargaining after the termination of the ATM negotiations indicates a lack of good faith.

Michael D. Pennington, Esq., for the General Counsel.
Tom Franklin, Esq., of Atlanta, Georgia, for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Denver, Colorado, on 22 October 1987,¹ pursuant to a complaint issued by the Regional Director for Region 27 of the National Labor Relations Board on 26 June 1987, and which is based on a charge filed by International Guards Union of America, Local 66 (the Union) on 20 May 1987. The complaint alleges that Wells Fargo Armored Service Corporation (Respondent) has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

Issue

Whether Respondent has violated the Act by failing and refusing to recognize, to meet with, and to bargain collectively in good faith with the Union as the exclusive bargaining representative of the relevant unit.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

On the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits that it is a Delaware corporation with headquarters in Atlanta, Georgia, engaged in the business of providing armored car services involving the pickup and delivery of valuables, including cash, checks, and documents from commercial customers and financial institutions, and having an office and place of business located in Boulder, Colorado. It further admits that during the past year, in the course and conduct of its business, it annually provided services valued in excess of \$50,000 to other enterprises within the State of Colorado that are directly engaged in interstate commerce and derive income in excess of \$50,000 from its Colorado business operations. Accordingly, it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that International Guards Union of America, Local 66 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts ²

During all times material to this case, the Union represented three separate units of Respondent's employees: (1) a statewide unit of automated teller machine (ATM) technicians and dispatchers certified by the Board on 7 November 1985 and consisting of approximately 30 employees (G.C. Exh. 7, par. 1); (2) a Boulder, Colorado unit of full-time and regular part-time guards, certified by the Board on 19 November 1985 and consisting of between five to seven employees; and (3) a Denver, Colorado unit of guard employees consisting of approximately 70 employees (G.C. Exh. 7, par. 7). The issue in this case concerns primarily the Boulder unit of guards.

On 17 December 1985, the Union's then attorney sent the following letter to Respondent's attorney and chief negotiator:

² Many important facts are contained in a "Stipulation of Facts" (G.C. Exh. 7).

¹ All dates herein refer to 1986 unless otherwise indicated.

December 17, 1985

Mr. Tom Franklin
Assistant Vice President
Labor Relations, Wells
Fargo Armoured [sic] Service Corp.
Post Office Box 4313
Atlanta, Georgia 30302

Re: Wells Fargo Armoured [sic] Service Corp. &
International Guards Union of America, Local No.
66 NLRB Case No. 27 RC 6572

Dear Mr. Franklin:

On November 19, 1985 the National Labor Relations Board certified the International Guards Union of America, Local No. 66 as the exclusive representative for purposes of collective bargaining of all full time and regular part time guard employees employed by Wells Fargo at its Boulder, Colorado location. Pursuant to that certification, please consider this letter a demand that Wells Fargo meet and negotiate with IGUA-66 for the purpose of entering into a collective-bargaining agreement. Please inform me when your bargaining representatives can meet with the union for this purpose or contact me so that we can schedule a meeting.

In addition, since IGUA-66 now represents these employees I request that you send me a list of the names, addresses and telephone numbers of all guards in Boulder that were not in the Excelsior list provided to the union prior to the election.

Very truly yours,
/s/ Kristin A. Kutz
Kristin A. Kutz

KAK/ps
cc: Paul Lynes
opeiu-5
afl-cio

[G.C. Exh. 2]

On 23 December 1985, the parties began negotiations for the ATM unit described above. Franklin represented Respondent at this and subsequent meetings while Kutz represented the Union at this meeting, but not at subsequent meetings.

One of the other persons in attendance on 23 December 1985 was Paul Lynes, president of the Union for a 6-year period of time ending in May. Lynes testified at hearing that Respondent never made a written reply to the 17 December letter published above (G.C. Exh. 2). Whether Franklin and Kutz had a conversation about the General Counsel's Exhibit 2, Lynes was not aware of any such conversation.

On the question of a conversation between Franklin and Kutz, Franklin himself testified at hearing, although he was also representing Respondent at hearing.³ Li-

³ In permitting such testimony by advocates, the Board has held that it is not the Board's function or responsibility to pass on the ethical propriety of a decision by counsel to testify in an NLRB hearing. Where the testimony is otherwise proper and competent, it should be admitted into evidence. *Operating Engineers Local 9 (Fountain Sand & Gravel Co.)*, 210 NLRB 129 fn. 1 (1974).

censed to practice law in the States of Missouri and North Carolina, Franklin is Respondent's chief spokesman at negotiations with labor unions. He testified that in the course of negotiations on 23 December 1985, he acknowledged to Kutz that he had received her 17 December letter and further told her that Respondent was ready and willing to negotiate, but would require separate meetings on separate days to negotiate for the ATM unit and for the Boulder unit. To this Kutz responded that she desired to finish the ATM negotiations first, and Franklin agreed.

On cross-examination, Franklin admitted telling the General Counsel before the hearing began that while he was certain of his conversation with Kutz, he was not certain at which of the ATM negotiating sessions the conversation had occurred. Franklin also admitted that he did not make the General Counsel aware that Franklin intended to be a witness. Finally, Franklin admitted that while he kept his own notes during the negotiating sessions, his notes for 23 December do not reflect the conversation with Kutz.⁴

After 23 December 1985, the parties met again during 1986 with respect to ATM negotiations on 16 and 17 January, 20 and 21 February, and 7 and 27 March (G.C. Exh. 7, par. 2). During the 1986 ATM negotiations, Kutz was replaced by Attorney Dennis Valentine of her law firm (G.C. Exh. 7, par. 3). The ATM unit employees went on strike on 23 February and made an unconditional offer to return to work on 12 March. No ATM agreement was ever reached and negotiations were discontinued on or about 27 March (G.C. Exh. 7, par. 4)⁵

Regarding the Denver guard unit, Respondent gave written notice, on 25 August, of its desire to negotiate changes in the existing collective-bargaining agreement. Negotiations began on 3 November, and continued until 20 January 1987 with the signing of a new agreement (G.C. Exh. 7, par. 5).

On 27 February 1987, Attorney Goldhammer, who represented the Union during the Denver guard unit negotiations referred to above, sent a letter to Respondent on behalf of the Boulder guard unit. It reads as follows:

February 27, 1987

Mr. Thomas P.G. Franklin
Wells Fargo Armored Service Corp.
Post Office Box 4313
Atlanta, Georgia 30302

⁴ Although taken by surprise by Franklin's testimony, the General Counsel never requested a continuance to bring in Kutz as a witness. No reason was suggested for Kutz' absence, although she is apparently a practicing attorney in Denver. In light of this, I credit Franklin's testimony despite my misgivings caused by Franklin's failure to mention the conversation with Kutz in his "position paper" (G.C. Exh. 8) submitted to the Board and in other correspondence received into evidence, all of which documents are described below.

⁵ On or about 14 June, Lynes had a conversation with a man named Williams, ATM union representative on the negotiating committee. Lynes stated it was no longer in the Union's best interest nor in the ATM unit's best interest for the Union to continue to represent the ATM employees. The record does not show whether the relationship was formally terminated.

Re: Wells Fargo Armored Service Corporation
and International Guards Union of America, Local
66 NLRB Case No. 27-RC-6572

Dear Tom:

On December 17, 1985 Kristin Kutz of my firm wrote you a letter demanding that Wells Fargo meet and negotiate with IGUA 66 for the purpose of entering into a collective bargaining agreement for the Boulder, Colorado Wells Fargo armored guards.

Apparently, since that time, the parties have been involved with numerous other matters and negotiations have never begun regarding Boulder employees. However, at this time the union hereby renews its request with the company to bargain in behalf of the Boulder armored employees.

Please contact me at your earliest convenience and let me know when you have times and dates available for this bargaining. Thank you very much.

Very truly yours,
/s/Joseph M. Goldhammer
Joseph M. Goldhammer

JMG/ps
cc: Paul Lynes
opeiu-5
afl-cio

[G.C. Exh. 3]

On 23 April 1987, Franklin answered with a letter of his own:

23 April 1987
Joseph Goldhammer
1563 Gaylord Street
Denver, CO 80206

Dear Joe:

I have reviewed the Boulder situation. The Company's position in this matter is simple. The National Labor Relations Board certified Local 66 of the International Guards Union of America to represent the Boulder Colorado employees on 19 November 1985. The parties never met to do any negotiating. In fact the only contact the Company had from Local 66 was the December 17, 1985 letter from Christine Koutz [sic]. There has been no attempt by the union to represent these employees since December 17, 1985.

It is our position that the one year presumption of certification has in fact expired and that Local 66 no longer legitimately represents the Boulder employees. The Company will therefore not meet to negotiate concerning these employees.

Sincerely,
/s/ Tom
Thomas P. G. Franklin
Assistant Vice President
Labor Relations

TPGF/jls

[G.C. Exh. 4]

On 6 May 1987, Goldhammer sent a final letter to Franklin, that is, final on terms of the evidence offered at the hearing. It reads as follows:

May 6, 1987

Mr. Thomas P. G. Franklin
Assistant Vice President
Labor Relations
Wells Fargo Armored Service Corporation
P.O. Box 4313
Atlanta, Georgia 30302

Dear Tom:

I am in receipt of your letter of April 23, 1987 regarding the Boulder situation.

This letter is to inform you that we have confidential authorization forms from a majority of the present members of the Boulder bargaining unit. Therefore, even though you may wish to obtain objective evidence to try to rebut the presumption after the one-year certification period has elapsed that the union still represents the members of the bargaining unit, I have evidence which will overcome any such objective evidence.

I would disclose the confidential cards to you only upon the assurance that you would continue to recognize and bargain with the union if I produced that sufficient number of authentic authorization cards. If you cannot provide that assurance, then I will be forced to file unfair labor practices charges for refusal to bargain. Therefore, I would like to know from you whether such disclosure would make any difference in your decision not to bargain with the union. Please respond to this inquiry within ten days. If no response is received within that period of time, I will assume that the cards will make no difference and I will proceed to file unfair labor practice charges.

Thank you very much.

Very truly yours,
/s/ Joseph M. Goldhammer
Joseph M. Goldhammer

JMG: tn
cc: Paul Lynes
opeiu 5
afl-cio

[G.C. Exh. 5]

While Franklin apparently did not reply to Goldhammer's letter of 6 May 1987, Franklin did send on 9 June 1987 a "position paper" to an agent of the NLRB which reads as follows:⁶

⁶ The Board directs that so-called position papers of parties sent to the Board should be admitted into evidence, if the substance is material. *Masillon Hospital Assn.*, 282 NLRB 675 fn. 5 (1987).

June 9, 1987

Wayne L. Benson
National Labor Relations Board
Region 27
260 New Custom House
721 19th Street
Denver, Colorado 80202
Re: Case No. 27-CA-10116

Dear Sir:

I have recently received the amended charge in this case and now have a better understanding as to the basis for the charge. I will attempt to express the employer's positions through this letter.

Local 66 of the International Guards Union of America was certified as a representative of all full time and all regular part time guard employees employed by the employer at its Boulder, Colorado location in case 27-RC-6572 which was dated 19 December 1985. I did receive a letter on February 27, 1987 from Joseph Goldhammer stating that the union wished to negotiate relating to the Boulder employees. I responded to that letter on April 23, 1987 but since the union had not "pressed its demand to enter into bargaining for this unit until February 27, 1987" (as stated in letter from Wayne L. Benson to Tom Franklin dated May 27, 1987) Wells Fargo had no obligation to bargain with Local 66.

It is the Company's contention that the National Labor Relations Board uses a reasonable standard as to the length of time a certification is deemed to be valid. The usual length of time is generally considered to be one year. In this particular case fifteen months have passed since the union "pressed" its right to bargain with Wells Fargo. It is Wells Fargo's position that the one year certification period has run and that the union does not still represent those employees.

It is Wells Fargo's position that at this time the most appropriate remedy would be for the union to get cards signed and press for a new election for those employees.

If you need any further information please feel free to contact me.

Sincerely,
/s/ Thomas Franklin
Thomas P. G. Franklin
Assistant Vice President
Labor Relations

TPGF:jl

[G.C. Exh. 8]

Returning to the testimony of Lynes, I note his testimony on cross-examination with respect to an important issue in this case. I quote directly from the transcript (Tr. 19-20):

Q. Was there anything in between the [sic] 27 March, 1986 and 3 November, 1986 that was happening that hasn't been brought out here that would

have prevented the union from requesting bargaining with the company?

A. Yes.

Q. Would you tell us what that is?

A. Well, I had hip surgery during the negotiations with ATM, and I had rehabilitation. My wife's blind. I have—every time she needs to go anywhere I have to haul her. She has no way getting around. And we had a lot of changes in management, had a lot of grievances. I'm out of town three days a week, so it don't give me much time to get around, you know, get everything done that I want to get done. And through all the problems at the local—at that time I was on the executive board with the international. Had problems with them I had to answer to. Just too many items to keep up with. So between everything happening, time got away from me.

Q. Just one last question, Mr. Lynes. To your knowledge on behalf of both yourself as president and as the officer agent of the union, are you aware at any time that Wells Fargo refused to bargain with you, your union, or your agents regarding Boulder employees?

A. We never did get an answer from Wells Fargo saying they wanted to bargain or give a date.

Q. Other than that, did anybody from Wells Fargo ever tell you or your agents or union that we will not bargain with you? We refused to bargain?

A. Not personally, no.

Q. What about anybody else in the union or your attorneys?

A. Not that I know of.

Q. Thank you.

On redirect examination, the General Counsel continued in the same vein. Again, I quote from the transcript (Tr. 20-21):

Q. Mr. Lynes, you just answered a question about what was going on to prevent you from requesting bargaining between ATM negotiations and the Denver guard unit negotiations. Could you describe for us the financial status of the union during that period of time? Especially right after the ATM negotiations ended.

A. Yes. The financial status of Local 66, right after the ATM, was in bad shape. We had about \$1,500 in the treasury and we owed over \$10,000 in lawyers fees.

Q. What were these lawyer fees for?

A. For ATM, negotiating the ATM contract and the Colorado Springs contract, and had Vail. Union business.

MR. PENNINGTON: I have no further questions.

B. Analysis and Conclusions

1. Do the facts and circumstances of this case establish Respondent's good-faith doubt of the Union's majority status

I begin with relevant rules of law stated in *Buckley Broadcasting Corp.*, 284 NLRB 1339, 1340 (1987):

Absent unusual circumstances, there is an irrebuttable presumption that a union enjoys majority status during the first year following its certification.³ On expiration of the certification year, the presumption of majority status continues but may be rebutted.⁴ An employer who wishes to withdraw recognition after a year may do so in one of two ways: (1) by showing that on the date recognition was withdrawn the union did not in fact enjoy majority status, or (2) by presenting evidence of a sufficient objective basis for a reasonable doubt of the union's majority status at the time the employer refused to bargain.⁵

The presumption of continuing majority status serves two important functions: first, it promotes continuity in bargaining relationships, i.e., gives the relationship "some measure of permanence,"⁶ and, second, the presumption protects the express statutory right of employees to designate a collective-bargaining representative of their own choosing, and prevents an employer from impairing that right without objective evidence that the representative the employees have designated no longer enjoys majority support.⁷

³ *Ray Brooks v. NLRB*, 348 U.S. 96, 98-104 (1954).

⁴ *Celanese Corp. of America*, 95 NLRB 664 (1951), cited with approval in *Ray Brooks*, supra.

⁵ *Retired Persons Pharmacy v. NLRB*, 519 F.2d 486 (2d Cir. 1975), enfg. 210 NLRB 443 (1974); *Allied Industrial Workers Local 289 v. NLRB*, 476 F.2d 868 (D.C. Cir. 1973), enfg. 192 NLRB 290 (1971); *Terrell Machine Co. v. NLRB*, 427 F.2d 1088 (4th Cir. 1970), enfg. 173 NLRB 1480 (1969).

⁶ *NLRB v. Century Oxford Mfg. Corp.*, 140 F.2d 541, 542 (2d Cir. 1944), enfg. 47 NLRB 835 (1943). Chairman Dotson acknowledges the importance of continuity in bargaining relationships, but he does not necessarily accord it absolute supremacy in all contexts. See his and former Member Dennis' joint dissent in *Gibbs & Cox*, 280 NLRB 953 (1986) (withdrawal of recognition in a separately recognized unit that was assertedly "merged" into a larger overall unit).

⁷ *Pennco, Inc.*, 250 NLRB 716 (1980), enfd. 684 F.2d 340 (6th Cir.), cert. denied 459 U.S. 994 (1982). See also *Fall River Dyeing & Finishing Corp. v. NLRB*, 107 S. Ct. 2225 (1987).

There are no "unusual circumstances" present in the instant case that might constitute an exception to the above rules. See *United Supermarkets*, 287 NLRB 119 (1987).

Any attempt to establish a reasonable doubt of the Union's majority status must be asserted in good faith, based on objective considerations, and raised in a context free of employer unfair labor practices. *Lockheed Engineering & Management Services*, 271 NLRB 119, 124 (1984).

Each side appears to acknowledge the vitality of the Board rules recited above. Within the framework of the cited rules, Respondent contends (Br. 3) that because the

Union sat idle during the presumed certification year and beyond, Respondent can reasonably doubt that the Union represented a majority of Respondent's employees. At page 5 of its brief, Respondent elaborates on its basic argument, contending that this inactivity by the Union is tantamount to abandonment of the units, which again leads Respondent to a good-faith doubt. If Respondent is correct, it is free to withdraw recognition and to refuse to bargain with the Union without fear of violating the Act. To determine whether Respondent is correct, I turn to the record.

The Boulder guard unit was certified by the Board on 19 November 1985. Under Board law, Respondent may not claim lack of majority status for the first year. Thereafter, Respondent is permitted to marshal its evidence to rebut the presumption of continuing majority support. Essentially, Respondent's evidence is that the Union remained inactive insofar as the Boulder guard unit is concerned until 27 February 1987 when Goldhammer wrote the letter recited in section A, *infra* (G.C. Exh. 3).

If the Goldhammer letter of 27 February 1987 is the terminal point of our inquiry, the beginning point is the Kutz letter to Franklin of 17 December 1985, also recited section A, "Facts" *infra* (G.C. Exh. 2). This letter is a valid and timely request to bargain. *Yolo Transport*, 286 NLRB 1087 fn. 2 (1987). Again as noted in section A, *infra*, Respondent acknowledges receipt of the bargaining demand and then agreed with union counsel to defer bargaining for the Boulder guard unit until the ATM bargaining was completed. The ATM negotiations terminated on 27 March (G.C. Exh. 7, par. 2). Arguably, Respondent was legally obligated at this time to respond to the Union's 17 December 1985 letter as Franklin and Kutz had previously agreed.⁷

In light of the above analysis, I find that Respondent is barred from challenging the Union's majority status by a lack of good faith. First, I adopt the General Counsel's argument (G.C. Br. 8-10) that during most of the allegedly inactive period, the Union was negotiating with Respondent with respect to either the ATM or Denver units. Nothing in those activities demonstrates an inactive or uncaring labor organization with respect to the Boulder unit.

Respondent's lack of good faith is evident for a second reason. Subsequent to 27 March, Respondent was under a continuing duty to bargain because the Union's request for bargaining continued in effect. *Dardanell Enterprises*, 250 NLRB 377, 379 (1980), *affd. mem.* 676 F.2d 687 (3d Cir. 1982). Cf. *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987); *Ambulette Transportation Services Corp.*, 287 NLRB 224, 228 (1987); Respondent's failure to bargain at a time Franklin had agreed, or at a minimum, to

⁷ I accept the General Counsel's unchallenged theory of its case, expressed in par. 9 of the complaint, that dates an alleged violation of the Act from 23 April 1987. This theory successfully avoids any statute of limitations issue, and I note that none was pleaded nor litigated. Accordingly, I need not consider whether in light of Franklin's credited testimony any violation of the Act occurred shortly after 27 March, when the ATM negotiations were concluded. However, I note, the General Counsel's argument in its brief (Br. 13), assuming Franklin is credited, "the Respondent's obligation to respond to the Union's request to bargain was triggered when the ATM negotiations ceased."

arrange for its obligation to be continued again, shows lack of good faith.

In the alternative, as a matter of substantive law, I find that Respondent has not met its burden to show sufficient evidence establishing a good-faith doubt. Assuming, without finding, that mere union inactivity for several months, without additional factors, can lead to a showing of abandonment of the unit, which in turn can be the basis for an employer's reasonable doubt of the union's majority status, I find a lack of evidence to establish that the Union abandoned the Boulder guard unit, or that Respondent reasonably believed it did.

In *Bio-Medical Application of New Orleans*, 233 NLRB 1467 (1977), the Board noted:

... unlike the Administrative Law Judge, we cannot reasonably find that had the Union failed to contact Respondent during [a 6-week period of time], this in itself would be sufficient to warrant the conclusion that the Union had abandoned interest in representing Respondent's employees.

The Board also noted the absence of a decertification petition as further evidence showing no abandonment. (No decertification petition exists in the present case.) See also *Imperial House Condominium*, 279 NLRB 1225, 1233 (1986); *Bay Area Sealers*, 251 NLRB 89, 113-115, aff'd, 665 F.2d 971 (9th Cir. 1982); and *All Brand Printing Corp.*, 236 NLRB 140, 147-148 (1978). (Union representative failed to visit plant for a 3-year period because union had agreed with respondent that negotiations would not begin until 60 days after bankruptcy order confirming plan of arrangement for settlement of debts.)

In *Pioneer Inn Associates v. NLRB*, 578 F.2d 835, 839-840 (9th Cir. 1978), the court noted that "a union's inactivity, particularly in failing to monitor contract provisions and pursue grievances is a factor to be considered in arriving at a reasonable good faith doubt." (Emphasis added.) In that case, the Union did not attempt to negotiate a new contract until 3 years after expiration of the prior agreement. The Union also ceased monitoring compliance with the contract for a period of 2 or 3 years. However, in at least one case, the Union prosecuted a grievance and no showing was made that any other grievance was ignored. Finally, in enforcing the Board's Order, the court noted "the Board properly considered it suspicious that the company failed to assert inactivity as a reason for doubt of majority status until after the Union had resumed an active role." *NLRB v. King Radio Corp.*, 510 F.2d 1154, 1156-1157 (10th Cir. 1975), cert. denied 423 U.S. 839 (1975).

In this case, considering Respondent's evidence in its best light, I find virtually no evidence to support Respondent's claim that it had a reasonable doubt of the Union's majority status. To the extent there is a showing of some union inactivity here, this is only a factor to be weighed with other evidence such as the Union's original demand for bargaining, the Franklin-Kutz agreement to defer bargaining, and the Union's involvement with Respondent's Denver guard unit. I therefore reject Respondent's claim that it had a reasonable doubt of the Union's majority status. I further find, as alleged, that

since on or about 23 April 1987, Respondent has violated Section 8(a)(1) and (5) of the Act.⁸

CONCLUSIONS OF LAW

1. Wells Fargo Armored Service Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Guards Union of America, Local 66 is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material, the Union has been and is the exclusive representative of all full-time and regular part-time guard employees employed by the Respondent at its Boulder, Colorado location, but excluding all office clerical employees and supervisors as defined in the Act.

4. By refusing to recognize, meet with, and bargain collectively with the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices violative of Section 8(a)(1) and (5) of the Act, I shall recommend to the Board that Respondent be ordered to cease and desist and that it take certain affirmative action designed to effectuate the policies of the Act. I shall also recommend to the Board that Respondent be ordered to recognize and bargain, on request, with the Union as the exclusive bargaining representative of the employees in the appropriate unit and embody in a signed agreement any understanding reached. I shall also recommend that Respondent be ordered to post appropriate notices.

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

ORDER

The Respondent, Wells Fargo Armored Service Corporation, Boulder, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize, meet with, and bargain with International Guards Union of America, Local 66, as the exclusive bargaining representative of the employees in the following appropriate unit:

⁸ In reaching any decision, I find it unnecessary to consider certain factors in this case, such as assessing the performance of the Union's attorneys during the time covered by this case, or deciding whether Lynes' personal circumstances excused the Union's failure to pursue its original demand for bargaining before 23 April 1987.

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.

All full time and regular part time guard employees employed by the Respondent at its Boulder, Colorado location, but excluding all office clerical employees and supervisors as defined in the Act.

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

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

(a) On request, recognize and bargain collectively with International Guards Union of America, Local 66, as exclusive representative of its employees in the above-described appropriate bargaining unit, and embody in a signed agreement any understanding reached.

(b) Post at its Boulder, Colorado facility copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 27, 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.

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.

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.

WE WILL NOT refuse to recognize, meet with, and bargain with International Guards of America, Local 66, as the exclusive representative of our employees in the following appropriate unit:

All full time and regular part time guard employees employed by the Respondent at its Boulder, Colorado location, but excluding all office clerical employees and supervisors as defined in the Act.

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

WE WILL, on request, recognize, meet with, and bargain collectively with the above-named Union as the exclusive representative of our employees in the unit set forth above, and embody in a signed agreement any understanding reached.

WELLS FARGO ARMORED SERVICE CORPORATION