

Monahan Ford Corporation of Flushing and Monahan Auto Repair Corp. and Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO.
Case No. 29-CA-62 (formerly 2-CA-10151). March 24, 1966

DECISION AND ORDER

On November 22, 1965, Trial Examiner Joseph I. Nachman issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondents and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Zagoria].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision and the entire record in the case, including the exceptions and briefs, and hereby adopts the Trial Examiner's findings,¹ conclusions, and recommendations, with the modifications noted below.²

We find merit in the General Counsel's exceptions to the Trial Examiner's finding that Frank Gorman should not receive backpay for the strike period. Gorman was discriminatorily laid off by Respondent on July 22, 1964, and thereafter joined the strike which began later in the same day.³ In accordance with established Board policy in cases of discriminatory termination before the employee goes on strike, we find that Gorman is entitled to backpay for the entire period from his layoff on July 22, 1964, to the time of his rein-

¹ We correct certain inadvertent errors in the Trial Examiner's Decision, none of which affects the Trial Examiner's ultimate conclusions or our concurrence therein. Where it was found that Imbesi told Henry he would lose his vacation "if he did return to work," it obviously should read "if he did not return to work"; in footnote 38 the name of Lodrini was omitted from the list of employees for whom the Union made application; the number of strikers not reinstated by August 3 was eight, rather than nine; and Walter Retus, as well as Panes, Costellano, Auble, Lodrini, and Vezzuto, applied for work on about August 8 or 9.

² We need not pass upon General Counsel's contention that various statements by Respondents' representatives constituted violations of Section 8(a)(1) additional to those found by the Trial Examiner, since, even if found to be so, such finding would be merely cumulative and would not affect our Order herein.

³ We agree with the General Counsel that Gorman's layoff was also a reason for the strike which followed.

statement on August 3, 1964.⁴ We shall modify the remedial order to accord with this finding.

[1. Modify paragraph 2(b) as follows:

["(b) Make whole Frank Gorman and all other employees who joined in the strike of July 22, 1964, for any loss of earnings they may have suffered as a result of the discrimination against them in the manner set forth in the section of the Trial Examiner's Decision entitled 'The Remedy,' as modified by this Decision and Order."]

[2. Modify the sixth indented paragraph of the notice as follows:

[WE WILL make whole Frank Gorman and all other employees who joined in the strike of July 22, 1964, for any loss of earnings they may have suffered as a result of our discrimination against them.]

⁴ *Standard Printing Company of Canton*, 151 NLRB 963.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This complaint,¹ pursuant to Section 10(b) of the National Labor Relations Act, as amended, herein called the Act, heard by Trial Examiner Joseph I. Nachman, at Brooklyn, New York, on February 15, 16, 17, 18, and 19, April 1 and 2, and May 3, 1965, alleges that Monahan Ford Corporation of Flushing and Monahan Auto Repair Corp., herein collectively called Monahan or Respondent, violated Section 8(a)(1) of the Act by various acts of restraint and coercion, Section 8(a)(5) and (1) by refusing to recognize and bargain with Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO, herein called the Union, or Local 259, and Section 8(a)(3) and (1) of the Act by laying off employee Frank Gorman because of his activities on behalf of the Union, and by failing to promptly reinstate to their former jobs a number of employees who engaged in a strike against Respondent, allegedly caused or prolonged by Respondent's unfair labor practices, after they had unconditionally abandoned such strike and made demand upon Respondent for reinstatement.

At the hearing all parties appeared by Counsel, and were afforded an opportunity to adduce pertinent evidence, to examine and cross-examine witnesses, and to argue orally on the record. Oral argument was waived. Briefs submitted by the General Counsel and Respondent, respectively, have been duly considered.

Upon the entire record in the case, including my observation of the demeanor of the witnesses, I make the following:

I. FINDINGS OF FACT²

A. *Chronology of events*

1. Background

At its Northern Boulevard premises, Respondent maintains its showroom and offices, and performs make-ready work on new and used cars. Salesmen, make-ready

¹ Issued November 9, 1964, upon a charge filed July 27 and served July 28, 1964, and an amended charge filed and served August 11, 1964. By order of the Regional Director, dated December 10, 1964, this case was consolidated with Case No. 29-CB-21 (formerly 2-CB-4089). However, the issues in Case No. 29-CB-21 having been disposed of by an informal settlement, the Regional Director severed the CB case, and the hearing herein involved only Case No. 29-CA-62.

² No issue of commerce or labor organization is presented. The complaint alleges and the answer admits, that Monahan Ford, an automobile sales agency, and Monahan Auto Repair, while separate corporations, operate as a single integrated enterprise and conduct business of a character and amount which is within the Board jurisdiction. I find the aforesaid facts to be as pleaded. At the hearing the parties stipulated with respect to the status of the Union as a labor organization, and I find the facts as stipulated.

mechanics, porters, and the clerical staff work at this location. At a location on Prince Street, about a mile from the showroom, Respondent operates a service and repair garage, where it employs a staff of mechanics. John Monaghan is the president and owner of the operation; John Pedersen is vice president and sales manager; and Peter Imbesi is service manager. Monaghan and Pedersen spend most of their time at the showroom, and Imbesi works primarily at the service garage on Prince Street, where the mechanics (except for those engaged in make-ready work), are employed.

2. Organizational activity July 17-22

In the early part of July,³ the Union began organizational activity among Respondent's service employees. After work on July 17, Ralph Diamond, the Union's vice president, met with five such employees who worked at the Northern Boulevard location. The meeting was arranged by employee Frank Gorman, and was held at his home which is relatively close to Respondent's showroom. In addition to Gorman, the employees in attendance at this meeting were Jan Ketcham, Vincent Lodrini, Walter Ware, and Vincent Rodriguez. At this meeting each of the five employees signed an application for membership in the Union, and paid a portion of the initiation fee. The application also authorized the Union to represent the employee in collective bargaining with the employer.

Having learned at the meeting on July 17, that employees at the Prince Street location were also interested in the Union, Diamond met with some employees from that shop after work on July 21. Employees present at this meeting, also arranged by and held at Gorman's home, were Nicholas Vezzuto, Frank Costellano, Alfred Manhan, and Monte Henry. Each signed a union card in the same form as those signed on July 17, and made a payment on account of initiation fee.

During the lunch hour on July 22, employees Walter Retus, Costellano, Vezzuto, and Henry, all of whom worked at Prince Street, attended a meeting with Diamond, also held at Gorman's home. At this meeting Retus signed and delivered to Diamond the same form of union card that had been signed by the other employees. Also delivered to Diamond at this time were union cards signed by employees Robert Auble, Joseph Panes, Harry Mole, and David Nelson, which had been obtained during work that morning by Costellano and/or Henry.⁴

On July 23 Louis Molner, employed by Respondent as a truckdriver, signed and delivered to Diamond the same form of authorization card which had been signed by the other employees.⁵

From this it appears, and I find, that on July 22, the Union had 14, and on July 23, it had 15 valid authorization cards signed by Respondent's employees, and that all employees signing cards were from among the so-called service personnel. The parties stipulated that on July 22, total employment, excluding supervisors, was 31; the classification of each being likewise stipulated. From this I find that 19 were service shop employees, 4 were clericals, and 8 were salesmen.⁶

³ This and all dates hereafter mentioned are 1964, unless otherwise stated.

⁴ Nelson, when called as a witness by Respondent, testified in effect, that his signature to the card was obtained by a trick on the part of Costellano; that he did not read the card before signing it; did not know it authorized the Union to represent him; and that he never intended to grant such authorization. Costellano testified that Nelson completed and signed the card voluntarily. On cross-examination Nelson admitted that all of the material on the card which is in pencil, is in his handwriting; that he read that portion of the card which called for the information he supplied. In view of this admission; his admission that he told a Board field examiner that he had signed a card for Local 259; and the fact that he is presently employed by Respondent and is under obligation to Imbesi for having loaned him money, and for assistance in getting him out of jail, I do not credit Nelson's testimony on direct. Rather, I find that Nelson signed the card voluntarily and with the intention of designating the Union as his bargaining representative.

⁵ The card signed by Molner bears the date of July 23, and at one point he testified that he wrote in that date at the time he signed the card. Other portions of his testimony could be construed as indicating that he made a mistake when he filled in the date, and that the card was actually signed on July 22. His testimony is, at best, confusing. I find, therefore, that Molner signed the card on July 23, as indicated on its face.

⁶ Except for the issue with respect to the validity of David Nelson's card, which I have heretofore disposed of, all findings heretofore made are based on stipulations, or on the credited testimony of Diamond, and those employees who testified that they signed cards.

3. Threats, restraint, and coercion on and before July 22

Shortly before 6 p.m., on July 21, Phil Martin, the used car manager and an admitted supervisor, told employee Walter Ware, who had signed a union card on July 17, that the latter was wanted in Monaghan's office. In the office Ware found Monaghan and Pedersen. Conversation was opened by Monaghan asking Ware if he had heard anything about the employees trying to organize a union. Ware denied knowledge of such activity. Pedersen remarked that if Ware knew anything, he could talk and let Respondent know about it. Ware again stated that he knew nothing about it. Monaghan then said that he "did not want a union because he couldn't run his business with the Union."⁷

Also on the afternoon of July 21, employee Vincent Rodriguez, who worked at the main showroom as a used-car mechanic, was called into the office of his immediate supervisor, Phil Martin, the used-car manager. Rodriguez had attended the union meeting at Gorman's home on July 17, and on that occasion signed a union card. Martin asked Rodriguez what he knew about the Union, stating that he knew that some employee was trying to get the Union and had heard that Rodriguez was the one. Rodriguez disclaimed all knowledge of the matter. Martin continued to urge Rodriguez to tell what he knew about the Union and "who started the Union." Rodriguez insisted that he knew nothing. The two then walked to the used-car lot where Martin again demanded that Rodriguez tell what he knew about the Union, and when this proved unsuccessful said, "You better keep your nose clean, Vince."⁸ Following this conversation, Rodriguez left for home accompanied by employee Vincent Lodrini who worked with Gorman in new car make-ready. Lodrini also had attended the union meeting on July 17, and at that time signed a union card. While traveling together, Rodriguez told Lodrini about his conversation with Martin, and suggested that Lodrini tell Gorman "they're getting wise to the Union." Upon reaching home, Lodrini telephoned Gorman and told the latter what Rodriguez had told him. At the time of Lodrini's call to Gorman, the union meeting of July 21, at Gorman's home, was in progress, and in the course of it Diamond took the telephone and Lodrini repeated to him what he had theretofore told Gorman.⁹

The following morning (July 22) at about 10 a.m., Lodrini was called in and interrogated by Monaghan and Pedersen. They asked Lodrini if he "knew anything that was going on about a union," and if "anyone knew about a union." Lodrini denied that he knew anything about it, and was told that he might leave. About an hour later (after Gorman, whom Lodrini assisted in new car make-ready, had been laid off, as hereafter related), Lodrini was called back to the office where he was told that Gorman had been "let go" because he was one of the highest paid men in the shop¹⁰ and they asked if Lodrini could take over Gorman's work. Lodrini replied to the effect, that he could do the simple things, but that he was unable to do the big jobs, such as "power steering and so forth." Lodrini was told that the so-called big jobs, could be sent to the service shop on Prince Street. After Lodrini expressed himself as able to do the rest of the work, Pederson stated, "Do your best, that is all we ask."¹¹

⁷ Based on the credited testimony of Walter Ware. Martin denied that he sent Ware to Monaghan's office. He gave no further details of this incident. Monaghan and Pedersen admitted that they may have spoken to Ware toward the end of the day's work, in accordance with their usual custom, to ask if Ware had completed his work assignments for the day, and that such discussions may have been in their office, but they deny that the Union was discussed, and that any statements of the nature referred to by Ware were made. On the entire record I credit Ware. My reasons therefore are more fully hereafter set forth.

⁸ Based on the credited testimony of Rodriguez. Martin admitted that he had a conversation with Rodriguez toward the end of the workday on July 21, but denied that the Union or union activities were discussed. He did not state what was discussed. On the entire record, I do not credit his denial.

⁹ Based on the composite of the credited and uncontradicted testimony of Rodriguez, Lodrini, Gorman, and Diamond.

¹⁰ At the time Gorman was being paid \$95 a week; Lodrini \$55 a week.

¹¹ Based on the credited testimony of Lodrini. According to Pedersen there was but one conversation with Lodrini on July 22, and that was after Gorman's layoff, when Lodrini was placed in charge of new car make-ready. He admits that Lodrini then raised some question about his ability to do major jobs, and that Lodrini was told he would not be responsible for such work, until he had acquired more experience. Pedersen further testified that in this conversation Lodrini was given the reason for the change (the layoff of Gorman, and placing him in charge of make-ready), and that the reason was the Team-

Shortly after noon on July 22, a group of about six employees working at the Prince Street shop, were seated in a car outside the shop, preparing to go to Gorman's home for a union meeting during the lunch hour.¹² As the group was preparing to leave, Imbesi, service manager at Prince Street, approached the car and told the group that he knew what they were up to, and that they should think twice before they did it. The group proceeded, however, to Gorman's home where they met with Union Representative Diamond. While this meeting was in progress, Gorman arrived and informed those assembled that he had been discharged that morning. Diamond told the employees that following the meeting they would go in a group to the showroom on Northern Boulevard to demand Gorman's reinstatement and recognition for the Union.¹³

Employee Robert Auble, who also worked at the Prince Street shop, did not go with the group to attend the July 22 union meeting at Gorman's house, going instead to his home for lunch. Returning to the shop between 12:30 and 12:45 p.m., Auble was approached by Imbesi who asked if he (Auble) had joined the Union. Receiving an affirmative reply, Imbesi told Auble to "lock up your tool box."¹⁴ Auble did so and then joined the group of employees who had attended the noon meeting at Gorman's home, but who had by that time returned to the shop. From them Auble learned that Gorman had been laid off; of the plan for the employees to go in a body with Diamond to Respondent's showroom; and that they were awaiting a call from Diamond with respect to time.

4. The layoff of Frank Gorman

Gorman, at the time of the events in question had worked for Respondent for about 18 months in various capacities. For about 4 months prior to his layoff he was in charge of making new cars ready for delivery to purchasers.¹⁵ For about 2 months prior to July 22, Lodrini had been Gorman's helper. However, Lodrini had no prior experience in this type of work. As a helper to Gorman, he only performed the simple tasks of installing hubcaps and floor mats, getting a sold car from the storage lot, etc. At no time during his tenure with Respondent was Gorman's work performance criticized, nor was he told prior to the moment of his layoff, that the volume of available work might require his layoff.

Gorman was the individual who contacted the Union and suggested that it undertake organization of Respondent's employees. As heretofore stated, the organizational meetings were held at Gorman's home, and at the first such meetings on July 17, he signed a union card. About mid-morning, on Wednesday, July 22, after Ware and

sters' strike against the over-the-road auto transporters, which curtailed deliveries of cars to the dealers, with the consequent adverse effect on sales and dealer profits. Monaghan did not specifically deny that he had a conversation with Lodrini prior to Gorman's discharge. His version of the conversation with Lodrini that followed the layoff of Gorman, differs somewhat from that of Pedersen. According to Monaghan the entire conversation consisted of his asking Lodrini whether he could handle the make ready work until Gorman got back, and Lodrini replied, "Okay." Monaghan had no recollection of any discussion with respect to work that Lodrini might not be able to do. According to Monaghan, there was no discussion with Lodrini about Gorman's layoff, or the reason therefor. To the extent that there is a material conflict between the testimony of Lodrini on the one hand, and Monaghan and Pedersen on the other, I credit Lodrini.

¹² The lunch period is from 12 noon to 1 p.m.

¹³ The findings in the foregoing paragraph are based on the composite of the credited testimony of Walter Retus, Nicholas Vezzuto, Diamond, and Gorman. Imbesi admitted that he made the statement attributed to him as above set forth, but contended he thought the men were going to the showroom. As the events at the showroom did not occur until at least an hour after Imbesi made his remark, and in view of the frequency that his testimony was impeached by prior inconsistent statements, I do not credit his explanation. The circumstances of Gorman's layoff; the Union's demand for and Respondent's refusal to grant recognition; and the strike which followed, are hereafter detailed.

¹⁴ Based on the credited testimony of Auble. Imbesi denied that he had any conversation with Auble, but for the reasons heretofore stated, I do not credit his denial.

¹⁵ Make ready-work requires, *inter alia*, the installation of floor mats and hubcaps, checking out the electrical system and repairing any defects, checking that doors close and latches work properly; adjusting or replacing a carburetor, installing power steering, power brakes, or a radio if the purchaser had ordered any of such items and the car had not come so equipped, or removing them if the car did come so equipped and the purchaser did not want one or more of such items.

Rodriguez had been interrogated about the Union during the preceding evening, as above found, Gorman was called into the office where Monaghan and Pedersen were present. They told Gorman that due to the Teamster's strike against the over-the-road carriers,¹⁶ new cars were not being delivered to dealers, and that they "had to let [him] go,"¹⁷ as of noon that day, and he was paid to that time. Not only was the layoff during the workday, but in the midst of the workweek.¹⁸ Respondent's sole defense to the allegation that Gorman's layoff was discriminatory, is that the Teamsters' strike completely shut off new car deliveries which reduced new-car sales resulting in less make-ready work, less profit, and the need for reducing expenses, and because Gorman was the higher paid he was selected for layoff, rather than Lodrini. The reports which Respondent made to Ford Motor Company, in accordance with the latter's requirements, disclose the following regarding sales, inventory, and sales personnel from June 10 to through July 30:

Reporting date	Salesmen employed	New Cars		Used Cars	
		Units sold during period ¹⁹	Inventory end of period	Delivered during period	Inventory end of period
6-10	9	24	61	8	27
6-20	9	23	60	16	25
6-30	9	24	49	17	23
7-10	10	11	38	4	21
7-20	10	9	29	4	17
7-31	10	17	32	8	9

5. The refusal to bargain

As above stated, shortly after Diamond met with some of the Prince Street employees at Gorman's home just after noon on July 22, Gorman informed Diamond of his layoff that morning. Diamond told these assembled that he, Gorman, and Panes were going to see Monaghan and ask for Gorman's reinstatement and recognition of the Union. The remaining employees were told to return to the Prince Street shop, and that they would be called if needed. Diamond, Gorman, and Panes then went to Respondent's showroom reaching there at approximately 1 p.m., and were approached by salesman Tim Kelly. Diamond gave Kelly his business card and stated that he wished to see Monaghan. Kelly took the card, went into an enclosed office, and after a few moments returned, and, handing the business card back to Diamond, stated that Monaghan would not see him. Diamond, Gorman, and Panes then left.²⁰ Shortly thereafter Diamond returned to the showroom accompanied by

¹⁶ The parties stipulated that said strike was in effect from on or about June 25 to on or about July 25. The record is clear that during the strike Respondent received no deliveries of new cars. It is also clear from the testimony that after the strike ended, new-car deliveries were promptly resumed.

¹⁷ According to Gorman, the quoted language was used. Pedersen and Monaghan both testified that Gorman was told that he was not being discharged, that it was only a layoff until new-car deliveries to dealers was resumed. Gorman did not deny this testimony. Gorman was recalled and resumed work August 3. As a practical matter, it is unnecessary to decide whether Gorman was discharged or laid off. In either event the remedy would be the same. Without deciding that such was its character, I shall hereafter refer to it as a layoff.

¹⁸ Respondent's workweek is from Friday through the following Thursday. Employees are paid each Friday for all work performed through the preceding Thursday.

¹⁹ Monaghan testified that a car was not regarded as sold until it had been delivered to the customer.

²⁰ Based on the uncontradicted and credited testimony of Diamond, Gorman and Panes. Kelly did not testify. Monaghan admitted that Kelly handed him Diamond's business card, and that Kelly may have added, "There is a couple of employees with him." Monaghan further admitted that upon receiving this information, he telephoned Ranes, his counsel in this proceeding, and on the latter's advice told Kelly that he would not see Diamond.

12 of the 14 employees from whom he had signed cards at the time, having in the interim telephoned the Prince Street shop and asked the employees there to join him.²¹ Again Diamond gave his business card to Kelly and told the latter that he wished to see Monaghan. Diamond also told Kelly that the Union represented a majority of the employees, and that he wanted to get recognition for the Union and to have Gorman reinstated. Kelly again went into an enclosed office, and returning after a few moments, told Diamond that Monaghan would see him in about 15 minutes. On this occasion Kelly did not return the business card to Diamond. After waiting about 20 minutes, Diamond asked Kelley when Monaghan would see the group. Kelly again went into the office and upon returning told Diamond that Monaghan was on the telephone and would be out to see him as soon as he completed the telephone conversation.²² Monaghan admitted that Kelly reported to him that Diamond had left, and thereafter reported that Diamond had returned "and he has some of the men with him from the shop and he wants to see you," specifically mentioning Gorman as among those with Diamond. He further admitted that he again called Rains and told him that Diamond was from Local 259, that he was "back again and he had more employees with him," and asked what to do; that again, on counsel's advice, he told Kelly to tell Diamond that he would not see him, and that if Diamond wished to communicate with him, to send a telegram or other written communication.

While Diamond and the group of employees were waiting to see Monaghan, Peter Imbesi, service manager of the Prince Street shop, came to the showroom. Imbesi addressing the assembled group of employees said, "come back to work, fellows." The men refused to return to work, someone in the group stating, not without the Union.²³ Imbesi, after again talking with Monaghan in the office returned to the showroom and asked Diamond and his group to leave the premises. At this point Diamond, who had known Imbesi by reason of having dealt with him about employee matters at other shops, told Imbesi that the Union represented a majority of the employees, making a gesture with his arm to the group with him, and that he wanted to see Monaghan to get recognition and Gorman reinstated. Imbesi again requested

²¹ As heretofore found employee Molner did not sign a card until July 23, and he testified that he was not with the group at the showroom on July 22. Diamond testified that all employees from whom he then had signed cards, except Nelson and Ketcham, the latter being at the time on vacation, were in the group that accompanied him to the showroom on this occasion.

²² The findings with respect to these incidents are based on the uncontradicted and credited testimony of Diamond, Panes, and Gorman. As heretofore stated, Kelly did not testify.

²³ Based on the composite of the credited testimony of Diamond, Vezzuto, Gorman, and Panes. Imbesi admitted that he received a telephone call advising him that some of the employees under his supervision were at the showroom, and that he went there to find out what was going on; that when he reached the showroom he found about eight of his employees with Diamond; that it was then past the lunch hour, and the men should have been at work, but denied that he asked the men why they were at the showroom, why they were not at work, or that he asked them to return to work. In an affidavit given the Board in the course of its investigation, Imbesi stated, "I asked the employees to return to work but they refused." Imbesi claimed however, that the conversation referred to in his affidavit occurred later that afternoon when the men came back to the shop to pick up their tools. I do not credit Imbesi. The statement in his affidavit is in continuity with other events at the showroom, and I am convinced that his explanation is an afterthought. Moreover, I find it difficult to believe that Imbesi could have gone into the showroom with full knowledge that the employees present were, as far as he was concerned, supposed to be at work, and not have asked some questions about their absence, or have failed to make some statement about their resuming work. In fact Monaghan testified that when Imbesi came into the office his statement was, "Those fellows didn't report back to work," and that he sent Imbesi out to talk to the men because they worked for him and he "would have more influence with them." Monaghan also testified that after Imbesi talked to the men, he returned and reported that he had tried to get the men to return to work, but they refused. And when asked whether on July 22, when the men were in the showroom, he made any effort to find out why the men were not working, or to get them back to work, Monaghan replied, "My Service Manager asked them to go back to work."

that Diamond and his group leave the premises and told Diamond to put in writing anything he had to say to Monaghan. Diamond refused to leave unless directed to do so by Monaghan.²⁴

Shortly thereafter Pedersen, Respondent's vice president and general manager, accompanied by a policeman, approached and identified himself to Diamond. The latter told Pedersen, "I represent a majority of the employees, as you can see, and I am here for recognition and reinstatement of Frank Gorman." Pedersen replied that whatever his business, Diamond would have to put it in writing, and told the policeman that he wanted Diamond and the men removed from the premises. At the direction of the policeman, Diamond and the employees with him left.²⁵ That day or the following day picketing began²⁶ at both the showroom and the Prince Street shop; all except two or three of the service employees remaining away from work until after the picketing ended on July 21. Both Monaghan and Pedersen admit that during the course of the picketing they observed approximately 12 of Respondent's employees, all service shop personnel, on the picket line at one time or another. During the evening of July 22, Respondent sent a telegram to each of the employees who failed to report for work after the lunch period on that day (except Gorman), stating that failure to report for work would not be tolerated; that work was available; and that unless they reported for work on July 23, Respondent would have to seek replacements.

In the early evening of July 23, two telegrams²⁷ over Diamond's signature as vice president of Local 259, were sent to Respondent. The first telegram, in material part, read as follows:

THIS IS TO CONFIRM OUR DEMAND FOR RECOGNITION AS BARGAINING REPRESENTATIVE OF YOUR EMPLOYEES WHICH WE MADE ON JULY 22, 1964 AFTER INFORMING YOU THAT THE UNDERSIGNED UNION HAD BEEN DESIGNATED BY THE MAJORITY OF YOUR EMPLOYEES AS THEIR REPRESENTATIVE FOR THE PURPOSES OF COLLECTIVE BARGAINING. ACCORDINGLY, WE HEREBY REQUEST A MEETING FOR THE PURPOSE OF DISCUSSING TERMS

²⁴Based on the credited testimony of Diamond and Gorman. According to Imbesi, he told Diamond, in accordance with instructions from Monaghan, that the latter was not available and that anything Diamond wished to discuss should be put in writing, and that Diamond merely replied that he would wait for Monaghan. Imbesi denied that anything else was said. In view of the contradictions previously referred to, and the testimony in this regard given by Monaghan, I do not credit Imbesi.

²⁵Based on the credited testimony of Diamond. It is not clear from the evidence whether Pedersen talked to Diamond only on the occasion that he was accompanied by the policeman, or whether he talked to Diamond prior thereto, and had a further conversation when the policeman arrived. I deem it unnecessary to make a finding in that regard, and find only that Pedersen spoke to Diamond when the policeman was present and that a conversation occurred as above forth. Pedersen denied that Diamond made any statement to him about majority status of the Union, or that his purpose was to obtain recognition or Gorman's reinstatement. Sergeant Long, the police officer present on this occasion, testified that he recalled such statements as "We want to see Monaghan," or "We want to see the boss," made by some of the group, but that he did not hear the words "majority," "recognition" or "reinstatement." Sergeant Long admitted that at the time there was a great deal of confusion, and on occasion there were several people talking at once, and that at times he could not hear or understand just what was being said. I do not regard the sergeant's testimony as in conflict with Diamond's. As to the conflict between Pedersen and Diamond, I credit the latter. I have heretofore found that Diamond made his business known to Kelly and to Imbesi, both of lesser authority in the Company than Pedersen. I find it difficult to believe that Diamond would state his business to those individuals, and after the difficulty he was having in speaking to someone in authority, would fail to state it when, for the first time he had the opportunity to speak to an officer of the Company—its vice president and general manager.

²⁶Diamond and the employees involved testified that they began picketing on the afternoon of July 23, and that no picketing occurred on July 22. Pedersen and Monaghan testified that they observed the picketing during the afternoon and evening of July 22. I find it unnecessary to resolve this conflict because in either event the same legal conclusions are reached.

²⁷The first shows a sending time of 6:17 p.m., and the second a sending time of 6:28 p.m.

AND CONDITIONS OF EMPLOYMENT. IF YOU HAVE ANY QUESTION AS TO OUR MAJORITY STATUS WE REITERATE THAT WE ARE WILLING TO DEMONSTRATE THE SAME TO ANY IMPARTIAL PERSON AGREED TO BY MANAGEMENT AND THE UNION. WE SUGGEST THAT YOU CALL US IMMEDIATELY TO SET UP A MEETING.

The material portions of the second telegram read as follows:

THE UNDERSIGNED UNION DEMANDS IMMEDIATE REINSTATEMENT OF FRANK GORMAN WHO YOU DISCHARGED FOR UNION ACTIVITY ON OUR BEHALF. PLEASE COMMUNICATE WITH US PROMPTLY WITH REGARD TO THIS MATTER.

Monaghan admitted that he received both telegrams during the evening of July 23.²⁸ He admits also that he made no reply to the telegram demanding recognition. Although he did reply on July 24 to the telegram relating to Gorman, such reply was not sent to the Union, but to Gorman himself, and went so far as to deny that the Union represented even Gorman.²⁹

On July 27, the Union filed a petition for an election.³⁰ The petition described the unit sought as "Included: All shop employees in the service department, excluding office clerical, guards and supervisors as defined in the Act." Monaghan admitted that he received a copy of this petition on July 28, but took no action with respect to it other than to forward it to his counsel. On July 31, the Union requested, and on August 3, the Regional Director approved the withdrawal of the representation petition.

6. 8(a)(1) activity during the strike

In the late afternoon or early evening of July 22, Lodrini, whom Respondent had that morning placed in charge of new car make-ready to replace Gorman, but who joined the walkout of employees in the early afternoon, was called at his home by Pedersen and asked to return some shop keys which Lodrini had in his possession.

²⁸ Based on the admission in Monaghan's affidavit given the Region in the course of its investigation. On his direct examination Monaghan testified that he did not see these telegrams until July 24. On cross-examination, when confronted with the statement in his affidavit, Monaghan stated that this meant that the *Company* received the telegrams on July 23, but that he was not at the office and did not see them until the following day. He admitted that if matters of importance occur when he is at home, whoever was in charge would call him; that if he was called on this occasion the telegrams were read to him. Monaghan stated that to the best of his recollection Phil Martin, the used car manager, signed for the telegrams. However, when asked if he was not in fact called about these telegrams on the evening of July 23, Monaghan would only answer, "I don't recall." Neither Pedersen nor Martin, both of whom testified on behalf of Respondent, was examined on this subject. My careful reading of Monaghan's entire testimony disclosed several instances where he made a flat statement while testifying on direct, but when questioned about it on cross, either made a contradictory statement, or became evasive. In other instances, for example when he was asked on cross what he thought Diamond wanted to see him about, his answers, if not actually evasive, were certainly lacking in candor. For this reason, I have concluded that Monaghan's testimony should be credited only in those instances where (1) the particular fact is not in dispute; (2) his testimony is in the nature of an admission against interest; or (3) where he is corroborated by other evidence which I find credible.

²⁹ The telegram referred to read as follows:

WE HAVE RECEIVED TELEGRAM ON YOUR BEHALF RE YOUR EMPLOYMENT FROM LOCAL 259, WITH WHOM WE HAVE NO RELATIONS AND DO NOT REPRESENT OUR EMPLOYEES OR AS FAR AS WE ARE CONCERNED YOU IN PARTICULAR HOWEVER, TO SET THE RECORD STRAIGHT REGARDING THEIR STATEMENT THAT YOU WERE DISCHARGE [SIC] PLEASE BE ADVISED AND REMINDED THAT YOU WERE NOT DISCHARGED BUT LAID OFF INDEFINITELY [SIC] FOR LACK OF WORK OCCASIONED, IN PART, BY THE TEAMSTERS' STRIKE WHICH HALTED THE DELIVERY OF NEW CARS. [Emphasis supplied.]

It should also be noted that Monaghan made no reply to the Union's claim that Gorman's termination was for union activity, and admitted that the lack of delivery of new cars was only partly the reason for such termination. What the other part or parts were, Monaghan did not say in the telegram or in his testimony.

³⁰ Case No. 2-RC-1356.

Lodrini went to the showroom, arriving about 6 p.m., where he talked with Monaghan and Pedersen in the latter's office. In this conversation either Pedersen or Monaghan asked "Why do you want a Union?" Lodrini replied that what the men wanted was mainly job security and greater benefits. Pedersen or Monaghan then stated,³¹ "Well I'm surprised, especially I'm surprised at Frank [Gorman]," he was getting the most money, had the privileges of everything in the shop and did what he wanted. Management then stated, "The Union ain't going to make it any better for you," and that they were going to fight the Union and stop it if they could. Also in this conversation Lodrini was told that Respondent had known about the union meetings for some while and was surprised when it learned that Gorman was a part of the organizational effort. Reference was then made to the conversation which Pedersen and Monaghan had with Lodrini at the end of the workday on July 21, and the comment was made, "I thought you didn't know anything about the Union." Lodrini replied that he was sorry he had to say that, but Gorman was his friend and he did not want to be disloyal to the latter. Then Lodrini was asked, "Do you believe the Union is good for you?" After he had stated that the Union had "its good points and its bad points," Lodrini was told, "I hope you make up your mind what you want to do. Your job is still open. If you want to . . . come back tomorrow morning . . ." ³² Lodrini did not return to work while the picketing was in progress, but applied for reinstatement after the strike terminated, as hereafter more fully set forth, and was told he had been replaced.

Also during the evening of July 22, Monte Henry, who worked as a class A mechanic at the Prince Street garage, received a telephone call at his home from Service Manager Imbesi. Imbesi asked Henry to return to work, saying that he would make it worthwhile for him to do so, and urged that Henry try to persuade other employees to do the same, mentioning specifically Retus and Costellano. Imbesi also told Henry that the latter had a vacation coming up which he would lose if he did not return to work, and that he would be "blackballed" with respect to other jobs. After further discussion, Imbesi asked Henry if the latter would like to talk with Monaghan. When Henry stated that he would, Imbesi said he would get Monaghan on the other phone and call back. Shortly thereafter, another call came in, and Imbesi told Henry that Monaghan wanted to talk with him. Monaghan told Henry that if his return to work was dependent on money, there would be no problem in his getting more money, as well as hospitalization insurance,³³ and that the same went for Costellano and Retus. Monaghan repeated the statement which Imbesi had made about "blackbaling" Henry for other jobs, and added, "You don't need the Union," and if the Union did get in he could be a bastard and reduce the number of class A mechanics from five to one. On July 30, Henry, who had therefore engaged in the picketing against Respondent, abandoned the strike and returned to his former job.³⁴

³¹ Lodrini was unable to attribute particular statements to either, testifying that one would make a statement and the other would interrupt with another statement. In setting forth further portions of this conversation, it should be understood that remarks attributed to management, the witness was only able to say that they were made by Monaghan or Pedersen.

³² Based on the credited testimony of Lodrini. Monaghan denied that he had any conversation with Lodrini during the evening of July 22. Pedersen denied that he called Lodrini that evening or that he had any conversation with him. He admitted that the makeready man does have keys to the radio storeroom which he keeps on his chain, and which he deposits in a drawer at the end of the workday. As Lodrini went with the group to the showroom during the day, not knowing whether he would return to work or not, and did not in fact return to work after the group left the showroom, it is entirely plausible that he left with the keys. It is equally plausible that when Respondent discovered that the keys to the radio storeroom were missing, that it made prompt efforts to get them back. For this reason I do not credit the denials of this conversation with Lodrini.

³³ At the time Respondent did not provide employees with hospitalization, and this was a benefit some hoped to attain by the Union.

³⁴ Based on the credited testimony of Henry. Monaghan denied that he ever spoke to Henry, either in person or by telephone. Imbesi at first stated that he did have conversations with Henry while the picketing was in progress, but that such conversations were face to face in Imbesi's office at the shop, but that neither vacations nor increased pay were discussed. Subsequently, Imbesi admitted that he did make two telephone calls to Henry while the picketing was in progress, but fixed the time of such calls as 3 or 4 days after the picketing started. Imbesi claimed that he made these calls—one from his home

On July 22, Imbesi also called Walter Retus employed as a heavy-duty mechanic at the Prince Street garage, and urged the latter to return to work saying he would receive his vacation pay, otherwise he would not. Later, but while the strike was still in progress, Imbesi again called Retus at his home, and told him that what had been said in the prior conversation still applied.³⁵

On various occasions while the strike was in progress Imbesi told employees engaged in picketing the Prince Street location that they could get along as well without a Union, and that the Union was unnecessary to get raises, hospitalization, or anything else they wanted, because Respondent would give them anything the Union offered.³⁶

On July 29, Monaghan arranged to and did meet with employee Jan Ketchum at the latter's home. Monaghan told Ketchum that the employees could have hospitalization and anything else the Union could get for them, and that they did not need the Union which would only interfere with the running of the shop. Monaghan also told Ketchum that if he would return to work he would be given a job in new car make-ready and an increase of \$15 in his weekly rate of pay. On August 3, Ketchum returned to work, and the following week was assigned to new car make-ready, with the \$15 weekly increase in pay.³⁷

7. Termination of the strike; reinstatement of employees

On July 31, picketing of Respondent's premises ceased, and on the same day the Union made unconditional application to return to work on behalf of 13 of the 15 employees who had theretofore signed union cards.³⁸ Prior thereto, on July 29, Respondent had advised Gorman that the Teamsters' strike against the over-the-road carriers having ended, it would "possibly" have work for him, and that he should report to Monaghan on August 3, prepared to work. Gorman reported as directed and was restored to his former job. Also on August 3, four other employees were reinstated. With respect to the remaining nine employees, Respondent informed the Union that there was no work available because replacements had been hired for them, and that they would be advised when work opportunities developed. Five of these (Panes, Costellano, Auble, Lodrini, and Vezzuto) personally applied for work between August 3 and 17, and were told that they had been replaced, and that no work was available for them. However, on August 28, Respondent placed newspaper advertisements in the local paper for a "Parts Counter Man" and for "Auto Mechanics." When these advertisements were placed, Respondent neither offered, nor attempted to offer employment to any of the strikers who had not then been rein-

and one from his office—at Henry's request, because the latter was unable to talk during the day. Imbesi did not explain why Henry was unable to discuss any problem he may have had, when the two talked face to face, as heretofore stated. Imbesi admitted that in these telephone conversations he "invited" Henry to come back to work and that "everything would be forgotten about," that Henry did bring up the subject of "advancements" to which he replied that if the job is done properly, advancements will be in order. I have credited Henry and rejected the contrary testimony not only for reasons heretofore stated with respect to Imbesi and Monaghan, but because it was quite obvious to me that Henry was a most reluctant witness. On a number of occasions, when the General Counsel put crucial questions, Henry pleaded lack of memory, and only when confronted with his prior affidavit did he give the testimony which I now credit. I am convinced that he would not have so testified if his testimony was not the truth.

³⁵ Based on the credited testimony of Retus. Imbesi denied that he had any telephone conversations with Retus. He admitted that he had a conversation with Retus in the shop, when the latter called for his paycheck, and that he made an innocent inquiry as to whether Retus was going on vacation. For the reasons heretofore indicated, I do not credit Imbesi.

³⁶ Based on the credited evidence of Vezzuto, Costellano and Panes. Imbesi admitted having conversations with employees but contended that they were expressing the desire to return to work, and that he merely told them that work was available and that they could return to work if they wished.

³⁷ Based on the credited testimony of Ketchum. Although Monaghan claimed that the meeting was initiated by Ketchum, he admitted that he talked with Ketchum on this occasion, that a better job and more money was discussed. According to Monaghan all he said was that he would do what he could, but could make no promises. That Ketchum received the increase in pay, is not denied.

³⁸ The 13 employees specifically mentioned by the Union were: Panes, Retus, Henry, Costellano, Vezzuto, Manhan, Auble, Molner, Gorman, Rodriguez, Ware, and Ketchum. The other two who had signed cards (Mole and Nelson), apparently did not join the strike

stated, although employee Manhan had worked as a parts man prior to the strike. On September 8 and 25, respectively, employees Manhan and Costellano were reinstated, and on November 6, all employees not reinstated prior to that date, were sent telegrams notifying them to report for work.

B. Concluding findings

Upon the facts heretofore set forth, I find and conclude that Respondent:

1. Violated Section 8(a)(1) of the Act by:

(a) The interrogation of Rodriguez and Ware on July 21, and the interrogation of Lodrini on July 22. This interrogation was not for the purpose of ascertaining whether Respondent was under a legal duty to deal with one claiming to be a designated representative of the employees, but, as I find and conclude, for the purpose of chilling their efforts to bargain through a representative of their choosing. That the interrogated employees so regarded it, is demonstrated by the fact that they denied any knowledge of the Union, although each of them had therefore signed a union card.

(b) For the same reason, the statement of Service Manager Imbesi to the five employees seated in the car, that he knew what they were doing and they should think twice before they did it, as well as his interrogation later that day of employee Auble as to whether the latter had signed a union card, were violative of the Act.

(c) The telegram sent to each of the striking employees on the evening of July 22 soliciting them to return to work the following day or suffer replacement. As I conclude, for reasons hereafter stated, that said employees were at the time said telegrams were sent, engaged in an unfair labor practice strike, the telegram was a threat to their job tenure for engaging in concerted activities protected by the Act, and hence constituted interference, restraint, and coercion in the exercise of rights guaranteed by Section 7 of the Act. *U.S. Sonics Corporation*, 135 NLRB 818; *Rice Lake Creamery Company*, 131 NLRB 1270.

(d) The statements by Imbesi and Monaghan to employee Monte Henry, soliciting his abandonment of the strike, and telling him that if he did not return to work as requested he would lose his vacation benefits and be "blackballed" from other jobs; Imbesi's statement to employee Retus that he would lose his vacation pay if he did not abandon the strike and return to work; as well as Monaghan's statements to employee Ketchum, offering the latter a wage increase if he would abandon the strike. These statements constituted interference, restraint and coercion of employees in the exercise of rights guaranteed them by Section 7 of the Act. *Oneita Knitting Mills, Inc.*, 150 NLRB 689.

2. Violated Section 8(a)(3) of the Act by:

(a) The layoff of Gorman on July 22, which, I find and conclude was discriminatorily motivated. The facts demonstrate that Gorman was the prime mover in the efforts to organize the Union, and his home located in relatively close proximity to Respondent's showroom, was the meeting place for the employees and their union representatives. That Respondent was aware of the union activity among its employees and trying to pinpoint those responsible for it, is demonstrated by the interrogation of Rodriguez, Ware, and Lodrini on July 21. Respondent's statements to Lodrini on the evening of July 22 demonstrated that it was satisfied in its own mind that responsibility for the union activity lay with Gorman. That conversation with Lodrini also demonstrates Respondent's displeasure that Gorman should have engaged in union activity. There is no evidence, nor does Respondent contend, that Gorman's work performance was in any manner deficient. Every fact which Respondent contends led to Gorman's layoff was known to it at the end of the preceding workweek, and certainly at the end of the workday on July 21, but no warning of the impending layoff was given; in fact the layoff occurred not only in the midst of the workweek, but in the middle of the workday.

Respondent's defense that Gorman's layoff was the result of Teamsters' strike against the over-the-road carriers, which brought new car deliveries to a halt and substantially reduced the amount of new car make-ready work available, does not withstand scrutiny. To be sure that strike did reduce the number of cars Respondent ordinarily delivered to its customers, thus diminishing the amount of new car make-ready work to be done. But Respondent retained Gorman in its employ during the reporting periods ending July 10 and 20, when only 11 and 9 new cars, respectively, were delivered to customers, but laved him off during the reporting period ending July 31, when 17 were sold and delivered. During the latter period the end of the Teamsters' strike was expected momentarily, while in the two earlier reporting periods, the end of the Teamsters' strike was not generally expected. Furthermore, I find it impossible to believe that Respondent, while still requiring the services of a make-ready man, would lay off Gorman, the only man in that department qualified to do all make-ready work that might be required, and place Lodrini in charge, who

admittedly could perform only the simplest of the required tasks, unless Respondent intended it as a temporary expedient to punish Gorman for his union activity. On those facts, I must and do find and conclude, that Gorman's layoff was discriminatorily motivated, and that the alleged lack of work was a mere pretext seized upon in an effort to obscure the true motive. Indeed Respondent virtually admits as much. In the telegram sent Gorman on July 24, Respondent stated that his layoff was "for lack of work occasion, *in part*, by the Teamsters' strike which halted the delivery of new cars." [Emphasis supplied.] What the remaining reason or reasons for the layoff were, Respondent did not explain. From this I can only conclude that the additional reason must have been Respondent's discovery that Gorman was responsible for the efforts of the employees to obtain union representation. Accordingly, even assuming that in laying off Gorman Respondent was, in part, motivated by valid economic considerations, the layoff was nonetheless a violation of Section 8(a)(3) of the Act, because a part of the motivation for Gorman's layoff was also as I have found, Gorman's union activity. It is well settled that where there are two reasons for a discharge or layoff, one lawful and the other unlawful, the discharge or layoff is unlawful under the Act.

(b) By denying reinstatement to some employees upon their abandonment of the strike and their unconditional application for reinstatement. Having concluded, as hereafter set forth, that the strike against Respondent was an unfair labor practice strike, each of the strikers was entitled to reinstatement to their former or substantially equivalent position, upon abandonment of the strike and unconditional application for reinstatement, and Respondent's failure to reinstate them on demand constituted discrimination against them which is proscribed by Section 8(a)(3). It is undisputed that the strike was abandoned on July 31, and that on the same day the Union, on behalf of each of the striking employees made application for reinstatement. Apparently the next business day was August 3, and on that day some strikers were reinstated, but others were denied employment because allegedly they had been replaced.

3. Violated Section 8(a)(5) by:

Refusing on and after July 22, to recognize and bargain with the Union as the duly designated collective-bargaining representative of its employees in a unit of all shop employees, including service and repair employees, excluding office clerical employees, salesmen, guards, professional employees, and supervisors as defined in the Act; a unit which Respondent does not question, and which I find to be appropriate. Respondent admits that it refused to bargain with the Union, but contends that no violation of Section 8(a)(5) can be found because (1) the Union's demand on July 22, assuming one was then made, and the subsequent demand made by the telegram of July 23, imposed no duty to bargain because it was for a unit in which the Union never had a majority; and (2) Respondent, in any event, had a good-faith doubt that the Union represented an uncoerced majority of the employees. Each of these defenses, I find and conclude, is without merit.

The defense that the Union's oral demand on July 22 and the written demand in the telegram which, as I have found, Respondent received on July 23, imposed no duty to bargain, is predicated on the contention that by Diamond's statements in the showroom on July 22, and in his telegram of July 23, the Union claimed to represent a "majority of your employees" and thus demanded bargaining for a unit of that scope, which Respondent argues, included the clericals and the salesmen. In such unit total employment, it was stipulated, was 31, and as the Union at no time had more than 15 authorization cards, Respondent argues, it never had majority status in the unit it demanded.

It is true, of course, that to impose a bargaining duty upon an employer, the Union's demand must "clearly define the unit for which recognition is sought." (*The C. L. Bailey Grocery Company*, 100 NLRB 576, 579.) But in matters of labor relations, as in many other matters, no special formula or form of words is required, and the demand is sufficient if the language employed and the circumstances prevailing reasonably indicate to the employer the employees the Union claims to represent. If, in such circumstances the employer had any doubt as to the scope of the unit for which recognition is sought, he can, and if he seeks to avoid bargaining because he does not understand the scope of the unit sought, good faith requires that he must, ask the Union to clarify the ambiguity. Measured by this criteria, I find the Union's demand for recognition in the instant case to have been sufficiently specific with respect to the employees it claimed to represent.

As I have found, when Diamond told Kelly that he represented a majority of the employees, he waived his arm toward the group of about 13 service employees present in the showroom. This was at least some indication that the service employ-

ees were the ones Diamond was claiming to represent, and was sufficient to place upon Respondent the duty of inquiry if it was uncertain as what employees Diamond meant. Even assuming that Kelly did not communicate this information to Monaghan, the evidence leaves no room for doubt Imbesi told Monaghan that none of the service employees working at Prince Street returned to work following the lunch period. Monaghan did not claim that he had any information that any employee, other than service personnel, was with Diamond. Monaghan admits that immediately after the picketing began, he observed it, and that he had his employees, some of whom he did not know, identified for him. He made no claim that his employees engaged in such picketing were other than service personnel.³⁹ Moreover, Diamond, as I have found, made the same statement to Pedersen, the general manager and vice-president of Respondent, and he observed that the group with Diamond did not include clerical or sales personnel, but consisted *entirely* of service employees. He also observed that all of Respondent's employees engaged in picketing were from the service department. If, as Respondent contends, it was confused as to the scope of the unit which the Union was demanding, a simple inquiry of the Union on that point, which good faith would seem to require, would have dissolved the confusion. Instead, it chose to ignore both the oral demand on July 22, and the telegram of July 23. A permissible inference from this fact—an inference that I make—is that the alleged defect in the Union's bargaining demand was not the reason for Respondent's refusal to bargain with the Union. Cf. *Inter-City Advertising Company of Greensboro, N.C., Inc.*, 89 NLRB 1103, 1111, footnote 19. Moreover, when all doubt as to the scope of the unit sought by the Union was removed by the representation petition which the latter filed on July 27, a copy of which Respondent admittedly received on July 28,⁴⁰ it continued to ignore the prior but continuing demands for recognition.⁴¹ That on the facts of this case, the Union's prior demands for recognition where continuing, there be no doubt, because there is no evidence to show that such demands were ever abandoned or withdrawn. *Burton-Dixie Corporation*, 103 NLRB 880.

My consideration of the entire record convinces me that but one conclusion may appropriately be drawn from Respondent's course of conduct with respect to the Union's demands for recognition, namely, that the alleged defect in the demands is simply an afterthought, seized upon in an effort to extricate itself from its rejection of the principles of collective bargaining which the Act imposes, and that any recognition demands the Union may have presented to Respondent would have been rejected regardless of the precision with which such demands may have been formulated and communicated. I so find and conclude.

Respondent's second defense, that it was entitled to reject the Union's recognition demands because it had a good-faith doubt that the Union represented an uncoerced majority, is also refuted by the facts. The record shows that on July 22, the Union had 14 signed authorization cards, and on July 23, it had 15 such cards, out of a total employee complement of 19 in the service department. Twelve of these employees were with Diamond in Respondent's showroom on July 22, when the initial recognition demand was made. The testimony, as I have found, leaves no room for doubt that the employees freely, voluntarily, and deliberately designated the Union as their bargaining agent. While Respondent sought to elicit from these employee witnesses evidence tending to show that they signed the cards by reason of misrepresentations as to their purpose, such efforts failed.⁴² The record contains no evidence to establish that Respondent had any information indicating that the Union's majority had in

³⁹ As Monaghan claims the picketing began and that he observed it on July 22, this fact was known to him when he received the Union's telegram of July 23. The same would be true if the picketing began during the afternoon of July 23, because the Union's telegram of July 23 was not received until after 8 p.m.

⁴⁰ The petition fixed the scope of the unit as "All shop employees in the service department," excluding all others.

⁴¹ Respondent's claim that it thought the Union's right to recognition would be resolved in the representation proceedings, and it was waiting for such resolution, is plainly without merit. "It is well established that the filing of a petition for an election does not suspend the employer's duty to bargain in the absence of evidence showing a good faith doubt" of the union majority status. *Master Transmission Rebuilding Corporation & Master Parts, Inc.*, 155 NLRB 364. As hereafter found, Respondent had no good-faith doubt in the instant case.

⁴² One employee, called as a witness by Respondent, did testify that his signature to a card had been obtained by deceit. However, as set forth *supra*, p. 4, I have discredited his testimony, and found as a fact that his designation of the Union was voluntary and deliberate.

any way been coerced, at the time it rejected the latter's recognition demands.⁴³ Nor does the evidence support Respondent's asserted doubt of the Union's majority status, or warrant its refusal to grant the Union recognition. Rather, I find and conclude that Respondent's refusal to bargain with the Union was motivated, not by any good-faith doubt of the latter's majority status, but by a rejection of the collective-bargaining principle, and the desire to gain time within which to undermine the Union's support. Respondent's conduct on July 22, while Diamond and the employees were at the showroom, when viewed in the light of Respondent's unfair labor practices as herein found, occurring before, during, and after the strike, admit of no other conclusion.

Accordingly, and for the reasons stated, I find and conclude that since July 22, Respondent refused to bargain with the Union as the collective-bargaining representative of its employees in the unit herein found appropriate, and thereby violated Section 8(a)(5) of the Act.

The Nature of the Strike

Having concluded that Respondent violated Section 8(a)(1), (3), and (5) of the Act, it becomes necessary to determine whether the strike of Respondent's employees which began on July 22 or 23, and terminated on July 31, was, as alleged in the complaint and denied by Respondent, caused or prolonged by the latter's unfair labor practices. The evidence leaves no room for doubt that the Union's strike against and its picketing of Respondent, was to protest what it regarded as Respondent's unlawful refusal to bargain with their designated representative. It therefore follows that the Union's strike was, at least in part, caused or prolonged by Respondent's unfair labor practices in that regard.

II. THE REMEDY

Having found that on July 22, and at all times thereafter, Respondent unlawfully failed and refused to recognize and bargain with the Union as the collective-bargaining representative of the employees in the aforesaid appropriate unit, I shall recommend that it be required, upon request, to recognize and bargain with the Union as such representative, and if an understanding is reached, embody the same into a signed agreement.

Having also found that Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed to them by Section 7 of the Act, and in view of the nature and extent of the unfair labor practices found to have been committed, it will be recommended that Respondent be required to cease and desist from in any manner infringing upon the exercise of such employee rights.

Although I have found that Gorman was discriminatorily laid off on July 22, I do not recommend a reinstatement order, because Respondent reinstated Gorman on August 3. Backpay for Gorman will be directed for the period beginning at 1 p.m., July 22, and ending with his reinstatement on August 3. In accordance with Board policy, there shall be excluded from said period such time as Gorman was on strike against Respondent. Whether backpay will in fact be due Gorman, can best be determined at the compliance stage of this proceeding. Any amount found due will, of course, bear interest as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

With respect to the remaining unfair labor practice strikers, it is likewise unnecessary to order reinstatement because, as heretofore found, by November 6, Respondent had either reinstated or offered reinstatement to all such strikers. Backpay will be recommended for each of such strikers for the period beginning August 3, and terminating with their reinstatement or Respondent's offer of reinstatement, whichever event first occurred, less net earnings during such period, in a manner consistent with

⁴³ Respondent did attempt to establish that during the picketing Diamond urged strikers to participate in the picketing and threatened bodily violence if they did not do so; that threats were made to customers of Respondent; and that physical damage to Respondent's property was committed, such as breaking of windows, slashing tires, and scratching up new cars. Counsel for Respondent conceded that he was unable to establish that any particular striking employee was responsible for such conduct. Respondent urged that such testimony was admissible as tending to establish that the Union did not in fact represent an uncoerced majority, and bearing upon Respondent's alleged good-faith doubt of the Union's majority status. Objections to all such testimony was sustained because (1) as Respondent conceded that it was unable to establish the responsibility of any particular employee for the alleged acts of misconduct, the testimony was irrelevant to any possible issue of reinstatement or allowance of backpay; and (2) as the alleged conduct occurred, if at all, after Respondent refused the Union's recognition demands, such facts could not have been a part of Respondent's reasons for rejecting the Union's recognition demands.

the Board policy as set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, *supra*. It will also be recommended, that Respondent be required to preserve, and on request make available to agents of the Board all records necessary or useful in computing the amount of backpay that may be due the several employees.

Upon the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

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

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

3. All shop employees, including service and repair employees, employed by Respondent at its Northern Boulevard and Prince Street locations, Borough of Queens, city and State of New York excluding office clerical employees, salesmen, guards and supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 22, the Union has been the duly designated collective-bargaining representative of the employees in the aforesaid unit, within the meaning of Section 9(a) of the Act.

5. By failing and refusing, on July 22, and at all times thereafter, to recognize and bargain with the Union as the collective-bargaining representative of the employees in the aforesaid unit, Respondent has engaged in and is engaging in unfair labor practices proscribed by Section 8(a) (5) and (1) of the Act.

6. By the conduct set forth in section B, 1 above, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed to them by Section 7 of the Act, and thereby engaged in, and is engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

7. By laying off Frank Gorman on July 22, Respondent discriminated against him in regard to his hire or tenure of employment because of his concerted activities on behalf of the Union, thereby discouraging membership in the Union, and thus engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

8. The strike engaged in by Respondent's employees in the aforesaid units was, at least in part, caused or prolonged by Respondent's aforesaid unfair labor practices.

9. By failing to promptly reinstate to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, all of the unfair labor practice strikers, upon their unconditional abandonment of their strike and application for reinstatement, Respondent discriminated against such unreplaced strikers in regard to their hire or tenure of employment, thereby discouraging membership in the Union, and thus engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in the case, and pursuant to the Section 10(c) of the National Labor Relations Act, as amended, it is recommended that Respondent, Monahan Ford Corporation of Flushing and Monahan Auto Repair Corporation, their respective officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to recognize and bargain collectively with Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, as the exclusive representative of the employees in a unit composed of all shop employees, including service and repair employees, employed at their Northern Boulevard and Prince Street locations, Borough of Queens, city and State of New York, excluding office clerical employees, salesmen, guards, and supervisors as defined in the aforesaid Act.

(b) Coercively interrogating employees with respect to their membership in, views about, or activities on behalf of any labor organization.

(c) Discouraging membership in or activities on behalf of the aforesaid, or any other labor organization of its employees, by discriminatorily discharging, laying off, or otherwise discriminating against any employee in regard to hire, tenure, or any term or condition of employment.

(d) Soliciting unfair labor practice strikers to abandon their strike and other support of any labor organization by returning to work, or suffer replacement if they refuse to do so.

(e) Threatening striking employees with loss of benefits, "blackballing" from other jobs, or promising them benefits, to induce them to abandon their strike.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the aforementioned or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

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

(a) Upon request, recognize and bargain collectively with Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, as the exclusive representative of the employees in the aforementioned unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached embody such understanding into a signed contract.

(b) Make whole Frank Gorman, and all other employees who engaged in a strike against them at any time between July 22 and 31, 1964, for any loss of earnings they may, severely, have suffered, for the period, and in the manner set forth in section hereof entitled "The Remedy."

(c) Preserve and, upon request, make available to agents of the National Labor Relations Board, for inspection and copying, all payroll records, social security records, timecards, personnel records, reports, and all other records necessary or useful in computing the amount of backpay that may be due any employee, as herein provided.

(d) Post at its Northern Boulevard and Prince Street premises, Borough of Queens, city and State of New York, copies of the attached notice marked "Appendix."⁴⁴ Copies of said notice, to be furnished by the Regional Director of Region 29 of the Board (Brooklyn, New York), shall after being signed by an authorized agent, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the aforesaid Regional Director, in writing, within 20 days from the date of receipt of this Decision, what steps they have taken to comply herewith.⁴⁵

⁴⁴ If this Recommended Order is adopted by the Board, the words, "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in such notice. If this Order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by substituting for the words "a Decision and Order" the words, "a Decree of the United States Court of Appeals, Enforcing an Order."

⁴⁵ In the event that this Recommended Order is adopted by the Board this provision shall be modified to read: "Notify the aforesaid Regional Director, in writing, within 10 days from the date of this Order, what steps they have taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT coercively interrogate our employees regarding their membership in, views about, or activities on behalf of any union.

WE WILL NOT discharge, lay off, or otherwise discriminate against employees because of their membership in or activities on behalf of Local 259, or any other union.

WE WILL NOT if our employees in support of any union, engage in an unfair labor practice strike against us, threaten to replace such strikers if they do not abandon such strike, nor will we threaten such strikers with loss of benefits, "blackballing" from other jobs, or make promises of benefits to induce them to abandon their strike.

WE WILL NOT in any way interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by the National Labor Relations Act, as amended.

WE WILL, on request, recognize and bargain with Local 259 as the exclusive representative of our employees in the unit set forth below, and if an agreement is reached, embody same into a signed contract. The unit referred to is:

All shop employees including service and repair employees, employed at our Northern Boulevard and Prince Street locations, excluding office clerical employees, salesmen, guards, and supervisors.

WE WILL make whole Frank Gorman and all other employees who engaged in a strike against us at any time between July 22 and 31, 1964, for any loss of earnings they may have suffered by reason of our discrimination against them for the period and in the manner set forth in that portion of the aforementioned Trial Examiner's Decision entitled "The Remedy."

WE WILL preserve and make available to agents of the National Labor Relations Board, all of our records necessary or useful in computing the amount of backpay due any of the aforesaid employees.

All of our employees are free to join or assist Local 259, or any other union, or to refrain from doing so.

MONAHAN FORD CORPORATION OF FLUSHING,
Employer.

Dated_____ By_____ (Representative) (Title)

MONAHAN AUTO REPAIR CORP.,
Employer.

Dated_____ By_____ (Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York, Telephone No. 596-5386.

Southern Athletic Co., Inc. and Amalgamated Clothing Workers of America, AFL-CIO. Case No. 10-CA-5861. March 24, 1966

DECISION AND ORDER

On November 22, 1965, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Zagoria].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial