

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

CHAMPION ENTERPRISES, INC., d/b/a
CHAMPION HOME BUILDERS CO.

and

CARPENTERS UNION LOCAL NO.
1109, a/w UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF
AMERICA

Cases 32-CA-19152-1
32-CA-19155-1
32-CA-19181-1
32-CA-19279-1
32-CA-19344-1
32-CA-19366-1
32-CA-19424-1
32-CA-19587-3
32-CA-19587-4
32-CA-19619-1
32-CA-19766-1

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for the Charging Party
Paul Bradshaw, Senior Field Representative,
Organizing Department, for the Charging Party

DECISION

Mary Miller Cracraft, Administrative Law Judge: This case was tried in Visalia, California on August 27-30, 2002. The General Counsel alleges that Champion Enterprises, Inc. d/b/a Champion Home Builders Co. (Respondent) violated Section 8(a)(1), (3), and (5) of the Act, culminating in withdrawal of recognition on April 18, 2002, from Carpenters Union Local No. 1109, a/w United Brotherhood of Carpenters and Joiners of America (the Union).¹

¹ The Union filed the charge in Case 32-CA-19152-1 on October 3, 2001; the charge in Case 32-CA-19155-1 on October 4, 2001; the original and first amended charge in Case 32-CA-19181-1 on October 16 and December 12, 2001, respectively; the charge in Case 32-CA-19279-1 on December 5, 2001; the charge in Case 32-CA-19344-1 on January 10, 2002; the charge in Case 32-CA-19366-1 on January 22, 2002; the original and first amended charge in Case 32-CA-19424-1 on February 15 and April 9, 2002, respectively; the charge in Case 32-CA-19587-3 and Case 32-CA-19587-4 on April 19, 2002; the charge in Case 32-CA-19619-1 on May 2, 2002; and the charge in Case 32-CA-19766-1 on June 27, 2002. The fourth consolidated amended complaint issued on July 17, 2002.

On the entire record, including my observation of the demeanor of the witnesses,² I make the following

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Findings of Fact

I. Jurisdiction

Respondent is a Michigan corporation with an office and place of business in Lindsay, California, where it is engaged in manufacture of modular homes. During the twelve months preceding July 17, 2002, Respondent sold and shipped goods valued in excess of \$50,000 directly to customers outside the State of California. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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II. Labor Organization Status

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

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III. Alleged Unfair Labor Practices

Background

Respondent builds prefabricated homes at various facilities in California. Respondent does not maintain an inventory of homes. Rather, all construction is initiated by customer order, accompanied by approved financing, for a specific model home with exterior and interior options selected by the customer. Each home is built on an assembly line which starts with the flooring or chassis, progresses to framing, roofing, interior walls, fixtures and appliances and is finally completed on the exterior and is painted. Various groups of employees perform specific portions of the assembly-line work.

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For instance, group 10 completes the flooring, subflooring, plumbing, heating, decking, furnaces, and commodes. The next station completes interior walls, which have been preassembled on a jig and are set by crane on the unit. This is followed by the sidewalls, cabinets, counter tops, and vanities. Group 30 builds the ceiling and completes all exterior and interior wiring. Group 40 installs siding, shingles, windows, doors, and exterior trim. The following station, group 60, completes taping and texturing. Group 50 follows with final touch-ups, checks the water system, lights, vent fans, and range hoods and loads the remainder of the material for completion onsite. Group 80 handles shipping and receiving.

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The relevant hierarchy at Respondent's Lindsay, California facility includes Hugh Beswick, vice-president, human resources, and chief negotiator; Donnie Scott, plant

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² Credibility resolutions have been made based upon the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

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superintendent; Jim Stewart, plant manager; Terry Bagniefski, group 30 foreman; Steve Strong, group 40 foreman, Jesse Ortiz, foreman; and Sandi Stryd, controller.³

5 Following an election held on July 21, 2000, on April 10, 2001, the Union was certified as the exclusive collective-bargaining agent of the employees in the following appropriate unit:

10 All full-time and regular part-time hourly paid production and maintenance employees including quality control inspectors, parts and receiving employees employed by Respondent at its 840 West Palm Avenue, Lindsay, California facility; excluding all sales employees, service department employees, clerical employees, guards and supervisors as defined in the Act.

15 Since July 21, 2000, the Union has been the exclusive representative of the unit employees for the purpose of collective bargaining with respect to pay, wages, hours of employment, and other terms and conditions of employment.

20 Negotiation commenced on July 23, 2001. Beswick, Stewart, Scott and Dick Barrett, vice president of operations for the western manufacturing region, represented Respondent at the table. Jay Bradshaw, senior field representative in the Union's organizing department, was the chief Union negotiator and was joined by employees Carlos Sahagun, Paul Guerrero and Danny Nichols. Other employees, including Jesse Harman, participated in negotiations from time to time. Although numerous bargaining sessions were held and some tentative agreements were achieved, no contract was reached. The principle obstacle to reaching agreement was disagreement regarding union security.

25 On April 17, 2002, Respondent received a petition signed by 89 of the 167 bargaining unit employees, stating that they no longer wished to be represented by the Union.⁴ On the following day, April 18, 2002, Respondent withdrew recognition from the Union. The complaint allegations are discussed below in chronological order.

30 **On numerous occasions beginning in late July 2001, Strong, surveilled and/or created the impression that Respondent was surveilling the Union activities of its employees**

35 Steve Strong has worked for Respondent for 32 years. He is the foreman of group 40, which performs painting, siding and shingling, and window installation. At the time of the trial, there were 28 employees in the group. Union negotiating committee members Carlos Sahagun and Danny Nichols work in group 40. There is no evidence of a rule prohibiting employees talking to each other while they work.

40 The area required for the painting, siding and shingling, and window work is about 65 feet for each section. Strong also supervises special options work, which is performed outside the main facility. Special options are features such as bay windows or porches, which require additional work, over and above the standard work for the model. Strong's practice in monitoring the work of employees under his supervision is to go from station to station utilizing a checklist to determine if there are any problems. Strong visits employee's work areas, as needed, from

50 ³ Respondent admits that these individuals are supervisors and agents within the meaning of Sec. 2(11) and 2(13) with the exception of Stryd. Respondent admits that Stryd is an agent within the meaning of Sec. 2(13) but is not a supervisor within the meaning of Sec. 2(11).

⁴ Although the petition was actually signed by 97 employees, Respondent did not rely on the signatures of 8 temporary employees.

once to twice a day to once or twice a week. He orders materials for the employees, if needed. Strong converses with employees as he inspects their work. Strong can also stand on a balcony from which it is possible for him to see all employees performing their work.

5 According to Sahagun, who has worked for Respondent for 12 years as a painter in group 40, other employees frequently come into his work area to get materials that he has built. When these employees talk with Sahagun, Strong is sometimes in the work area. Since negotiations began, on July 23, 2001, and, indeed, according to Sahagun, since early 2000, if Strong sees employees speaking to Sahagun, it appears to Sahagun that Strong makes a point of coming over and asking if there is a problem. Sahagun feels that Strong “stares us down” and so we just split up and walk away.

15 Although Sahagun testified quite generally as to Strong's actions, he testified regarding two specific instances. First, on an unspecified date, Strong approached Nichols and Sahagun while they were talking and asked if there was a problem. Second, on Wednesday, October 24, 2001, Sahagun spoke with co-worker Holterman. Strong approached them and told Sahagun that employees would be leaving that day at 2 p.m. rather than leaving at 2:30 p.m. Five minutes later, Sahagun and Holterman were still engaged in conversation. Strong approached them and stood between them. The employees quit talking.

20 Sahagun also testified that prior to Union activity, Strong would walk by about once a day, look at what Sahagun was doing, and then walk away. Since Sahagun has become active for the Union, Strong comes by Sahagun's workstation about three or four times per day. Sahagun explained that after negotiations began, Strong's observations “slowed down a little bit” to a level of two or three times per day. Strong's observations stopped in December 2001.⁵

30 Danny Nichols, who has worked for Respondent six years and is currently a window and siding installer, testified that after the first negotiation meeting, his foreman Steve Strong began following him around at least five to eight times per day. Prior to negotiations, Strong followed Nichols one or two times per day, according to Nichols. This increased surveillance lasted for about two months. On July 24, when Strong followed Nichols, according to Nichols, Nichols, who was working on the outside of a structure installing windows, spoke with an employee working on the inside of the structure. Strong asked Nichols what they were talking about and Nichols responded it was none of his business. Nichols agreed that Strong never told him to stop talking to employees and he never disciplined Nichols for talking to employees.

40 General Counsel argues that Sahagun's and Nichols' testimony conclusively illustrates that Respondent, through Strong, engaged in surveillance or created the impression of surveillance of Sahagun's and Nichols' conversations with other employees. General Counsel notes that Nichols and Sahagun both testified regarding increased monitoring of their activities.

45 Respondent characterizes Sahagun's and Nichols' testimony as “exaggerated and internally inconsistent.” Respondent further notes that no corroboration of their testimony was elicited. Finally, Respondent notes that Strong's areas of supervision (three areas that are 65

50 ⁵ In his affidavit, Sahagun stated that Strong has been observing him three to four times a day for a few seconds “for years.” Sahagun explained that Strong's observations increased when Sahagun began wearing Union paraphernalia. This would have been sometime in early 2000. I do not find that by use of the term “for years” in the affidavit, Sahagun contradicted his testimony that Strong's increased activity began following the advent of Union activity. Rather, I find these statements are consistent.

feet long and another area outside) are enormous. Respondent argues that it would be physically impossible for Strong to perform surveillance to the extent Sahagun and Nichols claim.

5 There is no doubt that Sahagun and Nichols were known Union adherents. Beginning in July 2001, both were members of the Union negotiation committee. However, their testimony was inherently unbelievable and is not credited for that reason as well as far their relative demeanors vis a vis Strong's comportment as a witness. According to Sahagun, since he has become active for the Union, Strong has been monitoring Sahagun's conversations with other employees by approaching the conversants and staring them down until they quit talking. This would be a period of at least two years as Union activity commenced at some point in 2000. Nichols' testified to a period of two months of increased surveillance, with Strong following him about 5 to 8 times per day during this period. These assertions are uncorroborated and incredible. Based on this credibility finding, the complaint allegations regarding surveillance or creation of the impression of surveillance are dismissed.

In late September 2001, Strong demanded to see documents that a known Union supporter was placing in his lunch box and told him he could not pass out materials at work

20 In September 2001, according to Strong, shortly after the morning break was over, he observed employee Danny Nichols on the south side of his workstation handing a paper to an employee named Manuel (not in Strong's department). Strong told Nichols not to hand out the paper. Strong told Nichols he needed to go back to work. He asked Nichols, "What is that?" Nichols responded, "Personal papers." Strong advised, "You need to put those up and go back to work." Strong did not actually see the papers.

30 Nichols testified that in late September, during breaks, he distributed a survey to employees. One day, when the 11:30 bell rang to return to work, Nichols took the surveys and his lunch bucket to his locker to put them away. While he was thus engaged, Strong approached Nichols and asked what kind of papers Nichols had. Nichols responded it was none of Strong's business. Nichols asked why Strong singled him out when many others employees were doing the same thing. Strong did not respond but turned around and walked off. According to Nichols, he has observed documents related to football polls and lotteries in the workplace.

35 General Counsel would apparently synthesize the two disparate testimonies to create a situation in which, while Nichols was putting away his lunchbox, "Strong questioned Nichols about the Union survey he was handing to another employee and [told] him not to hand out the surveys." That is not consistent with Nichols testimony or with Strong's.

40 Strong and Nichols testified regarding two separate events. Assuming that both testified credibly, no violation is present. Examining Nichols' testimony alone, there is no evidence that Strong told Nichols that he could not pass out materials at work. Nichols testified only that Strong asked what kind of papers Nichols was putting in his locker. Such a question regarding open actions of an employee, do not constitute coercion. *Porta Systems Corp.*, 238 NLRB 192 (1978), enfd. 625 F.2d 399 (2d Cir. 1980).

50 Turning to Strong's testimony, he saw a known Union adherent distributing a document on work time. His question regarding the nature of the document, openly distributed during work time, does not constitute surveillance. *Porta Systems, supra*. His admonition to get to work also lacks a coercive nature. Although Respondent does not have a no-distribution rule, there is no evidence that it allows employees to leave their workstations during work time to distribute non-

work related materials. General Counsel's claim that Respondent allows employees to sell candy during work time, falls short of such evidence. Apparently General Counsel is referring to the testimony of Nichols on rebuttal. He testified that he had seen employees selling candy during work time. However, Nichols did not testify that Respondent was aware of the sale of candy during work time. Accordingly, even crediting Nichol's rebuttal testimony, there is no evidence that Respondent was aware of the sale of candy during work time. This complaint allegation is dismissed.

On October 4, 2001, Bagniefski confiscated Union materials from employee workstations

Jesse Harman works in Group 30. His supervisor is Terry Bagniefski. Harman builds ridge beams, fills the insulation machine, and cuts numerous two-by-fours and two-by sixes for the sidewall department. He also cuts and straps trusses for triple wide mobile homes. Harman supported the Union by picketing, walking out, wearing Union hats and T-shirts, and assisting the Union with surveys.

The survey, distributed by Harman on October 4, 2001, asked employees to list their priorities regarding bargaining. Harman passed the surveys out before work, during breaks, and at lunch. When Harman reported to work at 7 a.m., he had the surveys with him in the break/lunch room prior to 7 a.m. There were numerous other employees and foremen Roy Williams, Terry Bagniefski, and Steve Strong present in the lunch room at that time. Harman noted that Bagniefski saw the surveys.

At the start of the workday, group 30 employees went outside for their morning meeting with Bagniefski, who told them what they were going to work on that day. Harman had the surveys with him at the meeting. After the meeting, Harman went to his workstation and put the surveys on his workbench. On break time, Harman went by the ceiling area and asked employees Butch and Albert (last names unknown) if they would like to have a survey. They said yes. Harman gave them surveys and told them that he would come back later to retrieve the completed surveys. As Harman started back to his work area, he saw Bagniefski take the surveys from Harman's workbench, where he had left them, roll them up, and take them through the lunchroom.

Harman is aware that an employee named Butch (last name unknown) had a newspaper article on his workbench for winning a chili pepper eating contest. It lay on his workbench for about a week. Then Butch taped it to the board behind the bench. Harman knows Bagniefski read the article because Harman saw Bagniefski reading it. Bagniefski did not roll up Butch's article and take it away.

Additionally, Harman has seen football pool papers on workbenches. Harman knows that Bagniefski has seen these papers. Bagniefski did not do anything with those papers.

Bagniefski testified that he did not confiscate any material that was Union material from an employee's workstation in September, October, or November 2001. In fact, Bagniefski stated that he did not confiscate any Union material from an employee's workstation at any time.

On the whole, I credit Harman's account of Bagniefski's confiscation of his Union surveys from his workbench. Bagniefski's denial was somewhat evasive in that he did not deny taking material from an employee's workstation. Rather, his denial appears to be conditioned on his knowledge of the nature of the papers. Based upon Harman's credited testimony, I find that Bagniefski confiscated Union materials from Harman's workstation.

On October 12, 2001, at an employee meeting, Stewart solicited employees to report to management the names of Union-supporting employees who "threatened" them with job loss or other unspecified harm

5 It is undisputed that Stewart made a statement to employees on October 12, 2001, by reading verbatim from a written text. In part, this text provides:

10 In recent weeks, I have had complaints from employees about co-workers bothering them to try and get them to join or support the union. I have heard that some employees are being told that if they don't join the union, they will be fired. I have also heard reports of employees making crude and very insulting statements about co-workers with whose views they disagree. I want to talk about this.

15 Each of you has the right to decide for yourself if you want to join the union. Our Company respects that right. Employees also have the right to try to convince each other that they should or should not support the union. We respect that right too.

20 But, employees do **not** have the right to interfere with the work of the co-workers, whether they are talking about the union or about baseball. And they certainly do **not** have the right to **threaten** someone because of his or her position on the union.

25 I cannot prohibit your co-workers from talking to you about the union issue. Frankly, each of you has the right to express your opinions on the union to each other. People have the right to argue for their position. An employee has the right to say to his co-worker or employee: "you will someday wish you had supported the union." Because that is just a matter of opinion. However, no one has the right to threaten a co-worker with harm if he or she does not support the union.

30 So, if someone is interfering with your ability to do your work, let your foreman know. We will put a stop to it.

35 If someone is threatening you with harm or saying that you are going to lose your job if you don't join the union, let your foreman know. We will put a stop to it.

40 Stewart continued the speech by referring to a rumor that the union contract would require all employees to join or pay fees to the union. Foreman Jesse Ortiz interpreted Stewart's remarks into Spanish.

45 General Counsel argues that Respondent violated Section 8(a)(1) by making this statement because employees were directed to identify Union supporters based on employees' subjective views of whether they felt they were being threatened or harassed by pro-Union employees, regardless of whether the underlying conduct was protected. General Counsel relies on *Tawas Industries, Inc.*, 336 NLRB No. 24 (2001). In that case, a notice provided, "If you feel that you are being subjected to [threats or coercion], please report such incidents to the Company and we will take the appropriate action" This was found unlawful because it had

50 the dual effect of encouraging employees to identify union supporters based on a subjective

view of threat or coercion and discouraging pro-union employees from engaging in protected activities. *Id.* at slip opinion 5.

Respondent argues that the statements read by Stewart do not violate Section 8(a)(1) citing *Kern's Bakery*, 150 NLRB 998, 1001-1002 (1965); *Liberty House Nursing Homes*, 245 NLRB 1194, 1197 (1979). Respondent asserts that because the speech unambiguously solicited reportage of unlawful threats only, it was lawful.

In *Kern's Bakery*, a company letter advised, "This matter is of serious concern to your company and to you and your family. It is our sincere opinion that if a union took over your rights it would not work to your benefit but to your serious harm." The letter also stated, "If anybody causes you any trouble at your work or puts you or your family under any sort of pressure to sign a card, please let me [Hart] know and I will see that it is stopped immediately." These statements were found protected by Section 8(c). In *Liberty Homes*, a speech informed employees, "if any of you are threatened, we want to know about it. . . We are not going to put up with this. This union is not going to scare Liberty Nursing Homes into rolling over and playing dead." The speech continued, "Let me repeat, if any of you are threatened by any one, we want to know about it. This nursing home is going to protect your right to make a free choice in this matter." The Board found these statements were sufficiently specific to require that any potential infringement of Section 7 yield to the right of employers to assure that its employees are insulated from coercion of employee organizers. However, the Board also found that a statement to a single employee, "I don't want anyone harassing you to vote for the Union," was found violative because it was broad enough to cover mere attempts to persuade employees to sign cards. *Id.* at 1197.

In disagreement with Respondent, I find that the speech solicited employees to report the activities of pro-Union employees whenever they felt subjectively bothered, insulted, or interfered with. Such subjective employee feeling may well be in direct contradiction of the laws protecting employee activities. As author of the speech, Respondent must bear the burden of any ambiguities inherent therein.⁶ The speech, on the whole, is open to varying interpretations.⁷ I note that the speech initially refers to employees "bothering" their coworkers and employees "making crude and very insulting statements." The speech continues with a general admonition that "if someone is interfering with your ability to do your work, let your foreman know." Concluding words make clear that it is pro-Union employees who should be reported. "If someone is threatening you with harm or saying that you are going to lose your job if you don't join the union, let your foreman know." Although use of the term "threaten" has been viewed as an insulating factor in such speeches,⁸ the total context of the speech in this instance convinces me that Respondent solicited lawful as well as unlawful activities.⁹

⁶ In *CMI-Dearborn, Inc.*, 327 NLRB 771, 775-776 (1999), the letter stated, "CMI will protect you from any threats, coercion or scare tactics used by union pushers to get you to join the union. If anyone tries these tactics on you, we urge you to report it . . . immediately. We will protect your right to be left alone." This request was held unlawful because it could include every contact that employees might subjectively regard as scare tactics or coercion.

⁷ Although Respondent avoided the pitfall of the ambiguous term "harassment," (see *Fixtures Mfg. Corp.*, 332 NLRB No. 55 at n. 4 (2000)), its utilization of the terms "interfere," "threaten," "bother," and "insulting" lead to the same result.

⁸ See, e.g., *Aluminum Casting & Engineering Co.*, 328 NLRB 8, 9 (1999)(holding limited to portion of statement, if "anyone puts you under any pressure to sign a union card," and not to portion referring to if anyone "threatens you in any way because you won't sign a card.").

⁹ Accord, *Greenfield Die & Mfg. Corp.*, 327 NLRB 237, 238 (1998).

October 18, 2001: Respondent announced that its Lindsay facility would be shut down on the following day due to lack of work; laid off a majority of unit employees for the following work day, October 19, 2001; selectively recruited a number of unit employees to perform unit work on October 19, 2001; and utilized non-unit personnel, including foremen, to perform unit work on October 19, 2001, all without prior notice to the Union and without affording the Union an opportunity to bargain about these decisions or their effect on unit employees

At a meeting of all employees held on October 18, 2001, Stewart announced there would be no work for employees on Friday, October 19, and possibly Monday, October 22. The Union did not receive any notice regarding the shut down or layoff of employees. Some employees were asked to work on October 19. These employees were needed for maintenance or to complete special options. The Union received no notice regarding selection of employees to work that date. The Union had no opportunity to bargain about the shut down, layoff, or selection of employees to work. All members of management continued working on October 19, 2001. Some of them performed unit work. The Union did not receive any notice about management performing unit work.

Prior to October 18, 2001, Respondent experienced similar instances when there were insufficient orders to warrant running the assembly line. Respondent asserts that because such instances are regular, typical occurrences, Respondent had no duty to bargain with the Union. Rather, Respondent asserts that standard practice during such a shutdown is to have employees perform work that is not complete. Because there was work to be completed in finishing and special options, those employees were requested to work.

General Counsel argues that Respondent's obligation was to notify the Union and afford the Union an opportunity to bargain regarding the shut down, layoff, and utilization of employees during the layoff as well as utilization of management to perform bargaining unit work during the layoff. This duty evolves from the mandatory nature of such subjects. General Counsel notes that any past practice regarding such situations is irrelevant as a defense against the duty to bargain. General Counsel relies on *Eugene Iovine, Inc.*, 328 NLRB 294 (1999); *Miller Waste Mills*, 334 NLRB No. 69 fn. 10 (2001), *enfd.* ___ F.3d ___ (8th Cir. 2003). General Counsel also notes that although the shut down and layoff were discretionary actions made at the last minute the evidence indicates that the lack of incoming orders is constantly monitored.

In agreement with the General Counsel, I find that Respondent violated Section 8(a)(1) and (5) by failing to provide the Union with notice and an opportunity to bargain regarding the shut down of the plant, layoff of employees, selection of employees for work during the shut down, and performance of bargaining unit work by supervisors. As cases cited by the General Counsel hold, the decision to lay off employees, the method of selection for lay off, and performance of unit work by management, even when occasioned by economic exigencies, is a mandatory subject of bargaining.

On November 14 or 15, 2001, Scott told employees that by picketing Respondent's dealer, employees were going to force Respondent out of business

Carlos Sahagun testified that at a safety lunch the week before Thanksgiving, he spoke with plant superintendent Scott. Scott said, "I see your buddies are out picketing [Respondent's] dealer in Visalia." Sahagun responded, "good for them." Scott said, "you all are going to force us right out of business." Scott denied that he had ever told any employee that Respondent would shut down if the employees went on strike. Scott recalled that employees have asked him if the

Union picketing at Respondent's distributors was lawful. Scott responded to this question that he guessed it was lawful. I credit Sahagun's testimony and find that by telling Sahagun that the picketing would force Respondent out of business, Respondent threatened employees.

5 **December 20, 2001: First Information Request**

At bargaining sessions held on November 26 and December 13, 2001, the Union presented its economic proposals. Although Respondent stated that it did not want to discuss economics until the end of negotiations, a colloquy between Beswick and Bradshaw, the chief Respondent and Union negotiators respectively, devolved. Bradshaw asked Beswick what Respondent's position was regarding the Union's wage proposal of \$15 per hour. Beswick testified that he told Bradshaw the proposal of a flat rate was ludicrous. Beswick explained that elimination of incentive-based pay would affect productivity negatively. According to Beswick, he explained that Respondent was not "crying poor" but, rather, the industry was labor-intensive and incentive pay was necessary to maintain high production. Bradshaw testified, to the contrary, that Beswick told the Union that Respondent could not survive; that it would be ludicrous for Respondent to agree to the Union proposal because Respondent could not afford it. Bradshaw agreed that Beswick also stated that wages had to be tied to a bonus plan.

20 By letter of December 20, 2001, the Union requested that Respondent provide it with all economic records including work orders and profit margins over the last two years, for the Lindsay facility as well as a list of Respondent's competition in the Lindsay market. This information was not provided to the Union.

25 On the whole, I credit Beswick's testimony. The record indicates that Respondent's incentive-based pay averaged \$12.40 to \$12.45 per hour. Some employees earned up to \$14 per hour. It is therefore unlikely that a proposal of \$15 per hour would be seen as unaffordable. Rather, it is more likely that the failure to include a production link to wages was the offending factor.

30 Given this credibility determination, I find that Respondent was not required to produce the requested information. Generally, in order to fulfill its duty to bargain in good faith, an employer must provide relevant information necessary for the union to perform its representative duties. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435, 436 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956). If an employer asserts that it cannot pay a particular wage, a union is entitled to justification for this position. The employer must provide the union with its financial records. *Shell Co.*, 313 NLRB 133, 133-134 (1993). However, the record as a whole determines whether financial inability to pay has been asserted. For instance, an employer may claim inability to pay but may subsequently rephrase its position that it is not claiming poverty or an inability to pay. In this situation, the union is not entitled to see the employer's financial records. *Central Management Co.*, 314 NLRB 763, 768-769 (1994). In the instant case, Respondent made clear that its bargaining position required incentive-based labor costs. Accordingly, as financial inability to pay was not at issue, there is no violation. *Nielsen Lithography*, 305 NLRB 697, 700, enf. sub nom. *Graphic Communications Local 508 v. NLRB*, 977 F.2d 1168 (7th Cir. 1992).

45 **On January 16, 2002, Bagniefski gave employee Harman extra work to perform and Scott harassed Harman because of his Union activity by calling Harman into Scott's office**

50 On January 16, 2002, Harman's foreman Bagniefski told him that Harman would need to perform the work of another employee (Mike – last name unknown) who had been temporarily reassigned to the assembly line. Specifically, Bagniefski asked Harman to lay out rafters.

According to Harman, he responded that he had a heavy workload that day but he would help out as much as he could. Bagniefski testified that Harman refused the assignment. Despite their disagreement on exactly what was said, it is undisputed that Bagniefski viewed Harman's response as less than desired and reported the matter to Scott. Bagniefski also reported other bickering and quarreling between Harman and himself earlier that week regarding blueprints. Scott told Bagniefski to leave Harman alone and Scott promised he would talk to Harman about the matter.¹⁰

Harman testified that he was unable to complete some of his regular work and had to leave some work orders uncompleted. Harman also went to Mike's workstation and completed some of Mike's work that day. He did not know how much work he completed or how much work Mike was supposed to have completed that day. Harman agreed that he performs Mike's work whenever Mike is on vacation. Respondent records do not reflect that Harman performed any of Mike's work that date.

Somewhere between 2:30 and 3 on January 16, 2002, Harman was told to go to Scott's office. Harman asked Nichols to accompany him. According to Harman, Scott asked Harman if he could work a little better with Bagniefski and get out the amount of work Bagniefski expected. Scott also asked Harman to be a team player. Harman complained that whenever he pointed out problems in construction to Bagniefski, Bagniefski was less than receptive. Scott concluded with the comment that Harman should try to get along with Bagniefski.

Nichols testified that Harman called him at about 3:20 p.m. and told him that he was going to be disciplined. The two went to Scott's office and Nichols recalled that Scott told Harman that he was not being a team player. Harman responded, according to Nichols, that Harman had gotten behind on his own job while he was doing Mike's job as well. However, he was getting caught up on his regular job. Harman characterized Bagniefski as difficult to get along with since the very beginning of his tenure with Respondent.

These facts do not make out an instance of harassment. All parties agree that when Bagniefski asked Harman to step in and help with Mike's work, Harman was equivocal, at a minimum, about following his foreman's order. Bagniefski told Scott, who was not present during Harman and Bagniefski's exchange, that Harman had refused to follow a direct order. Under these circumstances, Respondent was warranted in discussing the matter with Harman. Although Harman was an open Union supporter, there is no evidence that ties Scott's request to talk with Harman to Harman's Union activity. Assuming that there were such evidence, Respondent has proven a legitimate reason for its actions. I find that Harman would have been called into Scott's office and asked to be a team player in any event. Accordingly, this allegation is dismissed.

February 11, 2002; Second Information Request

At an unspecified date during bargaining, the Union learned that Respondent utilized quality control. By letter of February 11, 2002, the Union requested:

3. A copy of any company policy or procedure with respect to handling customer complaints.

¹⁰ Scott believed he had called Harman into his office on two prior occasions. One involved a "cuss fight" between Harman and another employee. Scott could not remember what the second incident might have involved.

4. A statement of any policy or procedure with respect to handling customer complaints.

5 Bradshaw explained that these items were requested so that the Union could discern whether there was follow-through on customer complaints that might create employee disciplinary issues. The Union also wanted to explore forming a quality committee. The requested items were not produced. However, by letter of February 21, 2002, Beswick stated that, “As far as we can tell, there has never been any disciplining of individuals as a result of
10 customer complaints.” This does not constitute a response to the information request. If Respondent had policies or procedures regarding handling customer complaints, it was required to provide such documents to the Union. See, e.g., *Honda of Hayward*, 314 NLRB 443, 452-453 (1994), and cases cited therein.

15 **February 14, 2002: Third Information Request**

By letter of February 14, 2002, the Union requested copies of all personnel documents relating to absenteeism over the last 3 years. Respondent agreed to provide this information by letter of March 6, 2002, noting that it would take about six weeks to compile the data.
20 Respondent withdrew recognition prior to providing the information. Since withdrawal of recognition, Respondent claims it is under no obligation to provide the information. Although Respondent estimated about six weeks from March 6, 2002, when those six weeks passed on April 17, 2002, the information was not produced. Assuming that six weeks was a reasonable period of time, I find that Respondent violated Section 8(a)(1) and (5) by failure to produce the
25 presumptively relevant material.¹¹

30 **On or about February 14, 2002, Respondent denied employees Dwain Glispey and Frank Terranzas, both of whom were on non-work status and on workers compensation, access to its employee lunchroom**

Prior to February 14, 2002, both Glispey and Terranzas were allowed access to the employee lunchroom. Although both were on workers’ compensation leaves, during the Union campaign, they frequented the lunchroom to hold Union informational meetings. In fact, the evidence reflects that other off-duty employees were also allowed access to the employee
35 lunchroom.

On February 14, 2002, Union representatives Manny Sierra and Dave Lupo entered the lunchroom and walked into the production area with a camera. Because most of the managers were in negotiations at the time, controller Sandra Stryd was contacted about the presence of
40 Union representatives in the production area. Stryd asked Sierra to come to the office with her to sort out the access issue. Sierra refused. Stryd requested that an employee call the sheriff’s department.

Glispey and Terranzas arrived at the facility after Sierra and Lupo. Glispey and
45 Terranzas waited in the office to meet with them but after waiting awhile, they went outside and attempted to approach the facility through the lunchroom area. The sheriff’s department had arrived at that time. Glispey asked Sierra, who was exiting the facility through the lunchroom door, whether the OSHA 200 log was on the bulletin board. Sierra said it was not. Glispey asked

50 ¹¹ Information regarding employees in the unit is presumptively relevant. *Shell Development Co. v. NLRB*, 441 F.2d 880, 887 (9th Cir. 1971).

if he could check and Sierra told him to check for himself. Stryd, who was standing in the door of the lunchroom, refused to allow Glispey to enter.

5 It is clear that Glispey and Terranzas sought access to the employee lunchroom on February 14 only to access the production area. Respondent was aware that this was the sole purpose of Glispey and Terranzas' attempt to enter the lunchroom. There is no evidence that Respondent allows off-duty employees to access the production area. Accordingly, it does not constitute a change in policy to bar off-duty employees from the production area. Moreover, any argument that failure to allow Glispey and Terranzas access to the lunchroom because of their
10 Union activities is belied by the free access to the lunchroom which they were accorded to conduct Union informational meetings. Accordingly, this complaint allegation is dismissed.

15 **On April 18, 2002, Stewart told employees at an employee meeting that Respondent was withdrawing recognition from the Union and would no longer negotiate or bargain with the Union; on April 18, 2002, Respondent withdrew recognition**

20 On April 18, 2002, Respondent withdrew recognition of the Union as the exclusive collective bargaining representative of the unit employees. This was based upon a petition signed by a majority of its unit employees. There is no evidence, nor is it alleged, that Respondent unlawfully sponsored the petition.

25 Respondent's withdrawal of recognition on April 18, 2002, occurred nine days after expiration of the certification year, which began on April 10, 2001. Accordingly, the Union's presumption of majority status, irrebuttable for one year, was rebuttable on April 18, 2002.

30 There is no doubt that Respondent has shown that the Union actually lost the support of a majority of unit employees. Accordingly, pursuant to *Levitz Furniture Company of the Pacific*, 333 NLRB No. 105 (2001), Respondent was privileged to withdraw recognition from the Union unless the petition from employees was caused by serious unremedied unfair labor practices.

35 The parties acknowledge that in order to determine whether there is a causal connection between the unfair labor practices and the subsequent lack of support for the Union, it is necessary to examine the length of time between the two, the nature of the violations, the tendency of the violations to cause employee disaffection, and the effect of the unfair labor practices on employee morale, organizational activities, and membership in the Union. *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 177 (1997)(*Lee Lumber I*), enfd. in relevant part and remanded, 117 F.3d 1454 (D.C. Cir. 1997), decision on remand, 334 NLRB No. 62 (2001)(*Lee Lumber II*), enfd. 310 F.3d 209 (D.C. Cir. 2002); *Master Slack Corp.*, 271 NLRB 78, 84 (1984).

40 Analysis of the circumstances surrounding withdrawal of recognition indicates that Respondent's unfair labor practices tainted the petition submitted by employees on April 18, 2002.

45 Respondent argues that many of the allegations are too remote in time to retain a causal connection to the withdrawal of recognition. One of the unfair labor practices span a period from October 12, 2001, through February 14, 2002. The first unfair labor practice, a request that employees report pro-Union employees' subjectively harassing activities, occurred on October 12, 2001, about six months prior to the withdrawal of recognition. This was followed by
50 failure to bargain with the Union about the plant shut down, layoff of employees, selection of employees to work during the shut down, and utilization of supervisors to perform bargaining unit work, all occurring on October 18, 2001. Although this failure to bargain was not an overall

failure to bargain, warranting a presumption of causation,¹² this failure to bargain was quite serious and showed employees that Respondent could apparently shut down without consultation with the Union. In November, Scott told Sahagun that employee picketing would drive Respondent out of business. Finally, on February 11 and 14, Respondent refused to provide information to the Union during the course of bargaining.

These dates are not too remote in time to have an effect on employee support for the Union. All were within six months of withdrawal of recognition. Given the nature of the unremedied unfair labor practices, this period of time is not too remote to defeat a causal connection. See, e.g., *D & D Enterprises*, 336 NLRB No. 76, slip opinion at 10 (2001)(15 weeks insufficient time to dissipate effects of unfair labor practices); *Overnite Transportation*, 333 NLRB No. 166, slip opinion at 4 (2001)(unremedied unfair labor practices which occurred 4 years prior to decertification petition not too remote in time given serious and pervasive nationwide unfair labor practices that would have a lasting effect on all employees); *Williams Enterprises*, 312 NLRB 937, 939 (1993), enfd. 50 F.3d 1280 (4th Cir. 1995)(4 months between employer unfair labor practices and decertification petition not too remote).

The nature of the violations and their tendency to create lack of support for the Union is readily evident. Although Bagniefski's confiscation and Scott's November statement to Sahagun were one-on-one occurrences with no evidence of dissemination, the other violations are quite serious because they affected the entire bargaining unit and illustrated the apparent weakness of the Union to assist employees. Requesting that employees inform on their co-workers based upon subjective opinion was the first step in creating employee disaffection. Bypassing the Union in October when the plant was shut down was certainly great cause for employees to question the efficacy of Union representation. Thereafter, Respondent hampered Union bargaining by failing to provide materials which were necessary for meaningful negotiations.

There is no direct evidence regarding the effect of the unremedied unfair labor practices on employee morale, organizational activities, and membership in the Union. However, it is reasonable to infer that Respondent's unfair labor practices, which were disseminated throughout the bargaining unit, weakened the ability of the Union to represent employees. If it is unnecessary to bargain with the Union about all the factors inherent in plant shutdown, reducing pro-Union employees to picketing while others worked, and if Respondent is allowed to gather subjective evidence from employees who feel they are being bothered, insulted or interfered with by pro-Union employees, it is reasonable to infer that employees will determine that there is nothing to be gained from Union representation.

During the course of these events, core Union adherents and members of the bargaining committee continued to remain loyal to the Union effort. These employees wore Union paraphernalia to work and supported picketing and walkouts to protest Respondent's actions and the course of negotiations. Although Respondent argues that this show of support indicates that employee morale, organizational activities, and membership in the Union were unaffected by solicitation of subjective feelings regarding being bothered, insulted, or interfered with by pro-Union employees and failure to bargain about the plant shutdown, I find this evidence insufficient to indicate that other employees' pro-Union sentiments were unaffected.

Based upon the record as a whole, I find that Respondent's withdrawal of recognition on April 18, 2002, was tainted by its prior unremedied unfair labor practices. Contrary to Respondent's assertion, I do not find that *Airport Aviation Services*, 292 NLRB 823 (1989),

¹² See *Lee Lumber I*, 322 NLRB at 178.

requires a different result. The facts are distinguishable. In *Airport Aviation*, the Board held that failure to respond to an October 1983 information request, combined with failure to furnish the 1982 payroll, and to answer grievances in May 1984 did not have a “direct adverse impact on wages or benefits and their long term effects were imperceptible at the time of the deauthorization activity [of August 14, 1984].” *Id.* at 824. In the instant case, Respondent not only failed to provide information to assist the Union’s bargaining, it also asked all employees to report pro-Union activity and failed to bargain about a plant shut down.

Similarly, I disagree with Respondent’s assertion that *Howe K. Sipes Co.*, 319 NLRB 30 (1995), requires a contrary result. In that case, Respondent failed to provide information to the union prior to withdrawal of recognition. The judge found, with Board approval, that the failure to provide the union with information would not tend to cause disaffection with the Union. *Id.* at 40.

On April 19, 2002: Respondent announced and on April 20, 2002, implemented an across the board wage increase for all unit employees of \$.61/hour without first notifying the Union of its intention to increase the wages of employees

On the day following withdrawal of recognition, Respondent announced a wage increase. This increase, implemented on April 20, 2002, was proposed at the table on April 17, 2002, as part of Respondent’s offer, an offer characterized by Respondent as worthy of a vote. The offer was rejected by the Union at the table. Prior to implementation on April 20, 2002, there was no notice to the Union regarding implementation of this wage increase. It is uncontested that at the time of the increase, the parties had not reached impasse or agreement in negotiations. It is undisputed that the wage increase was a mandatory subject of bargaining and that Respondent failed to notify the Union of the issue before implementing the wage increase. Respondent relies on its asserted lawful withdrawal of recognition as the basis for failure to consult the Union, citing *Master Slack Corp.*, 271 NLRB 78, 81 (1984). Because Respondent had not lawfully withdrawn recognition at the time of announcing and implementing the wage increase, its obligation to bargain with the Union regarding mandatory subjects of bargaining continued. By failing to notify the Union and provide an opportunity to bargain about the wage increase, Respondent violated Section 8(a)(1) and (5).

April 22, 2002: Fourth Request for Information

By letter of April 22, 2002, the Union requested certain follow-up information:

1. With regard to item 1, you list a number of employment policies, but you do not answer the question as to whether these are all of the employment policies encompassed by your management rights proposal. Please do so.
2. Second of all, you provide some, but not all, of your "applicable Human Resources guidelines." We are requesting that you complete the response to the information request by furnishing all of the human resources guidelines, so that we can determine which are applicable.
3. With regard to item 1(d), you admit that you do have work schedules that are in writing, but you have yet to admit that you have production schedules as well. However, you furnished neither of the work schedules referred to in your response and all of the production schedules requested.

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6. With regard to your withholding information regarding work-related injuries, it becomes impossible to evaluate the workplace safety without them. We are asking you to reconsider your refusal in this regard.

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12. With regard to the health information you furnished, you appear to have furnished us two different kinds of information. Please correct me if I'm wrong. It appears to us that you have furnished information regarding a medical plan in effect in some of your facilities and also information regarding a proposed medical plan for this facility. Thus, in various documents, you refer to the size of the coverage group as 4,500 individuals, and other of the documents refer to the coverage group as involving 12,000 individuals.

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14. With respect to the financial information, you have omitted the dollar amounts of the employee contributions. Rather, you merely indicate 65 percent. In order to analyze the impact of the contributions on the employees, we need the figures, and not the percentage of the unspecified amount.

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15. With regard to the PPO referred to in the program summary, please send us a list of all the preferred providers for the Northern California area.

16. With regard to the benefit summary, please send us a list of the new network providers referred to therein. Please also furnish the addendums referred to therein in 3.3: Various Global Services.

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17. With regard to paying for office services, what is referred to in the entry called "Change?"

18. What are the changes in coverage information, Section 112.1 relating to outpatient mental health services?

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19. With regard to administrative fees, you list an administrative fee of \$34.00 per month per subscriber with 4,500 subscribers; yet, the plan coverage indicates 12,000. How many persons are covered by the plan, and what will be the administrative fee per subscriber for the Northern California employees' unit?

20. We note that Blue Cross is entitled to change administrative specific and aggregate stop-loss fees and aggregate attachment if the enrollment varies by 15 percent. Is the enrollment in our plan going to 180 employee, 4,500 employees, or 12,000 employees?

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Bradshaw testified that the Union wanted employment policies encompassed in the Respondent's management rights proposal to address the expansive rights Respondent sought to incorporate in its management rights proposal. The Union needed Respondent's human resources guidelines to understand maintenance of Respondent's personnel files and the hiring of new employees. The Union requested production schedules due to Respondent's bonus plan and work schedules. This was tied to wages, an economic issue. The Union wanted records of all work-related injuries in order to propose a safety committee and to discuss post-injury treatment.

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As to item 12, Bradshaw testified the Union was confused by the health plans presented to the Union because there were different groups mentioned. Item 14, the co-payment information, was requested because this amount is deducted from employees' checks and the Union needed to know how much individual and family co-payments were to see how it would impact employees' pocket books. Regarding Item 15, the Union wanted a list of all preferred providers so it could run a check on the providers' infection rates, access, malpractice suits, prenatal care, child health care facilities, and occupational facilities. Item 17 concerned what

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office services were covered by “change.” Item 18, requested changes in outpatient mental health coverage. The Union also sought clarification on administrative fees and co-payment. Finally, in item 20, the Union sought the size of the covered employee enrollment.

5 This information was necessary to the Union’s ability to represent the employees and to bargain effectively on their behalf. Respondent claims the fourth and fifth information requests were rendered moot by its lawful withdrawal of recognition. Respondent also notes that because the request postdated withdrawal of recognition, any failure to furnish the information could not have tainted the withdrawal of recognition. Respondent cites *A. W. Schlesinger Geriatric*
10 *Center*, 304 NLRB 296, 298 (1991). Given my finding regarding the unlawfulness of the withdrawal of recognition, failure to provide the information violates Section 8(a)(1) and (5).

May 15, 2002; Fifth Request for Information

15 By letter of May 15, 2002, the Union requested: “. . . a list of the employees; job classification; dates of hire; tenure of employment; wages rates; . . . and addresses of all persons employed by [Respondent] in the bargaining unit for the period from April 1, 2002 through the present, May 10, 2002.” The Union did not receive any information pursuant to this request. The requested presumptively relevant information was necessary to the Union’s ability
20 to represent employees. Given my finding regarding the unlawfulness of the withdrawal of recognition, failure to provide the information violates Section 8(a)(1) and (5).

Conclusions of Law

- 25 1. By confiscating Union materials from an employee work station, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
- 30 2. By soliciting employees to report to management the names of Union-supporting employees who bothered them, made crude or insulting remarks, or interfered with ability to work, Respondent violated Section 8(a)(1).
- 35 3. By stating to an employee that by picketing Respondent’s distributor, employees were going to force Respondent out of business, Respondent violated Section 8(a)(1).
- 40 4. By announcing to all employees that it would shut down because of lack of work without prior notice to the Union, and by laying off a majority of unit employees, selectively recruiting other unit employees to perform unit work, and utilizing non-unit personnel including foremen to perform unit work during the layoff, without first notifying the Union and without
45 affording the Union an opportunity to bargain, Respondent violated Section 8(a)(1) and (5).
- 50 5. By announcing that Respondent was withdrawing recognition from the Union and would no longer negotiate or bargain with the Union, Respondent violated Section 8(a)(1).
6. By withdrawing recognition of the Union as the exclusive collective bargaining representative of unit employees, Respondent violated Section 8(a)(1) and (5).
7. By refusing to provide information to the Union pursuant to its requests of February 11, February 14, April 22, and May 15, 2002, Respondent violated Section 8(a)(1) and (5).

Remedy

5 Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Included in the affirmative action necessary to remedy the unfair labor practices is an order that Respondent bargain with the Union for a reasonable period of time of at least six months and no more than one year. *Lee Lumber II, supra*, 334 NLRB No. 62, at slip opinion 4.

10 Respondent asserts that the facts of this case do not warrant depriving employees of their Section 7 right to choose whether or not they wish to be represented by the Union. I disagree for the following reasons.

15 First, the Union was certified in April 2001. Bargaining did not commence until July 2001. In October 2001, Respondent solicited employees to report on pro-Union employees' activities and then shut down the plant without bargaining with the Union about the shut down, the layoff, selection of employees who would not be laid off, or performance of unit work by non-unit personnel during the shut down. The Board has long recognized that bargaining for an initial contract is especially difficult. See *Lee Lumber II, supra*, 334 NLRB No. 62 at slip opinion 5. Respondent severely hampered the Union's bargaining ability by these egregious violations. The requirement that Respondent bargain with the Union for a reasonable period of time must be viewed in light of these violations. Balanced against this requirement, it must be conceded that the Section 7 rights of employees who may oppose continued representation by the Union are not unduly hampered by the six to twelve-month prohibition to raising a question concerning the Union's continuing majority status.¹³

25 Second, an affirmative bargaining order will foster the Act's policy of maintaining meaningful collective bargaining and industrial peace. It will restore to the majority who originally voted for the Union an opportunity to engage in meaningful bargaining without the danger of decertification. Respondent's actions deprived the Union and the employees who supported the Union of this opportunity.

30 Finally, the temporary affirmative bargaining order is the only remedy which is adequate to remedy Respondent's violations. The Union must be afforded a time to bargain with Respondent free of decertification efforts. The alternative remedy, a notice to employees, would not adequately remedy the tainted withdrawal of recognition. Such a remedy would merely serve to reward the wrong doer by requiring only that a notice be posted while it would not advance the Section 7 rights of employees who might wish to have no Union representation. Such Section 7 rights must be exercised in an atmosphere free of the unlawful effects that directly caused employee disaffection.

45 ¹³ Moreover, I note that Respondent's unilateral actions continued following the unlawful withdrawal of recognition. Respondent provided a wage increase and continued to refuse to provide information to the Union that was necessary to the Union's ability to represent employees and to effectively negotiate on their behalf. Employees thus clearly learned that rejection of the Union would be rewarded by a wage increase. The affirmative bargaining order will allow the Union an opportunity to meaningfully bargain for the employees in order that they may potentially reassess the Union's ability to represent them.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

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ORDER

Respondent, Champion Enterprises, Inc., d/b/a Champion Home Builders, Lindsay, California, its officers, agents, successors, and assigns, shall

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1. Cease and desist from

- a. Confiscating Union materials from an employee workstation.
- b. Soliciting employees to report to management the names of Union-supporting employees who bother them, make crude or insulting remarks, or interfere with their ability to work.
- c. Stating to an employee that by picketing Respondent's distributor, employees were going to force Respondent out of business.
- d. Announcing to all employees that it would shut down because of lack of work without prior notice to the Union, and by laying off a majority of unit employees, selectively recruiting other unit employees to perform unit work, and utilizing non-unit personnel including foremen to perform unit work during the layoff, without first notifying the Union and without affording the Union an opportunity to bargain.
- e. Announcing that Respondent was withdrawing recognition from the Union and would no longer negotiate or bargain with the Union.
- f. Withdrawing recognition of the Union as the exclusive collective bargaining representative of unit employees.
- g. Refusing to provide information to the Union pursuant to its requests of February 11, February 14, April 22, and May 15, 2002.
- h. Announcing and implementing a wage increase for all unit employees without first notifying the Union and affording the Union an opportunity to bargain.
- i. In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

- a. On request, bargain with Carpenters Union Local No. 1109, a/w United Brotherhood of Carpenters and Joiners of America, for a reasonable period of time no shorter than six months and no longer than one year, as the exclusive representative of

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¹⁴ 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.

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employees in the following appropriate unit concerning terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

- 5 All full-time and regular part-time hourly paid production and
 maintenance employees including quality control inspectors, parts
 and receiving employees employed by Respondent at its 840
 West Palm Avenue, Lindsay, California facility; excluding all sales
10 employees, service department employees, clerical employees,
 guards and supervisors as defined in the Act.
- b. On request, furnish the Union with the information it requested on February 11,
February 14, April 22, and May 15, 2002.
- 15 c. Within 14 days after service by the Region, post at its facility in Lindsay, California,
 copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms
 provided by the Regional Director for Region 32, after being signed by the
 Respondent's authorized representative, shall be posted by the Respondent
20 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. In the event that, during the
 pendency of these proceedings, the Respondent has gone out of business or closed
25 the facility involved in these proceedings, the Respondent shall duplicate and mail, at
 its own expense, a copy of the notice to all current employees and former employees
 employed by the Respondent at any time since October 12, 2001.
- d. Within 21 days after service by the Region, file with the Regional Director a sworn
30 certification of a responsible official on a form provided by the Region attesting to the
 steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges
violations of the Act not specifically found.

35 Dated January 17, 2003
 San Francisco, California

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 Mary Miller Cracraft
 Administrative Law Judge

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50 ¹⁵ If this Order is enforced by a Judgment of the 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."

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