Mike O'Connor Chevrolet-Buick-GMC Co., Inc., and Pat O'Connor Chevrolet-Buick-GMC Co., Inc. ***and*** **General Drivers, Warehousemen and Helpers Local Union No. 534, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.** Cases 17–CA–5505 and 17–RC–7077

March 14, 1974

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS FANNING, JENKINS, AND PENELLO

On June 29, 1973, Administrative Law Judge George L. Powell issued the attached Decision in this proceeding. Thereafter, Respondent, General Counsel, and Charging Party each filed exceptions and a supporting brief, and Respondent filed an answering 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 authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions of the Administrative Law Judge to the extent consistent herewith.

Respondent operates a General Motors dealership in Sedalia, Missouri, and is engaged in the retail sale, distribution, and servicing of new and used automobiles and trucks. Pursuant to a stipulation for certification upon consent agreement entered into by the parties, a Board-conducted election was held on March 27, 1973,[3] in an agreed-upon unit of salesmen. The results of the balloting were eight votes for representation by the Union, six against, and three challenged ballots. The challenges were sufficient in number to affect the results of the election. Thereafter, the Union filed timely objections to the election and unfair labor practice charges against Respondent. The Regional Director for Region 17 issued a complaint on the basis of the charges and ordered that the representation and unfair labor practice cases be consolidated for hearing. The consolidated cases were heard before Administrative Law Judge George L. Powell from May 14 through 18.

On June 29, the Administrative Law Judge issued his Decision. He sustained the challenges to two of the three challenged ballots and found it unnecessary to rule on the third, as it could no longer affect the results of the election. He accordingly recommended that the Union be certified. With respect to the objections to the election and unfair labor practice allegations in the complaint, the Administrative Law Judge found no credible evidence to support any of them and recommended their dismissal.

The parties have excepted to substantially all adverse determinations made by the Administrative Law Judge in his Decision.[4] We adopt certain of the Administrative Law Judge's conclusions and reject others. Our specific findings are set forth below.

1. *Determinations on challenged ballots:* The Administrative Law Judge sustained the challenges to the ballots of Norman Capps and Dave Martin. He found Capps to have been discharged for cause, and not, as alleged in the complaint, for his participation in union activities. We agree. The Administrative Law Judge sustained the challenge to Martin's ballot on the ground that he had "managerial responsibilities sufficient to cause him to be a supervisor within the meaning of the Act. . . ." While we agree that the challenge to Martin's ballot should be sustained, we do not find it necessary to determine whether he is a supervisor or not.

Martin holds the position of "New Truck Manager" and is generally responsible for overseeing the sale and inventory of trucks at Respondent's operation. In performing these functions, Martin exercises a substantial amount of independent judgment and is

[1] Charging Party contends, *inter alia*, that the Administrative Law Judge denied it a fair hearing. It alleged as the primary basis for its claim that the Administrative Law Judge, accompanied by the court reporter, appeared at Respondent's showroom one evening midway through the hearing and engaged in an *ex parte* conversation with Pat O'Connor, Respondent's president and principal witness. It offers by way of proof an affidavit from an employee who claims to have witnessed the event

For consideration of the issue here, we assume the Charging Party's allegations to be true. While we deem such *ex parte* contacts to be injudicious and improper (even if the conversation never went beyond purely social topics, as Respondent contends), we do not find the Administrative Law Judge's conduct to have been so serious in this case as to have been prejudicial We have made an independent examination of the entire record in this case and find the Administrative Law Judge's principal findings to be fully supported Furthermore, several particular findings of his which we have reversed, *infra,* require the issuance of an order nearly as broad in scope as that which would have issued had he found substantially all the violations alleged Under these circumstances, we find that the Administrative Law Judge's conduct does not warrent any corrective proceedings which would further delay the determination of the rights and obligations of the parties herein

[2] General Counsel and Charging Party have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect *Standard Dry Wall Products, Inc*, 91 NLRB 544, enfd 188 F.2d 362 (C A 3). We have examined the Administrative Law Judge's credibility findings in this case especially carefully because of the alleged instance of *ex parte* communication and we find no basis for reversing his findings.

[3] Hereinafter, all dates refer to 1973 unless otherwise indicated

[4] Charging Party, in addition, excepts to the Administrative Law Judge's refusal to consider its brief and that of General Counsel, having found them to be untimely Although it may be that they should have been considered inasmuch as the briefs might have been expected to be delivered on time in the normal course, we need not pass on this matter in view of our decision herein

treated in other important respects as a managerial representative.[5] Thus, unlike the other employees, he is authorized to close sales on trucks and normally authorizes new truck sales made by other salesmen as well. Martin is responsible for meeting with the factory representative in preparing a detailed purchase order for trucks and is similarly responsible for developing the cost information and specifications necessary to make a bid on fleet truck sales. In the past, Martin has, on occasion, conducted truck sales meetings for the other salesmen to keep them current on the latest truck information. One night a week Martin is effectively in charge of Respondent's operations and is the only one present with the authority to close a deal on the sale of cars or trucks. Other unit salesmen do not have comparable responsibilities. Moreover, unlike the other salesmen, Martin sometimes attends management meetings and sometimes participates in interviewing prospective salesmen to determine their knowledge of trucks. Martin has an office of his own in a separate part of the facility, and, like other managerial personnel, is paid on a basis of a fixed salary plus a set commission on the entire sales of Respondent's operation, while the other employees receive a commission on the basis of their own sales. From these facts, we conclude that Martin is a managerial employee with interests closely allied to management and differing significantly from those of the other employees composing the unit. We therefore affirm the Administrative Law Judge's determination sustaining the challenge to his ballot.

The only remaining challenged ballot is that of Bill Glen, the finance salesman. The Union appears now to concede that it failed to substantiate its challenge to his ballot. In any event, we do not find it necessary to rule on the challenge as it no longer can be determinative.

2. *The election results:* As the results of the election were eight in favor of representation by the Union and six against, and since we have sustained the challenges to two of the three challenged ballots and the only remaining challenged ballot could no longer be determinative, we will certify the Union as the representative of the employees in the following appropriate unit:

> All new and used automobile and truck salesmen including finance and insurance salesman and appraiser-salesman of the Pat O'Connor Chevrolet-Buick-GMC Co., Inc., of Sedalia, Missouri, but excluding office clerical employees, corporate officers, new car sales manager, used car sales manager, professional employees, guards and supervisors as defined in the Act and all other employees.

3. *Section 8(a)(3) allegations:* We have already indicated above that we affirm the Administrative Law Judge's dismissal of the 8(a)(3) discharge allegation with respect to Norman Capps. General Counsel was permitted to amend the complaint at the hearing to allege seven additional 8(a)(3) violations which attributed to Respondent the imposition, after the election, of more onerous terms and conditions of employment because of the employee's union activity. The Administrative Law Judge found no credible evidence that any of the alleged changes in working conditions were unlawfully impelled. He therefore dismissed these 8(a)(3) allegations. Although General Counsel and Charging Party except to their dismissal, we find no basis in the record to reverse the Administrative Law Judge's disposition of these allegations and we therefore adopt them.

4. *Section 8(a)(1) allegations:* The complaint alleges 20 independent 8(a)(1) violations by Respondent, many of which served also as the basis of the Union's objections to the election. The Administrative Law Judge dismissed the allegations in their entirety. He based this dismissal on a blanket determination that all of General Counsel's witnesses were incredible and that the record accordingly contained no credible evidence to support the allegations. Charging Party and General Counsel vigorously except to the manner in which the Administrative Law Judge's disposed of these allegations.[6]

We have carefully reviewed the record. In brief, the testimony of General Counsel's witnesses in support of these allegations was denied in every instance except one by Respondent's witnesses. Thus, where there was conflict in the testimony it was up to the Administrative Law Judge to determine whom to credit. He credited Respondent's witnesses over those of General Counsel's. As previously indicated, it is the Board's established policy not to overrule an Administrative Law Judge's resolutions of credibility unless the clear preponderance of all the relevant

[5] Prior to the time he accepted the position of truck manager, dating back to 1966 or 1967, Martin held the position of office manager for Respondent, and until just recently was also an officer of the corporation, as its secretary-treasurer

[6] General Counsel contends that the Administrative Law Judge's failure to set forth the conflicting evidence with regard to the numerous 8(a)(1) allegations does not comply with the requirements of Sec 102 45 of the Board's Rules and Regulations That section provides in relevant part that a decision of an Administrative Law Judge "shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record . . "

It would have been better practice for the Administrative Law Judge to have discussed the conflicting evidence on the allegations in issue, and explain why he credited one set of witnesses over another Nonetheless, for essentially the reasons that we have set forth in fn. 1, *supra,* we do not find the Administrative Law Judge's failure to do so here to be of such a serious nature as to require any additional corrective proceedings.

evidence convinces us that the resolutions are incorrect.[7] We find no basis to reverse his findings with respect to the 19 allegations which Respondent's witnesses denied.

As noted above, however, in one instance the testimony of the General Counsel's witness was not contradicted. Employee Greg Buford testified that, around February 23, George Riley, the Respondent's new-car sales manager, and Pike Ferris, a used-car salesman who had held the supervisory position of used-car sales manager a few months earlier, engaged him in a conversation relating to the union organizing drive. Buford testified that Ferris expressed opposition to the Union and told him, in Riley's presence, that "if there was a chance that the Union got in, Van Chevrolet [a competitor] was going to buy the company from Mr. O'Connor, fire all the employees and do away with the Union." Ferris did not testify at the hearing; and while Riley did testify, he did not deny that Ferris made the aforementioned statements to Buford in his presence.

On the basis of this testimony, which was not rebutted by Respondent's witnesses, we find, contrary to the Administrative Law Judge, that the allegation of an 8(a)(1) violation, predicated on the statement made by Ferris, should be sustained. While Ferris was no longer a supervisor at the time he made the aforementioned threatening remarks to Buford, the surrounding circumstances were such as to have reasonably led Buford to regard Ferris' remarks as being the repetition of comments made by officials of Respondent. As noted above, Ferris made the remarks in the presence of an admitted supervisor, Riley, who did nothing to disavow them, and thereby ratified them. Consequently, Respondent must be held accountable for the remarks made by Ferris.[8] These statements contain an implied threat that Respondent would terminate, i.e., sell, its operations if the employees selected the Union, and thereby violated Section 8(a)(1) of the Act.

5. *Section 8(a)(5) allegations:* The Administrative Law Judge also dismissed the 8(a)(5) allegations of the complaint in light of his findings that Respondent had not committed any unfair labor practices during the pendency of the election and that the Union won the election and was entitled to a certification. The exceptions filed by General Counsel and Charging Party to the dismissal of this part of the complaint raise viable issues going only to so much of the 8(a)(5) allegations as rest on certain postelection changes in working conditions made by the Respondent without notice to or consultation with the Union.[9] We find merit in these exceptions.

The Board has long held that, absent compelling economic considerations for doing so, an employer acts at its peril in making changes in terms and conditions of employment during the period that objections to an election are pending and the final determination has not yet been made.[10] And where the final determination on the objections results in the certification of a representative, the Board has held the employer to have violated Section 8(a)(5) and (1) for having made such unilateral changes.[11] Such changes have the effect of bypassing, undercutting, and undermining the union's status as the statutory representative of the employees in the event a certification is issued. To hold otherwise would allow an employer to box the union in on future bargaining positions by implementing changes of policy and practice during the period when objections or determinative challenges to the election are pending. Accordingly, since we have already determined in this case that the Union should be certified, we find, contrary to the Administrative Law Judge, that Respondent was not free to make changes in terms and conditions of employment during the pendency of postelection objections and challenges without first consulting with the Union.

General Counsel alleged in his complaint that Respondent made the following changes during this period: (1) in mid to late April Respondent changed the type of car it provided one of the employees as a demonstrator, thereafter providing him with a less desirable model with fewer "extras"; (2) in mid-April and again in early May, Respondent announced new standards for the number of automobiles that salesmen would be required to sell in order to avoid certain disciplinary sanctions; (3) on or about May 4, Respondent required salesmen thereafter to work more Saturdays; (4) on or about May 4, Respondent required salesmen to maintain time records on the number of hours they worked each week; (5) on or about May 4, Respondent announced a new policy requiring salesmen to be personably liable for the first $100 of damages incurred on their company-provided demonstrator; and (6) on or about May 4,

[7] *Standard Dry Wall Products, supra,* fn 2

[8] *Air Control Products, Inc,* 139 NLRB 607, 620, enfd. 344 F.2d 902 (C A. 5, 1965), *Earl B. Law and Donald T. Law d/b/a E B Law and Son,* 92 NLRB 826, enfd 192 F.2d 236 (C.A. 10), *Samual Flatau, d/b/a Yale Filing Supply Co,* 91 NLRB 1490

[9] A general "refusal to bargain" allegation in the complaint was framed for the purpose of obtaining a bargaining order under *Gissel* concepts in the event the election resulted in the Union's defeat As we here find that the Union won the election, the issue framed by that allegation is no longer presented We note in this connection that General Counsel's exceptions do not seek review or reversal of the dismissal of the complaint's broad 8(a)(5) allegation.

[10] *King Radio Corporation, Inc.,* 166 NLRB 649, 652; *Laney & Duke Storage Warehouse Co, Inc,* 151 NLRB 248, 266–67, enfd. in relevant part 369 F.2d 859, 869 (C.A. 5, 1966); *Zelrich Company,* 144 NLRB 1381, enfd. 344 F 2d 1011 (C.A. 5, 1965).

[11] *Keystone Casing Supply, Inc,* 196 NLRB 920; *King Radio Corporation, Inc., supra, General Electric Company,* 163 NLRB 198, enfd in relevant part 400 F.2d 713 (C.A 5, 1968); *Zelrich Company, supra, Fleming Manufacturing Company, Inc,* 119 NLRB 452.

Respondent withdrew the privilege of leaving its premises during work hours for refreshments.

Respondent does not dispute the fact that it announced that these changes in rules and policies would be implemented on or about the date alleged. Instead, it defends its changes on the ground that, as a new employer, it had to make known its policies to its employees, and that the changes in policy and practice which were made were motivated by sound business considerations, and not for the purpose of undermining the Union. It is well established, however, that, whether unlawfully motivated or not, an employer violates Section 8(a)(5) and (1) where it makes changes in terms and conditions of employment during the pendency of objections to an election which eventually results in the certification of the union.[12]

We next determine whether the changes alleged to have been made by Respondent, number 1 though 6 above, involved "wages, hours, and other terms and conditions of employment" within the meaning of Section 8(d) of the Act, over which Respondent was required to first consult with the Union. The changes alleged in 2, 3, 5, and 6 above clearly cover subjects over which an employer has an obligation to bargain; in failing to do so, Respondent violated Section 8(a)(5) and (1) of the Act. However, we do not find allegation numbered 1 above to be a matter which affects "terms and conditions of employment," inasmuch as the allegation is limited to a change affecting only one employee and it is not contended that Respondent changed its policy with regard to the assignment of demonstrator cars to its employees in general. Moreover, we do not find allegation 4 above to establish a *prima facie* violation, there being no evidence that the rule requiring maintenance of such records went beyond the requirements of the law.

Having found Respondent to have violated Section 8(a)(5) and (1) by making the aforementioned changes in terms and conditions of employment while objections and determinative challenges to the election were pending, we will provide as a remedy in our Order that Respondent bargain upon request with the Union with respect to these matters, and make whole any employees who incurred any monetary loss as a result of the unilateral implementation of these changes, until such date as Respondent bargains in good faith or to impasse.

[12] As the Trial Examiner stated, with Board approval, in *Fleming Manufacturing Co*, *supra*, at 465: "Nor is there any merit to the Respondent's defense, even if true, that its action was dictated by economic considerations. 'The Respondent had a duty to bargain with the employees' representative, and it could not elect to observe or disregard this duty on the basis of economic expediency, even in good faith' " (Footnote omitted)

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Mike O'Connor Chevrolet-Buick-GMC Co., Inc., and Pat O'Connor Chevrolet-Buick-GMC Co., Inc., its officers, agents, successors, and assigns, shall take the action set forth below:

1. Cease and desist from:

(a) Discouraging employees from voting for Local 534 as their collective-bargaining representative by threatening to terminate operations if they select the Union as their representative.

(b) Changing terms and conditions of employment without first bargaining with the Union, with respect to such matters as the number of automobiles a salesman must sell in order to avoid disciplinary measures, the number of Saturdays each salesman must work, the amount of damages salesmen will be held personally liable for on company-provided demonstrator cars, and whether employees can leave the Respondent's premises for refreshment breaks.

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

2. Take the following affirmative action which we find will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Union as the exclusive representative of the employees in the bargaining unit hereinafter described as appropriate and embody in a signed agreement any understanding which may be reached.

(b) Make whole any employees who may have suffered monetary losses by reason of the changes in the terms and conditions of employment specifically described in paragraph 1(b) above, with interest to be computed on the amount so determined in accordance with *Isis Plumbing & Heating Co.*, 138 NLRB 716.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its premises in Sedalia, Missouri, copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent's representative, shall be posted by it

[13] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the consolidated complaint be dismissed insofar as it alleges violations of the Act not specifically found.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for General Drivers, Warehousemen and Helpers Local Union No. 534, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and terms and conditions of employment.

APPENDIX

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

After a trial in which all parties had the opportunity to present their evidence, it has been decided that we violated the law and we have been ordered to post this notice. We intend to carry out the Order of the Board and abide by the following:

WE WILL NOT tell our employees that if they select Local 534 as their collective-bargaining representative, we will terminate our operations.

WE WILL NOT fail and refuse, upon request, to recognize and meet and bargain collectively with Local 534 as the duly certified representative of our employees in the following unit:

> All new and used automobile and truck salesmen including finance and insurance salesman and appraiser-salesman of the Pat O'Connor Chevrolet-Buick-GMC Co., Inc., of Sedalia, Missouri, but excluding office clerical employees, corporate officers, new car sales manager, used car sales manager, professional employees, guards and supervisors as defined in the Act and all other employees.

WE WILL NOT unilaterally change the past practice relating to the number of automobiles each salesman must sell in order to avoid disciplinary measures, the number of Saturdays each salesman must work, the amount of damages salesmen will be held personally liable for on company-provided demonstrator cars, and our past policy relating to leaving the premises for refreshment breaks, without prior notification to and bargaining with Local 534.

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

WE WILL make whole any of our employees who may have suffered monetary losses because of the changes we made in our past practice with respect to the minimum number of automobiles each salesman must sell, the number of Saturdays each salesman must work, and the amount of personal liability a salesman will be held to for damage incurred on company-provided demonstrator cars, as provided in the Board's Decision and Order.

WE WILL, upon request, bargain collectively in good faith with said Local 534, as the exclusive representative of the employees in the appropriate unit described above and, if any understanding is reached, embody such understanding in a signed agreement.

MIKE O'CONNOR CHEVROLET-BUICK-GMC CO., INC., AND PAT O'CONNOR CHEVROLET-BUICK-GMC CO., INC.
(Employer)

Dated By
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 616 Two Gateway Center, Fourth at State, Kansas City, Kansas 66101, Telephone 816–374–4518.

DECISION

STATEMENT OF THE CASE

GEORGE L. POWELL, Administrative Law Judge: The issues in these cases involve: (1) Jurisdiction and successorship; (2) ruling on the challenges and objections to the election in Case 17–RC–7077 and determining its outcome; (3) determining whether Respondent[1] violated Section 8(a)(3) and (1) of the National Labor Relations Act, herein called the Act (29 U.S.C. § 151, *et seq.*), in the discharge of Norman D. Capps, and other specific allegations; (4) determining whether Respondent violated Section 8(a)(1) of the Act by numerous specific alleged instances of violations; and (5) determining whether Respondent refused to bargain in good faith with the Union in violation of Section 8(a)(5) of the Act.

For the reasons hereinafter set forth: in Case 17–RC–7707, I find merit in the challenges to the ballots of Norman D. Capps and David A. Martin[2] and find that the Union won the election and should be certified as the collective-bargaining representative of the employees in the unit involved. Accordingly, I do not rule on the objections to the election. In Case 17–CA–5505, I find the General Counsel has not established by a preponderance of the evidence that Respondent violated the Act as alleged in the complaint, and I will dismiss the complaint in its entirety.

A. Case 17–RC–7077

General Drivers, Warehousemen & Helpers Local Union No. 534, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called the Charging Party or Union, filed a petition for representation, with the National Labor Relations Board, herein called the Board, under Section 9 of the Act on February 1, 1973, for an agreed upon unit of employees of Mike O'Connor Chevrolet-Buick-GMC Co., Inc., herein called Employer, as follows:

> All new and used automobile and truck salesmen including finance and insurance salesman and appraiser-salesman of the Mike O'Connor Chevrolet-Buick-GMC Co., of Sedalia, Missouri; but EXCLUDING office clerical employees, corporate officers, new car sales manager, used car sales manager, professional employees, guards and supervisors as defined in the Act and all other employees.

By a stipulation for certification upon consent election, an election by secret ballot was conducted on March 27, 1973, among the employees of the Employer in the above unit. The tally of ballots shows there were approximately 17 eligible voters, 8 for whom cast ballots for, and 6 against, representation by the Union. There were no void ballots, but three ballots were challenged making the challenged ballots sufficient in number to affect the results of the election. Thereafter, on April 2, 1973, the Union filed timely objections to the election.

[1] Name of Respondent appears as amended at the trial

[2] There is no need to determine the challenge to the ballot of Bill N Glenn

Case 17–CA–5505

The Union filed a charge with the Board on February 21, 1973, against Employer, amended April 3, 1973, which resulted in a complaint and notice of hearing being issued April 16, 1973, on behalf of the General Counsel of the Board by the Regional Director of Region 17 of the Board alleging violations of Section 8(a)(1), (3), and (5) of the Act.

Employer denied that it is now an employer engaged in commerce within the meaning of Sections 2(6) and 2(7) of the Act and denied the essential allegations that it violated the Act.

With the General Counsel, the Employer and the Union each being represented by counsel, the case was tried before me in Sedalia, Missouri, on May 14 through 18, 1973. A brief was filed by Respondent on June 25, 1973, after it had obtained an extention of time to June 26, 1973. No other party filed a timely brief.

Upon the entire record including my observation of the demeanor of the witnesses, and after due consideration of the brief of the Respondent, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The parties admit that Employer is a Delaware corporation engaged principally in the retail sale, distribution, and servicing of new and used automobiles and trucks at its facility located in Sedalia, Missouri; and that in the course and conduct of its business operations it derives gross revenues in excess of $500,000 from its retail sales and performance of services, and annually purchases goods and products valued in excess of $50,000 from suppliers located outside the State of Missouri.

However, evidence was adduced and I find that the last day of business of Employer was March 16, 1973, and the first day of business of Pat O'Connor Chevrolet-Buick-GMC Co., Inc., herein called Respondent, was March 19, 1973.

Respondent is a Delaware corporation engaged principally in the retail sale, distribution, and servicing of new and used automobiles and trucks at the same facility of Employer in Sedalia, Missouri. And that in the course and conduct of its business operations, based on its operations at the time of the trial, it anticipates over $500,000 from its retail sales and services by the end of the calendar year of 1973, and at the time of the trial it already had purchased over $50,000 worth of goods and products from suppliers located outside the State of Missouri.

I find Employer and Respondent each to be now, and at all material times herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

I find the Union is now, and has been at all material times herein, a labor organization within the meaning of Section 2(5) of the Act.

There is no issue concerning jurisdiction.

II. THE REPRESENTATION CASE AND THE ALLEGED UNFAIR LABOR PRACTICES

A. *Successorship*

Respondent continued the same business at the same address and with the same employees and supervisors as Employer. At the trial the Employer's sign had not yet been replaced by the sign of Respondent. Patrick J. O'Connor had been president and general manager of Employer since his father, Mike, had died on July 25, 1972. Mike owned all the stock of Employer. On March 22, 1973, Respondent purchased all the assets of Employer although the last day of business for Employer was Friday, March 16, 1973, and the first day of business for Respondent was Monday, March 19, 1973.[3] Respondent, securing the privilege from the State of Missouri, uses the same low-number dealer tags used by Employer. Patrick J. O'Connor is president and general manager of Respondent and owns 43 percent of its stock with the right, in time, to own all of it by purchasing it from Motors Holding Division of General Motors Corp., the present holder of the remaining 57 percent of the stock of Respondent. I find from these facts that Respondent is the successor of Employer within the meaning of the Act, from March 19, 1973.

B. *Challenged Ballots*

In Case 17–RC–7077, the eligibility list of employees as of February 14, 1973, of Employer contained 16 typewritten names including the names of David A. Martin, herein called Martin, and Bill N. Glenn, herein called Glenn. On the day of the election, March 27, 1973, all of these 16 persons voted as did Norman Capps, herein called Capps, whose name did not appear on the list of eligible employees as originally typed but did appear in ink. The Board agent[4] challenged the vote of Capps as his name was not on the typed list of eligibles, and the Union challenged the vote of Martin on the ground he was a supervisor. Glenn's vote was also challenged. As the vote was 8 for the Union and 6 against it, the challenged ballots were sufficient to affect the outcome of the election. The challenges to Glenn's vote is not ruled upon inasmuch as sustaining the challenges to the votes of Martin and Capps, below, results in the election being conclusive, having been won by the Union. The challenge to Capps ballot is sustained because he no longer was an employee having been discharged earlier for cause, as will be set forth below.

Martin

Martin's ballot was challenged on the ground that he was a supervisor. He himself did not testify.

According to President Patrick J. O'Connor, herein called Pat, Martin was the new truck sales manager. He maintains inventory of and orders new trucks from the factory. He first discusses his inventory with the factory representative and the latter discusses the proposed order with Pat. As far as the record shows, Martin's proposed order is an effective recommendation insofar as types of equipment are concerned and there is no evidence his order is not approved although Pat does have final responsibility to order this expensive equipment. A salesman cannot close a sale without a manager's approval, yet Martin can and does close sales on trucks and gives final approval on truck sales by others, as do acknowledged supervisors, the new car sales manager and the used car sales manager. Martin was an officer of (since 1965), and on the board of directors of Employer until November 2, 1972, when supplanted at a meeting of the board of directors. At the board of directors meeting of Employer on January 16, 1973, new officers were elected and Martin was not one of them. Martin maintains an office, separate and distinct from the other offices, with the new and used trucks. I find him to have managerial responsibilities sufficient to cause him to be a supervisor within the meaning of the Act, and sustain the challenge to his ballot. It is unnecessary to consider the Union's objections to the conduct of the election inasmuch as it has now been determined that it has won the election, and as Case 17–CA–5505 includes allegations of that conduct which would reach the level of being violations of Section 8(a)(1) of the Act. I will recommend the Union be certified as the collective-bargaining representative of Respondent's employees in the above petitioned-for unit.

C. *The 8(a)(3) and (1), Case 17–CA–5505*

Background of Case 17–CA–5505

This case involves an automobile dealership with crucial determinations of credibility between car salesmen and supervisors being made on their demeanor while testifying. In some instances the natural and foreseeable probabilities aid in establishing credibility and when they occur they will be so noted.

Upon the death of Mike O'Connor on July 25, 1972, top management of this corporation, which for many years had been owned and controlled by Mike O'Connor, went to the son, Pat, as noted earlier. This was an interim arrangement, however, until something could be worked out as to who would be the new dealer to hold this franchise. Pat O'Connor applied to be accepted by General Motors Corporation as the new dealer and financed on a buy-out arrangement by a division of General Motors known as Motors Holding Corporation. He was approved by General Motors to become the new dealer in October 1972, and was approved to be financed as the new dealer in January 1973.

A young dealer who is being financed by Motors Holding Corporation is subject to substantial controls of Motors Holding in the daily management of the business. Two of the three directors are Motors Holding employees. Motors Holding provides corporate legal services, prescribes inventory levels, financing levels, management

[3] There may be some disagreement on the exact day Respondent actually began in business varying from March 19, 1973, to March 27, 1973. The exact date is immaterial, although I find it to be March 19, 1973, for the purpose of this decision.

[4] Respondent's brief states that Respondent challenged the ballot of Capps, but the order consolidating cases and directing hearing on challenges and objections recites that the Board agent challenged his ballot As it is immaterial as to who challenged his ballot I will use the recitation in the formal papers as above.

practices, etc., in the new dealership. All these matters were being adjusted during January, February, and March, 1973, leading up to phasing out Mike O'Connor Chevrolet-Buick-GMC Co., Inc., as the dealer and installing Pat O'Connor Chevrolet-Buick-GMC Co., Inc., an entirely new corporation owned by Pat O'Connor and Motors Holding Company, as the new dealer which ultimately took effect on March 22, 1973.

As part of this adjustment from Mike O'Connor to the management of Pat O'Connor and Motors Holding, a decision was made in January 1973 to eliminate the "washout" commission plan and to install a commission plan based on direct sales activity. Under the old plan, as the company took in used cars in trade, the new car salesman who had taken in the original used car continued to get commissions on sales spawned by the used car in which he did not participate. On or about January 15, 1973, Pat called the salesmen together in a meeting to explain to them, *inter alia,* a new commission plan which proffered a graduated percentage commission on salesman's direct sales activity but no commission on subsequent sales in which the salesman did not participate.[5] This is the commission plan that is being used throughout the industry. No other dealers known to the employees of the Union still use the "washout" plan. However, the salesmen's initial reaction to the new commission plan was negative. A few days later they asked for a meeting with Pat to go over the plan again. Allegedly this meeting broke up on a firm statement by Pat that the Company would definitely adopt the direct commission plan despite the complaints of salesmen.

The Union is Called in

Employee Red McIntyre instigated the Union by contacting Lester Hepburn, the Union's business agent. On January 26, 1973, the salesmen met at employee Walker's[6] home and heard Hepburn discuss the merits of unions. He, Hepburn, passed out union authorizations cards to the nine employees attending and received back nine signed cards at the meeting.

Three days later, by letter dated January 29, 1973, the Union demanded recognition from the Employer claiming to represent a majority of the "new and used car salesmen." Before receiving Employer's reply dated February 2, 1973, the Union filed the petition for an election in Case 17–RC–7077.

Two more signed authorization cards were received by Hepburn dated February 1, 1973.

Four additional meetings of the employees took place with Hepburn present (called union meetings) and one took place without Hepburn. They will be developed below in chronological order.

The second union meeting was also at Walker's home and was on February 6, 1973.

The hearing in the representation case was scheduled for February 21, 1973, but at the prehearing conference the parties stipulated the unit and entered into a stipulation for certification upon consent election, as noted above.

The third union meeting was at the Union's hall on February 22, 1973; the fourth, also at the hall, was on March 22, 1973, and the fifth was at the hall on March 26, 1973.

Walker testified that there was a meeting of the employees at Capps' house between the third and fourth union meeting. Hepburn was not present. Walker testified that at this meeting they discussed the type of pay plan they wished to negotiate and admitted there was no discussion of threats or promises made by Respondent.

As noted above, the fifth union meeting (Hepburn in attendance) was the day before the election and much of the time of the meeting was devoted to voting procedures. Eight of the nine employees who attended the first union meeting attended this meeting. Among other things they decided to challenge the ballot of Martin on the ground that he was a supervisor, and the ballot of Glenn on the ground that he had not been employed long enough to vote.

On May 4, 1973, at a routine sales meeting, Respondent passed out a statement of "General Personnel Policies and Procedures."

The Discharge of Norman D. Capps

The General Counsel of the Board alleges in effect that Capps was discharged because of his union activities and in order to discourage employees in exercising their right to engage in concerted or union activities all in violation of Section 8(a)(3) and (1) of the Act.

Capps had been a new car salesman almost 2-1/2 years from September 1, 1970, until his discharge on February 20, 1973. In 1972 he sold more units than any other salesman. There is no record evidence that he took any special part as a leader in the union activity other than sign the Union's authorization card and attend the five union meetings. There was one meeting of the employees at his home but that was after his discharge on February 20, 1973, and it followed three union meetings. The instigator of the Union was McIntyre and the first meetings were held at Walker's home. There is no evidence of Capps' speaking out for the Union or developing a union philosphy. I do not credit testimony of employees Tippie and McIntyre that Pat had told them, separately, that Capps was the instigator of the Union. I credit Pat's denial of this. There is no evidence pointing towards Capps as a union instigator or leader or even an enthusiastic supporter.

Employer fired Capps on February 20, 1973, when it found out he had organized a partnership and arranged for "floor plan" financing on a used car inventory and was actively engaged in business in competition with the dealership. Capps admitted he had been warned about this type conduct before, and had refrained from it until January 1973. This is a discharge for cause and it does not violate the Act. The details follow.

Capps admits that Pat confronted him about having "D tags" in about May 1972. "D tags" are special license tags issued by the state to persons actively engaged in the

[5] The meeting had four other objectives, i e., to sell more cars, outline the truck situation, and talk about the new regime and new employees

[6] Walker is a combined new and used car salesman.

business of selling cars. Using them, ownership of each car in inventory does not have to be registered with state officials so that the dealer does not have to pay sales tax when he buys a car for resale. Capps admits that Pat told him that the possession of dealer tags was against company policy and wouldn't be permitted. He had also been warned about using the Company's "D tags" on his wife's car which would permit constant buying and selling of personal cars.

Pat continued to suspect Capps of being in business in competition with the dealership. When the Wackenhut Corporation Retail Store Protection Division called on him about October 1972, for a routine employee efficiency and integrity check, Pat asked them particularly to check out Capps and Ray Tippie, both of whom admit prior challenges from Pat concerning possible competing sales. However, this particular investigation did not turn up any adverse evidence on Capps.

On or about January 10, 1973, Capps went into partnership with Dan Doty who operated a Kawaski motorcycle shop. They called the partnership "C & D Auto Sales." Doty had a sales lot and Capps was to furnish some of the sales contacts and financing ability. On January 10 they took out floor plan financing for their used car inventory through the Sedalia Bank & Trust Company. They had dealership tags which are available only to car dealers.

About February 15, 1973, McIntyre, a friend of Capps and a fellow salesman at Employer, had a customer for a Monte Carlo. McIntyre, after showing the Monte Carlo that Employer had on display, suggested that the customer might like to see another Monte Carlo that he knew was for sale. McIntyre referred the customer to Capps and the three of them drove Employer's demonstrator, assigned to McIntyre, out to the C & D Auto Sales lot where Capps, while still an employee of Employer, demonstrated C & D's Monte Carlo to the O'Connor customer. However, this episode was witnessed by Johnny Knott, the Company's used car sales manager. Capps, knowing he had been observed by Knott in this episode, went to Knott and volunteered an explanation even though none was asked. Likewise, Red McIntyre sought out Johnny Knott to explain his conduct.

About the same time, on February 15, Pat was alerted by his banker to the fact that one of his employees was in the automobile business in competition with him. The banker sent him to the other bank in town where Capps and Doty financed their cars, and Pat was advised of the partnership and financing arrangements that Capps and Doty had worked out. Pat at that time obtained a copy of the financing statement. The following Monday was a holiday and Capps was called in on Tuesday, February 20th, and discharged. At the time of his discharge, Pat clearly stated that he had proof of C & D's activities and that he didn't want Capps in competition with him and he was, therefore, terminated. Capps attempted to argue about the matter which Pat refused to do. Capps made a parting remark that because of Pat's "arrogance in the past he was making a mistake now and Capps would see that it cost him."

Pat did not trust Capps as is established by the prior warnings and the special check made on Capps by the Wackenhut "integrity man." Capps' testimony shows that the distrust on this point was well deserved. When Pat found out through official records and reliable bank sources that Capps was indeed engaged in the used car business, Pat had the opportunity to end the matter by terminating Capps. Clearly, the "opportunity" referred to in this connection is the opportunity to catch a suspected thief "red handed," not the opportunity to fire a union adherent.

Of course, Capps' business activities are undisputed in view of the financing statement filed on the official records and the incident involving the Monte Carlo customer in which Capps was fully aware that he had been caught by the management. Therefore, Capps' only defense in this case is that Employer had allowed other employees to sell their cars. Capps fails to note a significant distinction, however, between his activities and the activities of other employees. The Employer has never objected to its employees selling their own *personal cars* which were brought for personal use and, in fact, used for that purpose. Employees have to rotate their cars just like everyone else and the company does not penalize them for this. In fact, Pat has suggested that employees bring their personal cars to the dealership's sales lot and get the benefit of the Employer's display and sales force. When the cars are sold, the employee owner pays a commission to the salesman and the Employer does not participate in the transaction in any way. This is a fringe benefit to the employees and keeps extra curricular sales by employees out in the open where there can be no dispute.

It is also undisputed that in the past, other employees have sold their own personal cars at home but it is clear from the record that whatever Employer had suspected that employees were buying cars for resale purposes and were selling them in competition with the Employer, they have been warned and disciplined for doing so. Prior Sales Manager George Boots sold cars on the side and was fired for doing so.

Ray Tippie testified that he was once caught having engaged in a purchase of a group of cars for resale purposes in partnership with a nonemployee. "He [Pat O'Connor] just told me that if I was in the used car business or he caught me selling cars other than our own cars, that they would have to let me go. . . . I understand and said I wouldn't."

In an offer of proof, counsel for General Counsel concedes that Mike O'Connor told Ray Tippie that if he "continued to engage in a competing auto business that he, Tippie, would be fired." Therefore there is nothing unusual about discharging an employee for doing what Capps did.

I find the discharge of Capps was for cause, based upon disloyalty to his employer and not based upon his union activities. It is unnecessary to cite cases for the basic proposition. I will recommend the 8(a)(3) and (1) allegations in the complaint based on Capps' discharge on February 20, 1973, be dismissed.

The General Counsel amended the complaint at the hearing to add seven additional allegations of violations of Section 8(a)(3) and (1). In order to better follow the

amended complaint I will use the paragraph headings thereof and take each one in order.

Paragraph 10

(c) On or about April 19, 1973, the Respondent refused to permit one of its employees, William McIntyre, to take his previously scheduled vacation.

There is no merit to this allegation. This was the first month of Respondent's operations, sales were down, and Pat, the new partial owner, was attempting to do well. There is no credible evidence this had anything to do with union activities or the election, which had been held about 3 weeks earlier and which was awaiting a resolution of objections. This allegation will be dismissed on the grounds of insufficient evidence of violation of the Act.

(d) In the mid to latter part of April 1973, the Respondent changed the terms of employment of one of its employees, Gregory Buford, by providing him with a "compact" model demonstrator automobile without air conditioning and automatic transmission, rather than with the normal intermediate to full-sized sedan-type demonstrator automobile equipped with air conditioning and automatic transmission.

There is no merit to this allegation and it also will be dismissed on failure of proof. The facts are that Buford did not get a Buick, which he had been getting, because there were none when he needed a new demonstrator. His low volume and low production did not entitle him to a Buick luxury car. Respondent properly refused him a Chevrolet demonstrator because he lived in an area serviced by another Chevrolet car dealer and dealers are not supposed to have their dealer-tagged cars based in areas of control of another dealer. (The other dealer had earlier complained.) The only cars Buford could obtain as a demonstrator at the time was a Opel and a Chevrolet truck [the other dealer had no truck dealership].

(e) In mid-April and on or about May 4, 1973, the Respondent changed the terms of employment of its new car salesmen by requiring them to sell a certain designated number of automobiles under threat of suspension, discharge and/or replacement.

There is no merit to this allegation and it too will be dismissed for failure of proof. The facts are that a "goal" of cars per month per salesman were set by Respondent and communicated through sales meeting and the sales managers. The salesmen denied they were threatened with discharge if they failed to meet their specific goals. Sales goals are legitimate and necessary motivational tools for salesmen. Tippie testified that a previous sales manager had set a 10 car per month per salesman goal. There is no evidence tending to show this action was motivated by antiunion considerations.

(f) On or about May 4, 1973, the Respondent changed the terms and conditions of employment by requiring its employees to work two consecutive Saturdays before allowing them a holiday contrary to previously established Company policy requiring its employees to work only alternate Saturdays.

There is no merit to this allegation and it also will be dismissed for failure of proof. There is nothing to connect it to union activities. Saturday is a high traffic day in this business and until 1972 all salesmen were required to work every Saturday. Then they began getting permission to take off. All that this change in Saturday work means is management is assured of a sufficient number of salesmen to meet the traffic. Salesmen are free to swap assigned floor time to accommodate their personal schedules.

(g) On or about May 4, 1973, the Respondent changed the terms and conditions of employment by requiring all its salesmen to keep and maintain time records of the number of hours worked per week.

There is no merit to this allegation and it too will be dismissed for failure of proof. The facts are that Respondent is correcting an inadvertent failure to comply with government record timekeeping requirements and is asking no more from the salesmen than the minimum required by law inasmuch as they receive a guarantee of 48 hours at $1.60 per hour minimum wage.

(h) On or about May 4, 1973, the Respondent changed the terms and conditions of employment by requiring all salesmen to be personally liable for the first $100 of damage to their Company-provided demonstrator automobiles.

There is no merit to this allegation and it too will be dismissed for failure of proof. There is no credible evidence to connect it to union activities. The facts are that the new management wanted a written statement and commitment to the salesmen as to the position of damage it would or would not pay. New collision insurance had to be obtained in connection with the change in ownership and control of Motors Holding Corporation. The new policy provided Respondent with $250 deductible insurance rather than $100 deductible and Motors Holding had suggested the salesmen pay the first $100 damage as is common in the industry.

It is clear from the record that there had never been a stated policy concerning insurance coverage on company demonstrator automobiles being driven by salesman even though these automobiles are permitted to be used as the salesman's personal car. The salesmen had no knowledge and no commitment from the company concerning who would pay for an accident in the demonstrator. It is true that so far as the company has been able to determine, it has in fact paid all the salesmen's claims with the exception of one or two incidents in which the salesman was grossly at fault and the company required him to pay a portion of the claim as a disciplinary measure.

(i) On or about May 4, 1973, the Respondent withdrew from all salesmen the previously existing privilege of being able to leave the Company's premises during working hours in order to have coffee and/or other refreshments.

There is no merit to this allegation and it too will be dismissed for failure of proof. There is no credible evidence to connect it to union activities.

There had never been any firm policy on whether employees could leave the dealership premises for meals, coffee breaks or other personal reasons during their assigned floor schedule time. The salesmen work only about 30–34 hours per week schedule floor time (alternating morning and afternoon shifts of 8 a.m. to 1 p.m. and 1 p.m. to 8 p.m. with an hour off for supper and alternate Saturdays). The principal problem was encountered on the morning shift when some salesmen would report for sales meetings and then leave for breakfast during scheduled floor time and possibly leaving for lunch between 11:30 and 12:30 just before getting got off at 1. Respondent had scheduled two or three men on the floor at all times, but the men might leave only one man to "cover" the floor. This was an abuse to the Employer that clearly could be remedied.

The employees have a great deal of free time while they are on assigned floor duty. Food and refreshment is provided on the premises and the employees can partake at their convenience. There is simply no need for them to leave the premises during the 5-hour morning shift. During the evening shift they have a supper break and, of course, there are no limitations on employees leaving the premises to meet bona fide customers or attend to company business.

The matter got lax under George Riley as sales manager. George Boots had been strict about it earlier and the new manager, Fitzwilliam, wanted to control the time better.

D. *Allegations of Specific 8(a)(1) Violations*

The General Counsel lists 20 allegations of independent 8(a)(1) violations of the Act in the complaint and notice of hearing combined with the notice of intent to amend complaint. As the validity of each allegation turns upon the credibility of the witnesses for the General Counsel and, as they are specifically not credited, I shall not list the allegations.

I find those to be supervisors within the meaning of the Act who allegedly did or said certain things.

In considering the testimony involving these allegations, I have taken into account the intelligence, knowledgeableness, sophistication, and worldliness of these new and used car salesmen and supervisors as these characteristics surfaced during the examination and cross-examination.

I specifically do not credit the witnesses for the General Counsel as to the specific allegations of violations of Section 8(a)(1) of the Act, and accordingly find there is no clear and convincing credible evidence adduced by the General Counsel to establish these allegations by a preponderance of the evidence, and they all will be dismissed.

E. *The Alleged 8(a)(5) Violation*

The General Counsel of the Board alleged that by refusing to recognize and bargain with the Union on February 2, 1973, and by the actions taken by Respondent related in paragraphs 10(d) through (i) above, and by its conduct set out in paragraphs 9 and 10 (in view of the fact that the Union had a majority of the employees in an appropriate unit since January 26, 1973) the Respondent had violated Section 8(a)(5) of the Act.

There is no merit to this allegation and it will be dismissed.

The facts are that the unit of the employees was not described in the Union's letter dated January 29, 1973, and, additionally, without waiting for a reply from the Employer, the Union filed the petition for an election. An Employer may await the results of an election before bargaining without violating the Act particularly where, as here, he had not committed any other unfair labor practices. Inasmuch as it is only *now* determined that the Union is the collective-bargaining representative of the above appropriate unit, and I am recommending that it be so certified, I will dismiss this allegation of the complaint. When the Union is certified, Respondent will be obligated to bargain in good faith with it, but there is nothing to hinder it from commencing to bargain now.[7]

Upon the foregoing findings and conclusions and upon the entire record, I make the following:

CONCLUSIONS OF LAW

1. Employer is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.
3. Respondent is the successor to Employer within the meaning of the Act and there was no cessation of business at any time in the transfer.
4. The Union is a labor organization within the meaning of Section 2(5) of the Act.
5. The challenges to the ballots of Capps and Martin have merit in Case 17–RC–7077, and the Union won the election held on March 27, 1973, by a vote of eight for to six against with one additional challenged ballot not ruled on. The appropriate unit of employees is:

> All new and used automobile and truck salesmen including finance and insurance salesman and appraiser-salesman of the Pat O'Connor Chevrolet-Buick-GMC Co., Inc., of Sedalia, Missouri, but excluding office clerical employees, corporate officers, new car sales manager, used car sales manager, professional employees, guards and supervisors as defined in the Act and all other employees.

6. The alleged violations of the Act in Case 17–CA–5505 were not established by a preponderance of the evidence.

[7] Determined to give justice, the good man makes fairness the touchstone of everything he does. (See Psalms 99:4, The Living Bible, Paraphrased.)

THE REMEDY

Case 17–RC–7077

Inasmuch as the Union won the election for certification as the collective-bargaining representative for the employees of Respondent in the above appropriate unit, it is hereby recommended that it be so certified by the Board.

Case 17–CA–5505

Upon the foregoing findings of fact and conclusions of law and the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following:

ORDER[8]

The complaint is dismissed in its entirety.

[8] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the Board, the findings, conclusions and Order herein shall, as provided in Section 102 48 of the Rules Regulations, be adopted by the Board and become its findings, conclusions and Order and all objections thereto shall be deemed waived for all purposes