Wells Fargo Armored Service Corporation *and* International Guards Union of America, Local 66. Cases 27–CA–10984 and 7–CA–11092

December 31, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On August 29, 1990, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions; to modify the remedy; and to adopt the recommended Order.

We agree with the judge that the Respondent violated Section 8(a)(5) of the Act by refusing to recognize the Union as the exclusive collective-bargaining representative of its employees in the expanded unit, including the ''Globed''[1] vault guards, and by refusing to bargain on that basis. We do not agree that the ''Globed'' employees come automatically under the terms of the collective-bargaining agreement negotiated by the parties covering the driver and messenger guards. To do so would be contrary to *H. K. Porter Co. v. NLRB*,[2] in which the Supreme Court held that the Board may require the parties to bargain, but it may not compel them to agree to any particular collective-bargaining provisions.

Contrary to the judge, we find that the appropriate remedy is that the parties bargain over the terms and conditions of employment of the newly represented employees. Accordingly, we modify that part of the judge's remedy that requires application of the existing contract to the newly represented employees.[3]

[1] *Globe Machine Co.*, 3 NLRB 294 (1937). We note that no objections were filed to the self-determination election, and the Respondent never filed a request for review with the Board. We agree with the judge that the Respondent is precluded from raising alleged errors in the conduct of the representation election as a defense in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(b) of the Board's Rules. In these circumstances, we find it unnecessary to pass on the judge's finding that the alleged errors would not warrant setting the election aside had proper objections been filed.

[2] 397 U.S. 99, 102 (1970). See also *Southern Indiana Gas Co.*, 284 NLRB 895 (1987), enfd. 853 F.2d 580 (7th Cir. 1988); and *Federal Mogul Corp.*, 209 NLRB 343 (1974).

[3] The judge inadvertently did not include this part of his remedy in his conclusions of law and recommended Order. Accordingly, we do not need to modify those portions of his decision.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Wells Fargo Armored Service Corporation, Denver, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Michael T. Pennington, for the General Counsel.
Thomas P.G. Franklin, of Atlanta, Georgia, for the Respondent.
Joseph M. Goldhammer, of Denver, Colorado, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Denver, Colorado, on March 6, 1990,[1] pursuant to an order consolidating cases, consolidated complaint and notice of hearing issued by the Regional Director for the National Labor Relations Board for Region 27 on February 12, 1990, and which is based on charges filed by International Guards Union of America, AFL–CIO (Union or Charging Party) on July 28 (27–CA–10984) and October 19 (27–CA–11092). The complaint alleges that Wells Fargo Armored Service Corporation (Respondent) has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

Issue

Whether Respondent has unlawfully refused to bargain with the Union with respect to certain employees employed at Respondent's Denver facility: vault custodians, dispatchers, coin room, and turret guards; all parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of General Counsel and Respondent.

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

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits that it is a Delaware corporation engaged in the business of providing armored car services to commercial customers and financial institutions and having an office and place of business located in Denver, Colorado. It further admits that during the past year, in the course and conduct of its business it has provided services valued in excess of $50,000 directly to other enterprises within the State of Colorado, which other enterprises are directly engaged in interstate commerce. Accordingly it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] All dates herein refer to 1989 unless otherwise indicated.

II. THE LABOR ORGANIZATION INVOLVED

I find that International Guards Union of America, Local 66 is a labor organization within the meaning of Section 2(5) of the Act (Jt. Exh. 9).

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *The Facts*

On August 31, 1972, the Board issued a Certification of Representative (G.C. Exh. 5) in Case 27–RC–4330, by which the Union was certified as the exclusive collective-bargaining representative for a unit of Respondent's employees described as follows:

> All regular full and regular part-time guards employed by the Employer in both the courier or armored car operations in its Denver, Colorado office; excluding office clerical employees and supervisors as defined in the Act, and all other employees.

Thereafter, by mutual agreement, the parties modified the unit description to read, ''all hourly paid guard employees, being driver guards, messenger guards and guards.'' (Hereafter called truck guards.) (Jt. Exh. 9, art. 1, sec. 1.)

After certification, the parties reached agreement on a collective-bargaining agreement. Over the years, subsequent agreements followed. The agreement, effective between January 17, and November 1, 1987, is in the record (Jt. Exh. 9).

On or about March 23, the Union filed a petition in Case 27–RC–6947 seeking to represent a group of Respondent's ''unrepresented guard employees working out of the Denver, Colorado branch office including those in the vault, turret and coin room.'' The Union requested that a ''*Globe* self-determination election be held, so as to ascertain the desires of the unrepresented employees'' to be included in the existing unit of driver guards, messenger guards, and other guards presently certified in Case 27–RC–4330 (truck guards) (G.C. Exh. 6).

In a Decision and Direction of Election issued on May 5, the Regional Director for Region 27, determined that the following employees of Respondent constitute an appropriate voting group:

> All vault custodians, vault custodians/dispatchers, coin room and turret guards employed at the Employer's Denver branch facility (hereafter called vault guards).

Accordingly, the above-described employees would be permitted to vote in a *Globe* self-determination election on whether they wished to be represented by the Union as part of the existing guard unit (Jt. Exh. 6, p. 5).

On June 2, an election was held in which the vault guards, approximately 14 were allowed to vote (Jt. Exh. 12, par. 3). A majority of employees selected the Union as their collective-bargaining representative (G.C. Exh. l(s), par. 7). No objections were filed to the conduct of the election (Tr. 104–105, 107).

On June 7, the Union sent a letter to Respondent which reads as follows:

> June 7, 1989
>
> Thomas P.G. Franklin
> Assistant Vice President
> Wells Fargo Armored Service Corp.
> P.O. Box 4313
> Atlanta, GA 30302
>
> Re: IGUA 66 and Wells Fargo Armored Service Corp. Boulder negotiations and negotiations for vault guards, turret guards, and coin room guards
>
> Dear Mr. Franklin:
>
> On June 7, 1989, Errol Rafsky called me and asked me to contact you to inform you that he wishes to negotiate with Wells Fargo Armored Service Corp. in regard to the Boulder guards as well as the vault guards, turret guards, and coin room guards which have been newly incorporated into the Denver unit.
>
> Please contact Mr. Rafsky directly to set a time and date for such negotiations.
>
> Thank you very much.
>
> Very truly yours,
> /s/ Joseph M. Goldhammer
> Joseph M. Goldhammer
>
> cc: Errol Rafsky [Jt. Exh. 10.]

On June 12, the Regional Director for Region 27 issued a ''Certification of Representative'' certifying the Union as the exclusive bargaining representative of an appropriate unit, consisting of, ''all vault custodians, vault custodian/dispatchers, coin room and turret guards [vault guards] employed at the Employer's Denver branch facility . . .'' (Jt. Exhs. 4, 12, par. 4).

On June 13, Respondent sent a letter and a bargaining proposal to union representatives. The letter reads as follows:

> June 13, 1989
>
> Mr. Bob Muskie
> c/o Wells Fargo Armored Service Corporation
> 970 Yuma Street
> Denver, CO 80204
>
> RE: DENVER VAULT, COIN AND TURRET
>
> Dear Mr. Muskie:
>
> I just received confirmation that we will meet on June 26, 27, 28 and 29. We should start at 1:00 PM on the afternoon of the 26th. We can begin at 9:00AM on the 27th–29th. I will let you and Dayle [sic] will arrange the room.
>
> I am attaching a copy of my initial proposal. Since we just concluded the Boulder negotiations, I feel like most of the language we agreed to in that Agreement can be agreed to for this unit. I have divided the contract into economic and non-economic issues. I have highlighted the changes that I have made. The rest of the language is the same. I hope you are in agreement with my thoughts on the bulk of this language. If you are in agreement, we will be able to concentrate on the economic issues during these meetings.

Looking forward to being in Denver again.

Sincerely,

WELLS FARGO ARMORED SERVICE CORPORATION
/s/ Thomas P.G. Franklin
Thomas P.G. Franklin
Assistant Vice President
Labor Relations

Attachment [Jt. Exh. 11.]

Respondent's bargaining proposal enclosed with the letter recited above described the unit covered by the bargaining proposal as ''all vault custodians, vault custodian/dispatchers, coin room and turret guards'' (p. 3). The document also proposed expiration on July 1, 1992 (Jt. Exh. 11, Proposal, p. 36). No mention was made of the earlier certified unit involving the truck guards whose labor agreement expired on November 1.

On June 26, the parties met to begin negotiations. The Union was represented by its attorney, Joseph Goldhammer, Union Vice President Errol Rafsky, and two others. Both Goldhammer and Rafsky testified for the General Counsel in the instant case. Respondent was represented by its Attorney Thomas P. G. Franklin and three other officials. None of Respondent's negotiators testified at hearing.

The session lasted between 30 and 45 minutes. Respondent took the position that it was willing to negotiate only if the vault guards were considered a separate appropriate unit, a position contrary to the Regional Director's May 5 Decision and Direction of Election, but consistent with the Regional Director's June 12 Certification of Representative. The Union took the position that there was a single unit, described as the existing Denver bargaining unit (truck guards), now augmented by the addition of the vault guards. Because neither side agreed to bargain unless the other side accepted its definition of the appropriate unit, little was accomplished on June 26.

On the following day, June 27, the Regional Director sent a letter to the parties which reads as follows:

June 27, 1989

International Guards Union of America
1815 South Oswego Street
Aurora, Colorado 80012

Re: Wells Fargo Armored Service Corp.
Case 27–RC–6947

Gentlemen:

The document entitled ''Certification of Representative'' sent to you by the undersigned in the above matter on June 12, 1989, was issued in error. The enclosed document entitled ''Certification of Results'' is what should have issued on that date. By this letter the ''Certification of Representative'' issued on June 12, 1989, is revoked and the enclosed ''Certification of Results'' becomes effective.

Very truly yours,
/s/W. Bruce Gillis, Jr.
W. Bruce Gillis, Jr.
Regional Director

Enclosure
[Jt. Exh. 5.]

The ''Certification of Results of Election'' enclosed with the June 27 letter stated in pertinent part:

> IT IS HEREBY CERTIFIED that the said organization [Union] may bargain for the employees in the above-named category [vault guards] as part of the group of employees which it currently represents at the Employer's Denver Branch. [Jt. Ex. 3.]

Respondent did not object to the correction.

On June 29, the Union sent a letter to Respondent which reads as follows:

June 29, 1989

Mr. Thomas P.G. Franklin
Wells Fargo Armored Service Corporation
P.O. Box 4313
Atlanta, GA 30302

Re: Negotiations between IGUA 66 and Wells Fargo Armored Service Corporation

Dear Tom:

This letter will serve to confirm our discussion at the negotiating session held at the Super-8 Motel on 6th and Federal in Denver, Colorado on the afternoon of June 26, 1989.

Basically, in that discussion, I stated the union's position that we were bargaining for the purpose of making additions and changes to the existing bargaining agreement between IGUA 66 and Wells Fargo Armored Service Corporation of Denver, Colorado because the recently held election served to include the turret guards, coin room guards and vault guards within the same bargaining unit as the driver guards, messenger guards and guards.

You stated your position that we were bargaining for a separate agreement and that somehow the turret guards, vault guards and coin room guards were a separate entity of employees for which a separate contract must be bargained.

I stated that the union was unwilling to waive the National Labor Relations Board's determination that the vault, coin room, and turret guards were to be included in the existing unit of truck guards. You refused to bargain with us on the basis that the newly represented employees would be covered under the same agreement as the existing represented employees.

If this letter does not fairly state the positions of the parties as expressed at our negotiating session of June 26, 1989, you should let me know immediately. Furthermore, if your position changes at any time that you will not bargain for inclusion of all of the represented guards in the Denver facility under the same agreement, you should let me know.

I will file a charge with the National Labor Relations Board alleging the company's refusal to bargain on the basis of the Board's certification in Case No. 27–RC–6947. We will maintain that charge unless you agree to bargain for the newly represented guards employees to be included under the game bargaining agreement and within the same unit as the existing truck guards.

Very truly yours,

/s/Joseph M. Goldhammer
Joseph M. Goldhammer

cc: Errol Rafsky
[Jt. Exh. 2.]

Respondent did not respond to this letter.

On July 10, Goldhammer sent Franklin a follow-up letter, which reads as follows:

July 10, 1989

Thomas P.G. Franklin
Assistant Vice President
Wells Fargo Armored Service Corp.
P.O. Box 4313
Atlanta, GA 30302

Re: Wells Fargo Armored Service Corporation
Case No. 27–RC–6947

Dear Tom:

I am in receipt of a letter dated June 27, 1989 from Bruce Gillis, Regional Director of Region 27, revoking the certification of representative issued in the above-referenced case on June 12, 1985 [sic] and issuing a certification of results dated June 27, 1989. The new certification of results certifies that International Guards Union of America may bargain for the vault guards, coin room and turret guards as part of the group of employees which it currently represents at the employer's Denver branch. Thus, you must bargain with us to determine which provisions of the existing contract may or may not be applicable to the new employees in the bargaining unit. You must also bargain for modifications and additions to the existing contract to accommodate the new employees in the unit. We are not seeking any modifications to the contract as it applies to the truck guards.

This is a demand for you to bargain on that basis. You refused to bargain on that basis on June 26, 1989. If I do not hear from you within seven days of the date of this letter I will assume that you are maintaining the position that you took at the June 26, 1989; bargaining session and that you are refusing to bargain with us on the basis delineated above.

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

cc: Errol Rafsky
opeiu 5 [Jt. Exh. 1.]

Again, Franklin did not reply.

On September 26, the parties met to begin negotiating for a new agreement to replace the existing agreement for truck guards due to expire on November 1. Rafsky represented the Union and Franklin the Respondent. The parties exchanged bargaining proposals (G.C. Exh. 2—Union's proposal, G.C. Exh. 3—Employer's proposal). At this time Rafsky attempted to bargain with respect to a unit of Boulder, Colorado guards and with respect to the vault guards. Franklin refused to bargain over both groups, saying first that the Boulder unit was separate, a contention which Rafsky accepted. As to the vault guards, Franklin stated that he wanted to wait until the Board hearing to resolve several questions he had.

Eventually, the parties agreed and executed on November 1, a new collective-bargaining agreement for the truck guards, with the understanding if the Union won the instant case before the Board, the vault guards would be added to the recognition clause of the new agreement, and bargaining would commence with respect to the newly added employees.

B. *Analysis and Conclusions*

I begin with the case of *NLRB v. Southern Indiana Gas Co.*, 853 F.2d 580, 581 (7th Cir. 1988), which explains a *Globe*[2] election as one where fringe group employees are accorded the opportunity to choose between being represented as their own distinct group or being represented as part of the existing larger unit. See also *Warner-Lambert Co.*, 298 NLRB 993 (1990).

In his Decision and Direction of Election of May 5 (Jt. Exh. 6), the Regional Director determined that the vault guards were an appropriate voting group and directed that a *Globe* election determine whether the vault guards desired to be represented by the Union as part of the existing guard unit. The final page of Joint Exhibit 6 shows unequivocal notice to Respondent of the May 5 decision.

After the Union won the *Globe* election on June 2, the Regional Director erred by first issuing on June 12 a ''Certification of Representative.'' On June 27, the error was corrected with the issuance of a ''Certification of Results'' (Jt. Exhs. 3, 5). Between these two dates Respondent took the position which it continues to assert in this case that the vault guards are a separate unit and not part of the existing unit of truck guards. This position was contrary to the Decision and Direction of Election noted above. It was also contrary to the Certification of Results.

In the face of the uncontested facts, I find that General Counsel has established a prima facie case that Respondent violated Section 8(a)(1) and (5) of the Act, by refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the vault guards as part of the preexisting unit. *Southern Indiana Gas Co.*, 284 NLRB 895 (1987); *Federal Mogul Corp.*, 209 NLRB 343 (1974); *Abex Corp.*, 215 NLRB 665 (1974), enf. denied 543 F.2d 719 (9th Cir. 1976).

Respondent contends that as a result of certain deficiencies caused by the Board agent who conducted the *Globe* election, voters were misled into believing they were voting on the question whether they desired the Union to represent them as a separate bargaining unit and not as part of the preexisting unit. Before considering this and other arguments advanced by Respondent, I turn to applicable law.

> Ballots cast under the safeguards provided by Board procedure [presumptively] reflect the true desires of participating employees. . . . Thus, the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one. . . . specific evidence is required showing not only that unlawful acts occurred, but also that they interfered with the employees exercise of free choice to such an extent that they materially affected the results of the election. *Kux Mfg. Co. v. NLRB*, 890 F.2d 804 (6th Cir. 1989). Another court has

[2] *Globe Machine Co.*, 3 NLRB 294 (1937).

> put the test in slightly different terms: ''not whether optimum practices were followed, but whether on all the facts, the manner in which the election was held raises a reasonable doubt as to its validity . . . . An election will be set aside only where the defect significantly impaired the election process. *Nightingale Oil Co. v. NLRB*, 905 F.2d 528, 531 (1st Cir. 1990).

With these principles of law in mind, I turn to the central issue in this case which concerns the notice of election and ballot. The former is contained in the record and reads in pertinent part:

> Voting Unit
>
> THOSE ELIGIBLE TO VOTE
> All vault custodians, vault custodian/dispatchers, coin room and turret guards employed at the Employer's Denver branch facility, who were employed during the payroll period ending May 5, 1989. [Jt. Exh. 8.]

The notice does not advise voters that the union representation which they may or may not desire will be part of an existing unit of truck guards as opposed to a separate unit. The parties have agreed that the ballot used in Case 27–RC–6947 contained the exact wording as used in the Notice of Election (Jt. Exh. 12, p. 3, par. 11).

Respondent contends that a fair reading of the notice and ballot would convey to a reasonable voter that the Board was conducting a normal representation election and not a *Globe* election. In its brief (p. 12, fn. 4), General Counsel does not concede the notice was misleading, although he states, ''more precise notice language might have been useful in precluding the possibility of confusion . . . .''

Citing the case of *Athbro Precision Engineering Corp.*, 166 NLRB 966 (Br. p. 5), Respondent contends that the error of the Board agent in drafting the language in the notice and ballot tended to destroy confidence in the Board's election process or could reasonably be interpreted as impugning the election standards the Board seeks to maintain.

In *Rochester Joint Bd., Textile Workers v. NLRB*, 896 F.2d 24, 27 (2d Cir. 1990), the court noted the case of *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967), vac. sub nom. *Electronic Workers IUE v. NLRB*, 67 LRRM 2261 (D.C. Cir. 1968), acquiesced in 171 NLRB 21 (1968), enfd. *NLRB v. Athbro Precision Engineering Corp.*, 423 F.2d 573 (1st Cir. 1970), which, the court explained, does not establish any per se rule that representation elections must be set aside following any procedural irregularity. Rather, the disputed conduct must be assessed on a case by case basis. In *Rochester* the court affirmed the Board's refusal to order another election because the Board agent had prematurely disclosed to the Union the results of the Regional Director's Decision and Direction of Election finding the multiplant unit to be appropriate. The premature disclosure enabled the Union to distribute handbills proclaiming that the Board had ruled in its favor; however, there was no evidence that the outcome of the election had been affected by the premature disclosure.

In the instant case, I assume without finding that the notice and ballot in issue did not properly convey to voters that they were deciding whether to become a part of an existing unit rather than a separate unit. Yet, I cannot find that such alleged error was sufficiently prejudicial or material to warrant setting the election aside. Compare *NLRB v. State Plating Co.*, 738 F.2d 733, 742 (6th Cir. 1984), and *Hudson Aviation Services*, 288 NLRB 870 (1988).

In *Nightingale Oil Co. v. NLRB*, supra, 905 F.2d at 531–532, the employer complained to the court that the election process was impaired because of an election procedure by which drivers, clericals, and servicemen were allowed to vote in a representation election. The Board agent challenged and segregated the ballots of the drivers and clericals and all votes were impounded pending the outcome of the Board's review of the unit determination. After the election, only the votes of the servicemen were opened and counted as they were found to constitute the appropriate unit. On appeal, the employer claimed that the procedure of allowing the drivers and clericals to vote effectively changed the scope of the unit from that described in the notice of election ''all full-time and regular part-time . . . servicemen . . . excluding all other employees.'' After discussion, the court rejected the employer's contention finding it unlikely that concern or confusion over the scope of the unit affected the vote (id at 533). See also *NLRB v. Sauk Valley Mfg. Co.*, 486 F.2d 1127, 1132 (9th Cir. 1973). (Notice incorrectly implied that an employee has an absolute right to decline to join a union, where in fact this right may be limited where a security clause is negotiated. No basis found to set aside representation election.)

Similarly, in the instant case, I find no credible evidence to show based on an objective standard that the vote of any vault guard in the *Globe* election was likely to have been affected as a result of the alleged confusion caused by the wording of the notice and ballot. [3]

The conclusion that Respondent's argument lacks merit is made more compelling by the fact that Respondent never objected or sought clarification regarding the notice and ballot at issue. The Decision and Direction of Election of May 5 (Jt. Exh. 6) clearly stated that a *Globe* self-determination election will permit the [vault guards] to vote on whether they wish to be represented by [the Union] as part of the existing guard unit (Jt. Exh. 6, p. 5). Respondent must have perceived a discrepancy between Joint Exhibit 6 and the notice and ballot. I cannot speculate why Respondent failed to act before the election but I do find that it is too late to do so in this proceeding. See *Nightingale Oil Co. v. NLRB*, supra, 905 F.2d at 534.

''It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See *Pittsburgh Glass Co. v. NLRB*, 313 U.S. 146, 162; Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.'' *St. Francis Hospital*, 271 NLRB 948, 949 (1984). Section 102.67(f), referred to above, provides:

> (f) The parties may, at any time, waive their right to request review [of a Regional Director's Decision and

[3] Respondent claims (R. Br. p. 7) that the notice of election was not in accord with the Board's Casehandling Manual, I decline to consider this argument in light of the fact that the Casehandling Manual is not legal authority binding on either the General Counsel or the Board. *Kirsch Drapery Hardware*, 299 NLRB 363 (1990); *Joio's Restaurants*, 282 NLRB 1285, 1288 fn. 12 (1987); *Kanakis Co.* 293 NLRB 435 fn. 3 (1989) (Chairman Stephens, dissenting), and see G.C. Exh. 7.

> Direction of Election]. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the Regional Director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

Cf. *Power Packaging Corp.*, 299 NLRB No. 52, fn. 1 (Aug. 9, 1990) .

I further find that the erroneous ''Certification of Representative'' is of no assistance to Respondent. ''The Board has consistently held that certifications are subject to reconsideration and that it may police its certifications by amendment, clarification, or even revocation.'' Morris, *The Developing Labor Law* 411–412 (2d ed. 1983).

In the alternative, Respondent raises two issues which are equally devoid of merit. First, Respondent contends that it never refused to bargain. Instead on September 26, according to Respondent, the parties agreed to negotiate a contract for the Denver messenger guards and driver guards and leave the issue of the [vault] guards until after the unfair labor practice case was resolved (Br. p. 14). No such agreement was ever reached. Instead, Rafsky decided to accept Respondent's ultimatum that if the Union desired a new agreement for the truck guards, it would have to abandon its demand that Respondent bargain over the newly added vault guards. If there was not a new agreement for the truck guards by November 1, Respondent threatened to implement its final proposal which contained many provisions not favored by the Union. Prior to November 1, each time Respondent and the Union met to resume bargaining for the truckdrivers Rafsky asked Franklin if he would bargain over the vault guards, and each time Franklin refused.

Besides the lack of agreement with the Union to defer bargaining for the vault guards, I note in agreement with the General Counsel that the pendency of unfair labor practices or other collateral litigation does not relieve an employer of its duty to bargain with the Union. *Bob's Big Boy Restaurant*, 264 NLRB 432, 434 (1982).

Finally, Respondent contends that to have bargained with the Union here may have subjected it to charges that it was bargaining with a union which did not represent an uncoerced majority of employees. Respondent cites no cases in support of its claim of potential jeopardy. Nor is its argument persuasive. In light of Respondent's failure to file any objections to the election to preserve its position, I reject Respondent's argument.

In sum, I find that since June 27, the date on which the ''Certification of Results'' issued, Respondent has violated and continues to violate Section 8(a)(1) and (5) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent and the Union set forth above have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to industrial strife burdening and obstructing the free flow of commerce.

CONCLUSIONS OF LAW

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

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

3. Since June 27, the unit set forth below in paragraph 4, constitutes a single bargaining unit inclusive of Respondent's vault guards, appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, Local 66 has been the exclusive collective-bargaining representative of the employees in the expanded, single unit, which is :

> All hourly paid guard employees, being driver guards, messenger guards and guards plus all vault custodians, vault custodian/dispatchers, coin room and turret guards employed at the Employer's Denver branch facility; excluding all non-guard employees, office clericals and supervisors as defined in the Act.

5. By failing and refusing to accept the vault guard employees as part of the existing bargaining unit subsequent to the Regional Director's issuance of a Certification of Results of Election, and by failing and refusing to bargain collectively over terms of particular applicability to these newly added employees in good faith, with the Union as the exclusive representative of the Respondent's employees in the appropriate unit, Respondent has engaged in, and is engaging in, unfair labor practices affecting the meaning of Section 8(a)(5) and (1) of the Act.

THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices, I find it necessary that it be ordered to cease and desist, and to recognize the vault guard employees as part of the existing unit, subject to its mutually applicable terms and, on request, bargain collectively with the Union, with respect to terms of particular applicability to these employees.

In addition, it appears that since June 27 the Respondent's vault guard employees may have been deprived of contractual benefits common to all other unit employees as a result of the Respondent's arbitrary and capricious failure and refusal to include them within the general terms of the existing agreement and its failure to bargain over specifically applicable terms of employment and, accordingly, it shall be required to give retroactive effect to all terms, including those subsequently negotiated with respect to specifically applicable terms, including wages, and make these employees whole for any such loss suffered as a result of the Respondent's illegal practices in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

[4] 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.

ORDER

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

1. Cease and desist from

(a) Failing and refusing to recognize its vault guard employees as part of the existing unit of truck guards represented by Local 66, International Guards Union of America.

(b) Failing and refusing to bargain collectively with Local 66 over the terms and conditions of employment applicable to the vault guard employees, newly included in the unit.

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

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

(a) Recognize Local 66, International Guards of America as the exclusive bargaining representative of its employees in the following single unit:

> All hourly paid guard employees, being driver guards, messenger guards and guards plus all vault custodians, vault custodian/dispatchers, coin room and turret guards employed at the Employer's Denver branch facility; excluding all non-guard employees, office clericals and supervisors as defined in the Act.

(b) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit described in paragraph 2(a) above, and, if an agreement is reached, embody it in a written and signed contract.

(c) Post at its Denver, Colorado plant copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to recognize our vault custodian employees as part of the existing unit of truck guards represented by Local 66, International Guards Union of America.

WE WILL NOT fail and refuse to recognize and to bargain with the Union as the exclusive representative of the employees in the unit set forth below concerning terms and conditions of employment applicable to the vault guard employee newly included in the unit and, if an agreement is reached, embody the understanding in a signed agreement.

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

WE WILL recognize the Union as the exclusive bargaining representative of our employees in the single unit set forth below:

> All hourly paid guard employees, being driver guards, messenger guards and guards plus all vault custodians, vault custodian/dispatchers, coin room and turret guards employed at the Employer's Denver branch facility; excluding all non-guard employees, office clericals and supervisors as defined in the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

WELLS FARGO ARMORED SERVICE CORPORATION