AT Systems West, Inc. (formerly known as Armored Transport, Inc.) *and* International Union, Security, Police and Fire Professionals of America, Local 100 (SPFPA), f/k/a International Union, United Plant Guard Workers of America, Local No. 100. Case 31–CA–24906

January 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On September 28, 2001, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed an answering brief in opposition to the General Counsel's and Charging Party's exceptions.[1]

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[2] and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent did not violate Section 8(a)(5), (2), and (1) of the Act by withdrawing recognition from the Union and thereafter entering into a collective-bargaining agreement with a different labor organization. The judge also found that the Respondent did not violate Section 8(a)(1) by allegedly threatening an employee with unspecified reprisals for speaking favorably about the Union. We disagree.

For the reasons set forth below, we find that the Respondent's withdrawal of recognition was unlawful, first, because there was a nexus between the employees' disaffection with the Union and the Respondent's unremedied unfair labor practices, and second, because the Respondent withdrew recognition at a time when it was obligated to bargain with the Union for a reasonable period following a settlement agreement. We also find that the Respondent subsequently violated Section 8(a)(2) by recognizing, and entering into a collective-bargaining agreement with another labor organization while the Union was the exclusive representative of the Respondent's employees. Finally, we find that the Respondent's threat to an employee violated Section 8(a)(1) of the Act.

Factual Background

The Respondent is a multistate armored car company engaged in the business of transporting and warehousing cash and other valuables for banks, retail stores, and similar businesses. This case involves the bargaining unit at the Respondent's Sacramento branch.

Beginning in the early 1980s, employees formed a labor organization known as Armored Transport Sacramento Employees Association (ATSEA). ATSEA signed collective-bargaining agreements with the Respondent covering the Sacramento employees. However, in 1985, the employees selected CASHA (the Union) in a Board-conducted election. In 1986, also in a Board election, the employees voted to decertify CASHA as the employees' bargaining representative. Thereafter, the employees reformed ATSEA, which through the mid-1990s signed collective-bargaining agreements with the Respondent, including a 3-year contract in 1995. In 1998, the employees again selected CASHA in a Board-conducted election.[3] At that time, CASHA also represented the Respondent's employees in several other California locations.

In July 1998, the Respondent began face-to-face negotiations with the Union concerning seven or eight of the Respondent's branches, including Sacramento. No collective-bargaining agreement was reached for the Sacramento unit. On March 3, 1999, the Respondent sent specifically tailored letters to unit employees at each of its Sacramento, Oakland, and Ventura facilities entitled "Don't Blame Us."

The letters began by stating that the Respondent "is extremely frustrated over the circumstance that we have gone over 17 months now without a new signed collective bargaining agreement" and pointed out that some employees had gone 3 or 4 years without a pay increase. The letters continued with a chronology of the bargaining to date, and a section entitled "How Can We Move Forward?":

> To move forward everyone needs to recognize that we are all co-workers and that the Company is our Company. Consistent with the preceding thought, we are providing you with a copy of a new proposal we are forwarding to CASHA on an unsolicited basis. Exclusive of compensation, said proposal is essentially iden-

[1] We grant the Respondent's request that the Board take administrative notice of the settlement agreement at issue in this case.

[2] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] Although the Union has changed names several times since it was certified by the Board as the Sacramento employees' 9(a) representative in July 1998, there is no dispute as to its identity or labor organization status.

> tical to the implemented contract in Los Angeles and Orange as well as the Company's last proposal concerning Oakland [Ventura and Sacramento]. With respect to compensation, the Company's proposal will result in wage increases ranging from $1.80 per hour to $2.95 per hour in the first year. [Emphasis in original.]

The letters suggested five courses of action the employees could take:

> 1. Demand that the union sign the enclosed proposal.
>
> 2. Demand that the union let you actually vote on the proposal and that they sign the proposal if a majority favor the proposal.
>
> 3. Go to the NLRB and request a new election because you no longer desire to be represented by people from Orange or Los Angeles or Blackfoot, Idaho (?).
>
> 4. Go to the NLRB and demand a new election because you are of the opinion you were misled (or deceived) by CASHA and you never agreed that UPGWA was a union you want to belong to.
>
> 5. Establish in some creditable fashion to Company management that CASHA (or is it UPGWA?) does not represent a majority of people in the Oakland [Sacramento, or Ventura] branch.

Appended to the letters were contract proposals that the Respondent was simultaneously providing—for the first time—to the Union.

On April 27, May 10, and June 10, 1999, the Respondent distributed to employees at all three facilities followup letters, restating the same points and stressing that the Union still had not signed a contract despite the increased wages that the contract would have provided. The letters specified the increased rates of compensation that the employees would have received had the Union agreed to the Respondent's contract proposal. The letters also warned employees of the consequences that could befall them in the event of a strike.

The Union filed unfair labor practice charges over the Respondent's March through June letters. In *Armored Transport, Inc.*, 339 NLRB No. 50 (2003), the Board found that by sending employees the letters with attached contract proposals, which proposals the union had not had an opportunity to review, the respondent engaged in unlawful direct dealing in violation of Section 8(a)(5). The Board also found that the respondent unlawfully solicited employees to decertify the union, in violation of Section 8(a)(1), and unlawfully interfered with internal union processes.[4]

In July 1999, the Respondent implemented a new wage scale for the Sacramento unit employees. The Union filed an unfair labor practice charge alleging that this constituted an unlawful unilateral change. While the charge was pending, negotiations continued. On September 9, 1999, after 14 months of unsuccessful bargaining, the Respondent submitted a "last, best and final" proposal for the Sacramento unit, in response to the Union's request.

On September 18, the Union conducted a ratification vote among the Sacramento employees. The tally showed 21 votes against ratification and 20 in favor of it. However, a comparison of this tally to documents each employee signed before voting disclosed that there were two more votes cast than employee documents. Based on this discrepancy, employees objected to the vote; however, union official Troy Nelsen told the employees that one or two votes were not significant enough to warrant a revote. On November 14, 1999, the Respondent implemented the terms of its final offer.

In December 1999, the Union and the Respondent entered into an informal Board settlement agreement regarding the July 1999 unilateral wage increase. Under the terms of the settlement agreement, the Respondent agreed that it would not unilaterally implement new wages and that it would, on request, meet and bargain with the Union. The settlement agreement, which contained a nonadmission clause, also required that the Respondent post a notice to employees for 60 days.

Following execution of the settlement agreement (and during the posting period of the settled charge), the Union wrote the Respondent three times in early 2000 specifying proposals for the various California facilities, including Sacramento. On February 28, the Respondent wrote the Union stating that it was willing to engage in "meaningful good faith bargaining."

In early March, several Sacramento employees, who had been active on behalf of ATSEA, began soliciting unit employees to oppose continued union representation. The ATSEA solicitors told employees that their signatures were needed so that the Union would no longer represent them, and to demonstrate their support for the agreement that the Respondent previously had implemented. Twenty-nine of approximately 48 unit employees signed this document.

On about March 17, 2000, employee Robert Elliot turned over the list of signatures, with a cover sheet, to

[4] Chairman Battista did not find a separate violation based on the interference with internal union processes allegation.

the Respondent's branch manager, Armes.[5] The cover sheet stated:

> We the employees of Armored Transport Sacramento would like to sign the current Implemented labor agreement. We as a [sic] employee group voted to no longer be represented by CASHA. And have chosen to represent ourselves in further contract negotiations. The attached is a list of signatures confirming our vote.

Upon receiving the document, Armes sent it to the Respondent's regional vice president, Eimer, who forwarded it to Respondent's president Irvin. Based on these documents, the Respondent concluded that the Union no longer represented a majority of its Sacramento employees and withdrew recognition. The Respondent did not inform the Union of the withdrawal.

Following its withdrawal of recognition, the Respondent recognized and bargained with the designated representatives of ATSEA. After one bargaining session, the Respondent entered into a collective-bargaining agreement with ATSEA on April 10, 2000, for an agreement with an effective term of April 15, 2000, to January 31, 2003.[6]

Employee and Union Steward Jayson Kessinger testified that in about April 2000, sometime after the Respondent had withdrawn recognition from the Union and recognized ATSEA, he was speaking with Assistant Manager Schaffner. Kessinger told Schaffner, "I cannot wait until the Union gets back in power," to which Schaffner replied, "Talk like that will get you in trouble."

The General Counsel alleged that the Respondent violated Section 8(a)(5) by withdrawing recognition from the Union because: (1) the March 2000 employee petition was tainted by the "Don't Blame Us" letters; and, (2) at the time of the withdrawal, there had not been a reasonable time for bargaining after the December 1999 settlement agreement. The General Counsel further alleged that, based on this unlawful withdrawal of recognition, the Respondent unlawfully recognized and bargained with ATSEA, in violation of Section 8(a)(2). Finally, the General Counsel alleged that Schaffner's April 2000 statement to Kessinger constituted an unlawful threat, in violation of Section 8(a)(1).

[5] Three employees signed the cover sheet. The remaining unit employees signed the untitled list that was appended to the cover sheet.

[6] The new agreement made the October 2000 employee wage increase under the former, implemented proposal effective in July 2000 and adjusted the pay rate to reflect additional wage increases over the term of the contract.

The Judge's Decision

The judge found that the Respondent did not violate the Act by withdrawing recognition from the Union or by recognizing ATSEA as the representative of its Sacramento employees. The judge first concluded that the "Don't Blame Us" letters, sent to employees in March, April, May, and June 1999,[7] were too remote in time from the employees' March 2000 petition to have been a cause of it. The judge also noted that the intervening contract ratification vote in September 1999, engendered some employee disaffection because of the possibility that the vote was tainted.

The judge further found that the December 1999 settlement agreement did not preclude the Respondent from lawfully withdrawing recognition from the Union. Although the settlement agreement required the Respondent to bargain in good faith, the judge, relying on the fact that the parties had already bargained for about 17 months prior to the settlement agreement, determined that a reasonable period of time for bargaining had passed. Accordingly, the judge concluded that, based on the employee petition, the Respondent possessed a good-faith doubt of the Union's majority status and therefore the Respondent was free to withdraw recognition from the Union and to recognize and bargain with ATSEA.

Finally, the judge found that the Respondent's remark to employee Kessinger that support for the Union would get him in trouble was an isolated remark and, thus**,** absent any other violations, was de minimis.

We disagree with the judge's findings for the reasons set forth below.

Discussion

1. The Respondent violated the Act by withdrawing recognition from the Union at a time when unfair labor practices were unremedied

The Board has long held that an employer may not withdraw recognition based on employee disaffection if there is a causal nexus between the disaffection and unremedied unfair labor practices. *Olson Bodies, Inc.*, 206 NLRB 779, 780 (1973). As one court has stated, a "company may not avoid the duty to bargain by a loss of majority status caused by its own unfair labor practices." *NLRB v. Williams Enterprises*, 50 F.3d 1280, 1288 (4th Cir. 1995).

Not all unremedied violations will preclude a lawful withdrawal, however. The unremedied unfair labor practices must be of a character as to either affect the union's

[7] The judge's decision states only that the letters were sent in March 1999. However, the record is clear that the letters were sent in April, May, and June as well.

status, cause employee disaffection, or improperly affect the bargaining relationship itself. That is, as stated, there must be a causal relationship between the unfair labor practices and the employees' disaffection with the union. *Master Slack Corp.*, 271 NLRB 78, 84 (1984). In making such a determination, the Board analyzes several factors, including (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on the employees' morale, their organizational activities, and membership in the union. See, e.g., *Saginaw Control & Engineering*, 339 NLRB No. 76 (2003); *Penn Tank Lines*, 336 NLRB 1066 (2001).

Here, the unfair labor practices that must be considered under the *Master Slack* analysis are those found by the Board in its decision, 339 NLRB No. 50 (2003), issued after the judge's decision herein, that the Respondent violated Section 8(a)(5) and (1) of the Act by virtue of the "Don't Blame Us" letters and the attached contract proposals that the Respondent provided Sacramento unit employees from March to June 1999.

The first factor to consider under *Master Slack* is the length of time between the unfair labor practices and the withdrawal of recognition. Here, the unlawful letters and contract proposal were sent in March, April, May, and June 1999. The employees began soliciting signatures to replace the Union in March 2000, and the Respondent withdrew recognition later that same month.[8] Thus, the time between the last of these letters and the disaffection by employees is 9 months. While this span of time is not insubstantial, given the nature of the unfair labor practices, we find that the passage of time reasonably would not dissipate the effects of the Respondent's conduct. As the Board stated in *Bridgestone/Firestone, Inc.*, 332 NLRB 575, 576 (2000), enfd. in relevant part unpublished 47 Fed. Appx. 449 (9th Cir. 2002), solicitations of employees to decertify a union and direct dealing with employees are violations "clearly [ ] of a type that tend to have a lasting effect on employees and cause employee disaffection from a union." Accord *Americare Pine Lodge Nursing*, 325 NLRB 98, 98–99 (1997), enf. denied in relevant part sub nom. *Americare Pine Lodge Nursing & Rehabilitation Center v. NLRB*, 164 F.3d 867 (4th Cir. 1999) (direct dealing in July and August tainted withdrawal of recognition announced in September and made effective in December). Further, here the employees followed precisely that path of decertification that the Respondent urged in the "Don't Blame Us" letters**,** supporting a finding that the employees had not forgotten the Respondent's earlier admonitions.

The second factor to consider is the nature of the unlawful acts, including the possibility of their detrimental or lasting effect on employees. The Board has found that direct dealing reasonably tends to have a lasting effect on employees, and an employer's going over the head of a union "to deal individually with the employees . . . tend[s] inevitably to weaken the authority of the [Union] and its ability to represent the employees in dealing with the Company." *RTP Co.*, 334 NLRB 466, 468 (2001) (citation omitted), enfd. sub nom. *NLRB v. Miller Waste Mills*, 315 F.3d 951 (8th Cir. 2003), cert. denied 124 S.Ct 51 (2003). See also *Bridgestone/Firestone*, 332 NLRB at 576 (solicitation of decertification, direct dealing, promise of benefits likely to undermine support for union). Here, the Respondent presented the employees with contract proposals without affording the Union a prior opportunity to consider the proposals or to bargain. Further, it encouraged employees to decertify the Union if the Union did not accept its proposals, and intruded on internal union processes. Given the nature of these unlawful acts, this factor reasonably would lead to employee disaffection with the Union.

The final two *Master Slack* factors focus on the effect of the unlawful conduct on employees' morale, their organizational activities, and the possible tendency of the unfair labor practices to cause employee disaffection from the union. Direct dealing regarding wages and soliciting employees to decertify a union, are "of a character that reasonably tends to have a negative effect on union membership." *RTP*, 334 NLRB at 469. As the Board has stated, "an employer who engages in efforts to have its employees repudiate their union must be held responsible for the foreseeable consequence of its conduct." *Bridgestone/Firestone,* 332 NLRB at 577 (citation omitted).

The Board has held that it is the objective evidence of the commission of unfair labor practices that has the tendency to undermine the union, and not the subjective state of mind of the employees, that is the relevant inquiry in this regard. *Wire Products*, 326 NLRB 625, 627 fn. 13 (1998), enfd. mem. 210 F.3d 375 (7th Cir. 2000); *Fabric Warehouse*, 294 NLRB 189, 192 (1989), enfd. mem. 902 F.2d 28 (4th Cir. 1990); *C. F. Martin*, 252 NLRB 1192 fn. 2 (1980). Here, the Respondent's direct dealing and solicitation of union decertification reasonably would tend to "minimize[ ] the influence of organized bargaining" and "emphasize[ ] to the employees that

[8] The Respondent acknowledges in its brief that it withdrew recognition in March 2000. After receiving the employees' petition on March 17 the Respondent immediately set about preparing contract proposals to present to the new employee-run labor organization.

there is no necessity for a collective bargaining agent." *May Department Stores Co. v. NLRB*, 326 U.S. 376, 385 (1945).

In sum, the Respondent's unlawful conduct was of a type that reasonably tends to have a negative effect on union membership and to undermine the employees' confidence in the effectiveness of their selected collective-bargaining representative. In light of this conduct it is not surprising that an employee petition rejecting the Union surfaced. *Penn Tank Lines, Inc.*, 336 NLRB at 1068. Under these circumstances, the Respondent could not lawfully challenge the Union's majority status on the basis of the antiunion petition that arose while those unfair labor practices remained unremedied. Therefore, we find that by withdrawing recognition from the Union, and by refusing to bargain with it, the Respondent violated Section 8(a)(5) of the Act.[9]

2. The Respondent failed to bargain with the Union for a reasonable period of time following the settlement agreement

In December 1999, the Respondent and the Union entered into a non-Board settlement concerning the Respondent's alleged failure to bargain in good faith with the Union by unilaterally implementing a wage increase. The settlement agreement required the Respondent not only to cease and desist from such conduct, but also, affirmatively, to bargain upon request with the Union.[10] Thus, the Respondent had an obligation to bargain with the Union for a reasonable period of time following execution of the settlement agreement. If the parties did not bargain for a reasonable period of time, following the Union's request, the Respondent was not free to withdraw recognition irrespective of the Union's majority status.

In *Poole Foundry & Machine Co.*, 95 NLRB 34, 36 (1951), enfd. 192 F.2d 740 (4th Cir. 1951), cert. denied 342 U.S. 954 (1952), the Board considered this issue and stated:

> It is well settled that after the Board finds that an employer has failed in his statutory duty to bargain with a union, and orders the employer to bargain, such an order must be carried out for a reasonable time thereafter without regard to whether or not there are fluctuations in the majority status of the union during that period. Such a rule has been considered necessary to give the order to bargain its fullest effect, i.e., to give the parties to the controversy a reasonable time in which to conclude a contract. Similarly, a settlement agreement containing a bargaining provision, if it is to achieve its purpose, must be treated as giving the parties thereto a reasonable time in which to conclude a contract. We therefore hold that after providing in the settlement agreement that it would bargain with the Union, the Respondent was under an obligation to honor that agreement for a reasonable time after its execution without questioning the representative status of the Union. [*Poole Foundry*, supra, at 36, fn. omitted.]

This requirement under *Poole* for a reasonable period for bargaining applies to informal Board settlements as well as formal settlements. *King Soopers, Inc.*, 295 NLRB 35 (1989).

In deciding whether the parties have bargained for a reasonable period of time under *Poole*, the Board considers the following factors: whether the parties were bargaining for an initial agreement, the complexity of the issues being negotiated and the parties' bargaining procedures, the total amount of time elapsed since the commencement of bargaining and the number of bargaining sessions, the amount of progress made in negotiations and how near the parties were to agreement, and the presence or absence of a bargaining impasse. See generally *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002). See also *Gerrino Restaurant*, 306 NLRB 86 fn. 2, 88–89 (1992); *Driftwood Convalescent Hospital*, 302 NLRB 586, 588–589 (1991).

Applying these factors here, we conclude, contrary to the judge, that the parties had not bargained for a reasonable period of time following the settlement agreement and, thus, the Respondent was not free to withdraw recognition from the Union.

Here, the parties were negotiating for a first contract. Because of the complexity of bargaining occasioned by this fact, as well as the fact that the parties were negotiating on a multilocation basis, the factors of initial contract and complexity of bargaining weigh against finding that a reasonable period of time to bargain had elapsed. See *Ford Center for the Performing Arts*, 328 NLRB 1

[9] Contrary to our dissenting colleague, we do not believe that the passage of time and the intervening events establish that the Respondent's pervasive unlawful conduct did not have an effect on employees' disaffection with the Union. As detailed above, the Respondent's conduct, which it never remedied, was of a type to have a lingering effect on employee sentiment, notwithstanding the passage of time and intervening events. Further, the alleged triggering event for employee dissatisfaction with the Union, on which our colleague relies, the contract ratification vote, itself occurred 6 months before the presentation of the petition to the Respondent, and only 3 months after the last of the Respondent's unlawful letters was sent to employees.

[10] The settlement agreement also required the Respondent to post a notice to employees for 60 days stating that it was taking this remedial action.

(1999). See generally *Lee Lumber*, supra, 334 NLRB at 403.

Although, by the time of the settlement agreement, the parties had been in negotiations for approximately 17 months, this fact must be balanced against the Respondent's unfair labor practices in sending the "Don't Blame Us" letters in March, April, May, and June 1999, and the settled unfair labor practice allegation that, in July 1999, the Respondent unilaterally implemented a wage increase. Taking into account the fact that the negotiations occurred in the context of this activity, we cannot conclude that the parties were at a virtual impasse and unable to reach an agreement.

Nor do we agree with the judge that the withdrawal was privileged because bargaining had reached a dead end even prior to the settlement agreement by virtue of the Respondent's unilateral implementation of its contract proposal in November 1999, which the Union did not contest. The critical time period for determining whether there was a reasonable time to bargain starts from the date of the approval of the settlement agreement. *Gerrino*, 306 NLRB at 89.

Turning to the next factor, the time elapsed between the December 1999 settlement agreement and the Respondent's withdrawal of recognition was only 3 months. As for progress made, during that period the parties had no face-to-face meetings, but did exchange letters regarding outstanding contractual issues. Thus, on January 3, 2000, Union President Troy Nelsen wrote the Respondent representative's Livingston, regarding outstanding contractual issues; Nelsen categorized his letter into nine proposals. Those issues pertained to all of the facilities in negotiation, including Sacramento. On February 18, 2000, Nelsen wrote to the Respondent to reiterate more specifically the Union's January 3, 2000 contract proposals. On February 28, 2000, Livingston responded to Nelson indicating that the Respondent "desires to engage in meaningful good faith bargaining." Yet soon after receiving the March 17, 2000 petition, the Respondent withdrew recognition. In these circumstances, we cannot find that the Respondent satisfied its obligation to continue bargaining with the Union for a reasonable period of time pursuant to the settlement agreement.

Accordingly, applying all the factors as set forth in *Lee Lumber*, supra, we conclude that a reasonable period of time for bargaining had not elapsed, and that the Respondent violated Section 8(a)(5) of the Act by withdrawing recognition from the Union at a time when it was obligated to bargain under the terms of the settlement agreement.

3. The Respondent recognized and bargained with ATSEA in violation of Section 8(a)(2) and (1)

Having found that the Respondent's unremedied unfair labor practices precluded a challenge to the Union's presumption of continuing majority support, and that Respondent was obligated to bargain with the Union under the terms of the settlement agreement, we further find that the Respondent's recognition of ATSEA and its signing of a contract with that labor organization violated Section 8(a)(2) and (1) of the Act. It is axiomatic that an employer may recognize and bargain only with the exclusive representative of its employees. See *Mastronardi Mason Materials Co.*, 336 NLRB 1296, 1308 (2001), enfd. unpublished 64 Fed. Appx. 271 (2d Cir. 2003); *Natico, Inc.*, 302 NLRB 668, 687 (1991). That representative, at all times relevant to this proceeding, was the Union.

4. The Respondent violated Section 8(a)(1) by threatening an employee for expressing sentiments favorable to the Union

Finally, contrary to the judge we find that the Respondent's threat to employee Jayson Kessinger likewise violated Section 8(a)(1). Thus, in April 2000, after the Respondent had unlawfully withdrawn recognition from the Union, when Kessinger told the Respondent's assistant manager, Steven Schaffner, that, "I cannot wait until the Union gets back in power." Schaffner responded, "Talk like that will get you in trouble." We find that the clear message of Schaffner's statement was that Kessinger could expect adverse consequences if he continued to openly support the Union. As such we find the remark violative of Section 8(a) (1). *Southwest Distributing Co.*, 301 NLRB 954, 975 (1991). Further, because it was clearly a coercive statement and, because of the other violations found, we disagree with the judge that this violation is isolated or de minimis.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that the collective-bargaining relationship between the Respondent and ATSEA from its inception violated Section 8(a)(2) and (1) we shall order that the parties cease and desist unless and until ATSEA is certified as the exclusive collective-bargaining agent for the unit employees. However, nothing here shall be construed as requiring or permitting the varying or abandoning of any provision contained in the collective-bargaining agreement between the parties which increased wages, benefits and or other employees rights and privileges over those which

previously existed. See, e.g., *Natico, Inc.*, 302 NLRB 668, 690 (1991).

We shall also order that the Respondent cease and desist from threatening employees with unspecified reprisals for speaking favorably about the Union.

We shall enter an affirmative bargaining order, which requires bargaining for at least a reasonable period of time as the appropriate remedy for the Respondent's unlawful withdrawal of recognition from the Union. First, we find that the Respondent has already committed itself to bargain with the Union by virtue of the terms of the settlement agreement into which it voluntarily entered. Thus, an affirmative bargaining order in these circumstances restores the status quo as agreed to by the Respondent.

Additionally, for the reasons fully set forth in *Caterair International*, 322 NLRB 64 (1996), we find that an affirmative bargaining order is warranted. We adhere to the view, reaffirmed by the Board in *Caterair*, supra, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." Id. at 68.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Building Material v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent*, supra, the court stated that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." 209 F.3d at 738.

Consistent with the court's requirement, we have examined the particular facts of this case as the court requires, and we find that a balancing of the three factors warrants an affirmative bargaining order.[11]

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent's unlawful withdrawal of recognition. At the same time, an affirmative bargaining order does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation, because its status is temporary.

Moreover, we have previously found that the Respondent committed numerous other unfair labor practices in addition to unlawfully withdrawing recognition. These include dealing directly with employees regarding significant terms and conditions of employment, soliciting decertification of the Union, and interfering with internal union procedures. The Respondent's efforts in fact resulted in an employee petition seeking the end of union representation, which the Respondent honored by withdrawing recognition from the Union, and recognizing and entering into a contract after one day of negotiations with another labor organization. Under these circumstances, it is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that employees will be able to fairly decide for themselves whether they wish to continue to be represented by the Union.

(2) The affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

(3) A cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent's violation, because it would permit a decertification petition to be filed before the Respondent had afforded the employees a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unfair in circumstances such as those here, where litigation of the Union's charges took several years and the nature of the Respondent's unfair labor practices were likely to have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar for a reasonable period of time is necessary in this

[11] Chairman Battista does not agree with the view expressed in *Caterair International*, supra, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) violation." He agrees with the District of Columbia Circuit Court of Appeals that a case-by-case analysis is required to determine if the remedy is appropriate. See *Saginaw Control*, supra, 339 NLRB 541, 546 fn. 8 (20030; *Eden Gardens Nursing Home*, 339 NLRB 71, 72 fns. 9 and 10 (2003). On the facts of this case, he finds a bargaining order is warranted.

case to fully remedy the Respondent's unlawful withdrawal of recognition.

ORDER

The Respondent, AT Systems West, Inc. (formerly known as Armored Transport, Inc.), Sacramento, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully withdrawing recognition from the Union and refusing to bargain with it as the exclusive collective-bargaining representative of the employees employed in the bargaining unit described below.

(b) Recognizing Armored Transport Sacramento Employees Association and executing a collective-bargaining agreement with it at a time when AT Systems West is obligated to recognize and bargain with the Union.

(c) Giving effect to its April 15, 2000 contract with Armored Transport Sacramento Employees Association or to any extension, renewal or modification of it; provided however, that nothing in this Order shall authorize or require the elimination of any wage increase or other benefits, terms, and conditions of employment that may have been established pursuant to the performance of those contracts.

(d) Threatening employees with unspecified reprisals if they continue to speak favorably about the Union.

(e) 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 and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> Included: All full-time and regular part-time driver/messengers employed by the Respondent at 1475 Overland Court, West Sacramento, California.
>
> Excluded: All other employees including office-clerical employees, and supervisors as defined in the Act.

(b) Withdraw recognition from the Armored Transport Sacramento Employees Association as the representative of its employees unless and until that labor organization has been certified by the Board as the exclusive bargaining representative of those employees.

(c) Within 14 days after service by the Region, post at its facility in Sacramento, California, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 17, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply with this Order.

CHAIRMAN BATTISTA, concurring in part and dissenting in part.

I agree with my colleagues that, in the circumstances of this case, the Respondent did not bargain with the Union for a reasonable period of time following the settlement, and thus it was not privileged to withdraw recognition from the Union. Contrary to my colleagues, however**,** I agree with the judge that the General Counsel has not established a causal nexus between the Respondent's "Don't Blame Us" letters and the employees' disaffection from the Union.

First, the period between the last of the letters and the employee disaffection was 9 months, a substantial period. Further, there were no unfair labor practices during that period. To the contrary, the parties bargained in good faith after the last of the letters was sent, and—at the Union's request—the Respondent presented a final offer that the Union presented to an employee ratification vote in September 1999.

Second, there was an intervening event, closer in time to the disaffection, which would also reasonably cause employee disaffection. That event was the ratification vote. That vote was marred by irregularities in the count. The Union refused to investigate the matter or order a recount, even though the number of voters did not match up with the number of votes cast. The Union's explana-

[12] 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."

tion (that one or two votes were not significant) was patently false in light of the one-vote margin in the vote. In short, the Union was willing to sacrifice employee choice in order to get the result that it wanted. As found by the judge, the irregularities in the ratification resulted in "a core group of Sacramento employees, who had never been in favor of the Union, [becoming] even more disenchanted with the Union." Given the relative proximity in time between this event and the employee disaffection, as compared to the remoteness in time between the Respondent's unlawful conduct and the disaffection, it is *at least as likely* that the former events, and not the latter, caused the disaffection.

There is also evidence that the employees were dissatisfied with the lack of effective representation at the bargaining table. As noted by the judge, at the time the employees signed the petition in March 2000, 6 months had elapsed since the ratification vote during which no substantive bargaining had occurred.

In sum, the General Counsel has not met his burden of proof that the unlawful conduct caused the disaffection.[1]

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unlawfully withdraw recognition from the Union and refuse to bargain with it as the exclusive bargaining representative of our employees at our Sacramento location in the appropriate unit noted below.

WE WILL NOT recognize Armored Transport Sacramento Employees Association or execute a collective-bargaining agreement with it at a time when we are obligated to recognize and bargain with the Union.

WE WILL NOT give effect to our April 15, 2000 contract with Armored Transport Sacramento Employees Association, or to any extension, renewal or modification of it, provided that nothing here shall authorize or require the withdrawal or elimination of any wage increase or other benefits, terms and conditions of employment that may have been established pursuant to the performance of such contracts.

WE WILL NOT threaten employees with unspecified reprisals if they continue to speak favorably about the Union.

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 and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> Included: All full-time and regular part-time driver/messengers employed by us at 1475 Overland Court, West Sacramento, California.
>
> Excluded: All other employees including office-clerical employees, and supervisors as defined in the Act.

WE WILL withdraw recognition from Armored Transport Sacramento Employees Association as the representative of our employees unless and until that labor organization has been certified by the Board as the exclusive bargaining representative of those employees.

AT SYSTEMS WEST, INC.

Nathan Laks, Esq. and *Jerry J. George, Esq.*, for the General Counsel.

Marta M. Fernandez, Esq. (Jeffer, Mangels, Butler & Marmo LLP), of Los Angeles, California, for the Respondent.

Scott A. Brooks, Esq. (Gregory, Moore, Jeakle, Heinen, Ellison & Brooks P.C.), of Detroit, Michigan, for the Union.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in Los Angeles, California, on June 11, 12, and 13, 2001. The charge in the captioned case was filed on February 7, 2001, by International Union, Security, Police and Fire Professionals of America, Local 100 (SSFPA), f/k/a International Union, United Plant Guard Workers of America, and its Amalgamated Local No. 100 (Union). On March 20, 2001, the Regional Director for Region 31 of the Board (the Board) issued a complaint and notice of hearing alleging violations by AT Systems West, Inc. (formerly known as Armored Transport, Inc.) (Respondent) of Section 8(a)(1), (2) and (5) of the National Labor Relations Act

[1] *Quazite Corp.*, 323 NLRB 511 (1997).

(the Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel (the General Counsel), counsel for the Respondent, and counsel for the Union. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation with offices and places of business in various cities in California, where it is engaged in the transportation of cash and valuables. In the course and conduct of its business operations, the Respondent annually purchases and receives goods at its California facilities valued in excess of $50,000 directly from points outside the State of California. It is admitted and I find that the Respondent is and at all material times has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. ALLEGED UNFAIR LABOR PRACTICES

A. Issues

The principal issues in this proceeding are whether the Respondent unlawfully withdrew recognition from the Union in violation of Section 8(a)(5) of the Act, and thereafter entered into a collective-bargaining agreement with a different labor organization in violation of Section 8(a)(2) of the Act.

B. The Facts

This matter primarily concerns the Respondent's Sacramento, California facility. Prior to the incidents involved in this proceeding, the Sacramento employees had organized themselves into an association and this association had entered into several collective-bargaining agreements with the Respondent. On July 22, 1998, following a Board, conducted representation election on July 14, 1998, the Union herein was certified as the exclusive collective-bargaining representative of the Respondents Sacramento, California full-time and regular part-time driver/messenger guards and vault driver/messengers. Abundant record evidence shows that the core group of several Sacramento employees remained opposed to the Union at all times material herein.

Thereafter bargaining negotiations, which simultaneously involved the Sacramento unit as well as many additional units for which the Union was the collective-bargaining representative, did not result in a collective-bargaining agreement for the Sacramento unit.

On March 3, 1999, ostensibly frustrated with the inability to reach agreement upon a contract, the Respondent sent lengthy letters entitled "Don't Blame Us" to effected employees at various of its facilities, including the Sacramento facility. In response, the Union filed a charge alleging that the letters were inflammatory and were designed to unlawfully encourage employee disaffection and loss of support for the Union. The Regional Office of the Board issued a complaint, and the matter, having been litigated, is currently pending before an administrative law judge for decision.

In July 1999, the Respondent implemented a new wage scale for the Sacramento employees. The Union filed a charge alleging, inter alia, that this constituted an unlawful unilateral change. While the charge was pending, negotiations continued.

On September 9, 1999, after some approximately 14 months of unsuccessful bargaining, the Respondent submitted a "last, best and final" proposal to the Union, with the understanding that the Sacramento employees would be permitted to vote on the contract. According to the Respondent's letter accompanying this "last, best and final" proposal, the request for such a proposal was in response to the Union's request that this be done. The Respondent's letter states, inter alia:

> WE agree with the union's request at this time because the only outstanding issue keeping you from providing a positive recommendation [to the unit employees in favor of accepting the contract] appears to be the union's insistence on a "closed shop." Further, we understand that you will request that the bargaining unit go on strike over this issue.

On September 18, 1999, the Union conducted a ratification vote among the Sacramento unit employees. The core group of Sacramento employees who were in favor of ratification of this proposed contract monitored this vote to insure that it would fairly reflect the wishes of the employees. It turned out that the vote was 21 against ratification and 20 in favor of ratification. However, each employee who voted was required to sign a document prior to voting, and the number of votes counted, when compared with this document, reflected that there were two more votes than there were names of voters. Employees objected to the vote and pointed out the discrepancy to the Union's official, Troy Nelsen, who stated, in effect, that the vote was accurate enough, and that the one or two vote difference was not significant enough to warrant a revote.

On December 16, 1999, the Union and Respondent entered into an informal Board settlement agreement, containing a nonadmission clause, and providing for the posting of an appropriate Board notice in which the Sacramento employees were advised that the Respondent would not implement new wages or wage rates without prior notice to the Union, and would, on request, meet and bargain with the Union.

On November 14, 1999, the Respondent implemented the terms of its last, best and final proposal. The Union did not file any unfair labor practice charges against the Respondent as a result of the unilateral implementation of the proposal.

A week or so prior to March 17, 2000, several employees who had been active on behalf of the aforementioned employee association and who were opposed to the Union, began soliciting signatures among the Sacramento unit employees in order to indicate that they no longer desired to be represented by the Union. While the document that they circulated had no heading

and no written declaration of purpose,[1] the solicited employees were told that their signature was needed so that the Union would no longer remain their collective bargaining representative and to further indicate that they were in favor of entering into the agreement that the Respondent had previously implemented. It is undisputed that a majority of unit employees signed this document. Upon obtaining an appropriate number of signatures on this document the persons who were instrumental in this endeavor wrote the following letter to the Respondent, attaching the list of signatures:

> We the employees of Armored Transport, Sacramento would like to sign the current Implemented labor agreement. We as a [sic] employee group voted to no longer be represented by [the Union]. And have chosen to represent ourselves in any further contract negotiations.

This document was signed by three employees under the heading of "Sacramento Employee Representative," and was handed to the Sacramento branch manager.[2] Upon receiving these documents the Respondent determined that a majority of its Sacramento employees no longer wished to be represented by the Union. Further, it engaged in bargaining with designated representatives of the group, and after one bargaining session on or about April 7, 2000, it entered into a collective-bargaining agreement with "Sacramento Employees Association," dated April 10, 2000, extending from April 15, 2000, to January 31, 2003.[3] Attached to the agreement, at the request of the Respondent, is the following acknowledgment, signed by 33 employees, well over a majority of the Sacramento unit employees:

> Labor Agreement Between Armored Transport, Inc. and Armored Transport
> Sacramento Employees Association Effective as of April 15, 2000
>
> I have read and understand this agreement. I acknowledge that by signing this Agreement, I agree to its terms and conditions as executed by the Company and the Employees' Association. I acknowledge that I did not rely on any inducements, promises or presentations made by the Company, any of its agents, servants or employees, or any other person or entity other that the representatives of our Association. I have signed this form freely and voluntarily.

[1] I find that the form was a common form utilized by the Respondent to document attendance at meetings, that it was readily accessible to any employee, and that, contrary to one of the General Counsel's witnesses, it did not bear the social security numbers of any employees.

[2] It is clear from the record evidence, and I find, that the Union and or its local Sacramento representatives, were apprised of the employees' decertification efforts.

[3] The proposal that the Respondent unilaterally implemented in November 1999, which was not acceptable to the Union, had an expiration date in 2000. Upon entering into a new contract with the Sacramento Employees Association, it was considered desirable to have a 3-year contract. In addition, because of the term of the contract, wage progressions, and wage rates were adjusted to reflect additional wage increase over the term of the contract.

Jayson Kessinger was a unit employee of the Respondent from 1996 until October 31, 2000. Kessinger, who had been the Union's steward at the Sacramento facility, testified that in about April 2000, apparently sometime after the Respondent had withdrawn recognition from the Union and had recognized the Sacramento Employees Association,[4] he happened to be having a work-related conversation with Steven Schaffner, assistant manager of the facility, and "somehow we got on the topic of Union." Kessinger said that, "I cannot wait until the Union gets back in power," and, according to Kessinger, Schaffner replied that, "[t]alk like that will get you in trouble." Nothing further was said. Schaffner did not testify in this proceeding.

C. Analysis and Conclusions

The General Counsel maintains[5] that issues surrounding the March 3, 1999 "Don't Blame Us" letters, now pending before an administrative law judge, preclude an immediate finding that the Respondent was privileged to withdraw recognition from the Union and recognize and enter into an agreement with the Sacramento Employees Association. Thus, it is maintained that if the said letters are found to be an unlawful inducement to the employees to disaffect from the Union, the Respondent was not at liberty to take advantage of the fruits of its unlawful conduct.

The "Don't Blame Us" letters were sent to the Sacramento employees in March 1999. There was no overt disaffection from the Union among the Sacramento employees until March 2000, 1 year later. There was an intervening contract ratification vote taken in September 1999, as a result of which a core group of Sacramento employees, who had never been in favor of the Union, became even more disenchanted with the Union because it appeared that the critically close ratification vote was tainted and that the Union would not agree to a revote. It was 6 months after the ratification vote, during which time no progress was made in bargaining, that the Sacramento employees were asked by fellow employees, clearly without any inducement, I find, by the Respondent, to sign a petition to remove the Union as their collective-bargaining representative. Under these circumstances, I find that it is highly unlikely that the "Don't Blame Us" letters had any effect whatsoever on employee disaffection. I, therefore, find no merit to this contention of the General Counsel.

The General Counsel also maintains that the Respondent is precluded from withdrawing recognition because of the settlement agreement entered into on December 16, 1999. Thus, the settlement agreement provides that the Respondent will not engage in unlawful unilateral conduct and will continue to bargain in good faith. There is no specific time for the mandated continuation of good-faith bargaining following a settlement agreement that provides for such bargaining. *Textron, Inc.*, 300 NLRB 1124 fn. 1, 1130 (1990); *Van Ben Industries*, 285 NLRB 77 (1987). Rather, the criterion to be followed is that a "reasonable" period for bargaining, upon the Union's request, must be permitted. The record is clear that the parties bargained well

[4] The complaint alleges that this conversation took place in October 2000.

[5] The positions of the General Counsel and the Union are substantially similar.

prior to December 1999, that there was every opportunity for bargaining after December 1999, and that perhaps other than the exchange of a few insubstantial letters there was no further bargaining and no progress was made. This is not a situation where bargaining was at an incipient stage, or where the parties had not had an opportunity to present and discuss their proposals at length, or where there was at least some reasonable expectation that further bargaining would at least move the parties from dead center. Indeed, it appears that the prospects were so dismal that the Union did not even file a charge to protest the Respondent's November 1999 unilateral implementation of the entire proposed contract. Under the circumstances, I find that the 3-month period between the date of the settlement agreement and the date of the Respondent's withdrawal of recognition was reasonable under the circumstances to have permitted effective bargaining, and I find no merit to the General Counsel's argument in this regard.

It is argued that the Respondent could not have had a good-faith doubt of the Union's majority status as the list furnished by the Sacramento employee representatives did not have a heading and did not on its face declare its purpose. For example, as maintained by the Union, the list of names submitted to the Respondent could have simply been a list of those employees who wanted to attend an employee picnic. I conclude that the covering letter, accompanying the list, was sufficient to advise the Respondent of the fact that the signatory employees no longer wanted the Union to remain their bargaining representative. There simply was no cause for the Respondent to suspect that the representations in the covering letter were bogus, and I conclude that the Respondent was privileged to rely upon such representations. See *Burger Pits, Inc.*, 273 NLRB 1001 (1984), affd. sub nom. *Hotel & Restaurant Employees Local 19 v. NLRB*, 785 F.2d 1996 (9th Cir. 1986). Nor, apparently, did the General Counsel believe that the list of signatures was not what it was purported to be, as the Regional Office undertook no investigation into the authenticity of the document. Nor is there any evidence in this proceeding to the contrary. Accordingly, I find that the Respondent was privileged to withdraw recognition upon receipt of the list and the accompanying letter, and that in fact a majority of the Sacramento unit employees clearly indicated that they no longer desired to be represented by the Union.

On the basis of the foregoing, I further find that the Respondent was privileged to negotiate with the Sacramento Employees Association and to enter into a collective-bargaining agreement with that labor organization. Nor does there appear to be anything sinister or unlawful about the Respondent's desire to have each of the employees acknowledge the fact that they read the agreement and agreed to its terms. Rather, this appears to be additional proof that a clear majority of the Respondent's employees were no longer interested in representation by the Union.

I find that the remark to employee Kessinger by Assistant Manager Schaffner that support for the Union would get him in trouble is de minimus under the circumstances, and incidental to the issues presented in this proceeding. Therefore, I conclude that this isolated remark, which could be interpreted to mean that support for the Union would get him in trouble with the majority of employees who disaffected from the Union, does not warrant a remedial order.

CONCLUSIONS OF LAW

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

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

3. The Respondent has not violated the Act as alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]