BASF Wyandotte Corporation *and* Local 7-627, Oil, Chemical and Atomic Workers International Union, AFL-CIO-CLC *and* Oil, Chemical and Atomic Workers International Union, AFL-CIO-CLC. Cases 7-CA-20117, 7-CA-21207, and 7-CA-22305

29 October 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS DENNIS AND JOHANSEN

On 23 October 1984 Administrative Law Judge Martin J. Linsky issued the attached decision. The General Counsel and the Respondent (BASF) filed exceptions and supporting briefs.[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 and to adopt the recommended Order as modified.

1. We adopt the judge's finding that BASF did not violate Section 8(a)(1) and (5) of the Act by making workers in its new automated steamroom facility salaried "utility technicians" rather than hourly "boiler operators," thereby removing those workers from the bargaining unit. We also adopt the judge's finding that BASF did violate Section 8(a)(1) and (5) of the Act by unilaterally deciding to discontinue paying union committeemen for release time spent administering the collective-bargaining agreement.[3]

2. In regard to the various violations alleged in what the judge referred to in his decision as the "withdrawal of recognition" case, we adopt the judge's finding that BASF Foreman Dan Barton's asking unit employee Ray Andres if he had signed a union decertification card violated Section 8(a)(1). Contrary to the judge, however, we find that BASF Foreman Al Gill did not violate Section 8(a)(1) when he discussed the merits of salaried versus hourly benefits with unit employee Rodney Hinzman, or when he escorted another employee, Julius Kucia, to Hinzman's restricted work area where Kucia asked Hinzman to sign a decertification card. We find that Gill's discussions with Hinzman regarding salaried benefits were essentially factual discussions, and that Gill did not make any promises to Hinzman about benefits or suggest that Hinzman disavow the Union. Such factual discussions, without express or implied promises, are not violations of the Act. *KCRA-TV*, 271 NLRB 1288 (1984); *Viacom Cablevision of Dayton, Inc.*, 267 NLRB 1141 (1983). We further find that Gill's escorting Kucia to Hinzman's work area was not particularly unusual, as it was common for the supervisors in that restricted building to escort employees who did not work there to their destinations. Although it was somewhat unusual for other employees to go to Hinzman's work area, it was not so unusual as to create an atmosphere in which Hinzman would tend to be coerced. Moreover, Gill's presence in these circumstances during Kucia's and Hinzman's discussion was not in itself an 8(a)(1) violation; Gill said nothing and did not even know beforehand why Kucia wished to speak with Hinzman.

3. In sum, we find that BASF violated the Act by: (1) unilaterally discontinuing payment to union committeemen for release time spent administering the contract after 27 September 1982; and (2) Foreman Dan Barton's asking unit employee Ray Andres in early June 1983 if he had signed a union decertification card. In spite of these violations, however, we adopt the judge's finding that BASF's withdrawal of recognition was lawful,[4] as the

[1] The Respondent BASF has requested oral argument This request is denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties

[2] BASF 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

We note that the judge inadvertently stated that BASF is a New Jersey corporation BASF is a Michigan corporation. The judge also was incorrect when he found that the new automated steam facility had been built when the old South Works boilers closed, as the South Works boilers closed in stages between May and July 1980, and the new steam facility was not operational until November 1981 These errors do not affect the merits of his decision

[3] In so finding, however, we do not rely on the judge's statement at fn 1 of his decision that he had no jurisdiction to decide whether the paid release time clause violated Sec 302 of the Act. The Board determined in *BASF Wyandotte Corp*, 274 NLRB 978 (1985), that it is appropriate for the Board to consider arguments concerning Sec 302 to the extent they support, or raise a possible defense to, unfair labor practice allegations.

We reject BASF's argument that paid release time violates Sec. 302, in light of the discussion in the above-cited case. That factually similar case held that paid release time granted by the employer to union officials or committeemen administering the contract did not violate Sec 302, as it came within the exception set forth in Sec 302(c)(1) for payments made "by reason of" one's services as an employee.

[4] We find it unnecessary to determine whether the International Union was a joint bargaining representative for the unit, as we are finding that BASF's withdrawal of recognition was not unlawful

We adopt the judge's finding that BASF did not violate Sec 8(a)(1) by leaving confidential memos explaining union decertification in places where unit employees could read them In so finding, however, we do not rely on the judge's statement that "even if I assume that the memo was deliberately left out to be found by unit employees I cannot conclude that although improper this so taints" the decertification as to make it improper (see sec IV, C, par 9 of the judge's decision) Rather, we simply find that BASF did not deliberately leave the confidential memos out for the unit employees to read.

unfair labor practices committed by BASF were not "sufficiently serious . . . that they possessed an inherent tendency to . . . [contribute] to the union's loss of majority status." *Chicago Magnesium Castings*, 256 NLRB 668, 674 (1981).[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, BASF Wyandotte Corporation, Wyandotte, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order[6] as modified.

1. Delete paragraphs 1(c) and (d) and reletter the subsequent paragraph.

2. Substitute the attached notice for that of the administrative law judge.

[5] In agreeing with the judge that the withdrawal of recognition was not unlawful, we place no reliance on the judge's reasoning that, as no evidence was proffered to demonstrate that BASF's violations influenced the employees to vote to decertify the Union, the violations did not taint the decertification process

Rather, we find that under all the circumstances the violations are not of such seriousness as to warrant a conclusion that they caused employee disaffection.

[6] The judge ordered BASF to make the union committeemen whole for any loss of earnings they may have suffered by reason of BASF's unlawful refusal to grant paid release time. BASF excepts to the judge's remedy, however, stating that the committeemen did not suffer any loss of earnings as the Local Union reimbursed them for release time taken. As we do not know the circumstances surrounding the Local's payment to the committeemen, we leave this issue to compliance.

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.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT unilaterally discontinue payment to union committeemen for 8 hours a week paid release time.

WE WILL NOT interrogate employees regarding whether or not they have signed a card to decertify the union.

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

WE WILL make union committeemen Alex Kozlowski and Frank Hrabelski whole for any loss of pay they may have suffered as a result of our unilateral abrogation of said paid release time, with interest.

BASF WYANDOTTE CORPORATION

Mark D. Rubin, Esq., of Detroit, Michigan, for the General Counsel.

Charles E. Keller, Esq., of Detroit, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. These cases were heard by me on February 28, March 1, November 15–18, 28–30, and December 1,2, and 5–7, 1983. The trial record was closed on February 13, 1984, following receipt of a written stipulation of expected testimony. Based on unfair labor practice charges filed December 10, 1981 (7–CA–20117), and September 23, 1982 (7–CA–21207), by Local 7–627, Oil, Chemical and Atomic Workers International Union, AFL–CIO–CLC, and Oil, Chemical and Atomic Workers International Union, AFL–CIO–CLC, the Regional Director for Region 7 of the National Labor Relations Board (the Board), issued complaints dated January 26 and November 2, 1982. These cases were consolidated by order of the Regional Director dated November 3, 1982. The complaint in Case 7–CA–20117 alleges that BASF Wyandotte Corporation, (Respondent), violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by: (1) unilaterally and without agreement of the Union converting and reclassifying the hourly bargaining unit position of boiler operator to the salaried position of utility technician thereby removing it from the bargaining unit; and (2) refusing to meet and discuss with the Union this unilateral action or process the Union's grievance concerning this dispute. The complaint in Case 7–CA–21207 alleges that Respondent violated Section 8(a)(5) and (1) of the Act by: (1) unilaterally and without notice to or agreement of the Union, stopping payment to Local Union committeemen for time spent administering the contractual grievance procedure; and (2) refusing to bargain in good faith with the Union concerning this dispute by refusing to accept, entertain, and otherwise process any grievances relating to the dispute. Respondent denied in its answers the commission of any unfair labor practices. These two cases are referred to as the "utility technicians" case and the "paid release time" case.

After the hearing began on these complaints, the International Union filed a further charge on June 28, 1983, upon which a complaint (7–CA–22305) was issued on August 11, 1983, alleging that Respondent violated Section 8(a)(5) and (1) of the Act by: (1) on numerous occasions Foreman Al Gill advising employees that they would obtain better benefits if they became salaried, nonunion employees; (2) Foreman Don Barton coercively interrogating an employee about whether the employee had signed a card indicating that the employee no longer wished to be represented by the Union; (3) Foreman Al Gill granting access to a restricted area of the plant to allow employees to solicit employees signatures on cards indicating they no longer wished to be represented by the Union; (4) Supervisor Logan "Tom" Burkhart telling an employee that any unfavorable review and discipline would be removed from his personnel file if the union employees decided to become nonunion salaried employees; (5) refusing to recognize the negotiating committee designated by the Union because it included the secretary-treasurer of the Local and a representative of the International; (6) bypassing the local union and refusing to recognize the International Union, while offering unit employees improvements in wages, pensions, and other fringe benefits if the unit employees became salaried, nonunion employees; and (7) withdrawing recognition from the Union and unilaterally instituting changes in wages, fringe benefits, and other terms and conditions of employment. Respondent again denied the commission of any unfair labor practices. This case is referred to as the "withdrawal of recognition" case.

Each of the complaints will be treated separately except that the "utility technician" and "paid release time" case will be looked at for their impact, if any, on the "withdrawal of recognition" case. Local 7–627, OCAW (the Local), and OCAW International Union (the International) are joint exclusive bargaining representatives of the unit employees.

On consideration of the entire record, including briefs filed by the General Counsel and Respondent and my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New Jersey corporation, headquartered in Parsippany, New Jersey, maintains an office and place of business at 1609 Biddle Avenue in the city of Wyandotte and the State of Michigan, where it is engaged in the manufacture of vitamins and polyols. Respondent's plant in Wyandotte, Michigan is the only facility involved in these proceedings. During the year ending December 31, 1982, which period is representative of its operations during all times material, Respondent in the course and conduct of its business operations, realized gross revenues in excess of $500,000 and purchased goods and materials valued in excess of $50,000 which were transported and delivered to its Wyandotte, Michigan place of business directly from points located outside the State of Michigan.

Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Since 1971, pursuant to a series of collective-bargaining agreements, the most recent of which was effective from June 24, 1980, through July 22, 1983, Respondent had recognized Oil, Chemical and Atomic Workers International Union and its Local 7–627 jointly as the exclusive agents for purposes of collective bargaining of the employees in the unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Reference to the last several collective-bargaining agreements refer to the agreements as ones between the Employer and the International "on behalf of" the Local. The last several agreements were signed by both officials of the International and Local. Both the International and the Local are labor organizations within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

Respondent acquired the Wyandotte, Michigan site when it took over the Wyandotte Chemical Company in January 1971. During the 1970s, Respondent employed about 1300 bargaining unit employees at its North and South Works facilities. During that time Respondent produced high volume basic industrial chemical products.

In October or November 1978, Respondent shut down its soda ash facility, reducing its bargaining unit personnel to about 600. In 1980 Respondent restructured its facilities further by closing the South Works facilities and the Bi-Carb plant in the North Works. With those changes the Company changed by 1980 from a high volume, labor intensive, chemical facility into a low volume, highly technical facility, producing vitamins and polyols. After personnel reductions in 1980, about 233 unit employees remained employed at the site. The number of unit employees was just over 100 when the charges in these cases were filed.

B. *Utility Technicians Case*

By 1980 Respondent required about 200 people to run the old boilerhouse. The old North Works boilers were manually operated and adjusted and required constant attention. When the South Works closed, a new "state of the art high tech" fully automated steam facility had been built to supply the Company's steam generation.

At the regular company union meeting on August 27, 1981, Assistant General Manager Ron Bearer gave union officials an hourly job description and specifications for the new steam facility. Bearer and Bob Parmer, superintendent at the boilerhouse, explained that the new steam facility would be fully automated and designed to run practically unattended. There was not enough work to justify paying an employee full time but since the Company wanted someone at the steam facility constantly, repair and maintenance functions were included in this new job description. Additional training, licensing, and a

high school diploma were among the specifications for the job.

The union representatives objected to the inclusion of maintenance and repair functions in the job description. They also objected to licensing and education requirements because those were not required at the North Works and because many of their unit members did not have a high school education. The union representatives also took the position that boiler operators should only do boiler operations and repair and maintenance functions should be done by maintenance employees, which was a separate group of unit employees. The meeting ended with Bearer announcing that he would take the Union's objections into consideration.

Following this meeting, the engineering superintendent in charge of the new steam facility, Logan "Tom" Burkhart, reviewed the job description and specifications of the boiler operator position for the new steam facility which had been presented to the Union. Burkhart explained that virtually all items listed on the job descriptions were done automatically by instruments. He criticized the job descriptions as having no applications to the new facility and was therefore asked to draft a job description which corresponded more closely to what would be done. The resulting job description required math and mechanical comprehension because of the instrumentation, ability to perform routine operations repairs, and technical background to make necessary decisions. Since only one person would man the facility each shift, the job description also required decision making and storage and inventory of raw materials. Burkhart explained that intensive and extensive training would be required for whoever was selected for these positions because the technology and instruments in the facility were new and sophisticated. The training expenses were projected to be $200,000.

After Burkhart presented his job description to Anne Marie Bieniewski, labor relations representative of Respondent who had requested he draft it, Respondent decided this position would be titled "utilities technician." During the 1980 bargaining, instrument technicians and other "technician" positions were removed from the bargaining unit and made salaried positions with the agreement of the Union.

At a company union meeting on September 23, 1981, in response to questions from union representatives about their objections to maintenance work being done by boiler operators, the Company announced that the positions were salaried and refused to discuss it further. Anne Marie Bieniewski told the union representatives that the job was going salaried, because of the Union's objections about the repair and maintenance functions to be done by the operators. Although the Union was left with the clear impression that the position would be salaried and out of the bargaining unit it was not until a few days after this meeting that Respondent made the final decision. A job vacancy notice for salaried utilities technician positions was posted from September 30 through October 6, 1981.

On October 14, 1981, John Profitt, a union steward in the boilerhouse, drafted a grievance protesting Respondent action "in removing a boiler operator's job from hourly and making it a salaried job." Profitt attempted to submit the grievance to his shift supervisor, Bob Beeny, who said he could not accept it and referred him to Bob Parmer, the heard of the department. Profitt next attempted to give the grievance to Parmer who also refused to accept it.

On October 19, 1981, four boiler operators (hourly employees) from the old boiler house were transferred to the salaried utilities technician classification in the steam facility. The fifth position was filled by a supervisor from the old boilerhouse.

C. *Paid Release Time*

It is undisputed that for the prior 30 years, pursuant to agreement, Respondent had paid the union bargaining committemen their hourly wage for "release time" during which they "administered" the contract. Under collective-bargaining agreements prior to 1965, they were released and paid for a full 40 hours per week. After a lengthy strike in 1965, the paid release time was reduced to 25 hours per week. The collective-bargaining agreement in effect from July 1980 through July 1983 further reduced the release time to 8 hours per week. The 1980 to 1983 contract was silent about whether the release time was to be paid or not. However, from July 24, 1980, until September 27, 1982 (more than 2 years), the committeemen were paid for their release time and then abruptly Respondent stopped paying them for release time claiming to continue paying them was violative of the contract and against the law.

According to the credited and undisputed testimony of Frank Hrabelski, who had been a committeeman since 1950, the committeemen spent their released time investigating and attempting to settle gripes, complaints, and grievances at the lowest level possible, as specifically mentioned in the collective-bargaining agreement. This involved talking to the complaining employee or steward and then discussing resolution of the problem with the employee's supervisor. Complaints which the committemen could not resolve at this level were investigated further and the employees were advised concerning whether or not they had a grievance which merited further action. If it did, the committeemen advised the grieving employee how to write his grievance and submit it according to the contractual procedure. The committeemen were also paid for release time spent in meetings with management.

At a regular company union meeting on September 16, 1982, Respondent announced that it would no longer pay union committeemen for release time unless the committeemen were in meeting with management. When the union representatives questioned this decision, they were told that Respondent's legal counsel had determined that this practice violated Sections 8(a)(2) and 302 of the Act. The union representatives were told that the committeemen could continue to take the 8 hours of release time a week to conduct "union to union" business but they would not be paid for this time. Respondent's representatives asked that the committeemen inform them as to their decision to either take the 8 hours without pay or work the 8 hours each week.

A special company union meeting was held on September 22, 1982, at which International Representative Larry Sartin questioned the reason behind the Company's decision to discontinue paying committeemen for their release time. He and committeemen Kozlowski and Hrabelski were informed that the Company had been advised by legal counsel that what they had been doing was illegal and the union was also breaking the law by accepting such payments. Sartin then asked if this was a deliberate attempt to single out the Wyandotte site. They were told that this was a corporate decision applicable to all sites. The union committeemen asked for and were granted more time to consider their decision.

On September 29, 1982, Hrabelski and his steward met with their foreman to protest the Company's action. When the foreman told them the answer remained unchanged (no paid release time except for meeting with management or meetings approved by management) the grievance was put into writing and given to the steward with the notation signed by the foreman that it was not acceptable and not grievable.

At the next regular meeting on October 6, 1982, there was further discussion of the release time issue. The Union suggested several alternatives to the Respondent's no paid release time position, including payment for 4 hours per week, 1 day per month, and 1 day every other week. Respondent maintained its position that any payment for meetings other than with management would be illegal. Sometime after this meeting the union committeemen decided that they would work and be paid rather than take unpaid release time.

D. *Withdrawal of Recognition*

Although it was not until June 20, 1983, that Respondent withdrew recognition of the Union effective on July 22, 1983, when the collective-bargaining agreement expired, it is necessary to recount events going back some several years to put what happened into context.

In August, September, or October 1981, Union President Lowen Draheim and committemen Alex Kozlowski and Frank Hrabelski were called to an unscheduled meeting with Respondent's labor relations managers, Ann Marie Bieniewski and Earl Schuknecht. During this meeting one of the company officials said the meeting was to discuss how unit employees could become salaried (i.e., nonunion) if they wanted to. Pamphlets and brochures concerning salaried benefits were on the tables. When union officials responded that they were in the middle of a collective-bargaining agreement and abiding by it, Bieniewski said there were ways around the contract. She suggested a "schism," at which point Kozlowski said the union officials should not be there and they left immediately. Neither Bieniewski nor Schuknecht testified. I credit Draheim's testimony regarding this conversation since he impressed me as a truth-telling witness and no one contradicted him. Schuknecht and Bieniewski were both available to be called by Respondent if it wanted to do so.

On numerous occasions between January and June 1983 Foreman Al Gill discussed the advantages of being salaried rather than hourly with employees under his supervision, including vitamin E operator Rodney Hinzman. Hinzman worked in the vitamin E area which is a restricted area where anyone not employed in that building must obtain a pass to enter. On June 16, 1983, Gill issued a pass to Julius Kuzia and escorted him to Hinzman's working area. Kuzia asked Hinzman if he was ready to sign a card to decertify the Union explaining that it was important to get all the cards they could since they were close to the amount needed. Gill was present and in a position to hear this conversation, although he did not say anything. Hinzman replied that he was not ready to sign a card because he had doubts and as a trustee of the Union he would resign before signing a card. Kuzia left with Gill escorting him out. The next day, when Hinzman asked Union President Draheim about the procedure required to resign, he was told that there were enough signatures already and they did not need his anymore.

By letter dated January 26, 1983, the Union notified Respondent of its desire for early negotiations. This request was rescinded by letter dated March 2, 1983, following Respondent's rejection of the request. The Respondent and the Union by letters of May 9 and May 14, respectively, exchanged statutorily required notices of intention to modify or terminate the then current agreement due to expire July 22, 1983. Both announced their availability for negotiations.

On May 24, 1983, Respondent sent a letter to Alex Kozlowski, chairman of the union bargaining committee, suggesting that negotiations begin on Thursday, June 23, 1983, at 5:30 p.m. Respondent's letter requested that the Union inform them who would represent the Union on the negotiation committee. Respondent's negotiation committee was also tentatively designated in the letter.

The Union informed Respondent of the membership of its negotiating Committee in a letter dated May 26, 1983. The negotiating committee members named were: President Lowen Draheim, Secretary-Treasurer Joseph Kanthack, Committeemen Alex Kozlowski, and Frank Hrabelski. International Representative Larry Sartin was named as chairman of the union negotiating team. The Union agreed to the Company's proposal for beginning negotiations on June 23, 1983.

About May 25, 1983, International Representative Larry Sartin attended a third-step grievance meeting at the Wyandotte site. While there, Sartin asked Respondent's manager of human resources, Charles Caldwell, why Respondent was going after the Union as hard as they were. Caldwell answered that it was not anything personal but they had orders from Germany (company worldwide headquarters) to get rid of all the unions in the United States. He went on to say they had already done it in two plants and Wyandotte was just next in line. Sartin was unaware of any move in the plant for decertification at that time so he asked Caldwell how Respondent planned to get rid of the Union. Caldwell told him not to be surprised during negotiations if one of the committeemen from the Union proposed to the Company that they "go salary." Caldwell refused to name the committeemen but when Sartin asked if it was Alex Kozlowski, Caldwell said yes. I credit Sartin that this conversation took place and credit his testimony as to what

he said and what Caldwell said. Although Sartin later changed his testimony about the date of this conversation from May 20 to May 25, this does not so impeach his credibility that I would disbelieve what he said. Although Caldwell specifically denied that he said this to Sartin, I do not credit his denial. Caldwell, I note, admitted under oath that he had lied to the Union back in September 1982 about the identity of the attorney who advised Respondent that paid release time was illegal. He knew who the attorney was but lied to the Union and said he did not know who it was. Caldwell was less than a totally credible witness.

On May 24, 1983, at a meeting of all supervisors of bargaining unit employees a confidential memo prepared by Henry Kramer, one of Respondent's in-house counsel, was given by Caldwell to all supervisors. The memo outlined the procedures by which bargaining unit employees could become salaried. The memo explained decertification, disclaimer, or disaffirmation, and listed various "do's and don'ts" for supervisors to abide by if asked by employees how to decertify their union or other questions. The memo ended by stating: "Supervisors should clearly understand that it is our intention to stay within the law and to honor our employee's right to choose for themselves whichever status they believe is in their best interests and those of their families." The memo was signed by Human Resources Manager C.L. Caldwell and dated May 24, 1983. Although the memo was headed "Salaried Confidential," copies were left by person or persons unknown lying in places where unit employees could see them. Two unit employees, Joseph Kanthack and Rodney Hinzman, saw copies laying on desks in rooms that they had to pass through regularly in the course of their work. Kramer testified that he told the supervisors at the May 24, 1983 meeting not to leave this memo lying around but to keep it confidential. His advice was not followed by all the supervisors.

In early June 1983, unit employee Ray Andres was in the office of Foreman Don Barton to pick up maintenance sheets. During this time Barton asked Andres if he had signed a card to decertify the Union yet. Andres replied that he wanted no part of it. He went on to explain that he believed there would be a hit list and because of his union activities he would probably he the first to "go out the gate" if the employees went salaried. Andres expressed his fear of being on a hit list to others including unit employees Julius Kuzia and Clarence Sturgill who were circulating the decertification cards.

On June 24 or 25, 1983, one of Respondent's supervisor Tom Burkhart approached Andres after asking and receiving permission from Charles Caldwell to do so. Burkhart told Andres that he knew of Andres' concern that there was a hit list and that he was at the top of the list. Burkhart told Andres there was no hit list and nobody would be "going out the gate" if employees went salaried. Andres questioned this but Burkhart assured him again there was no hit list. Burkhart went on to explain that if there was anything in an employee's record to do with reprimands or disciplinary actions it would be taken out if the employee so desired. The employees would start out with a clean slate. Burkhart admitted that he spoke with Andres and told him there was no "hit list" but claims this conversation took place after recognition of the Union was withdrawn. Andres simply was not sure when it took place. Burkhart credibly maintained that he spoke to Andres in order to alleviate any concern Andres might have that his job was in jeopardy. Burkhart denies that he spoke about starting over with a clean slate but I conclude that if he did not say exactly this he said something like it.

On June 14, 1983, Alex Kozlowski told Respondent Representative Walter Krudwig that they had to meet because he was getting many questions concerning salaried benefits from the union membership. Krudwig told Kozlowski that he would have to contact Pat Howard or Chuck Caldwell to set up a meeting. Late that afternoon Kozlowski and Union President Draheim met with Krudwig, Howard, and Caldwell. Frank Hrabelski was told about the meeting but chose not to come. International representative Sartin was not informed of or invited to this meeting by either side.

At the beginning of the meeting Draheim said he was there as an employee not as the President of the Union. Despite this statement, he asked what benefits Respondent was offering if employees became salaried. Kozlowski said they wanted to communicate this information to the membership. Respondent's representatives emphatically denied rumors that the Company was offering between $300 and $700 increase in pensions if employees became salaried calling those rumors "totally false." There followed a discussion of the summary of benefits, including wages, pensions, bumping rights protection, and cost-of-living adjustments (COLA). The meeting ended when Draheim had to leave but resumed the next morning about 7 a.m. with more extensive comparison of benefits and discussion of alternatives if unit employees became salaried. The company representatives gave union representatives copies of the employee handbook explaining benefits received by salaried employees. Respondent's representatives asked if the union officials were authorizing them to pass out the information on salary benefits to unit employees. Draheim and Kozlowski gave Respondent permission to do so.

Company negotiators Henry Kramer and Walter Krudwig sent Union Negotiation Chairman Kozlowski a letter dated June 15, 1983, contesting the Union's inclusion of Secretary-Treasurer Kanthack and International Representative Sartin on the union negotiating committee. Respondent stated its position that the union negotiating committee must consist of the president and the two committeemen. The letter also stated that Respondent considered Local 7-627, as the only party to the bargaining agreement and that the International had no independent bargaining rights.

On June 17, 1983, unit employees Julius Kucia and Frank Tarnowoski met with Charles Caldwell after calling for an appointment. Kucia gave Caldwell a stack of cards which read:

> We, the employees, no longer want to be represented for purposes of collective bargaining by the Oil, Chemical, and Atomic Workers International Union and/or it Local No. 7-627.

The cards had a line for the employees' signature, identification number, and date. Caldwell took the cards to Attorney Henry Kramer, who counted them and compared them with the seniority list. The seniority list showed 102 bargaining unit employees. Fifty-seven cards had been signed and delivered to Respondent. A clear majority of the bargaining unit employees wished to decertify the union.

By letter, dated June 20, 1983, Respondent informed the Union that it had received cards from a majority of the unit employees stating they no longer wished to be represented by the Union. Respondent stated its intention to honor the current agreement until July 22, 1983, at 3 p.m. when it was due to expire, and announced its withdrawal of recognition from the union effective at 3:01 p.m. on that date. Bargaining unit employees were sent a copy of this letter along with a letter announcing that production and maintenance employees would be placed on salary status and given salaried benefits effective July 22, 1983. Thereafter a salaried production and maintenance handbook was sent to the unit employees and a series of meetings to advise employees of their new benefits were held.

Analysis

The "utility technicians" case and the "paid release time" case are the types of disputes which could have and probably should have been disposed of under the grievance-arbitration clause of the collective-bargaining agreement between Respondent and the Union. *United Technologies Corp.*, 268 NLRB 557 (1984). However, deferral to the arbitral process is inappropriate in this case since Respondent refused to accept and process the grievances filed with respect to the "utility technicians" and "paid release time" cases. Their failure to accept the two grievances was not itself an unfair labor practice. *Jacobs Mfg. Co.*, 94 NLRB 1214, 1225 (1951).

A. *Utility Technicians Case*

It is undisputed that the 1980 collective-bargaining agreement removed technician positions from the bargaining unit. The issue is therefore only whether the new utility technician was not a technician position but merely given that title to justify its removal from the bargaining unit.

At the hearing, the General Counsel vigorously asserted that the utility technicians were really just boiler operators monitoring newer and more sophisticated equipment. The original job description which contained functions similar to those performed by boiler operators and called for the position to be hourly, and the fact that all five utility technicians had previously worked in the boiler house were advanced as proof that this should have remained a bargaining unit position. The change in the job description following the Union's objections to the Respondent's proposal to include maintenance functions in the boiler operator functions for the new steam facility tends to support the General Counsel's position.

The credible and unchallenged testimony, however, of Tom Burkhart, the engineering superintendent in charge of the steam facility, explains the need for the change. It is apparent that the original job description was inaccurate. Once Burkhart, who knew what the job entailed, wrote a proper job description it became obvious that the job fit under the technician classification. Despite the comment by Anne Marie Bieniewski that the position was made salaried because of the Union's objections to the inclusion of maintenance functions in the job description, I find that the position was a technician position as classified in the 1980 agreement which excluded all technicians from the bargaining unit. There was therefore no violation of the Act when this new position in the new steam facility ws accurately designated as a technician job, made salaried, and taken outside of the bargaining unit. There was no legal duty on the part of Respondent to negotiate concerning this. Only hourly personnel are in the bargaining unit and all others were excluded under the 1980 agreement to include "instrument control and other technicians."

The "utility technician" position was a new job classification to maintain, calibrate, and repair microprocessors and other advanced electronic equipment. It is different from the boiler operator classification which was an hourly position.

B. *Paid Release Time Case*

When Respondent announced its unilateral decision to discontinue payment of bargaining committeemen for release time used in administering the collective-bargaining agreement on September 16, 1982, it did so with the explanation that such practice was deemed to be a violation of Section 8(a)(2) and Section 302 of the Act. Respondent further asserted that the Union would be violating the Act to demand or accept continued paid release time. Finally Respondent relies on the silence in the contract which does not mention payment, only release time.

Section 8(a)(2) of the Act makes it an unfair labor practice or an employer "to dominate or interfere with the . . . administration of any labor organization or contribute financial or other support to it, [except that] . . . an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

The Board requires that we examine each case to determine if an employer's action amounts to domination of the union. Not every payment to a union official will be considered to violate Section 8(a)(2).

In the instant case, the employer most definitely did not dominate this Union. Quite the contrary, the union committeemen used their paid release time to hear and investigate complaints and to attempt to settle complaints or assist employees in drafting grievances.

The Board has held that payment of union representatives for time spent conducting internal union business on company time and using company facilities did not violate Section 8(a)(2) of the Act. *Hesston Corp.*, 175 NLRB 96 (1969). In another case very similar to this one, the Board held that where employee advisory board members received their regular pay for time spent in closed monthly meetings of the board, there was no violation of Section 8(a)(2). The Board found this conduct "not at all

unusual where affiliated unions are involved and not inherently coercive" since it serves "to permit an otherwise legitimate labor organization to perform its functions for the benefit of all concerned more effectively than otherwise might be the case." *Sunnen Products*, 189 NLRB 826, 828 (1971).

The Board has explained it's position where it stated in *Duquesne University*, 198 NLRB 891 (1972):

> Indeed, where a union lawfully has been established as the employees' bargaining representative, and has been accorded lawful recognition by an employer who, following recognition, deals with that representative at arm's length, we have sometimes characterized benefits of the type found herein merely as friendly cooperation growing out of an amicable labor-management relationship.

Respondent's assertion that the collective-bargaining agreement requires release time but not payment for such time is without merit. It is clear that the matter was a mandatory subject of bargaining. During the period from July 22, 1980, through September 16, 1982, Respondent paid the union committeemen for their release time as they had for many years. By this action, Respondent signified its interpretation of the clause in the 1980 agreement as only reducing the hours (from 25 to 8) but not eliminating payment. After interpreting the clause this way for over 2 years of a 3-year agreement, Respondent cannot now argue that it was never obligated to pay union committemen for this time. This was clearly a unilateral change during the term of an existing collective-bargaining agreement. Respondent therefore violated its duty to bargain in good faith where it unilaterally implemented its position that release time would be paid only when the committeemen were in meetings with management.

William Jenkins, an attorney for Respondent who headed up Respondent's negotiating team for the 1980 agreement, testified that during discussions on the release time clause in 1980 that he told the union representatives that paid-release time clause would be changing and committeemen would not be paid to just walk around the plant. However, what is said during negotiations is not as good a way to determine what the parties intended as is the practice of the parties under the clause. For 2 years the parties interpreted the clause to require paid-release time.

The Board has clearly stated in *Axelson, Inc.*, 234 NLRB 414, 415 (1978), that:

> [W]e have found that wages paid to employees during the presentation of grievance constitutes a mandatory subject of bargaining and that the unilateral abrogation of such a contractual term or past practice violates Section 8(a)(5) and (1) of the Act.
>
> These union-related matters inure to the benefit of the members of the bargaining unit by contributing to more effective collective-bargaining representation and thus "vitally affect" the relations between an employer and employee.
>
> We see no distinction between an employee's involvement in contract negotiations and involvement in the presentation of grievances. In one situation an employee is implementing a contractual term or condition of employment and in the other situation an employee is attempting to obtain or improve contractual terms or conditions of employment. In both situations the activity is for the benefit of all the members of the bargaining unit. [See also *Meharry Medical College*, 236 NLRB 1396, 1406 (1978).]

The release time clause in the contract provided, inter alia, that committeemen "shall administer the grievance procedure per Article V." While article V does not specifically talk about committeemen until step 3, it is as illogical to suggest that the committeeman has nothing to do with grievances until step 3 as it is illogical to suggest that a trial attorney has nothing to do until the trial starts. The stated purpose of the grievance procedure agreed to by these parties was to resolve the dispute at the lowest possible level and that is exactly what the committeemen were doing on their release time and were legally entitled to be paid for doing so.

I therefore find that Respondent's refusal to pay union committeemen for their 8 hours of release time and its unilateral elimination of paid release time after paying it for 2 years of a 3-year contract violated Section 8(a)(5) and (1) of the Act.[1]

C. *Withdrawal of Recognition Case*

The complaint alleges several violations of Section 8(a)(1) including promising benefits, coercively interrogating employees, and assisting employees soliciting decertification card signatures. It also alleges several violations of Section 8(a)(5) by Respondent including refusal to recognize the Union's negotiating committee because it included the secretary-treasurer of the Union and because the International representative was chief spokesman; refusing to recognize the International Union's status as joint bargaining agent, and meeting with employees and offering various benefits of being salaried which were implemented unilaterally following the withdrawal of recognition from the Union.

I credit the testimony of employee Rodney Hinzman concerning his conversations with Foreman Al Gill. On numerous occasions between January and June 1983, Gill stated to Hinzman that unit employees would be better off if they became salaried, nonunion employees. It was Gill, and not Hinzman, who brought up the subject in the beginning but later on they would alternately bring up the subject. In addition, Gill also gave permission and escorted another employee, Julius Kuzia, to Hinzman's

[1] I do not express an opinion on whether the paid-release time clause violates Sec 302 since I have no such jurisdiction. *Sheet Metal Workers*, 234 NLRB 1238 (1978) However, I note that Respondent instituted suit in U S. District Court in New York seeking to have a paid-release time clause in a separate and distinct collective-bargaining agreement declared in violation of Section 302. The clause provided that union offices would get paid for attending to union business on company time The court found the clause to be perfectly legal *BASF Wyandotte v. Local 227*, 116 LRRM 3115 (1984)

restricted work area where Kucia solicited Hinzman's signature on a card to decertify the Union. Furthermore Gill remained present while this solicitation was taking place. In these circumstances, I find that Respondent, through its agent Gill, violated Section 8(a)(1) of the Act.

I credit the testimony of Ray Andres concerning his conversation with Foreman Dan Barton. Barton's questioning of Andres concerning whether or not he had signed a card to decertify the Union was unquestionably the type of interrogation forbidden by the Act. I credit Andres over Barton. Barton denied that he ever asked Andres if he signed a card to decertify the Union. I credit Andres over Barton because Andres appeared credible and had no motives to fabricate. Andres is still an employee of Respondent and, if anything, had a motive to say the opposite of what he said.

I find, however, that Andres' conversation with Supervisor Burkhart was not a violation of Section 8(a)(1). Andres was concerned that if the Union was decertified he might lose his job. He said he might be on a "hit list." Burkhart told Andres that there would be no "hit list." Burkhart's credited testimony as to the date of their conversation shows that it was not until after Respondent had objective evidence to support its claim of a good-faith reasonably grounded doubt as to the Union's continued majority status that Burkhart spoke with Andres. Andres himself could not remember when the conversation took place. Caldwell and Kramer received signed cards from 57 of the 102 unit employees expressing their desire not to be represented by the Union on June 17, 1983. Burkhart spoke to Andres only after Caldwell assured him it was okay to do so. Their conversation took place on June 24 or 25, 1983. Burkhart's assurance to Andres that there was no hit list with his name on it was not violative of the Act.

The disagreement between Respondent and the Union concerning the composition of the union negotiating committee is a matter controlled by the collective-bargaining agreement. Both Respondent and Union cite article II, section 3–C of the 1980 collective-bargaining agreement as providing that the Union shall have a negotiating committee of up to three persons who are employees actively at work. The three members of the committee were to be the two committeemen and the secretary-treasurer. Obviously this language would exclude any person who was not employed at the BASF Wyandotte site at the time of negotiations, including the International representative. The language of the agreement is evidence of a clear and unmistakable waiver by the Union of any right to have other representation at the negotiating table. The contract next states that the "committeemen and the President of the Local shall be paid for lost time spent during regular working hours, excluding overtime opportunities, at their regular rate of pay, in attending negotiations meetings with the Company during the sixty-day period predating the expiration date of this Agreement."

The history of collective bargaining and agreements between these parties show that Respondent recognized and dealt with both the Local and the International. It is apparent that at times Respondent bargained with the International representative when they felt the Local representatives were not sufficiently responsive. However, when it served their purposes, they chose to exclude the International representative. I have found that the Local and International were and had always been joint bargaining representatives of the unit employees at BASF Wyandote and ordinarily while Respondent could not dictate who would be on the Union's negotiating team we have a situation here where in clear and unmistakable language the Union limited their choice of representatives. Respondent did not violate the Act when it stated in a letter to the Union that Larry Sartin, the International representative, was not eligible and questioned whether the president or secretary-treasurer should be the third member of the union negotiating team since Respondent was merely requesting the Union to comply with the contract.

The General Counsel contends that Respondent violated Section 8(a)(5) and (1) by meeting with only two union representatives to explain and offer them benefits if the unit employees became salaried. This contention is premised on the faulty assumption that Union President Draheim and committeman Kozlowski were not meeting in their representative capacity when they met on June 14 and 15 with Respondent's representatives. Despite Draheim's assertion that he said at the very beginning of the meeting that he was there as an individual, and not as president of the local, his actions and discussions with representatives of management belie that assertion. First and foremost, the meeting was requested by the Union. Committeeman Kozlowski said they needed information to give to their members because they had been getting questions about salaried benefits. Furthermore the discussions, while not actually negotiations, were representative in nature, as evidenced by suggested alternatives for retirement, assurances against bumping, etc. Finally, Respondent's representative asked if the union officials were authorizing them to distribute the information on salaried benefits to employees and such permission was given. Clearly this was within their authority as union officials and having received such permission, Respondent's distribution of information on salaried benefits to the unit employees did not violate Section 8(a)(5) and (1) of the Act.

Respondent announced its withdrawal of recognition effective on the date and time of the expiration of the collective-bargaining agreement, following its receipt of 57 cards from employees stating they no longer wished union representation. It is undisputed that this was a majority of the 102 unit employees. In addition, another 10 cards to decertify the Union were received by Respondent during the next several days after it withdrew recognition. Respondent therefore had a reasonably grounded good-faith doubt of the Union's continued majority status, justifying its withdrawal of recognition. Since the Union was well beyond its first year of certification it enjoyed only a rebuttable presumption that its majority representative status continued. *Terrell Machine*, 173 NLRB 1480, 1481 (1969). The presumption was rebutted when Respondent received the cards.

Unit employees Hinzman and Kathack saw the May 24, 1983 "salaried confidential" memo, which discussed decertification, lying around the plant at points where it was possible for other unit employees to see it as well.[2] This was most unfortunate but does not rise to the level of misconduct such that it negates or taints Respondent's reasonably grounded good-faith doubt as to continued majority status of the Union. In addition, the decertification cards signed by the unit employees who wanted to decertify the Union was written in language identical to the language in the "salaried confidential" memo which gave an example of a decertification card. The unit employees most directly involved in the decertification effort were Julius Kuzia, Frank Tarnowski, and Clarence Sturgill. No one called any of them as witnesses. I must conclude from circumstantial evidence that they got the language for the decertification card from the "salaried confidential" memo which was carelessly left about. But even if I assume that the "salaried confidential" memo was deliberately left out to be found by unit employees I can not conclude that altthough improper this so taints the process that the will of 57 unit employees to decertify the Union could be ignored by Respondent. I would note in passing that a decertification election may have been the best way to resolve this matter but there is no evidence of record that either Respondent or the Union wanted such an election.

I credit Sartin when he testified that Caldwell told him that corporate headquarters in Germany wanted to get rid of the unions.

I do so because Sartin appeared to be a credible person. In addition, if Caldwell had not said this to Sartin it is doubtful that Sartin would have called William Jenkins back in Parsippany, New Jersey, to find out if this was true, i.e., that Germany had a policy to get rid of the unions. Jenkins admitted that Sartin called him. Jenkins denied that such a policy existed. This is probably a matter of semantics. A company has a legal right to "think" whatever it wants about unions but it has no right to engage in unfair labor practices to undercut the union's support among its employees or engage in any unfair labor practices. I am deciding this case with that philosophy in mind. A company does not violate the Act if it wants to get rid of the union but only if it does something illegal to get rid of the union.

Respondent's violation of the Act in unilaterally terminating paid release time after September 16, 1982, is not such a grievous violation of the Act that it taints Respondent's good-faith reasonably grounded doubt of the continued majority status of the Union. No employee testified that it was this event which persuaded them to vote for decertification nor did any union official testify or was there any other evidence of complaints from unit employees that they no longer were being looked in on by the committeemen so that the inference could be drawn that this violation of the Act underminded the support the Union had such that a withdrawal of recognition would be inappropriate even though 55.8 percent of the unit employees signed decertification cards prior to the withdrawal and within 3 days after the withdrawal a little over 65 percent of the unit employees had signed decertification cards. While a reasonably grounded good-faith doubt as to continued majority status should take place in an atmosphere free of unlawful labor practices before recognition can be withdrawn the unlawful labor practices must be "sufficiently serious to warrant a determination that they possessed an inherent tendency to produce disaffection and, thereby, contributed to the union's loss of majority status." *Chicago Magnesium Castings*, 256 NLRB 668, 674 (1981).

With respect to the 8(a)(1) violation there was no evidence introduced which indicated that any other employees knew of or were influenced by the interrogation of Hinzman or Andres. Furthermore, despite the interrogation neither Hinzman nor Andres signed cards to decertify the Union. There was no showing that the violations of Section 8(a)(1) had any effect on the majority of the unit employees' decision not to be represented by the union.

Because I find that Respondent had a reasonably grounded good-faith doubt as to the continued majority status of the Union it had a right to withdraw recognition. *Bennington Iron Works*, 267 NLRB 1285 (1983).

Conclusions of Law

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

2. Oil, Chemical and Atomic Workers International Union, AFL–CIO–CLC and its Local 7–627 are labor organizations within the meaning of Section 2(5) of the Act.

3. By unilaterally discontinuing payment to union committeemen for 8 hours a week release time Respondent violated Section 8(a)(5) and (1) of the Act.

4. By coercively interrogating employee Ray Andres in early June 1983 regarding whether or not he had signed a card to decertify the Union, Respondent violated Section 8(a)(1) of the Act.

5. By granting an employee access to a restricted area of the plant during working hours to solicit Rodney Hinzman's signature on a card to decertify the Union, Respondent violated Section 8(a)(1) of the Act.

6. By promising employee Rodney Hinzman that his benefits would be better if he went nonunion, Respondent violated Section 8(a)(1) of the Act.

7. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, I shall recommend that they be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully refused to pay union committemen for 8 hours a week release time spent administering the collective-bargaining agreement, I recommend that Respondent be ordered to make them whole for any loss of earnings they may have suffered

[2] Neither Hinzman nor Kathack signed decertification cards

by reason of this unlawful unilateral change, by paying them a sum of money equal to the amount they would have normally earned as wages from September 16, 1982, until July 22, 1983, with interest computed in a manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).[3]

I shall further recommend that Respondent be required to preserve and make available to Board agents, on request, all pertinent records and data necessary to analyze and determine whatever backpay may be due union committeemen.

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

ORDER

The Respondent, BASF Wyandotte Corporation Wyandotte, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally discontinuing payment to union committeemen for 8 hours a week release time.

(b) Coercively interrogating employees regarding whether or not they have signed cards to decertify the Union.

(c) Allowing employees access to restricted areas of the plant during working hours to solicit employees' signatures on cards to decertify the Union.

(d) Promising employees better benefits if they chose to become nonunion.

(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) Make whole union committeemen Alex Kozlowski and Frank Hrabelski for any loss of pay they may have suffered as a result of its unlawful conduct, in the manner set forth in the remedy section of this decision.

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

(c) Post at its Wyandotte, Michigan facility, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 7, 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.

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[3] See generally *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1961).

[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.

[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."

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