Local 167, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (General Motors Corp.) *and* Muriel D. James. Case 7-CB-6834(2)

27 November 1987

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JOHANSEN AND STEPHENS

On 2 April 1987 Administrative Law Judge Walter J. Alprin issued the attached decision.

The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The complaint alleged that the Respondent violated Section 8(b)(1)(A) when union bargaining committee member Bruce Dale incorrectly advised Charging Party Muriel James in September 1985 that she was not subject to the provisions of the new local seniority agreement, which resulted in James' losing approximately 4 months of seniority. The complaint alleged further that James relied to her detriment on the incorrect information provided to her by Dale. The judge found a violation. We reverse.

On 10 October 1977 the Employer hired James in a bargaining unit position. On 4 September 1984 James transferred to a nonsupervisory position that was outside the bargaining unit. At the time of the transfer, the governing collective-bargaining agreement between the Employer and the Union provided that an employee would be credited with accumulated unit seniority in such circumstances without loss (slippage) of seniority.

On 16 October 1984 the Employer and the Union entered into a new collective-bargaining agreement. The new agreement provided that "any employee accepting a job outside the bargaining unit (supervisory or nonsupervisory) will have their seniority adjusted on a day-for-day basis, upon the accumulation of one year."[1] The new agreement also provided that "none of the provisions of this agreement are retroactive and are effective only on and after date of the signing of this agreement."[2]

In July 1985 union alternate committeeperson Vicki Urbanski informed James that James likely would lose seniority after a year out of the bargaining unit. James replied that she did not believe she would lose seniority under the terms of the bargaining agreement and that the Employer did not believe so either. Urbanski disagreed and told James that "you had better check it out."

Thereafter, James was told by both her current supervisor and former supervisor that she would not lose seniority if she remained out of the unit for more than a year. According to James, within 2 weeks of her conversation with Urbanski, she encountered union district committeeman Bruce Dale outside the plant manager's office as she was on her way to the cafeteria. James testified that after exchanging pleasantries, she "asked him if I went into that salaried job under the old agreement, did I still fall within those provisions, and he said, 'Yes.'" James could not recall anything else said in the conversation on this matter. This is the full extent of her testimony regarding the conversation with Dale.[3]

Thereafter, James elected to remain in a nonbargaining unit position. She returned to the unit on 2 January 1986. While still outside the unit, James became aware that her seniority had been reduced to reflect certain time she had worked outside the bargaining unit. When James complained to her local union representative about her reduction of seniority, she was told that management had correctly reduced her seniority. James contacted International Union Representative Jack Payne, who was then occupied in negotiation of a bargaining agreement elsewhere. Payne told James and another employee with a similar complaint that he could not be bothered with their complaints and that if they wanted to go further, they could take the matter to the membership or the International union president.

James, however, convinced management to restore her original seniority date. Thereafter, on 19 February 1986, union committeeman Dale filed a "policy grievance" demanding that all employees

[1] The provisions' seniority slippage as applied to supervisory positions was later deleted because it conflicted with the national agreement between the Employer and the International Union

[2] The final agreement did not contain alternative language regarding seniority "slippage" drafted by a subcommittee dealing with seniority. Union committeeman Bruce Dale was a member of the seniority subcommittee. That language provided that "any employee accepting a job(s) outside the bargaining unit and is assigned for a period of one-year will have their seniority adjusted on a day for day basis. The adjustment will be applicable to accumulated time in the non-bargaining position(s). This provision will be applicable to employees currently assigned to non-bargaining positions on the effective date of this agreement."

[3] Dale testified that he had no recollection of a discussion with James regarding her seniority but testified that he could not have given her the advice that James claimed was given

returning to the bargaining unit from nonsupervisory jobs "slip" seniority on a day-for-day basis as set forth in the 1984 bargaining agreement. On 27 February 1986 management agreed to adjust the seniority dates on nonsupervisory personnel on a day-for-day basis upon the accumulation of 1 year of nonbargaining unit service. As a result, James' seniority was again reduced.

Based on the foregoing facts, the judge found that the Respondent violated Section 8(b)(1)(A) by failing in its duty fairly to represent employees. The judge concluded that the Respondent arbitrarily, discriminatorily, and in bad faith refused to accept, file, and process a grievance on behalf of James to reinstate her seniority. The judge reasoned that the 1984 agreement specifically rejected the applicability of slippage to employees, such as James, already transferred outside the bargaining unit as of the effective date of the agreement; that committeeman Dale *correctly* so advised James in September 1985; and that Dale (and the Union), in connection with the subsequent "policy grievance," arbitrarily and in bad faith pursued a different and erroneous interpretation of the agreement. We disagree and shall dismiss the complaint.

As an initial matter, we note that the judge's finding of a violation in this case has, as its analytical underpinning, the notion that the 1984 bargaining agreement, by its terms, does not permit a reduction in James' seniority. That notion, however, was *not* an element of the General Counsel's theory in support of the complaint. Indeed, it conflicts with the complaint's theory, which is that the terms of the 1984 agreement were, on their face, open to more than one interpretation, that union committeeman Dale *incorrectly* advised James in September 1985 that her seniority could not be reduced under the terms of the 1984 agreement, which advice she relied on to her detriment, and that Dale knew in September 1985 that his advice was contrary to the Union's interpretation. Indeed, consistent with the particulars of the complaint, counsel for the General Counsel conceded, as reflected in his posthearing brief, that the wording of the 1984 agreement has "at least three reasonable interpretations." One such interpretation is that seniority is reduced for employees that stay in a nonunit position commencing 1 year after the effective date of the 1984 agreement, without regard to when the position was originally accepted. This interpretation forms the basis for committeeman Dale's "policy grievance" that was eventually accepted as the correct interpretation by management.

In short, the judge erred in failing to recognize that the "policy grievance" filed by union committeeman Dale rested on a reasonable interpretation of the 1984 bargaining agreement. As a result, he apparently ignored the complaint allegation that Dale's advice in September 1985 was knowingly contrary to the reasonable interpretation the Union actually embraced, and substituted a theory directly at odds with the complaint. The issue, as alleged and litigated, is whether the Union violated the Act when union committeeman Dale gave James bad advice, which she then relied on to her detriment. Under the circumstances presented in this case, we find that the Union did not violate the Act.

It is well settled that a union must refrain from purposely keeping unit employees uninformed or misinformed concerning grievances or matters affecting employment. *Painters Local 1310 (Reliance Electric)*, 270 NLRB 506 (1984). It is also well settled, however, that mere negligent action or nonaction alone does not constitute a breach of the duty of fair representation violative of the Act. *Teamsters Local 692 (Great Western Unifreight System)*, 209 NLRB 446 (1974). Thus, a union does not violate the Act simply by giving to an employee an incorrect interpretation of the governing bargaining agreement so long as it is not deliberately misleading or deliberately incorrect. *Painters Local 1310*, supra.

In the instant case, the General Counsel relies on a representation made by union committeeman Dale in September 1985 interpreting the seniority provisions of the collective-bargaining agreement, as applied to employee James. The General Counsel contends that because union committeeman Dale actively participated on a seniority subcommittee during the negotiation of the 1984 bargaining agreement,[4] Dale must have known the correct interpretation of the agreement's ambiguous language as later asserted in the policy grievance of February 1986. It is contended, therefore, that Dale must have known that the interpretation given to James in September 1985 was in fact exactly opposite of the Union's actual interpretation.

Our review of the record convinces us that the evidence is insufficient to establish that Dale deliberately misled or purposely gave bad advice to James. As noted, the terms of the seniority provision at issue admittedly are ambiguous on their face and open to more than one interpretation. In this context, employee James asked committeeman Dale, in an informal setting, a single question—"if I went into that salaried job under the old agreement, did I still fall within those provisions." Nothing in James' inquiry sets forth the precise details

[4] See fn 2, supra

of her employment situation and, indeed, she made no reference to seniority or to the reduction of seniority. Further, James' phrasing of the question in terms of the "old agreement" rather than the applicability, if at all, of the current agreement is confusing; hence her inquiry was susceptible to being misunderstood.

In these circumstances, we find that although Dale perhaps was negligent in failing to secure additional details before offering an answer to James' question, there is insufficient evidence to establish that he purposely misled James. Dale's expertise regarding the seniority terms of the agreement, by virtue of his participation on the seniority subcommittee, does not, standing alone, establish that he deliberately gave bad advice. Rather, it appears that his answer was far more likely the result of confusion stemming from an ambiguous question being asked in an informal setting regarding an interpretation of an ambiguous contractual provision—a confusion that was furthered by the failure of the participants to flesh out the details necessary for either of them to accurately assess what the other meant. In view of these ambiguities and the reasonable contractual basis underlying Dale's subsequent "policy grievance,"[5] the circumstances do not establish a course of conduct that is arbitrary, discriminatory, or in bad faith.[6] Accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

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[5] In light of our conclusion to dismiss the complaint, we find it unnecessary to address the Respondent's contention that Dale did not, in any event, act on behalf of the Respondent by filing the "policy grievance." Further, as previously discussed, the judge's findings regarding filing of the grievance are erroneous insofar as they rest on the 1984 agreement's possible applicability to employees such as James

[6] Although his recommended Order contains no provisions directed at the International Union, which was not a respondent in this proceeding, the judge stated that International Representative Payne's alleged refusal to consider James' complaint was arbitrary and discriminatory, and constituted "another instance" of breaching the duty of fair representation We disavow the judge's comments in this regard.

Howard M. Dodd, Esq., for the General Counsel.
A. Robert Kleiner, Esq. (Kleiner and Fayette), of Grand Rapids, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALTER J. ALPRIN, Administrative Law Judge. The charge here was filed by Muriel James, an individual, on 25 April 1986, and complaint thereon issued 31 July 1986. The issued involved is whether Local 167, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (Respondent or Union) engaged in an unfair labor practice by breaching its duty of fair representation of James, a member, in violation of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). Hearings were held before me at Grand Rapids, Michigan, on 5 February 1979. A brief dated 11 March 1987 was filed on behalf of the General Counsel.

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

FINDINGS OF FACT

I. JURISDICTION

It is admitted and I find that the Union, with offices at Wyoming, Michigan, is a labor organization within the meaning of Section 2(5) of the Act, and that General Motors Corporation, Rochester Products Division (Employer) is a Michigan corporation engaged in the manufacture, sale, and distribution of automobiles and related products; has an office and facilities in Wyoming, Michigan; and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

A. *Background*

James was first employed by the Employer, in a bargaining unit represented by the Union, on 10 October 1977 and became a member of the Union on completion of her probationary period. On 4 September 1984 she accepted a transfer to a nonsupervisory salaried position with the Employer, which position was not within the represented unit. At that time the effective collective-bargaining agreement permitted unit members to work for the Employer outside the unit for any period of time without loss (slippage) of seniority.

During negotiations between the Employer and the Union for a collective-bargaining agreement to become effective 16 October 1984, Bruce Dale, a district committeeman and member of the Union's bargaining committee, and others, met on a subcommittee dealing with seniority. On 31 July 1984 this subcommittee reached tentative agreement for the seniority proposal, providing in part:

> Any seniority employee who accepts a transfer and is transferred from an occupational group in the bargaining unit, but in Rochester Products Wyoming Operations and is later transferred to an occupational group in the bargaining unit shall be credited with his/her accumulated seniority, providing their service has remained unbroken.
>
> Any employee accepting a job(s) outside the bargaining unit and is assigned for a period of one-year will have their seniority adjusted on a day for day basis. The adjustment will be applicable to accumulated time in the non-bargaining position(s). *This provision will be applicable to employees currently assigned to non-bargaining positions on the effective date of this agreement.* [Emphasis added.]

Note that this provision does not make clear when slippage is to start.

In the final agreement of 16 October 1984, there appears a Local seniority agreement, at paragraph XI, "General Provisions." The following two subparagraphs are as follows in pertinent part.

> F. Any employee accepting a job outside the bargaining unit (supervisory or non-supervisory) will have their seniority adjusted on a day-for-day basis, upon the accumulation of one year.
>
> G. None of the provisions of this agreement are retroactive and are effective only on and after date of the signing of this agreement.

Note that the italicized portion of the committee recommendation was deleted, and the nonretroactive portion, subparagraph G, was added. Dale, however, testified that prior to and on execution of the 1984 agreement he understood that there would be day-for-day seniority slippage for a unit employee transferred to a nonunit position after 1 year.

During July 1985, toward the end of her first year outside the unit, James was having lunch with a friend and former fellow unit employee, Vickie Urbanski, who was also union alternate committeewoman, when the conversation turned to seniority issues. Urbanski told James that if she remained outside the unit beyond a year her seniority would begin to slip. James said that she did not believe the new 1984 provision would apply to her since she transferred out of the unit before the 1984 agreement took effect and the new agreement impliedly and specifically was not retroactive. Urbanski nevertheless advised James to check further.

James then discussed the matter with her current supervisor in the nonunit position, and with her prior supervisor in the unit position, both of whom agreed that she would not lose seniority if she remained out of the unit for more than a year. Within the next 2 weeks she also discussed the issue with Dale, the union district committeeman.

This meeting with Dale was a chance encounter in the hall at work. James and Dale, who had known each other for about 8 years and who usually saw each other at work about once a week, jokingly exchanged comments regarding professional basketball teams. James testified, "And in the course of the conversation I asked him if I went into that salaried job under the old agreement, did I still fall within those provisions, and he said 'yes.'" Dale testified that he had no specific recollection of the encounter, but could not deny it took place. He also had no recollection of such a discussion, but having sat on the seniority committee he states that he could not have made the statement described because he would have believed it to be incorrect.

James was offered the opportunity to remain a nonsupervisory and nonunit employee of the Employer and, relying on her belief that she would continue accruing seniority, she accepted it, remaining in that position after her 1-year anniversary of 4 September 1985. For reasons not here pertinent, she returned to the bargaining unit on 2 January 1986.

Shortly thereafter, James consulted the seniority roster and noted that her seniority date had been changed from 10 November 1977 to 5 February 1978. She complained to her union committeeman, who advised that management had correctly exercised its right to reduce seniority. She asked if there were some other union representative to whom she could speak, and was referred to her zone person, who that day was Urbanski. Urbanski also advised James that management was within its rights in reducing her seniority, although she could grieve the amount of reduction. James asked what other relief there might be, and was told that she could "go through Union levels."[1]

In order to follow that advice, in September 1985 James and Al Papke, the only other employee apparently in the same position as James, spoke to a district committeeman, who told them they had no grounds for grieving, but that they could take the matter to Local President Hilla. They did so, and he took the same position, advising that if they wished to go further they could speak to the International Union Representative Jack Payne. They attempted for several days to contact Payne, who apparently was occupied in negotiating another contract. Whey they finally did so, Payne's response was, "If you think I'm going to stop doing what I'm doing to be bothered by your pennyante 'blank', you're wrong." He told them that if they wanted to go further, they could either "take it to the membership, or you can contact Owen Biever" (sic) obviously Owen Bieber, the International's president). Neither James nor Parke did either,[2] although apparently both filed charges with the Board.[3]

At some point in the interim, James spoke to the Employer's "human relations manager or personnel manager," and her original seniority date of 10 November 1977 was reinstated. On 19 February 1986 Committeeman Dale filed a "policy grievance," demanding that the Employer abide by section XI(f) of the local agreement "and that all non-supervisory employees returning to the bargaining unit from non-supervisory jobs slip seniority as agreed to in 1984 Local Negotiations." The following day the grievance was denied by the foreman in that "Management has applied the provisions of paragraph 69 and Doc. 86 of the current National Agreement on a consistent basis." On 27 February 1986 the matter was apparently settled between union and employer representatives that "management will adjust the seniority dates of non-supervisory personnel on a day for day basis upon the accumulation of one year of non-bargaining unit service" and thus "abide by Section XI(f) of the local seniority agreement as it relates to non-supervisory."

Apparently in preparation for this hearing, on 6 November 1986 committeeman Dale raised questions inter-

[1] At some later time management adjusted James' seniority date to 27 December 1977

[2] James did attend a union meeting in which there was some discussion of this situation, but as she did not ask for a membership vote it is not relevant

[3] Papke's charge, for reasons not in the record, was apparently dismissed at the Regional level.

nally with the Union, and on 7 November 1986 received a transmittal slip from James Wagner, the Local's International representative, stating "At your request" and noting "Per our telephone conversation, this is the only paragraph that was changed and the change never intended to apply to non-supervisory employees." It was attached to a page having the full language of section XI of the local agreement, quoted above here in full, with lines through the sentence reading "Any employee accepting a job outside the bargaining unit (supervisory or non-supervisory) will have their seniority adjusted on a day-for-day basis, upon the accumulation of the year." In the margin next to this stricken portion are written the words "Please note," followed by the typewritten words "Not applicable, local parties will follow National Agreement provisions. LEK, 11/9/84" and the handwritten initials LEK, apparently the Employer's labor representative, Larry Knox, and JW, for J. W. Wagner of the International Union.

The controlling provisions of the National Agreement referred to,[4] are paragraph 69 and document 86, both in the record within the National Agreement. Without quoting them both in full, suffice it to say that both provisions relate to seniority of "Any employee who has been transferred from a *supervisory* position to a job classification in the bargaining unit." (Emphasis added.) In addition, a letter from Employer Representative Knox to Union Representative Wagner, dated 3 February 1987 and accepted and approved by Wagner on behalf of the International the same day, specifically provides that "As we discussed, *supervisory* employees who accept a job outside of the bargaining unit are governed by the applicable provisions of the GM-UAW National Agreement. (Emphasis added.)

Discussion

The doctrine of union "fair representation" of members is not specifically spelled out in the Act. Rather, it has been inferred by the Board and the courts from the special relationship between employees and their exclusive bargaining representatives. This duty of fair representation has been defined by Board and court decisions as the right of employees "to be free from unfair or invidious treatment by their bargaining agent,"[5] such as when a union's "conduct toward a member is arbitrary, discriminatory, or in bad faith."[6]

It is, however, well recognized that mere negligence alone is not, of itself, an arbitrary act.[7] The circuit courts perhaps phrased it best in noting that the duty of fair representation "'is a legal term of art, incapable of precise definition,' and calls for an *ad hoc* review of each factual situation."[8]

[4] According to counsel for Respondent.

[5] *Miranda Fuel Co.*, 140 NLRB 181, 185 (1962), enf denied 326 F 2d 172 (2d Cir. 1963).

[6] *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)

[7] *Office Employees Local 2*, 268 NLRB 1353 (1984).

[8] *Smith v Hussman Refrigerator Co.*, 619 F.2d 1229, 1236 (6th Cir 1980), quoting *Griffin v. Auto Workers*, 149 F.2d 181, 182 (4th Cir. 1973).

For the sake of transactional clarity, the foregoing statement of facts was not fully chronological, as is necessary here in order to reach conclusions. There now follows an ad hoc chronology of the pertinent facts.

1. On 31 July 1984: Dale's subcommittee on seniority recommends slippage of seniority "applicable to employees currently assigned to non-bargaining positions on the effective date of this agreement." Being in effect retroactive, the provision had no nonretroactive clause.
2. On 4 September 1984: James transfers to nonunit employment in a nonsupervisory position.
3. On 16 October 1984: New Local bargaining agreement. Seniority slippage is retained, but not specifically applicable to employees already transferred, and with a specific nonretroactive provision.
4. July 1985: James' alleged conversation with Dale.
5. On 4 September 1985: James elects to continue nonunit employment, allegedly on Dale's advice.
6. On 2 January 1986: James returns to unit and discovers change in seniority date.
7. Date not reported: James complains to Employer and has original seniority date reinstated.
8. On 19 February 1986: Dale files "policy grievance" to require seniority slippage for James and another employee without naming them, pursuant to section XI(f) of the local agreement. Rejected next day at local level. Agreement on 27 February 1986 for slippage as per section XI(f).
9. Date unreported: James and another employee speak with International Representative Payne.
10. On 25 April 1986: James files unfair labor practice charge with the Board.
11. On 6 November 1986: Dale makes telephone inquiry to International Representative Wagner regarding seniority provisions of agreement.

It remains impossible to determine what Dale told James during their meeting in July 1985. This was not a formal employee-union contact, so Dale's failure to recall the meeting is understandable. James impressed me as a straightforward and articulate witness, and if she placed her question to Dale I believe that it would have been understood as pertaining to a unit employee already currently assigned to a nonsupervisory, nonunit employment. If Dale's response were based on his knowledge gained from the subcommittee's recommendation, even though it was changed in the final agreement, he is correct that it would have to have been that slippage applied to employees *already assigned*, without any concept of nonretroactivity. In view of the final wording of the agreement, however, this would have been at least debatable if not flat incorrect. If Dale later learned of the changes made in the final agreement, specifically rejecting the applicability of slippage to employees already transferred and including a nonretroactive clause, such advice by Dale would have been a clear breach of duty. Dale, however, also impressed me as a straightforward witness, and I find no reason to believe he would have intentionally misadvised James at that time. A credibility determination is, however, unnecessary, as I believe that Dale would be no more than negligent whether he relied on his understanding of the committee recommendation,

or whether at that time he failed to verify the language of the final agreement. The "meeting" was extremely informal, at best, and under the circumstances Dale was not being arbitrary or discriminatory, nor acting in bad faith.

On the other hand, when Dale became aware that the Employer had reinstated James' original seniority date, he filed what he termed a "policy grievance." Though it was not filed on behalf of specific employees, Dale knew at the time that there were two employees, James and Papke, who would be affected. James was not notified of the grievance being filed or settled, and was not given an opportunity to present or argue her almost unique situation. By this time, I find, Dale was either still operating under his incorrect belief that the final agreement had incorporated the language of his subcommittee's proposal, providing for slippage for employees already transferred on 16 October 1984 with no provision for nonretroactivity, or was operating with the knowledge that the retroactive provision had been specifically stricken and the nonretroactive clause specifically included. If the former, Dale's action went beyond simple negligence, and in failing to determine the text of the final agreement, or to either state in full the circumstances involving James or permitting her to do so for herself, was arbitrary and discriminatory. If the latter, then Dale's actions were not in good faith, in addition to being arbitrary and discriminatory. Dale's later action, in November 1986, of contacting the International representative for a copy of article XI, as included in the final contract, would support an assumption that in February of that year he took the action of filing the grievance without being aware of the precise terms of the agreement. In either case, his activity, vis-a-vis the "policy grievance," constituted a breach of the duty of fair representation.[9]

James, with the other affected employee, also approached International Representative Payne. Although one can understand his wishing not to be disconcerted from an ongoing negotiation, Payne's refusal to consider James' complaint was arbitrary and discriminatory, and constituted another instance of breaching the duty of fair representation.

James went no further in exhausting internal union remedies. Counsel for Respondent Union intimated, without citation, that there exists an entire body of circuit court decisions on the issue of exhausting remedies, but it appears to me that the issue arises, with certain limitations, and has an effect only in proceedings before the Federal district courts pursuant to Section 301 of the Act, for violation of contract, and not in administrative proceedings brought before the National Labor Relations Board for unfair labor practices pursuant to Section 8(b)(1)(A) of the Act.

[9] It has been said that it is not wrong to know, but that it is wrong not to find out I believe that Dale's alleged advice to James, even if given exactly as stated, would have been evidence that at the time Dale did "not know" and was no more than negligent at worst By the time the matter came to a head with Dale's filing the "policy grievance," however, he should have "found out" whether the contract was nonretroactive Not having done so Dale was "wrong" and the Union's obligation to James was not fulfilled

III. THE EFFECT OF THE UNFAIR LABOR PRACTICE ON COMMERCE

Respondent Union's activities as set forth above, occurring in connection with the operations of the Union and of the Employer, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that Respondent Union has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

It is recognized that a violation of Section 8(b)(2) is not alleged. There is no way to know whether, had James been permitted to grieve her reduction in seniority, her later employment status would have changed. Equity, however, demands that if such were the case, Respondent must make James whole for any loss of earnings and other benefits, computed on a quarterly basis less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).[10]

Counsel for the General Counsel has requested a visitatorial clause. I find no basis for granting such additional remedy.

CONCLUSIONS OF LAW

1. The Employer, General Motors, Rochester Products Division is, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 167, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America is, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.
3. By failing in its duty to fairly represent employees by arbitrarily, discriminatorily, and in bad faith refusing to accept, file, and process to conclusion a grievance on behalf of Muriel James requesting that the Employer reinstate her seniority, Respondent has engaged in an unfair labor practice in violation of Section 8(b)(1)(A) of the Act.
4. The unfair labor practice described immediately above affects commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

[10] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).