Royal Midtown Chrysler Plymouth, Inc. *and* District 9, International Association of Machinists and Aerospace Workers, AFL–CIO *and* Automotive, Petroleum and Allied Industries Union Local No. 618, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO.[1] Cases 14–CA–17815 and 14–CA–17834

September 29, 1989

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND HIGGINS

On August 12, 1985, Administrative Law Judge Elbert D. Gadsden issued the attached decision in this proceeding. The Respondent filed exceptions and a supporting brief. On May 1, 1986, the judge filed the attached supplemental decision in this proceeding.[2] The Respondent and the General Counsel filed exceptions and supporting briefs. The Respondent also filed a motion to strike sections A and B of the judge's supplemental decision.[3]

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

The Board has considered the decision, the supplemental decision, and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[4] and conclusions only to the extent consistent with this Decision and Order.

1. The judge found, inter alia, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Charging Party Teamsters and the Charging Party Machinists. For the reasons set forth below, we agree with the judge's findings concerning the Machinists, but find, contrary to the judge, that the Respondent did not violate the Act by refusing to bargain with the Teamsters.[5]

The facts are set forth in detail in the judge's decision. Briefly, from November 1982 until early 1984, R. Michael Sheahan and Christopher Blumeyer operated Quality Chrysler Plymouth Sales, Inc. (Quality). The Teamsters and Machinists were parties to separate contracts with Quality covering parts and delivery employees and mechanics, respectively, which expired on July 31, 1984. In early 1984, Quality experienced financial problems and Sheahan purchased Blumeyer's interest in Quality and became its sole owner.

On December 7, 1984, Harold Arbeitman and Edwin Sapot purchased Quality from Sheahan and changed the name to Royal Midtown Chrysler Plymouth, Inc. (the Respondent). Sapot and Arbeitman became co-owners and president and vice president, respectively. By December 14, 1984, the Respondent had hired four of the five employees previously employed in the predecessor employer's Machinists unit and three of the four employees previously employed in the predecessor's Teamsters unit.[6]

[1] On November 1, 1987, the Teamsters International Union was readmitted to the AFL–CIO. Accordingly, the caption has been amended to reflect that change

[2] The Board remanded this case to the judge for further consideration of whether the Respondent violated Sec 8(a)(5) and (1) of the Act by failing to recognize and bargain with the Machinists and whether the Respondent violated Sec. 8(a)(1) of the Act by telling an employee during a preemployment interview that the Respondent would operate a nonunion shop.

[3] In secs. A and B, the judge made additional findings concerning his conclusion in the original decision that the Respondent violated Sec 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Teamsters The Board did not request these additional findings in its remand order In view of the discussion below concerning the Respondent's obligation to bargain with the Teamsters, we find it unnecessary to pass on the judge's additional findings in his supplemental decision or on the Respondent's motion to strike.

[4] The Respondent 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 agree with the judge that the Respondent violated Sec. 8(a)(1) of the Act when, as the credited testimony shows, its agent John Van Hoogstraat told employee Jere Tyrer during a preemployment interview that the Respondent's operation would "be a nonunion shop" While statements to the effect that an employer has a nonunion work force may sometimes be merely descriptive and not unlawful, Van Hoogstraat's statement, given its context, had a reasonably foreseeable coercive impact The Respondent had agreed to interview all the predecessor's employees who it knew were represented by the Union. By stating unequivocally that the Respondent was going to operate a nonunion shop, Van Hoogstraat conveyed the message that, regardless of the circumstances, the Respondent would refuse to bargain with the employees' collective-bargaining representative Further, the manner in which the statement was made in the hiring interview implicitly invited a response from the employee concerning whether he had any objection to such conditions The Board has recognized that statements of this kind made in employment interviews may amount to coercive interrogation, even in the absence of threats See *Groves Truck & Trailer*, 281 NLRB 1194, 1201 (1986) We also note that in this case, the implications of Van Hoogstraat's statement in the interview were reinforced both by the subsequent conduct of Service Manager William Pinkley, who not only inquired about the union sentiments of the machinists, but also sought to give them unsolicited assistance in withdrawing from the Union and by the Respondent's subsequent unlawful refusal to bargain with the Machinists

[5] We find no merit in the Respondent's contention that the two bargaining units are not appropriate units for bargaining We note that the Respondent failed to present any evidence at the hearing to support its contention that the units are not appropriate and that it offers only a simple assertion to support its claim

[6] The Respondent continued operations immediately after taking over Quality. There was no hiatus in operations and there is no claim that the Respondent intended to expand the work force in either unit Thus, the Respondent intended to employ the same number of employees in each unit that were employed by Quality Two of the three employees in the Teamsters unit were hired on December 7 and the other, Ronald Payne, was hired on December 14 Payne served as parts manager for both Quality and the Respondent and the judge included him in the unit Payne was terminated on December 26, 1984. The Respondent claims that Payne and Donald Miller, hired to replace Payne, should not be included in the unit because they were/are statutory supervisors We find it

Continued

On January 9, 1985, representatives from the Teamsters and the Machinists requested that Arbeitman recognize and bargain with their respective units. The Respondent refused these requests and also failed to respond to a followup letter dated January 9, 1985, sent by the Machinists representative. On January 9, 1985, it is undisputed that a majority of employees in the Machinists unit were former employees of Quality and that of the four employees in the Teamsters unit, only one had been previously employed by Quality.

We agree with the judge's finding that the Respondent is a successor to Quality based on a substantial continuity in the employing industry.[7]

The judge further found that the Respondent was obligated to bargain with the Machinists and Teamsters on, and subsequent to, the change in ownership on December 7, 1984, because a representative complement of the Respondent's work force was on the job and a majority of those employees in each unit were former employees of Quality.

2. The Respondent contends in its exceptions, inter alia, that the judge applied an incorrect date for determining when a majority existed. According to the Respondent, a majority exists "when demand for bargaining has been made and a representative complement is on the job." The Respondent claims that, therefore, the applicable date for determining when the bargaining obligation attaches in this case is January 9, 1985, when the demand for bargaining was first made. Since on that date only one of the four unit employees was a former employee of Quality, the Respondent contends that it has no obligation to bargain with the Teamsters. We find merit in the Respondent's argument.

Successorship does not automatically carry with it the obligation to bargain with the union that represented the predecessor's employees. Nor does the fact that the union represents a majority of the successor's employees in an appropriate unit operate alone to invoke the bargaining obligation; and this is so even when the successor has attained a "substantial and representative complement" of employees. The bargaining obligation—albeit potentially present when successorship and representative complement are established—must be triggered by a demand for recognition or bargaining.[8] It follows, therefore, that the determination of whether the successor has incurred a bargaining obligation must be assessed at that time rather than when successorship takes place. Of course, if a demand is made concurrent with the establishment of successorship or the attainment of a representative complement, or, even prematurely but is continuing, the obligation will attach upon the occurrence of such events. But where no demand is made until some time after successorship and representative complement have occurred, the obligation will rise or fall depending on the union's representation among the unit employees at the time of its demand.[9] With these principles in mind, we decide the issue concerning the Teamsters' claim.

Although the Respondent employed a representative complement of employees in the Teamsters unit on December 14, 1984, and a majority of these employees were former employees of Quality, no demand for bargaining was made at that time. It was not until January 9, 1985, that the Teamsters made a demand for recognition and bargaining. At this time, only one of four unit employees was a former employee of Quality. Therefore, in assessing the Respondent's bargaining obligation with the Teamsters under these circumstances, we conclude that the Respondent was not obligated to recognize and bargain with the Teamsters. Accordingly, we shall dismiss the complaint allegation that the Re-

unnecessary to pass on Payne's and Miller's status because such a determination would not change the result in this case.

The judge found that William Pinkley, one of the Quality Machinists-unit employees hired by the Respondent, became a supervisor on being hired by the Respondent This finding is consistent with the parties' stipulation that Pinkley, who was the service manager for the Respondent, was a supervisor within the meaning of Sec 2(11) of the Act In addition, we note the judge's finding, supported by the record, that service managers had traditionally been excluded from the Machinists unit. The Respondent excepted to the judge's finding in his supplemental decision that Pinkley should be included in the unit In light of the parties' stipulation that Pinkley was a supervisor, the judge's finding that he was a supervisor, and the past practice regarding exclusion of service managers from the unit, we find merit in the Respondent's exception and exclude Pinkley from the unit This does not affect the finding that a majority of the employees in that unit on January 9, 1985, were former employees of Quality

[7] See *Fall River Dyeing Corp. v. NLRB*, 482 U S 27 (1987).

[8] See *Fall River Dyeing Corp. v. NLRB*, 482 U S at 46, *Grico Corp*, 265 NLRB 1344, 1345 (1982), *Hudson River Aggregates*, 246 NLRB 192 fn 3 (1979), enfd. 639 F.2d 865 (2d Cir 1981), *Bengal Paving Co.*, 245 NLRB 1271, 1272 (1979)

[9] As the Supreme Court noted in *Fall River*, the Court in *NLRB v. Burns Security Services*, 406 U S 272 (1972), did not have to consider when the successor's obligation to bargain arose. In *Fall River*, the Court agreed with the Board and the Court of Appeals for the First Circuit that the so-called substantial and representative complement rule fixes "the moment when the determination as to the composition of the successor's workforce is to be made" *Fall River*, 482 U S at 47 In *Fall River*, the union demanded recognition before the time such a complement was reached and the Court, therefore, was not faced with the situation presented here, i e, a demand made after a union had lost majority status in a representative complement of unit employees. Nevertheless, in finding that the Board's "continuing demand" rule is reasonable, the Court stated. "[t]he successor's duty to bargain at the 'substantial and representative complement' date is triggered *only when the union has made a bargaining demand*" (Emphasis added) Id at 46. Although these statements of the Court did not address the majority status of the union in *Fall River* at the time of the demand, a full reading of the Court's opinion and the principles enunciated therein presume that the union enjoyed majority status among the unit employees at the time the demand for bargaining matured.

spondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Teamsters.[10]

3. The Respondent does not dispute the finding that a majority of employees in the Machinists unit were former employees of Quality. Instead, the Respondent contends that its refusal to recognize and bargain with the Machinists is based on a good-faith doubt as to the majority status of that unit. The judge failed to address this issue in his original decision and then rejected the Respondent's contentions in his supplemental decision. We agree with the judge's findings that the Respondent failed to establish that it had sufficient objective considerations to justify a good-faith doubt as to the majority status of the Machinists.

In order to establish a good-faith doubt as to majority status the evidence must demonstrate a clear intention by the employees not to be represented by the union. *Parkview Furniture Mfg. Co.*, 284 NLRB 947 at 972 (1987). Here, the Respondent relies on Pinkley's testimony that three of the four employees in the Machinists unit stated that they did not desire union representation. Initially, we note that Pinkley's comment to Arbeitman that the employees did not care one way or the other about the Union and that 75 percent did not want the Union (i.e., Pinkley's paraphase of comments made to him) is insufficient to support the Respondent's assertion of a good-faith doubt of the Machinists' majority status. As noted below, an investigation of the basis for Pinkley's comment to Arbeitman discloses that the employees' statements to Pinkley did not evidence a clear intention not to be represented by the Machinists. According to the credited testimony of one of those three employees, Robert Bailey, Bailey never told Pinkley he did not want the Union. The judge further pointed out that, on cross-examination, Pinkley acknowledged that Bailey never made such a categorical statement (that he did not want the Union), but simply said he did not care whether or not they had a union. In addition, the judge pointed out that the other two employees, Follmer and Mazzuca, did not testify at the hearing and were not available to affirm or deny the union sentiments attributed to them by Pinkley. Thus, while the judge credited Pinkley's testimony that he told Vice President Arbeitman that a majority did not want the Union, he discredited the authenticity of Pinkley's report to Arbeitman regarding such employees' union sentiments. In such circumstances, we agree with the judge's finding that the Respondent failed to show that a majority of the employees in the Machinists unit expressed a clear intention not to be represented by the Machinists.

ORDER

The National Labor Relations Board orders that the Respondent, Royal Midtown Chrysler Plymouth, Inc., St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with District 9, International Association of Machinists and Aerospace Workers, AFL–CIO (Machinists Union) as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit with regard to their wages, hours, working conditions, and other terms and conditions of employment:

> All journeymen automobile and truck mechanics, machinists, electrical machinists, welders, trimmers, metal men, fender, body painters, radiator repairmen, refrigeration, automotive air conditioning mechanics, inspectors, glass installers, service salesmen and towermen, apprentices, and working foremen, and specialists employed by the Respondent at its St. Louis, Missouri facility EXCLUDING office clerical

[10] In his original decision the judge interpreted *Canterbury Villa*, 271 NLRB 144 (1984), to hold that a bargaining demand is not needed to trigger the bargaining obligation and that the only appropriate date for determining majority status is when the successor employer employs a representative complement of the predecessor's employees. It appears that the judge misinterpreted *Canterbury Villa* and failed to take into account the particular facts of that case

In *Canterbury Villa*, the alleged successor employer contested the Board's certification of the union pursuant to an election conducted among the predecessor's employees. The union had won the election and the predecessor, Mary Kenny, filed objections. On March 1, 1983, while those objections were still pending before the Board, Canterbury Villa purchased the assets and took over the operation from Mary Kenny. On August 11, 1983, the Board overruled the objections and certified the union. On August 23, 1983, the union requested recognition and bargaining from Canterbury Villa Canterbury Villa refused. The Board found that Canterbury Villa was the successor to Mary Kenny—noting inter alia that the majority of Canterbury Villa's employees on March 1 had been employed by Mary Kenny—and that Canterbury Villa's refusal to bargain was unlawful, notwithstanding that on August 23 when the union demanded bargaining, only 30 percent of the unit employees were former employees of the predecessor. In this latter regard, the Board found that the passage of time and unit changes occurring since successorship had been established did not justify Canterbury Villa's refusal to bargain.

The Board's holding in *Canterbury Villa* is predicated on the following propositions: once a union establishes its majority status in a Board-conducted election, unless and until the Board determines that the election results are invalid because of objectionable conduct, the union's status as the chosen representative of the employees is not affected by a change in identity of the employees' employer, the union's majority status remains constant from the date it was established in the election throughout the resolution of the question concerning representation in the union's favor; and the certification of the union that follows is binding whether the employer then is the predecessor or successor. *Dynamic Machine Co*, 221 NLRB 1140, 1142 (1975), enfd 552 F.2d 1195 (7th Cir 1977). In other words, for the purpose of resolving the question concerning representation in the election proceeding, the Board in *Canterbury Villa* saw no reason to differentiate between situations involving an unchanged employer and those involving an employer that is replaced by a successor Furthermore, in *Canterbury Villa* the union's continuing interest in being recognized as the employees' bargaining representative was implicit in the union's continuing participation as a party in the election proceeding Clearly, these are not the circumstances here

and professional employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to furnish the Machinists Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(c) Requesting, urging, and assisting employees to request a withdrawal card or to withdraw from the Machinists Union, or from any other labor organization.

(d) Telling employees it will operate a nonunion business.

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

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

(a) Recognize and, upon request, bargain collectively with District 9, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive bargaining representative of the unit employees with regard to wages, hours, working conditions and other terms and conditions of employment of the unit employees, and if an understanding is reached, embody such understanding in a signed agreement.

(b) On request, furnish the Machinists Union, the information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, including the information requested in its January 9, 1985 letter.

(c) Post at its business facility located at 4315 South Kingshighway, St. Louis, Missouri, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 14, 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.

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

APPENDIX

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

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

WE WILL NOT fail or refuse to recognize and bargain with District 9, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive bargaining representative of the employees in the following appropriate unit with regard to the wages, hours, working conditions, and other terms and conditions of employment.

> All journeymen automobile and truck mechanics, machinists, electrical machinists, welders, trimmers, metal men, fender, body painters, radiator repairmen, refrigeration, automotive air conditioning mechanics, inspectors, glass installers, service salesmen and towermen, apprentices, and working foremen, and specialists employed at our St. Louis, Missouri facility EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to furnish information requested by District 9, International Association of Machinists and Aerospace Workers, AFL–CIO that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT request, urge, or assist our employees to request a withdrawal card or withdraw from District 9, International Association of Machinists and Aerospace Workers, AFL–CIO or from any other labor organization.

WE WILL NOT tell our employees that we will operate a nonunion business.

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

WE WILL, on request, recognize and bargain collectively with District 9, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive bargaining representative of the employees in the appropriate unit described above, with regard to their wages, hours, working conditions, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL, on request, furnish information requested by District 9, International Association of Machinists and Aerospace Workers, that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, including the information requested in its January 9, 1985 letter.

ROYAL MIDTOWN CHRYSLER PLYMOUTH, INC.

Michael T. Jamison, Esq., for the General Counsel.
Michael E. Kaemmerer, Esq. (Buechner, McCarthy, Leonard, Kaemmerer, Guest & Owen), of St. Louis, Missouri, for the Respondent.
Nancy M. Watkins, Esq. (Wiley, Craig, Armbruster & Wilburn), of St. Louis, Missouri, for Teamsters Local 618.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. Charges of unfair labor practices were filed on 24 January 1985 and 8 February 1985, respectively, by District 9, International Association of Machinists and Aerospace Workers, AFL–CIO (Machinists or Charging Party), and Automotive, Petroleum and Allied Industries Union Local No. 618, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamsters or Charging Party), against Royal Midtown Chrysler Plymouth, Inc. (the Respondent). On behalf of the General Counsel, the Regional Director for Region 14, issued an order consolidating cases and a consolidated complaint, and an amended consolidated complaint against the Respondent on 7 March 1985 and 18 April 1985, respectively.

In substance, the amended consolidated complaint alleged that Respondent is the successor of Quality Chrysler Plymouth, and as such, it is the continued employing entity of Quality; that by virtue of the unexpired collective-bargaining agreement in effect between Quality and the Charging Parties, Respondent is bound to recognize and bargain with the respective Charging Parties; that Respondent is bound to recognize and bargain with Charging Party Machinists, representing its mechanic unit employees, and Charging Party Teamsters, representing its parts and delivery employees, respectively; that Respondent has interfered with, restrained, and coerced its employees, by failing and refusing to furnish information requested by Charging Party Machinists on behalf of Respondent's mechanic employees; that Respondent has failed and refused to recognize and bargain with Charging Party Teamsters, as the exclusive collective-bargaining representative of its parts and delivery employees, and Charging Party Machinists, as the exclusive collective-bargaining representative of its mechanic employees; that by so failing and refusing, Respondent has violated Section 8(a)(1) and (5) of the Act; and that by independent statements and other conduct by representatives or agents of Respondent to unit employees, Respondent has violated Section 8(a)(1) of the Act.

The Respondent filed an answer and an amended answer on 29 March and 23 April 1985, respectively, denying that it has engaged in any unfair labor practices as alleged in the amended consolidated complaint.

A hearing in the above matter was held before me in St. Louis, Missouri, on 20 and 21 May 1985. Briefs have been received from counsel for the General Counsel and counsel for the Respondent, respectively, which have been carefully considered.

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

FINDINGS OF FACT

I. JURISDICTION

The uncontroverted and credited testimony of record shows that from November 1983 through December 7, 1984, Quality Chrysler Plymouth Sales, Inc. located at 4315 South Kingshighway, St. Louis, Missouri, annually had gross revenues in excess of $500,000; and that it purchased and had shipped from out of State to its Kingshighway facility Chrysler and Plymouth automobiles of a value in excess of $50,000 annually. The parties stipulated that Quality Chrysler Plymouth Sales, Inc. was a Missouri corporation.

I therefore conclude and find upon the foregoing credited evidence that Quality Chrysler Plymouth Sales, Inc. was a Missouri corporate employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The complaint alleges, the answer admits, and I find that Royal Midtown Chrysler Plymouth, Inc. is an employer, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The consolidated complaint alleges, the amended answer admits, and I find that Charging Party Machinists is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

The consolidated complaint alleges, the amended answer admits, and I find that Charging Party Teamsters is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Information*

Since 21 November 1982, Co-owners R. Sheahan and Christopher Blumeyer operated a Chrysler Plymouth dealership under the name of Quality Chrysler Plymouth Sales, Inc. (Quality), which sold new and used Chrysler and Plymouth automobiles. Shortly after commencing business operations, Blumeyer and Teamsters Local 618 (Teamsters or Charging Party) entered into a collective-bargaining agreement covering Quality's parts and delivery employees, effective 5 November 1982 to 31 July 1984. Also, on or about 1 December 1982, Blumeyer and District 9 Machinists (Machinists or Charging Party) en-

tered into a collective-bargaining agreement covering Quality's mechanic employees, effective 1 December 1982 to 31 July 1984. Both the Teamsters and the Machinists are Charging Parties in this proceeding.

Quality also became a member of Greater St. Louis Automobile Association Signatory Group (GSAASG), a multiemployer bargaining organization authorized to negotiate collective-bargaining agreements on behalf of its members with labor organizations representing employees. Quality did not authorize GSAASG to negotiate and bind it to an agreement with the Machinists on behalf of its mechanic unit employees. However, Quality did assign bargaining rights and was a signatory member of GSAASG to negotiate with Teamsters on behalf of its parts and delivery unit employees. The latter authorization was never withdrawn.

The uncontroverted record evidence also established that since on or about 1 December 1982 until 6 December 1984, Charging Party Machinists was to be the designated exclusive collective-bargaining representative of employees of Quality in the following appropriate unit:

> All journeymen automobile and truck mechanics, machinists, electrical machinists, welders, trimmers, metal men, fender, body painters, radiator repairmen, refrigeration, automotive air conditioning mechanics, inspectors, glass installers, service salesmen and towermen, apprentices, and working foremen, and specialists employed by Quality at its St. Louis, Missouri facility EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

Since on or about 5 November 1982 until 6 December 1984, Charging Party Teamsters was to be the designated exclusive collective-bargaining representative of employees of Quality in the following appropriate unit:

> All parts managers, counterpersons, parts department employees, lubrication men, heavy truck drivers, undercoat men, tire and battery department employees, auto top installers, pressure type washers, polishers, new car clean-up employees, utility men, seat cover employees, paint shop helpers, motor riders, pickup and delivery and car jockeys, used car clean-up employees, porters, sweepers, and utility shop employees employed by Quality at its St. Louis, Missouri facility EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

In its answer, Respondent admitted that the following named persons occupied the positions set opposite their respective names, and are now, and have been at all times material herein, supervisors of Respondent within the meaning of Section 2(11) of the Act, and agents of Respondent within the meaning of Section 2(13) of the Act:

Edwin Sapot—President
Harold Arbeitman—Vice President
Joe Perniciaro—General Manager

The parties stipulated that William Pinkley, service manager, is a supervisor for Respondent within the meaning of Section 2(11) of the Act, and an agent within the meaning of Section 2(13) of the Act.[1]

B. *Respondent Purchased the Fixed Assets of Quality Chrysler Plymouth*

The uncontroverted and credited evidence established that in or about November 1982, Sheahan also held a 20-percent interest, and Blumeyer an 80-percent interest in Quality Volkswagen Sales. In early 1984, Quality Volkswagen and Quality Chrysler Plymouth commenced experiencing financial difficulty and Co-owner R. Michael Sheahan purchased Blumeyer's interest in both Quality Volkswagen and Quality Chrysler Plymouth dealerships. Both dealerships were located at the same facility, 4513 South Kingshighway, St. Louis, Missouri. Sheahan closed the Volkswagen dealership and continued to operate Quality Chrysler Plymouth. However Quality Chrysler Plymouth became delinquent on its contributions to the benefit funds of the bargaining units of both the Machinists and Teamsters. Sheahan nevertheless made an effort to pay the contributions by making partial payments on its delinquency to the Teamsters (Rod Joggerst) and the Machinists (Dave Meinell).

Near the end of 1984, Sheahan commenced searching for interested purchases of the dealership of Quality Chrysler Plymouth. As a result of his efforts, Harold Arbeitman and Edwin G. Sapot proceeded to negotiate for the purchase of Quality in about November 1984. The parties reached an agreement and signed a written contract for a purchase price of $60,000 on 23 November 1984. However, although the written agreement was never consummated by the parties, Sapot and Arbeitman paid off the capital loan of Sheahan to Commerce Bank, which in turn released Sheahan of all indebtedness. Sheahan thereupon assigned all assets to Arbeitman and Sapot. Neither Teamsters Representative Joggerst nor Machinists Representative Meinell learned about the transfer of assets (ownership) until after it was completed. The transaction was completed on 7 December 1984. Arbeitman and Sapot continued business operations in the same facility under the name of Royal Midtown Chrysler Plymouth, Inc.

Just prior to the 7 December 1984 change of ownership from Quality Chrysler Plymouth to Royal Midtown Chrysler Plymouth, the Respondent herein, employees in the bargaining units at Quality were as follows:

Teamsters	*Machinists*
Ronald Payne—Parts Manager	Robert Bailey—Mechanic
Gerald Agee—Parts	Carlo Mazzuca—Mechanic
Andrea DiBello—Parts	Jere Tyrer—Mechanic
Henry Hearns—Porter	Gary Follmer—Mechanic
William Pinkley—Service Writer	

[1] The facts set forth above are uncontroverted and are not in conflict in the record.

Subsequent to the 7 December 1984 transfer of the fixed assets from Quality to Respondent (Royal Midtown Chrysler Plymouth), the co-owners were Sapot, president, and Arbeitman, vice president. Arbeitman was also the owner of another dealership under the name of the Royal Gate Dodge, of which John Van Hoogstraat was the general manager. Thus, a few days before the transfer from Quality to Respondent, Manager Van Hoogstraat interviewed the employees of Quality for employment with the new company, Respondent (Royal Midtown Chrysler Plymouth). Following the interviewing process by Van Hoogstraat, Respondent immediately or later in December hired former employees of Quality in the bargaining units as follows:

Teamsters Unit
Ronald Payne—Parts Manager
Term—12-26-84
Donald Miller—Parts Man
Hired—2-26-84
Andrea DiBello—Parts
12-26-84
Gerald Agee—Parts
Term—3-8-85
Separated—5-31-85
Albert Micks—Parts
Hired—1-7-85
Jerry Messicks—Parts
Hired—3-18-85

Machinists Unit
William Pinkley—Service Writer/Manager
Robert Bailey—Mechanic
Gary Follmer—Mechanic
Jere Tyrer—Mechanic
Hired 2-18-85
separated 5-31-85
Carlo Mazzuca—Mechanic
Ron Rodash
Term 2-15-85

Dave R. Meinell, business representative for the Machinists, went to Quality and spoke with Sheahan after he learned that Quality had been sold. On 9 January 1985, Meinell, and Rod Joggerst, business representative for the Teamsters, went to the Respondent's showroom and asked the receptionist to speak with Arbeitman. She told them he was in a meeting and referred them to the manager across the street. Meinell and Joggerst went across the street and they testified they introduced themselves to Manager Perniciaro, told them who they represented, and Meinell asked him if he had the authority to negotiate or sign subsequent agreements covering wages, hours, and working conditions. Perniciaro told them he did not, but made a telephone call across the street to Respondent, and then referred them to Arbeitman.

Meinell and Joggerst returned across the street to Respondent's showroom where they met Arbeitman on the floor, and where they testified they introduced themselves and told him who they represented. However, Arbeitman denied that either Meinell or Joggerst introduced themselves or told him who they represented. Meinell and Joggerst further testified that Meinell explained to Arbeitman that the Respondent hired a majority of the members in the bargaining unit, and that according to the law, the Respondent had an obligation to negotiate the terms and conditions of a contract for the respective units. Teamsters Representative Joggerst testified that after he introduced himself and told General Manager Perniciaro and Vice President Arbeitman who he represented, he said Machinists Representative Meinell did the rest of the talking, and he corroborated Meinell's testimony of the conversations held with the general manager and the vice president, respectively.

However, Vice President Arbeitman's version of the conversation differs from that of Meinell and Joggerst in that Arbeitman denied that either Meinell or Joggerst introduced themselves or told him who they represented; that both Meinell and Joggerst approached him in a threatening manner talking about negotiating a contract; that he asked them for a copy of the contract and they refused to produce a contract; and that he did not have any idea about a contract to which they were referring. He acknowledged he did ask them to leave the premises and that they did in fact leave the premises. He also testified that he never negotiated or signed a collective-bargaining agreement with either the Machinists or the Teamsters.[2]

Machinists Business Representative Dave Meinell sent a letter dated 9 January 1985 to the Respondent requesting it to negotiate a contract on behalf of its Machinists unit employees. The letter also requested bargaining unit information regarding the names, addresses, dates of employment and separation from employment, and rates of pay and classifications of employees in the unit. The information was requested within 10 days from the receipt of the letter which was sent certified mail (G.C. Exh. 5).

Respondent did not dispute its receipt of the Machinists 9 January letter and it acknowledged it did not re-

[2] Having closely observed the demeanor of witnesses Meinell, Joggerst and Arbeitman, and having carefully examined their respective testimonial versions in light of all of the credited evidence of record, I am strongly persuaded that Arbeitman was not testifying truthfully when he denied that Meinell and Joggerst identified themselves and told him who they represented on 9 January. In order to credit Arbeitman's version, I would have to believe and conclude that Arbeitman, the owner of another dealership whose mechanic employees are unionized and hold a contract with him, nevertheless does not understand what kind of contract to which Meinell and Joggerst were referring; that two experienced union business representatives such as Meinell and Joggerst did not realize they had to identify themselves and state who they represented in order to gain the receptable attention of an employer, and that they even refused to state their names or to tell who they represented when they were asked to do so by Arbeitman. Such a version or conclusion does not coincide with reality. In fact, common experience discredits it Moreover, the rather reluctant manner in which Arbeitman testified, which is partially reflected on p 198 through 203 of the transcript herein, was far short of convincing that he was telling the truth. On the contrary, I was persuaded that Meinell and Joggerst both identified themselves, told Arbeitman the name of the respective union they represented, and that they neither threatened Arbeitman with physical harm nor gave him any reasonable basis for being apprehensive about his safety, even though their demand for recognition and bargaining might have eventually evolved into a heated exchange. However, that occurred only after Arbeitman manifested an unwillingness to talk with them about recognition or negotiation with respect to the Machinists or Teamsters unit employees I therefore credit the testimony of Meinell and Joggerst and discredit Arbeitman's testimony in this respect.

spond to the letter or provided the information requested.

A letter dated 6 March 1985 (G.C. Exh. 6) was sent to the Machinists on the same date. In substance the letter provided as follows:

> Dear Sirs,
>
> While working at Royal Midtown CP December 13, 1984, to present, I have found that my benefits, working conditions, and safety conditions never improved considerably, much better than when I had union representation, while with Quality C.P. My representative did not help at this time and I feel I no longer wish to be represented by I.A.M. Local ???
>
> I therefore respectively request a withdrawal card immediately from I.A.M. Local ???

The letter also stated, "please advise," and was signed William E. Pinkley, Robert E. Bailey, Gary Follmer, and Jere Tyrer, with the postscript: "T.G. Hawkins—employed 2–4–85 to present. I feel no need for union representation. The working conditions are to my satisfaction."

In reference to the above letter, Jere Tyrer worked for Quality from November 1982 to December 1984 as a mechanic with mechanics Gary Follmer, Bob Bailey, Carlo Mazzuca, and Service Writer Bill Pinkley, who was a member of the bargaining unit. When he learned of the contemplated change in ownership of Quality in December 1984 he applied for an interview for employment with Respondent. The interview was conducted by John Van Hoogstraat, on behalf of the Respondent. During that interview, Tyrer testified that Manager John Van Hoogstraat told him the new ownership would be nonunion and he then terminated his employment with Respondent in December 1984.

Tyrer further testified that he was hired by Service Manager Pinkley for Respondent on 15 February 1985 until April 24, 1985. In March, Tyrer said Pinkley told him he had retained an attorney to obtain moneys due from Quality for the former unit employees at Quality. Pinkley also told him he wanted the mechanics to get a written withdrawal card from the Union because this was a problem for him (Pinkley), mentioning the Labor Board was on him, and asked him to call the Union and get them. On the next day, Pinkley came in with a document dated 6 March 1985, which he (Tyrer) signed because all the other employees had signed it and he did not want to be the source of trouble. He stated that Pinkley had told him previously that he was going to prepare something to get something going.

Thomas Hawkins testified that he was hired by Pinkley for the Respondent on 7 February 1985; and at that time Pinkley told him the Respondent was a nonunion shop. Hawkins worked with Bob Bailey, Gary Follmer, and Ron Rodash. He further testified that on 6 March 1985 Pinkley brought the letter (G.C. Exh. 6) to him. He read it, signed it, and Pinkley asked him if there was anything he wanted to add since he was new in the shop. Hawkins said he then added the words following his signature on the letter because he wanted to go with the flow since he was new in the shop.

Analysis and Conclusions

The crucial issue presented for determination in this case is whether Respondent (Royal Midtown Chrysler Plymouth) is a successor to Quality Chrysler Plymouth, and is thereby legally obligated to bargain with the Machinists and/or the Teamsters, with respect to Respondent's mechanic unit and parts and delivery unit employees, respectively.

In addressing this question, it is observed that the Board has long held that whether a purchaser, like Respondent, is obligated to bargain with the exclusive representative of the employees of its predecessor, is determined by establishing whether there is substantial continuity in the employing enterprise. Where there is such continuity, the Board says, there is a presumption of majority status by the union under the predecessor, such as established by the collective-bargaining agreements we have here, the bargaining obligation is not affected by the change in ownership. The Board went on to describe the traditional criteria for determining whether there is substantial continuity in the employing enterprise as follows: (1) business operations; (2) plant; (3) work force; (4) jobs and working conditions; (5) supervisors; (6) machinery, equipment, and methods of production; and (7) product or service. *Grico Corp.*, 265 NLRB 1344, 1345 (1982).

Successorship

Applying these well-established criteria to the uncontroverted evidence in the instant case, it is noted that:

(1) The business operations of Respondent involved a continuation of the same sales and services of new and used Chrysler Plymouth automobiles, as were conducted by Respondent's predecessor, Quality Chrysler Plymouth;

(2) Respondent carries on its business operations in the same facility where Quality Chrysler Plymouth operated the same business located at 4315 Kingshighway, St. Louis, Missouri;

(3) the work force at Quality consisted of four persons in the Teamsters unit of the parts department, and four mechanics and one service writer in the Machinists unit of the service department. Respondent immediately hired three of the same Teamsters unit parts employees and four of the same Machinists service department employees. Several weeks later, Respondent employed the fifth Machinists unit employee formerly employed by Quality;

(4) after Respondent purchased all of the fixed assets of Quality on 7 December 1984, all of Quality's Teamsters unit parts employees employed by Respondent, performed the same work they formerly performed for Quality. Likewise, four of the Machinists unit mechanic employees performed the same job function for Respondent that they formerly performed for Quality, and the fifth Machinists unit employee, William Pinkley, who formerly performed the job of service writer for Quality, thereafter performed the job of service writer and service manager for Respondent. Consequently, it is well es-

tablished by the evidence that Respondent employed a majority of its predecessor's Teamsters unit employees and a majority of its Machinists unit employees subsequent to its purchase of the assets on 7 December 1984;

(5) Teamsters unit employee Ronald Payne served as parts manager while he was employed by Quality, and he served as parts manager when he was employed by Respondent. Payne was therefore a supervisor for both Quality and the Respondent. Although Machinists unit employee William Pinkley served as service writer, under a service manager, when he was employed by Quality, he served as service manager and service writer while working for Respondent, and therefore is a supervisor for the Respondent;

(6) the uncontroverted evidence established that Respondent purchased the fixed assets of Quality and continued to operate the same sales, parts and service departments, utilizing the same fixed assets (machinery and equipment) in continuing the same business operations that were formally conducted by Quality;

(7) Quality and Respondent dealt in the same product and service, the sale and service of new and used Chrysler and Plymouth automobiles.

I therefore conclude and find upon the foregoing credited evidence, that Respondent assumed the same automobile sales and servicing business, at the same location, with essentially the same work force, the same job classifications and working conditions, essentially the same supervisors, using essentially the same machinery and equipment, and dealing in the same product and service, with many of the same customers as when the enterprise was operated by Quality. I therefore further conclude and find that Respondent is the successor of Quality. *Grico Corp.*, supra; *Premium Foods*, 260 NLRB 708, 714 (1982); *Merchants Home Delivery Service*, 230 NLRB 290, 295 (1977).

Having found that there is a substantial continuity of the Quality enterprise carried on by the Respondent, it is presumed that both the Machinists unit and the Teamsters unit employees enjoyed a majority status under Quality, as established by the respective collective-bargaining agreements, at the time Respondent purchased the fixed assets of Quality on 7 December 1984, and several weeks thereafter. *Merchants Home Delivery Service*, supra.

Demand for Recognition and Bargaining

Based upon the foregoing credited evidence, I find that Machinists Business Representative Meinell and Teamsters Business Representative Joggerst visited Respondent on 9 January 1985, introduced themselves to Respondent's vice president, Arbeitman, and told him they represented their respective Unions (Machinists and Teamsters). Although Meinell did the remainder of the talking, by asking Arbeitman to recognize them and negotiate a contract on behalf of Respondent's unit employees, it may be reasonably inferred from the fact that both Meinell and Joggerst were there together for the same purpose, that Meinell's request for recognition and negotiation was made on behalf of both the Machinists and the Teamsters (Joggerst), in lieu of both of them attempting to articulate the same request at one time. Arbeitman immediately ventilated his frustration by pretending he did not understand their request or by not making a reasonable inquiry to ascertain what they were requesting, and finally by asking them to leave the premises without an honest attempt to learn further details of their visit and request. Under these circumstances, it was not necessary for Teamsters Representative Joggerst to make an additional verbal request to Arbeitman to negotiate on behalf of the Teamsters unit employees. The request by Meinell, who was accompanied by Joggerst, who had previously introduced himself and stated whom he represented, was obviously a sufficient communication to Arbeitman that both representatives were requesting recognition and negotiations for a contract.

The evidence is also uncontroverted that when Respondent acquired the fixed assets of its predecessor (Quality) on 7 December 1984, Respondent interviewed and thereafter employed three of the four Teamsters unit employees (Payne, DiBello, and Agee) who remained in its employ for several weeks after 7 December 1984. Respondent argues, however, that on 9 January, if Meinell and Joggerst requested negotiations with respect to unit predecessor employees, the only one of the three predecessor parts employees in Respondent's employ at that time was Gerald Agee. Consequently, Respondent now argues that since it did not have a majority of Teamsters-predecessor employees in its employ on 9 January, Respondent was not obligated to recognize and bargain with the Teamsters because the predecessor parts unit employees no longer represented a majority of such employees. In support of its position, the Respondent cites *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

On the contrary, the General Counsel argues that Respondent is nevertheless obligated to bargain with the Teamsters with respect to all parts and delivery employees, because the relevant date for determining whether an alleged successor employer has hired a majority of a predecessor's employees, is the date on which a representative complement of predecessor employees is employed by the successor. The General Counsel cites *Canterbury Villa, Inc.*, 271 NLRB 144 fn. 5 (1984), where the Board, pointing out that the Supreme Court affirmed its test in *NLRB v. Burns Security Services*, supra, stated that,

> [A] mere change of employers or of ownership in the employing industry is not such an 'usual circumstance' as to affect the force of the Board's certification within the normal operative period if a majority of employees after the change of ownership or management were employed by the preceding employer [cited cases omitted].

Thus, having found that there was substantial continuity in the company in *Canterbury Villa*, supra, the Board concluded that Canterbury was a successor to its predecessor and therefore, had a duty to recognize and bargain with the certified collective-bargaining representative of its employees. With respect to a subsequent diminution in the majority employee complement of the successor, the Board stated in *Canterbury*, supra at 145 fn. 5 that, "It is well settled that the time frame for determining what percentage of a purchaser's employees are

former employees of a predecessor is when a representative complement of an employer's work force is first on the job. *Hudson River Aggregates*, 246 NLRB 192 (1979)." Here, there is no dispute that a majority of Teamsters unit employees were in Respondent's employ on, and for several weeks after, 7 December 1984, when Respondent commenced business operations as successor to Quality. In view of this explicit evidence and Board law, I conclude and find that Respondent was obligated to bargain with Charging Party Teamsters, on and subsequent to the change of ownership on 7 December, even though the Teamsters did not request recognition and negotiation until 9 January 1985. *Hudson River Aggregates*, supra.

Additionally, the Board has also held that even in the event of a loss of majority of a complement of unit employees after the change of ownership, the remaining unit employees are presumed to support the Union in the same proportion as the original complement employed by the successor, unless such presumption is rebutted by objective considerations. *John Ascuago's Nugget*, 230 NLRB 275, 286–287 (1977); and *Golden State Rehabilitation Convalescent Center*, 224 NLRB 1618, 1620 (1976), enf. denied on other grounds 566 F.2d 77 (9th Cir. 1977).

In the instant case, Respondent did not present any evidence to rebut the presumption of continued support for the Teamsters, prior to the request for recognition and negotiations by the Teamsters and the Machinists on 9 January 1985. Consequently, based upon the foregoing credited evidence and cited cases, I find that both the Machinists and Teamsters represented a majority of the respective unit employees in mid-December 1984, and on 9 January 1985, when the Machinists and Teamsters requested recognition and bargaining of the Respondent. *Canterbury Villa*, supra; *NLRB v. Burns Security*, supra; and *Hudson River Aggregates*, supra. Since the Machinists' 9 December 1985 request, Respondent has failed and refused to recognize or bargain with either the Machinists or the Teamsters, in violation of Section 8(a)(1) and (5) of the Act. *NLRB v. Burns Security*, supra.

It is undisputed that a majority of predecessor Machinists unit employees were in Respondent's employ when the Machinists made its request for recognition and bargaining on 9 January.

Machinists' Request for Information

It is well established by the evidence and Respondent's admission, that it received the Machinists' 9 January 1985 letter, requesting negotiations and information concerning the names, dates of employment and separation, and rates of pay and classifications of Machinists unit employees; and that Respondent has failed to respond to the written request, as well as failed and refused to provide the requested information.

It has been long settled that an employer has a duty under the Act to supply, upon request, such information which is probably relevant, in fact relevant, necessary and useful to a union's effective and intelligent evaluation in determining whether to process employee grievances, or to negotiate on behalf of employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 438 (1967). In the instant case, since the subject of the information requested appears relevant to the Unions' interest in having such data on its unit employees for purposes of determining the identity of its members, or prospective members, or collecting their dues, the request appears to be at least probably relevant and not unreasonable.

The above conclusion is further supported by Board law, that information such as that requested by the Machinists here, is presumptively relevant. *Monsanto Co.*, 268 NLRB 1381 (1984). Respondent did not present any evidence in rebuttal to the presumption of relevancy, and I find that the presumption is not rebutted. Accordingly, Respondent's failure and refusal to provide the information requested by the Machinists constitutes a failure and refusal to bargain in good faith with the exclusive collective-bargaining representative of its Machinists unit employees, in violation of Section 8(a)(1) and (5) of the Act. *NLRB v. Acme Industrial Co.*, supra; *Monsanto Co.*, supra.

Coercive Action by Respondent's Agent

The credited evidence of record also established that on or about 7 December 1984, John Van Hoogstraat (John Van), manager of Respondent's Dodge dealership, pursuant to Respondent's authority, interviewed employees of Quality for employment with Respondent, including mechanic employee Jere Tyrer. During the interview, Tyrer testified that Van Hoogstraat told him the new ownership would be nonunion. Mechanic Thomas Hawkins testified that he was interviewed for employment and subsequently hired by Service Manager William Pinkley in late January or early February 1985. Hawkins further testified that during his interview Pinkley told him Respondent was nonunion. Van Hoogstraat testified that during his interview with the employees on 7 December 1984, he was aware that Quality employees had a contract with and were represented by a union, because several of the employees asked him if the new company had a union. Van Hoogstraat did not state whether or not he answered the employees' question, but notably he did not deny the prior testimony of Tyrer or Hawkins that he told them Respondent was nonunion. I therefore credit Tyrer's and Hawkins' testimony and find that Van Hoogstraat told Tyrer and Houston that Respondent would be or was already nonunion.

Since Van Hoogstraat was admittedly a manager of one of Respondent's other automobile dealerships, and pursuant to directions of Respondent interviewed employees of predecessor Quality for employment on behalf of Respondent, Van Hoogstraat had actual and apparent authority to act as agent, and was in fact an agent of Respondent, to interview and hire the employees. *Gourmet Foods*, 270 NLRB 578 (1984); and *Bio-Medical of Puerto Rico*, 269 NLRB 827 (1984). Thus, in his capacity as interviewing and hiring agent for Respondent, Van Hoogstraat's statement to employees Tyrer and Hawkins, that Respondent's operation was or would be a nonunion shop, is probative evidence that Respondent did not intend to recognize or bargain with the Machinists or Teamsters Union as representatives of the newly hired unit employees. This conclusion is further supported by the fact that Respondent, upon request, refused to recognize or bargain with the Machinists or the Teamsters as

representatives of its respective mechanic unit and parts unit employees.

I therefore find that Van Hoogstraat's announcement to the employees that Respondent would not be a union shop tended to interfere with, restrain, and coerce Respondent's employees in the exercise of their right to have or organize a union to represent them. Such an announcement constituted a violation of Section 8(a)(1) of the Act. *Lawson Co.*, 267 NLRB 463 (1983).

Efforts to Have Employees Withdraw from the Union

Jere Tyrer further testified he was hired by Respondent's service manager, William Pinkley, on 15 February 1985. In early March, Pinkley told him he "wanted the mechanics to secure a withdrawal card from the Union because this was a problem for him, mentioning the Labor Board was on him . . . ." Pinkley added he was going to prepare something to get something started. On the next morning, Pinkley brought a letter dated 6 March 1985, signed by himself, William Pinkley (G.C. Exh. 6), which expressed satisfaction with benefits, safety and working conditions at the Respondent, which were better than conditions under union representation at predecessor Quality; and that since union representation did not prove helpful at that time he no longer wished to be represented by the Machinists, and therefore requested immediate withdrawal from the Machinists.

Since the letter was already signed by machinists Robert Bailey, Gary Follmer, and T. G. Hawkins, Jere Tyrer testified that he signed the letter because he did not want to be a source of trouble. Hawkins testified that Pinkley presented him with the letter on March 6 and asked him if he wanted to add anything since he was new in the shop. Hawkins said to go along with the flow, he signed and added a postscript of his satisfaction in working for the Respondent. The letter was sent to the Machinists.

According to Pinkley's testimony, Bailey, Follmer, and himself had expressed concern as early as December 1984 about the Union not assisting them in getting their last pay from Quality. Between 23 December 1984 and January 1985, Pinkley said discussions between himself, Bailey, Follmer and the new employee Rodash established they were also satisfied that they could get parts, wherein they could not get parts and equipment at Quality; that they had Blue Cross-Blue Shield, a $15,000 life insurance policy, were offered profit sharing, and these were benefits they did not have at Quality. He said this view represented a consensus of the mechanics, with the exception of Jere Tyrer, who was not present. In early March they tried to get a withdrawal card from the Union but the Union refused to grant it. Pinkley said finally Bailey suggested he (Pinkley) prepare a letter requesting a withdrawal card on behalf of them (Bailey and Follmer).

Pinkley further testified that around the first of the year (1985) Arbeitman asked him how the employees felt about the Union. He said he told Arbeitman, "Well, basically nobody really cares," meaning Bailey and Follmer. On cross-examination Pinkley said he knew he was excluded from the bargaining unit since he was Respondent's service manager. Although he said Bailey told him in December he did not care whether or not they had a union, he acknowledged on cross-examination that Bailey never told him he (Bailey) did not want the Union.

After evaluating the testimonial versions of employees Jere Tyrer and T. G. Hawkins, as opposed to the versions of Service Manager William Pinkley and employee Robert Bailey, I credit Tyrer and Hawkins' version over those of Pinkley and Bailey for the following reasons: It is quite clear from the testimony that neither Tyrer, Hawkins nor Bailey asked Pinkley to prepare the 6 March letter (G.C. Exh. 6) requesting a withdrawal card or withdrawal from the Union. At most, Bailey said he and Pinkley agreed to put a request for withdrawal in writing but the evidence does not indicate they agreed when that should be done. Bailey said Gary Follmer was not present when he agreed with Pinkley that such a request should be put in writing, and Follmer did not testify in this proceeding. Hawkins and Tyrer did not authorize the preparation of the letter. They saw the letter for the first time on the morning of 6 March after it had been signed by Pinkley, Bailey, and Follmer. Therefore, Pinkley's testimony that the mechanic employees agreed to withdraw from the Union and requested him to prepare such a letter is not corroborated by testimony of any employees, including Bailey.

On the contrary, Tyrer and Hawkins affirmatively testified that they had not participated in any discussion or agreement to withdraw from the Union. Instead, the evidence shows that Pinkley presented the letter to Hawkins and asked him if he wanted to add anything. Tyrer signed because the letter was already signed by Manager Pinkley and two of his coworkers, Bailey and Follmer, both of whom were his coworkers at predecessor Quality. Under these circumstances, I find that Manager Pinkley initiated the idea of obtaining a withdrawal card or withdrawing from the Union, the idea of making such a request in writing, he prepared the letter requesting withdrawal, and he solicited the concurrence and/or the signatures of the signatory employees.

Since Pinkley was service manager and an acknowledged supervisor for Respondent, his initiative and managerial influence is obviously manifested by the manner in which the signatures of the employees, and especially those of Tyrer and Hawkins were secured. Tyrer and Hawkins testified they signed because they would have been uncomfortable and apprehensive if they dissented or refused to sign. Moreover, it may be reasonably inferred from the conditions under which Tyrer and Hawkins signed the letter, that Follmer, who did not testify, also signed because he was influenced to do so by the managerial influence and leadership efforts of Manager Pinkley. It is therefore clear, and I find that the signing of the letter by all of the employees here can hardly be characterized as having been obtained voluntarily, independent of managerial influence. In fact, Manager Pinkley's supervisory influence (suggesting withdrawal, preparing the letter requesting withdrawal, and soliciting signatories to it) is self-evident of Respondent's interference, coercion, and restraint upon the free exercise of the employees' Section 7 rights, in violation of Section

8(a)(1) of the Act. *Frontier Dodge*, 277 NLRB 1242, 1243 (1985).

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I will recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent violated Section 8(a)(1) and (5) of the Act by unlawfully failing and refusing to recognize and bargain with Charging Parties Machinists Union and Teamsters Union as the exclusive collective-bargaining representatives of its employees in the appropriate Machinists unit and Teamsters unit, respectively; that Respondent violated Section 8(a)(1) and (5) of the Act, by failing and refusing to furnish relevant information requested by the Machinists Union; and that Respondent violated Section 8(a)(1) of the Act, by requesting, urging, and assisting Machinists unit employees to request a withdrawal card or withdrawal from Charging Party Machinists Union, I will recommend that Respondent cease and desist from engaging in such conduct; that it be ordered to recognize and, upon request, bargain in good faith with Charging Party Machinists and Charging Party Teamsters Unions as the exclusive collective-bargaining representatives of its employees in the respective appropriate units; and that it furnish the information requested by the Machinists Union.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Charging Party Machinists Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Charging Party Teamsters Union is a labor organization within the meaning of Section 2(5) of the Act.
4. By unlawfully failing and refusing to recognize and bargain with Charging Party Machinists Union, Respondent violated Section 8(a)(1) and (5) of the Act.
5. By unlawfully failing and refusing to recognize and bargain with Charging Party Teamsters Union, Respondent violated Section 8(a)(1) and (5) of the Act.
6. By unlawfully failing and refusing to furnish information requested by Charging Party Machinists Union, Respondent violated Section 8(a)(1) and (5) of the Act.
7. By unlawfully requesting, urging and assisting Machinists unit employees to request a withdrawal card or withdrawal from Charging Party Machinists Union, Respondent violated Section 8(a)(1) of the Act.
8. All of the below-described employees employed by Respondent in its service department, constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All journeymen automobile and truck mechanics, machinists, electrical machinists, welders, trimmers, metal men, fender, body painters, radiator repairmen, refrigeration, automotive air conditioning mechanics, inspectors, glass installers, service salesmen and towermen, apprentices, and working foremen, and specialists employed by Quality at its St. Louis, Missouri facility EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

9. All of the below-described employees employed by Respondent in its parts and delivery department, constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All parts managers, counterpersons, parts department employees, lubrication men, heavy truck drivers, undercoat men, tire and battery department employees, auto top installers, pressure type washers, polishers, new car clean-up employees, utility men, seat cover employees, paint shop helpers, motor riders, pickup and delivery and car jockeys, used car clean-up employees, porters, sweepers, and utility shop employees employed by Quality at its St. Louis, Missouri facility EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

10. At all times material herein, the Charging Party Unions have been the exclusive collective-bargaining representative of the employees in the aforedescribed appropriate units within the meaning of Section 9(a) of the Act.

[Recommended Order omitted from publication.]

Michael T. Jamison, Esq., for the General Counsel.
Michael E. Kaemmerer, Esq. (Buechner, McCarthy, Leonard, Kaemmerer, Guest & Owen), of St. Louis, Missouri, for the Respondent.
Nancy M. Watkins, Esq. (Wiley, Craig, Armbruster & Wilburn), of St. Louis, Missouri, for Teamsters Local 618.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. On 2 April 1986, the Board remanded the 12 August 1985 above-captioned decision of the administrative Law judge, for further consideration of certain below-described 8(a)(1) and (5) allegations in the amended complaint; and that the judge, based upon evidence in the record, issue a Supplemental Decision and Order within 30 days of his receipt of its remand Order. The Board deferred considering the remaining allegations of the complaint, pending the judge's issuance of a Supplemental Decision and recommended Order.

1. Specifically, the Board correctly noted that the complaint alleged and mechanic employee Jere Tyrer testified that during an employment interview in early December 1984, Respondent's general manager, John Van Hoogstraat, told him successor Respondent (Royal Midtown) would operate nonunion; that the judge found Van Hoogstraat's statement violated Section 8(a)(1) of the Act because Van Hoogstraat did not deny he made the statement, although the record shows Van Hoogstraat testified he did not tell any of the persons he interviewed on 7 December, that Respondent would not be a union shop; and that since the judge failed to credit or

reject Van Hoogstraat's testimony, the case is remanded to him to resolve the conflicting testimonial accounts, and determine under the credited testimony, whether Respondent violated Section 8(a)(1) of the Act.

2. The Board further correctly noted that the amended complaint alleged that Respondent failed and refused to recognize and bargain with the Machinists Union, in violation of Section 8(a)(5) of the Act; that the judge found that the Respondent, a successor employer, had a duty to bargain with the Machinists Union because a majority of its predecessor Machinists unit employees were employed by Respondent when the Machinists Union requested recognition and bargaining on 9 January 1985; and that although Respondent had acknowledged that it employed a majority of predecessor Machinists unit employees on 9 January, it affirmatively alleged in its answer that it was not obligated to recognize and bargain with the Machinists Union. Respondent articulated this defense in its opening statement at the hearing, adding at that time, and in its posthearing brief, that Respondent had a good-faith doubt that a majority of Machinists unit employees supported the Machinists Union, but the judge failed to address this defense in his decision.

In complying with the Board's Order to address these issues, I have reviewed my decision, the record in this proceeding, the posthearing briefs submitted by the respective parties, and now include the following written credibility resolutions and findings, inadvertently omitted in my original decision, in this supplemental decision.

A. *Respondent's Successorship Obligation to Bargain*

The uncontroverted record evidence shows that immediately prior to the 7 December 1984 change of ownership from Quality Chrysler Plymouth to Respondent (Royal Midtown Chrysler Plymouth), employees in the respective bargaining units and classifications at Quality were as follows:

Teamsters
Ronald Payne—Parts Manager
Gerald Agee—Parts
Andrea DiBello—Parts
Henry Hearns—Porter

Machinists
Robert Bailey—Mechanic
Carlo Mazzuca—Mechanic
Jere Tyrer—Mechanic
Gary Follmer—Mechanic
William Pinkley—Service Writer

Following the 7 December 1984 interviewing process by Van Hoogstraat, Respondent immediately or later in December hired former employees of Quality in the bargaining units on the dates indicated under their respective names as follows:

Teamsters Unit
Gerald Agee
  Hired 12-14-84
  Terminated 3-8-85
Andrea DiBello
  Hired 12-7-84
  Terminated 12-26-84
Ronald Payne
  Hired 12-7-84
  Terminated 12-26-84

Machinists Unit
Robert Bailey
  Hired 12-13-84
Gary Follmer
  Hired 12-13-84
Carlo Mazzuca
  Hired 12-13-84
  Terminated 2-7-85
William Pinkley
  Hired 12-10-84

Respondent immediately commenced business operations as Royal Midtown Chrysler Plymouth with four (Bailey, Follmer, Muzzuca, and Pinkley) of the five predecessor Machinists unit employees in its employ. It had one Teamsters unit employee (DiBello) in its employ, and 1 week later, 14 December 1984, it had three of the four predecessor Teamsters unit employees (Payne, DiBello, and Agee) in its employ. Consequently, by 15 December 1984, Respondent had a majority of both predecessor Teamsters unit and Machinists unit employees in its employ.

B. *The Majority Status of the Teamsters Unit*

The General Counsel argues that Respondent is obligated to bargain with the Teamsters Union on behalf of the parts unit, because the relevant date for determining whether an alleged successor employer has hired a majority of a predecessor's employees, is the date on which a representative complement of predecessor employees is on the job. In support of this position the General Counsel cites *Canterbury Villa, Inc.*, 271 NLRB 144 fn. 5 (1984), where the Board noted that the Supreme Court affirmed its test in *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). However, in the instant case, no demand for recognition and bargaining had been made upon Respondent by either union representative in December 1984. The employment of Teamsters unit parts employees DiBello and Payne was terminated with Respondent on 26 December 1984, and Respondent thereafter had only one Teamsters unit employee (Agee) left in its parts unit.

Counsel for Respondent argues that since the employment of Teamsters parts employees DiBello and Payne was terminated on 26 December 1984, only parts employee Agee was working for Respondent on 9 January 1985, when Teamsters Representative Joggerst accompanied Machinists Representative Meinell to the Respondent and requested recognition and bargaining.

The General Counsel, however, argues that this change in the Teamsters complement is immaterial, because the Board had held that even in the event of loss of majority of a complement of unit employees after a change of ownership, the remaining unit is presumed to support the Union in the same proportion as the original complement employed by the successor, unless such pre-

sumption is rebutted by objective considerations. *John Ascuago's Nugget*, 230 NLRB 275, 286–287 (1977); *Golden State Rehabilitation Convalescent Center*, 224 NLRB 1618, 1620 (1976), enf. denied on other grounds 566 F.2d 77 (9th Cir. 1977).

With respect to a subsequent diminution in the majority employees complement of the successor, the General Counsel further argues that the Board stated in footnote 5, page 5, that, "it is well settled that the timeframe for determining what percentage of the purchased employees are former employees of predecessor is when a representative complement of the employer's work force is on the job." *Hudson River Aggregates*, 346 NLRB 192 (1979). Here, there is no dispute that a majority of Teamsters unit employees were in Respondent's employ on and for several weeks after 7 December 1984, while Respondent continued business operations as successor to Quality.

In an effort to rebut the presumption of Teamsters unit's continued majority and refute the General Counsel's advocated time for determining majority status, Respondent denies that the Teamsters Union requested recognition and bargaining. It also argues and advocates a different time for determining Teamsters unit's majority status.

Arbeitman testified that Teamsters Representative Joggerst did not request recognition and bargaining when he accompanied Machinists Representative Meinell to Respondent's showroom on 9 January. However, I previously found that both union representatives introduced themselves and told Arbeitman the names of the respective unions each represented. Machinists Representative Meinell then requested recognition and bargaining and Arbeitman became angry and ordered them to leave the premises before either representative could say more. Under these circumstances, I found that Joggerst also requested recognition and bargaining because Arbeitman obviously understood the purpose of his presence, and he made both representatives feel that any further request for recognition and bargaining would be futile.

Without conceding Teamsters Representative Joggerst's requested bargaining when he accompanied Machinists Representative Meinell to the Respondent on 9 January, Respondent argues that the time for determining when a majority exists is "when demand for bargaining had been made and a representative complement is on the job." *Indianapolis Mack Truck Sales*, 272 NLRB 690 (1984); *Grico Corp.*, 265 NLRB 192 (1979). Under these authorities, Respondent argues, that Respondent was not a successor of the Teamsters parts unit employees because Gerald Agee was the only parts unit employee in Respondent's employ on 9 January. The evidence shows that Agee was in fact the only parts employee in Respondent's employ since 27 December 1984. As such, Respondent argues that the parts unit did not constitute a representative complement of predecessor employees even if the Teamsters had in fact requested bargaining on 9 January.

The cases cited by counsel for Respondent are correct, and in fact, more recently, in *Eastone of Ohio, Inc.*, 277 NLRB 1652 (1986), the Board explicitly stated:

> A successor employer . . . is obligated to bargain with the exclusive bargaining representative of the employees acquired from the predecessor unless it demonstrates either that the representative no longer enjoyed majority support on the date of its refusal to bargain or that it had a good-faith doubt of the representatives' continued majority support.

Conclusions

In the instant case, it was not established that the diminution and the size of the Teamsters parts unit was the result of any unfair labor practice committed by the Respondent. It was established by the testimony of Respondent's interviewing agent, Van Hoogstraat, that predecessor employees, including employee Tyrer, told him during their interview that they were represented by a union. I find that the latter communication by the employees to Van Hoogstraat constituted knowledge sufficient, not only to apprise Van Hoogstraat of such fact, but also to put him on reasonable inquiry of any specifics about the representative status of all of the newly hired predecessor employees. It matters not that Van Hoogstraat might not have communicated to Respondent's management what the interviewed employees told him about their representative status, since Van Hoogstraat was Respondent's agent, acting on its behalf. Knowledge of Van Hoogstraat is imputed to Respondent under these circumstances.

The evidence is uncontroverted that Respondent hired a majority of predecessor Teamsters unit employees on 14 December 1984. Thus, it necessarily follows that the successorship of the bargaining obligation flowed from the predecessor's recognition of the multiemployer bargaining relationship with the Teamsters unit. And that bargaining obligation is binding on the Respondent. *Zims Food Liner, Inc.*, 495 F.2d 1131, 1142 (1974). This is so even though Respondent purchased only a part of the Teamsters' bargaining unit which included employees of other employers. *White-Westinghouse Corp.*, supra; *Miles & Sons Trucking Service*, supra.

Nor does the diminution in the Teamsters' parts unit from three to one parts employees relieve Respondent of its successor obligation to bargain with the Teamsters Union. Respondent is still obligated to bargain with the Union because such diminution does not appear, and it had not been shown that the diminution had significantly affected employee attitude. *White-Westinghouse Corp.*, supra; *Boston-Needham Industrial Cleaning, Inc.*, 216 NLRB 26, 28 (1975). Moreover, it is noted that Respondent initially employed three predecessor parts employees in December 1984. Two of those employees (Miller and Payne) were terminated 26 December 1984. Nevertheless, Respondent subsequently employed parts employee Albert Mick on 7 January 1985. The employment of Mick appears to indicate that the diminution in the unit was temporary, rather than permanent.

The Board has held that the burden of proving reduction in the bargaining unit was not a temporary reduction, but permanent in character, is on the Respondent. *Emco Steel, Inc.*, 227 NLRB 989 (1977). Respondent in the instant case has not presented any evidence to estab-

lish that diminution in the parts unit is not temporary. The fact that Respondent hired Mick on 7 January 1985, indicates such diminution was not permanent. I therefore conclude and find, consistent with the evidence, that the reduction in Respondent's parts unit in December 1984 and January 1985, was only temporary and not permanent. *Emco Steel, Inc.*, supra.

Based on the foregoing credited evidence and cited legal authority, I find that Respondent successor's obligation to bargain with the Teamsters Union on behalf of its parts unit employees, arose when it hired a majority of the predecessor employees who were a part of a unit covered by a multiemployer bargaining relationship. Consequently, when Respondent, pursuant to the Teamsters Union's 9 January request, thereafter refused to recognize and bargain with the Union, Respondent violated Section 8(a)(5) of the Act.

In its answer to the complaint, Respondent affirmatively denied that it is obligated to bargain with the Teamsters Union, but it did not state why it was not so obligated. Nor did Respondent state during the proceeding that it had a good-faith doubt of the continued majority status of the Teamsters unit, as it asserted it had with respect to the Machinists unit. Notwithstanding, at the conclusion of my evaluation of Respondent's good-faith doubt of the Machinists' majority status, I will also determine whether Respondent had such a doubt with respect to the Teamsters unit.

C. *Respondent's Contended Good-faith Doubt of Machinists' Continued Majority*

Machinists Union in December and January

Respondent concedes that the predecessor Machinists unit employees represented a majority when Respondent commenced operations and also on 9 January, when the Machinists Union requested bargaining. It contends, however, that Respondent lawfully refused to bargain with the Machinists and refused to furnish it with requested information, based upon a good-faith doubt that the Union continued to request a majority of the Machinists unit.

In support of its contention, Respondent presented testimony of mechanic Robert Bailey and acknowledged former Quality's service-writer advisor, now Respondent's service manager, William Pinkley, who had testified in this proceeding.

Bailey testified that early in December 1984, while working for Quality, he recalled having discussions with Service-Advisor Pinkley about working without a contract or in a nonunion shop, and he told Pinkley it would probably be all right if benefits and wages were similar. He said that conversation arose after they heard Quality was going out of business and they were speculating about a new ownership—whether it would be union or nonunion.

After the change of ownership in late December or early January, he recalled teling Pinkley he thought working conditions at Respondent were better. The shop was cleaner and they had a little more equipment. He said these discussions were of a general nature and were initiated either by himself or Pinkley. At that time, he said they felt all right without a union and did not see any reason for having one.

Respondent's service manager, *William Pinkley*, corroborates Bailey's testimony and further testified that Shop Steward Jere Tyrer called the Machinists Union on the day before the change of ownership, and Meinell came to the shop on 7 December. After the mechanics were interviewed, Meinell bought them a drink and told them to go to work, that he would take care of the union matter. Meinell and mechanic Mazzuca left shortly thereafter, and Pinkley, Bailey, and Follmer remained and discussed the benefits offered by the Respondent. During their discussion, Bailey said Follmer, who did not testify in this proceeding, made the comment that with the kinds of benefits offered by the Respondent, they did not need a union, and he questioned why they should pay union dues. Pinkley also said during the Christmas party, Arbeitman asked him how the employees felt about the Union. He said he told him basically nobody really cares; that on the day before the change of ownership, they asked the Union to come out and help them but the Union did not show up until the next day.

Manager Pinkley further testified more extensively about the employees feelings that the Union was not interested in helping them the day before they lost their jobs and it failed to secure them jobs in a union shop. He said after the mechanics reported to work at Respondent, he, Bailey, Follmer and Mazzuca talked about getting a withdrawal card from the Union. They talked about trying to collect their last week's pay from Quality. When they would call Mike, he would tell them the checks are in, that the Union had the money covered and would bring it over, but the Union would not show up. Pinkley said Bailey and Follmer talked about retaining an attorney to secure their pay and he (Pinkley) suggested that they all retain the same lawyer to reduce the cost. They did retain an attorney on the recommendation of Pinkley but they had not received any money as of the date of this proceeding.

With respect to the attitude of the mechanics towards the Union, Pinkley testified that between 1 and 10 January 1985, the mechanics engaged in discussions about the Union. When he was asked what was said, he said,

> specifically, I couldn't tell you, but basically everybody felt the same way. The business was going well, we had came from a point where we weren't having to beg for funds and this and that. We had money, we could do what we wanted to. We had a policy in our hand for $15,000 of life insurance, we had cards for Blue Cross Blue-Shield. We had a profit sharing that they were offering us. We could put up any amount we want. . . .

The mechanics wondered if the Union was going to collect their money and they knew the union dues and the union pension and welfare had never been paid. Pinkley said Bailey, Follmer, and himself felt that the Union would be a problem and he reported their sentiments to Arbeitman.

It is particularly noted, however, that Bailey testified that he had no problem with the Union before or after the change of ownership and Follmer did not testify in this proceeding.

On cross-examination Pinkley admitted he was service writer and service advisor for predecessor Quality, and that he is presently service manager performing both service manager and service writer functions. He also acknowledged that he was aware when he was hired by the Respondent, that as service manager, he is in a classification excluded from the Machinists' bargaining unit. When Pinkley was asked whether mechanic Bailey ever told him he did not want a union, Pinkley said yes and in so many words he did not really care if he had a union or not. Finally Pinkley said he could not ever recall Bailey expressly saying he did not want a union. When Pinkley was asked what did he report to Arbeitman about the employees' sentiments about the Union, Pinkley said he told Arbeitman that there was a 75-percent consensus of the employees that they did not want the Union, that they did not care if they had a union because the benefits and everything were over and above what they were getting as a union member.

Conclusion

In evaluating the testimony of Machinists unit employees with respect to their sentiments about the Union, it is first noted that only two unit employees testified on the subject. They were mechanic Robert Bailey and Service Manager William Pinkley. Manager Pinkley testified that during the 1985 Christmas party, Respondent's vice president, Arbeitman, asked him how the employees felt about the Union and he replied the employees did not care because they did not feel the Union helped them during the change of ownership; and that there was a 75-percent consensus not wanting the Union. While I credit Manager Pinkley's testimony regarding his conversation with Vice President Arbeitman, I do not credit the authenticity of Pinkley's reports to Arbeitman about the union sentiments of unit employees, for the following reasons.

Although both witnesses testified they talked to each other about the Union, it is particularly noted that Bailey's testimony in this regard is rather general and equivocal, very short in duration, and exclusively confined to conversations he had only with Manager Pinkley. On the contrary, Manager Pinkley's testimony about such conversations is quite specific, of extensive duration, and allegedly carried on not only with mechanic Bailey, but also with mechanics Carlo Mazzuca and Gary Follmer. However, the record shows that neither Follmer nor Mazzuca appeared and testified in this proceeding, and statements attributed to them by Manager Pinkley are not corroborated or substantiated in the record.

It is further noted that Bailey's limited conversations with Pinkley amounted to speculation about how they thought it would be all right working without a contract in a nonunion shop. Bailey could not recall whether he or Pinkley elicited this hypothetical sentiment but he acknowledged telling Pinkley the working conditions were better with Respondent then with Quality, and he agreed with Pinkley that he did not see any reason for having a union. Again, Bailey could not recall which of them (he or Pinkley) induced this hypothetical response. Although Pinkley testified it was the consensus among unit employees that they did not need or want the Union, Bailey denied he ever told Pinkley he did not want the Union. On cross-examination Pinkley acknowledged Bailey never made such a categorical statement but simply said he did not care whether or not they had a union. In fact, Bailey stated without equivocation that he did not have a problem wth the Union either before or subsequent to the change of ownership from predecessor to Respondent. Follmer and Mazzuca did not testify and were not available to deny or affirm the union sentiments attributed to them by Manager Pinkley.

While Bailey's testimony about his union sentiments may appear somewhat negative, indifferent, and equivocal, I am not persuaded that any of his statements to Pinkley reflected his true sentiments. It is undoubtedly clear from the uncontroverted testimony of Pinkley that he is manager of the service department, and as such, was the leader instigating, articulating, and transmitting to higher management, unsupported and even erroneous antiunion sentiments attributed to union employees (Follmer and Mazzuca). With such unlawful antiunion instigation by Manager Pinkley, it is understandable why Bailey's testimony is limited and equivocal. In all reasonable probability, Bailey was, as witness Hawkins expressed it, "going with the flow" of Service Manager Pinkley. Bailey must have assumed it risky to do otherwise. Consequently, while I credit the positive denials of Bailey, I do not construe his slightly indifferent, equivocal, and general statements to Manager Pinkley as stating he did not want the Union.

It is quite clear from the evidence of the very active and aggressive efforts of Pinkley, that he was subtly using his managerial influence to encourage unit employees to abandon the Union. Bailey's testimony about his union sentiments is very limited, guarded and, at most, equivocal. The record does not contain any other evidence independent of Pinkley's testimony, that other unit employees did not desire the continued representation of the Union. If the testimony of Bailey did not establish an unequivocal antiunion sentiment, I am not persuaded that Mazzuca and Follmer would have expressed antiunion sentiments even if they had appeared and testified in this proceeding. This conclusion is especially true when Pinkley's efforts to undermine the Union is considered along with the union curiosity expressed by Arbeitman at the Christmas party, and Pinkley's response to him.

Although it may be argued that Arbeitman was relying upon Pinkley's reports to him, the evidence does not show that Arbeitman received complaints about the Union from any source other than his service manager, Pinkley. In his brief, counsel for Respondent raises some question about the supervisory status of Pinkley. However, I do not see Pinkley's status as an issue in this proceeding. Pinkley acknowledged he is and has been service manager of the Respondent since the change of ownership, and unit employees confirmed his testimony in this regard. Moreover, the uncontroverted evidence established that Manager Pinkley hired mechanic Thomas

Hawkins in early February, and he hired mechanic Jere Tyrer in about mid-February. Pinkley runs the service department and it was not shown that he shares that authority with anyone else. Thus, I find that Pinkley was a supervisor within the meaning of Section 2(11) of the Act. As manager of the service department, Pinkley is management, and as such, he not only instigated, but encouraged unit employees to abandon the Union.

I further find that Manager Pinkley is a member of the Machinists unit as he was for predecessor Quality, and that the unit is not less appropriate because he is included in the unit, since it is not unusual for service departments to be so constituted in the automobile service industry. it is therefore clear from the evidence that Respondent did not have a doubt of the continued majority status of the Machinists Union. However, if Respondent had any doubt, certainly this record makes it clear that such doubt was not a good-faith doubt of the continued majority status of the Machinists or the Teamsters Union.

Based on the foregoing evidence and findings under topics B and C, I further find that by failing and refusing to recognize and bargain with the Machinists Union and the Teamsters Union, Respondent violated Section 8(a)(5) and (1) of the Act.

D. *Respondent Told an Employee it Would Operate as a Nonunion Shop*

The record shows without dispute, that John Van Hoogstraat is general manager of Royal Gate Dodge, in which Respondent's vice president, Harold Arbeitman, has an ownership interest. On 6 December 1984, Quality machinists unit and parts unit employees were advised by Quality that they could avail themselves of an interview for employment with Respondent (Royal Midtown Chrysler) on the next day (7 December 1984). On 7 December 1984, Van Hoogstraat, on behalf of Respondent, interviewed 20 or 21 Quality employees, including Machinists unit employee Jere Tyrer.

Mechanic Tyrer testified that during his interview by Van Hoogstraat on 7 December, Van Hoogstraat told him the new "employment would be a nonunion shop" but that Respondent offered everything comparable to the union contract, except birthdays. Van Hoogstraat denied he told any of the applicants he interviewed that Respondent would not be a nonunion shop. However, he acknowledged that some or one of the mechanics told him during the interview, that the employees had a union contract but he said he did not relate that information to Respondent's vice president, Arbeitman. The literal affirmative testimonial statement by Tyrer and the literal testimonial denial by Van Hoogstraat, give the appearance of an equivocal and genuine conflict in testimony, which questions honest credibility resolution. However, when both testimonial versions are considered in the context of all of the credited record evidence, and the demeanor of each witness, it becomes clear that Tyrer was testifying truthfully and Van Hoogstraat was not.

A review of the record evidence shows that although employees told Van Hoogstraat during the interview that they had a union, he made no further inquiry or comment, and said he did not mention it to Vice President Arbeitman. At this juncture, Van Hoogstraat's testimony may be considered believable, even if naively so. However, when further considered in conjunction with Respondent's conduct immediately after the change of ownership, it becomes even less convincing. Specifically, in December and early January, Respondent admitted Service Manager William Pinkley engaged in conversations with unit employees about how they felt about the Union. During the Christmas party, Respondent's vice president, Arbeitman, asked Respondent's service manager, Pinkley, how the employees felt about the Union. Manager Pinkley told him "basically nobody really cares," the Union has failed to help them. Such curiosity and hearsay response by management cannot be ignored when it is considered along with additional events as they unfolded.

Manager Pinkley continued to engage in discussions with unit employees about their union sentiments in late December and early January. On 7 February 1985, Pinkley hired mechanic Thomas Hawkins who credibly testified that when he was hired, Pinkley told him Respondent was a nonunion shop.

Mechanic Jere Tyrer was hired by Pinkley on 15 February 1985. he credibly testified that in early March Manager Pinkley told him he "wanted the mechanics to secure a withdrawal card from the Union because this was a problem for him, mentioning the Labor Board was on him." Manager Pinkley was also involved in discussions with other unit employees about securing a withdrawal card from the Union.

In March, Manager Pinkley was instrumental in having unit employees sign a letter, prepared by himself, requesting a withdrawal card from the Union. Moreover, when Machinists Union Representative Meinell and Teamsters Union Representative Joggerst visited Respondent Vice President Arbeitman and requested recognition and bargaining, Arbeitman's reaction was one of anger and lack of cooperation, and he ordered them to leave the premises.

It is also noted that Manager Pinkley's statement to mechanic Hawkins that Respondent was nonunion, is consistent with what mechanic Tyrer testified Manager Van Hoogstraat told him. As I observed Tyrer and Van Hoogstraat testify, I was persuaded by their demeanor that Tyrer was telling the truth. After evaluating all of the evidence of record, I was further persuaded that Van Hoogstraat's denial that he told Tyrer Respondent was going to operate nonunion, was not truthful. Additionally, I find from all of the evidence of Respondent's conduct that Respondent did not intend to operate with a union shop. This finding is consistent with all of the evidence of record.

I therefore conclude and find upon the foregoing credited evidence, that Van Hoogstraat told Tyrer, a union member and steward, that Respondent was operating nonunion; that such statement has a coercive and restraining affect upon the exercise of employees' protected Section 7 rights, and was therefore in violation of Section 8(a)(1) of the Act.

THE REMEDY

Having found that Respondent coerced and restrained its employees by telling them Respondent would operate a nonunion business, in violation of Section 8(a)(1) of the Act, the recommended Order will provide that Respondent cease and desist from engaging in such unlawful conduct, and that it take certain affirmative action to effectuate the policies of the Act.

[Recommended Order omitted from publication.]