Arc Bridges, Inc. *and* American Federation of Professionals. Case13–CA–44627

September 29, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND HAYES

On December 31, 2008, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The General Counsel and the Charging Party each filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief. The Respondent filed cross-exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

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

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

I. INTRODUCTION

For 8 consecutive years, the Respondent annually reviewed its finances in June and, if sufficient funds existed, implemented an across-the-board wage increase in July. In June 2007, the Respondent determined that it could give a 3-percent across-the-board wage increase, and, after an initial delay, gave that increase to its unrepresented employees but not to its newly union-represented employees. The judge found that the Respondent's conduct did not violate Section 8(a)(3) and (1) of the Act. We disagree. Indeed, although there is strong evidence that the withholding of the wage increase was unlawfully motivated, we find, for the reasons discussed below, that the Respondent's conduct was "inherently destructive" of the represented employees' Section 7 rights, even absent proof of antiunion motivation. Accordingly, we find that the Respondent violated Section 8(a)(3) and (1) as alleged.

II. RELEVANT FACTS

The Respondent provides services for developmentally disabled individuals. On November 15, 2006, and February 22, 2007,[2] the Board certified the Union as the collective-bargaining representative of two distinct units of employees, known as the day services unit and the residential supportive living unit. Together, there are approximately 260 employees in the two units. About 121 individuals (managers, supervisors, and support staff) are not represented by the Union.

The Respondent's practice was to review its finances each June and, if feasible, to grant across-the-board wage increases in July. The Respondent conducted that review every year from 1999 through 2006 and provided across-the-board, nonmerit-based increases in all but 3 years. In those 3 years, the Respondent reviewed its finances but did not provide any wage increase because it found it could not afford one.

The Respondent followed the same review procedure in 2007. Executive Director Kris Prohl testified that the Respondent's board of directors had given her authority at the board's June 2007 budget meeting to grant a 3-percent wage increase to all staff in July. Prohl, however, decided not to grant the increase to represented or unrepresented employees at that time "because the situation was not clear to us to be able to expect what was going to happen [with the Union]."

In July, during negotiations over an initial collective-bargaining agreement, the Union made economic demands including, among other things, wage increases totaling 50 percent over 3 years. The Respondent countered that the Union sought much more than the Respondent could afford.

On various dates between May and August, former employee Teresa Pendleton had several conversations about the Union with Supervisor Raymond Teso. During those conversations, Teso told Pendleton that: (1) Prohl had intended to give the employees raises in June; (2) the $56,000 the Respondent had budgeted for the unit employees was now going to its lawyers; and (3) "the Union would be gone in November." Additionally, in late July or early August, Area Manager Bonnie Gronendyke told employee Shirley Bullock that Prohl "was going to give us a raise until we voted the Union in."

[1] The General Counsel, the Charging Party, and the Respondent have implicitly 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.

[2] All subsequent dates are in 2007, unless otherwise noted.

In August, the Union announced a "Strike Vote." In late August, the represented employees voted to authorize the Union to call a strike. No strike was called or instituted, however.

Around October 12, the Respondent granted the previously authorized 3-percent across-the-board wage increase, retroactive to July, to all unrepresented employees. Employees represented by the Union received no increase.

Prohl testified that if she had proposed, and the Union had accepted, the 3-percent increase for represented employees, the Respondent would have had no further bargaining leverage on the topic of wages. Prohl also testified that because the employees had voted to authorize a strike, she believed that such a relatively "little 3-percent" wage offer, compared with the Union's 50-percent 3-year wage proposal, would make the employees "very unhappy" and a strike more likely.

Some time later, the Respondent offered the Union a 1.5-percent wage increase and, later still, a 2-percent increase, both retroactive to July. The Respondent did not offer the full 3-percent increase because, according to Prohl, "subsequently there have been significantly more costs that the agency has encountered and less income."

III. THE JUDGE'S DECISION

As stated, the judge found no violation and dismissed the complaint. The judge found that the Respondent's practice of granting wage increases based on its annual financial review had become an established term and condition of employment. In his view, however, that finding was irrelevant because the General Counsel had not alleged a violation of Section 8(a)(5). Accordingly, the judge cabined his analysis within the *Shell Oil* line of cases,[3] which hold that employers may treat represented and unrepresented employees differently when implementing new benefits, as long as the disparate treatment is not unlawfully motivated. Applying *Wright Line*,[4] the judge concluded that the Respondent did not violate Section 8(a)(3) because, in his view, the General Counsel failed to establish unlawful motivation.

IV. DISCUSSION

We reverse the judge's dismissal. Specifically, we conclude that the Respondent's withholding of an established term and condition of employment from its newly organized employees, while continuing the same for unorganized employees, was "inherently destructive" of their Section 7 rights and, accordingly, violated Section 8(a)(3) and (1).

The *Shell Oil* cases applied by the judge stand for the general proposition that the Act does not require employers to afford represented and unrepresented employees the same wages and benefits. For example, an employer may, as part of a bargaining strategy, withhold from represented employees a wage increase granted to unrepresented employees, provided the withholding is not discriminatorily motivated. The key fact in the *Shell Oil* cases, however, is that the wages or benefits withheld from represented employees were *new*.[5]

By contrast, where an employer withholds from its represented employees an *existing* benefit (i.e., an established condition of employment), the proper analytical framework is found in *NLRB v. Great Dane Trailers, Inc.,* 388 U.S. 26 (1967). In those circumstances, the Board will find that the unilateral withholding of an established condition of employment from only the represented employees is "inherently destructive" of their Section 7 rights, even absent proof of antiunion motivation.[6] See *United Aircraft Corp.,* 199 NLRB 658, 662 (1972), enfd. in relevant part 490 F.2d 1105 (2d Cir. 1973); *Eastern Maine Medical Center,* 253 NLRB 224, 242 (1980), enfd. 658 F.2d 1 (1st Cir. 1981). The key question, therefore, is whether the June–July wage review process was, as the judge found, an established condition of employment for all of the Respondent's employees, including those represented by the Union.

A. The Respondent's Annual Wage Review/Increase was an Established Condition of Employment

The evidence supports the judge's finding that the Respondent had a practice of reviewing its finances each June and then granting nonmerit-based, across-the-board wage increases to employees each July, if sufficient funds existed.[7] The Respondent conducted that review each and every year from 1999 through 2006 and either provided an across-the-board increase (in 5 of those

[3] See *Shell Oil Co.*, 77 NLRB 1306 (1948); see also *Sun Transport, Inc.,* 340 NLRB 70 (2003); *Empire Pacific Industries*, 257 NLRB 1425 (1981); *B. F. Goodrich Co.*, 195 NLRB 914 (1972).

[4] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[5] See *Shell Oil Co.*, 77 NLRB at 1309 (employer implemented new pay increase and hours only for unrepresented employees); see also *Sun Transport, Inc.,* 340 NLRB at 72 (employer offered lower severance pay to unrepresented employees); *Empire Pacific Industries*, 257 NLRB at 1426 (employer granted new cost-of-living increase only to unrepresented employees); *B. F. Goodrich Co.*, 195 NLRB at 915 (employer granted new profit-sharing benefits only to unrepresented employees).

[6] No proof of antiunion motivation is necessary because inherently destructive conduct "carries with it unavoidable consequences which the employer not only foresaw but which he must have intended and thus bears its own indicia of intent." *Great Dane Trailers*, supra at 33 (internal quotations and citation omitted).

[7] That the specific amount of the increase was not fixed is not significant. See *Otis Hospital*, 222 NLRB 402, 404 (1976), enfd. 545 F.2d 251, 255 (1st Cir. 1976).

years) or gave no increase at all (in 3 of those years). We agree with the judge that the described pattern amounted to an established condition of employment. See *Eastern Maine,* supra at 242 ("regular and periodic" wage surveys followed by increases "were as much conditions of employment . . . as the promise of a wage increase in *United Aircraft*").

In its cross-exceptions, the Respondent points to the fact that, in several instances, it granted merit-based wage increases or bonuses at times other than July and that it provided no across-the-board increase in July 2002, 2003, and 2004. Relying on that evidence, it argues that "the variable nature of the timing, methodology, and scope of past wage adjustments . . . is preclusive of a determination that a practice exists." That argument is a diversion.

None of the evidence that the Respondent granted other types of increases at other times of the year changes the fact that it still reviewed its finances each June and, when financially feasible, granted an across-the-board increase each July. Nor is that practice undercut by the Respondent's decision not to give such increases in July 2002, 2003, or 2004. The Respondent's own salary summary, which it submitted as an exhibit at the hearing, shows that it conducted its annual review in those years, inasmuch as it lists the dates of *July* 2002, *July* 2003, and *July* 2004. Presumably, the Respondent's annual review indicated that no across-the-board increase was warranted in those years. That was not the case in 2007.

Executive Director Prohl's own credited testimony confirms that in 2007, if not for the existence of the Union, the Respondent, based on its annual review, would have provided a 3-percent increase to all employees in July. She testified that she was given authority by the board of directors in June 2007 to grant a 3-percent increase to all staff in July. Additionally, the credited testimony of employee Bullock is that Prohl said that she had intended to give the employees raises but did not do so because of the Union.

Accordingly, we find that the 3-percent increase provided to unrepresented employees on October 12, 2007, retroactive to July 2007, was an established condition of employment for the Respondent's represented employees.

B. The Respondent's Withholding of the 2007 Wage Increase from its Represented Employees was "Inherently Destructive" of their Section 7 Rights

The Respondent's rationale for withholding the 3-percent wage increase from represented employees was that it wanted to enhance its bargaining position in negotiations with the Union. According to the Respondent, 3 percent was all it had to offer, and it believed that granting the increase to represented employees in October 2007 would have served no useful bargaining purpose. Therefore, it decided to withhold the increase until such time as it could be used to the Respondent's best advantage in bargaining.

The Respondent's rationale is essentially an admission that the represented employees did not receive the October 2007 across-the-board wage increase *because* they chose union representation. Indeed, that choice, the Respondent contends, is what permitted it to withhold the annual increase and, in effect, take the position that the increase would have to be negotiated back by the Union. Leaving no room for doubt, the Respondent, in its answering brief, echoes the judge's characterization of its conduct as a "legitimate bargaining strategy." Board law, however, is clearly to the contrary.

In *United Aircraft Corp.,* 199 NLRB at 662, the Board found similar conduct to be "inherently destructive" of employee rights, with a consequence of discouraging union activity in violation of Section 8(a)(3) and (1). The employer in that case had denied a scheduled wage increase to newly represented employees, and its vice president admitted that it did so because it was in negotiations with the union. Citing *Great Dane Trailers,* 388 U.S. at 34, the Board found that because the increase was an established condition of employment, its denial was "'inherently destructive' of important employee rights," even absent proof of antiunion motivation. 199 NLRB at 662. The Board then rejected the employer's proffered business justification: that the promised wage increase was based on the assumption that other matters of compensation would remain the same. Id. The Board reasoned that if the belief that bargaining with the union will have negative financial consequences could justify discrimination, "the proscriptions and protections of the Act would be rendered largely nugatory." Id.

Likewise, in *Eastern Maine Medical Center,* 253 NLRB at 242, the employer had conducted a wage survey each year for the previous 8 years, which led to across-the-board wage increases. In 1976, however, the employer broke from that pattern by granting an increase to all employees except unit employees. Id. at 241. The employer's director testified that the wage survey preceding the 1976 increase included the unit employees, and he conceded that represented employees did not receive the increase because the employer had been in negotiations with the union over wages. Id. at 242. Citing *United Aircraft,* supra, the Board concluded that the employer's refusal to provide the wage increase, which it found to be an established condition of employment, was inherently destructive of important employee rights and

therefore violative of Section 8(a)(3), even without specific proof of antiunion motivation. Id.

Applying *United Aircraft* and *Eastern Maine Medical Center* here leads to the same result. First, as in those cases, an annual wage increase, when the annual review of finances found it possible, was, for the reasons explained above, an established condition of employment for *all* of the Respondent's employees, including those represented by the Union.[8] Second, like the employers' rationale in *United Aircraft* and *Eastern Maine Medical Center,* the Respondent's stated reason for withholding the wage increase from represented employees was that it was in negotiations with the Union over wages. Finally, as in those cases, a high-ranking official admitted that the increase was withheld because the company was in negotiations with the union—in this case, Executive Director Prohl conceded that *all* employees would have received a 3-percent increase in July 2007 if the Respondent had not been in negotiations with the Union.

For the above reasons, the Respondent's withholding of the 2007 annual wage increase from its represented employees was inherently destructive of their Section 7 rights, even without specific proof of antiunion motivation.[9] Accordingly, the Respondent violated Section 8(a)(3) and (1).

[8] Because the October 2007 wage increase was an existing benefit, the Respondent was no more privileged to withhold it from represented employees than it would have been, for example, to revoke their health benefits or vacation allotment. See *More Truck Lines*, 336 NLRB 772, 773 (2001), enfd. 324 F.3d 735 (D.C. Cir. 2003).

[9] Even so, the record strongly indicates that the Respondent's conduct was motivated by union animus. First, Executive Director Prohl essentially blamed the Union when she said that she was going to give employees a 3-percent increase until they "voted the Union in," and that the $56,000 that had been budgeted for the represented employees now had "to go to pay for the lawyers." Second, Prohl's testimony that she believed a 3-percent increase would make the represented employees *more* likely to strike appears to be pretextual, as it is undermined by her subsequent decision to offer those employees an even smaller, 1.5-percent increase. Third, one of the Respondent's managers told an employee that Prohl would "pat us on the back" for opposing the Union, and another manager sent a note to employees telling them that she takes their support for the Union "personally." Finally, the evidence suggests that the Respondent's decision to delay, and eventually withhold, the increase from represented employees was motivated by the approaching end of the certification year for the day services unit on November 15. As the judge found, the Respondent's practice was to give annual wage increases each July, when financially feasible. After the arrival of the Union, however, the Respondent waited until mid-October to grant the increase, to unrepresented employees only, making it retroactive to July. Unrepresented employees, therefore, received a raise and a lump-sum payment shortly before the expiration of one bargaining unit's certification year. That this unprecedented delay was not coincidental is borne out by Supervisor Teso's statement that "the Union would be gone in November."

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by unilaterally withholding from its newly organized employees an annual wage increase that they would have received but for the Respondent's discrimination, we shall order that each of the affected employees be reimbursed for the increases they would have received on October 12, 2007, retroactive to July 2007, to the present by payment to them of the difference between their actual wages and the wages they would have received had the increases been granted to them in the manner that they were granted to the Respondent's unrepresented employees, plus interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).[10]

ORDER

The National Labor Relations Board orders that the Respondent, Arc Bridges, Inc., Gary, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in the American Federation of Professionals (AFP), or any other labor organization, by withholding wage increases from employees represented by the AFP, or any other labor organization.

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

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

(a) Make whole employees in the appropriate collective-bargaining units[11] for any monetary loss they have

[10] The General Counsel seeks compound interest computed on a quarterly basis for any backpay or other monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Rogers Corp.*, 344 NLRB 504 (2005).

[11] The appropriate collective-bargaining units are:

> All full-time and regular part-time entry level Day Services Employees including Assistant Trainer, Community Connections Specialist, COTA (Certified Occupational Therapy Assistant), DSP (Direct Support Professional), Aquatics Manager, DSP Follow Along, DSP H & S (Health & Safety) Technician, DSP Job Coach, DSP Lead Trainer, DSP Recreation Manager, DSP SIP (Social Integration Program) Technician, DSP Trainer, Employment Specialist, and Substitute Trainer, employed by the Respondent at its facilities currently located at 2650 West 35th Avenue, Gary, Indiana, 2660 West 35th Avenue, Gary Indiana, 2395 West Old Ridge Road, Hobart, Indiana, 550 East Burrell Drive, Crown Point, Indiana, and 9600 Kennedy Avenue, Highland, Indiana; but excluding all Residential Services employees, all Supported Living Services employees, temporary employees, volunteers, clients on the payroll, managerial employees, confidential employees, of-

suffered as a result of the failure to grant to those employees the increased wages generally granted to unrepresented employees on October 12, 2007, retroactive to July 2007, plus interest, in the manner set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of reimbursement due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facilities in Gary, Indiana, and any other facilities, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 12, 2007.

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

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

All full-time and regular part-time Direct Support Professionals (DSP's), Lead DSP's and Medical/Residential Drivers employed by the Respondent at its Residential and Supported Living facilities currently located in Lake and Porter Counties, Indiana; but excluding all other employees, Day Services employees, temporary employees, volunteers, clients on the payroll, managerial employees, confidential employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

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

APPENDIX

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discourage membership in the American Federation of Professionals (AFP), or any other labor organization, by withholding wage increases from employees represented by the AFP, or any other labor organization.

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

WE WILL make whole employees in the appropriate collective-bargaining units for any monetary loss they have suffered as a result of the failure to grant to those employees the increased wages generally granted to unrepresented employees on October 12, 2007, retroactive to July 2007, plus interest.

ARC BRIDGES, INC.

Jeanette Schrand, Esq., for the General Counsel.
Raymond C. Haley, III, Esq. (Woodward, Hobson & Fulton, LLP), of Louisville, Kentucky, for the Respondent.
Eugene Elk, International Representative, of Pittsburgh, Pennsylvania, for the Union.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice a hearing in this matter was held before me in Chicago, Illinois, on July 28 and 29, 2008. The charge was filed by American Association of Professionals (the Union) on March 31, 2008. Thereafter, on May 28, 2008, the Regional Director for Region 13 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging a violation by Arc Bridges (Respondent) of Section 8(a)(1) and (3) National Labor Relations Act (the Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

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

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Indiana corporation, with an office and place of business in Gary, Indiana, and additional facilities in Lake County, Indiana, is engaged in providing social services, including residential services, transitional services, supported employment, and sheltered workshops for individuals with developmental disabilities. The Respondent annually derives gross revenues in excess of $250,000, and annually purchases and receives at its Indiana facilities goods, products, and materials valued in excess of $50,000 directly from points outside the State of Indiana. It is admitted and I find that the Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[1]

II. THE LABOR ORGANIZATION INVOLVED

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

III. ALLEGED UNFAIR LABOR PRACTICES

A. Issues

The principal issue in this proceeding is whether the Respondent has violated and is violating Section 8(a)(1) and (3) of the Act by withholding a wage increase from its unionized employees during the course of bargaining negotiations.

B. Facts

The Respondent provides a variety of services for developmentally disabled individuals (clients) in northwest Indiana, including the operation of residential group homes, transitional services, employment counseling and assistance, and sheltered workshops. Such services are largely funded by Medicaid and State appropriations.

On November 15, 2006, and February 22, 2007, the Union was certified as the exclusive collective-bargaining representative of two distinct units of employees, known as the day services unit and the residential supportive living unit, respectively. Both units, collectively, total approximately 260 employees, who provide the aforementioned services to the Respondent's clients. Approximately 121 individuals, consisting of managers, supervisors, truckdrivers, and clerical support staff, are not represented by the Union; of this number approximately 70 to 80 individuals are not managers or supervisors.

The Respondent actively campaigned against the Union during the two preelection campaigns. Following the first election, Dorothy Shawver, Respondent's director of community services, sent a memo to the employees, inter alia, as follows:

> As you know the Day Services Staff voted for union representation. Now, as you might expect the union is pushing others to join what they call their "winning team."
>
> . . . .
>
> In the weeks and months to come you will begin to see how things turn out and whether the 57 folks who voted for the AFP are able to get what they thought they would obtain. As of this date the union has yet to *begin* negotiations with Arc BRIDGES and is now attempting to expand their membership by seeking support from you asking that you sign a membership card. [Original emphasis.]

And on January 24, 2007, prior to the election in the residential supportive living unit, Shawver, sent the following note to the employees:

> During the union campaign, many people have said to me "don't take it personally". I do take this personally. If you were in my position I think you'd take it personally too. I have worked at Arc Bridges for 22 years. I have built wonderful working relationships with many of you. It saddens me to think that all of that could change in the coming weeks. The Area Managers, Directors and I have spent the last few months making sure you have the facts in order to make an informed choice. I hope these *facts* have assisted you in your choice. It is important that you vote. This is your chance to let your voice be heard. I ask that you vote "NO", put this experience behind us and refocus our efforts on those people that are most important to us—our clients. [Original emphasis.]

Collective bargaining for the day services unit began in December 2006, and collective bargaining for the residential supportive living unit began in March 2007. Thereafter, separate bargaining sessions continued to be held for each unit, one session in the morning and the other in the afternoon. However, the issues discussed during the course of bargaining, particularly the economic issues, were identical for both units.

On July 10, 2007, the Union presented its initial economic demands as part of a multipage proposed collective-bargaining agreement. Up to this point in negotiations the parties had apparently not discussed monetary issues. Included in the demands were a health insurance proposal requiring the Respondent to pay a significant increase per month per employee for health insurance; a wage increase proposal calling for a 20-percent increase in wages for the first year of the contract, a 20-percent increase for the second year, and a 10-percent increase for the third year; and a proposal that the Respondent's then current profit-sharing plan be frozen and that it be replaced by a 401(k) plan administered by the Union.

At the following session, on July 12, 2007, the Respondent presented the Union with several documents: A document

[1] The record also shows the Respondent is a health care institution within the meaning of Sec. 2(14) of the Act.

headed "Key Financial Data," showing that its 2007 net income (deducting revenues from expenses) was projected to amount to $53,497; and another document headed "Projected Contract Costs, Union First Demand," showing that the first year of the contract proposed by the Union would require additional outlays by the Respondent of $4, 311,905.

At this bargaining session, the Respondent's chief negotiator told the Union's bargaining committee that it was "time to bring a healthy dose of reality to these negotiations." The Union was requested to "narrow its focus," and to determine which issues were most important to it so that bargaining could proceed on those issues. Further, the Respondent took the position that wages, and apparently current health care and pension benefits, be frozen, and declined to provide a counterproposal on wages, or apparently other economic issues.

The parties were not scheduled to meet again until August 8, 2007. However, that negotiating session was canceled due to the illness of the Union's chief negotiator. Before another negotiating session was held the Union sent out an announcement to the bargaining unit employees entitled "Strike Vote." The announcement states, in part, as follows:

> Remember—the Company REJECTED your entire economic proposal and DID NOT offer one of their own. They told the Union negotiators that they simply wanted to know *one or two* economic areas that were "the most important" to you and they would "look at what they could do in those areas."
>
> The propaganda that they are feeding you about a strike vote is just that—propaganda. How can they expect you to take care of the Arc Bridges Client Family if you can't take care of your own family? As of June 30, 2006, Bridges, Inc. had $7,699,465.00 in NET ASSETS! [Original emphasis.]

It appears that negotiations thereafter were infrequent. There were no further economic proposals from either party until after the Respondent granted a wage increase to its supervisors, managers, and nonunit employees, infra.

The Respondent's fiscal year extends from July 1 to June 30. For many years it has been the practice of the Respondent to review wages in June of each year as a component of the budget process, and to budget for wage increases, if financially feasible. Customarily, such wage increases are granted in July of each year. Following this pattern, in July of each of the prior 2 years, 2005 and 2006, before the Union became the employees' bargaining representative, the Respondent granted across-the-board wage increases of 3 percent to all staff, including managers and supervisors.

Executive Director Kris Prohl is responsible for all the operations of the Respondent. Prohl testified that at the June 2007 budget meeting she was given authority by the board of directors to grant a 3-percent across-the-board wage increase in July to all staff, including managers and supervisors. However, she did not do so "because the situation was not clear to us to be able to expect what was going to happen." Prohl was not questioned further about the import of her testimony in this regard, but its meaning seems clear: that the Respondent did not grant the wage increase because of union-related considerations.

Since the aforementioned July 2007 negotiating sessions there have been no change in either the Union's or the Respondent's bargaining position, and the only significant event thereafter took place in late August 2007, when the unit employees voted to authorize the Union to call a strike. However, no strike was announced or instituted.[2] On about October 12, 2007, there being no foreseeable prospects of a successful resolution of the matter, Prohl decided to grant the aforementioned wage increase, retroactive to July 2007, to all nonbargaining unit personnel, including supervisors and managers.

Asked why she did not also grant the wage increase to the unit employees, Prohl testified that she was attempting to avoid a charge for "not good faith bargaining." Questioned about this, Prohl explained, in effect, that if the Respondent unilaterally granted the wage increase the Union would have likely filed a refusal to bargain charge. Further, if the Respondent would have proposed, and the Union would have accepted the increase as a down payment on the 20-percent increase it was requesting, the Respondent would have had no further bargaining leverage, as any amount of wage increase was simply one component of the entire contract. Also entering into Prohl's assessment of the situation were the matters of "grant money" and the fact that the Union had taken a strike vote.

Regarding the matter of grant money, Prohl testified that in mid-September 2007, the Respondent proposed to the Union that certain grant money, which came from an outside source on a "pass through" basis,[3] be distributed to the unit employees as a bonus and not a wage increase; further, as time was running out under the terms of the grant, the Respondent was looking for a quick response from the Union regarding this proposal. However, the Union, according to Prohl, was apparently not sufficiently interested in this proposal, and because of the Union's procrastination, the grant expired and the funds were no longer available.[4] This conduct of the Union, according to Prohl, convinced her that the Union would similarly disregard and deem inadequate the offer of a 3-percent wage increase.

And, Prohl reasoned further that because the employees had voted to authorize a strike, she believed such a relatively "little three percent" wage offer, compared with the Union's 50-percent 3-year wage proposal, would make the employees "very unhappy" and a strike more likely, and would have served no useful purpose. In this regard, Prohl emphasized that the Union, in advocating for strike authorization, apparently did convince the employees that the Respondent should sell its assets, largely consisting of physical facilities needed to house and support its programs, to finance the Union's substantial wage increase proposal and other economic proposals. Thus, according to Prohl, the employees had been led to believe there was much more money potentially available to finance a wage

[2] Because the Respondent is a health care institution, the Union was required to give the Respondent the appropriate 10-day advance written notification of a strike under Sec. 8(g) of the Act.

[3] That is, the money was not attributable to the Respondent but rather to the grantor.

[4] The Union maintains that it did have some concerns over the distribution of the grant money, but the fact that the grant expired without the money being distributed to the employees was not due to the Union's inattention or disinterest.

increase than the mere $53,497 that the Respondent maintained it had available.

On the other hand, if the Union agreed to the 3-percent wage increase there would have been nothing left to bargain with. Prohl testified:

> My concern was that we were looking at 50 percent increases [over three years] in wages at a bare minimum is what was on the table. There were significant [proposed] changes across the board in terms of employee benefits and work rules, all kinds of things, which had not had an opportunity to be negotiated. I felt that if we just parceled out the three percent of the 50 percent that was asked for, that, in the first place, that would not do us any good . . . once we said this is all the money we have and we agreed to use it for this purpose, there's nothing left.

On October 12, 2007, Prohl issued the following memorandum to all supervisors and managers, entitled "Non-Union Staff Annual Raises":

> This week we informed all non-represented staff of their annual increase retroactive to July 1, 2007. No adjustment has been made for represented workers because there has been no agreement reached with the union.
>
> We waited on giving pay raises to our non-union staff as we hoped that the union would be reasonable in negotiations and we would be able to reach an agreement in a reasonable amount of time.
>
> Unfortunately, the union has maintained its outrageous demands in negotiations. Unless there is a dramatic change in the union's position, which we don't expect, an agreement in the near future is unlikely. It is not fair to the rest of our employees to make them wait for their salary adjustment because the union has more than $4 million in first year demands on the table.
>
> Unit employees will have to wait to see what increases, if any, will be negotiated by the AFP.

The memorandum was not to be shared with bargaining unit employees because, according to Prohl, the Respondent didn't want to "shout [the wage increase] from the roof," but wanted the managers and supervisors to be able to answer questions about it if asked by bargaining unit employees.

Prohl testified that the Respondent granted the October 2007 wage increase to the other staff, particularly the supervisory and managerial staff, "so we can retain them, so that we can keep people here."[5] However, the amount of turnover of the unit employees, which was somewhat lower but nevertheless significant,[6] did not outweigh her aforementioned concerns regarding the bargaining process and other matters mentioned above.

Thereafter, during the course of bargaining, the Respondent offered the Union a 1-1/2-percent retroactive wage increase, and later offered a 2-percent retroactive wage increase. The Respondent did not offer the full 3-percent increase because, according to Prohl, "subsequently there have been significantly more costs that the Agency has encountered and less income."

Prohl testified that in the mid-1990s there was a prior union certification of the Auto Workers Union as the collective-bargaining representative of certain of the Respondent's employees. Negotiations lasted about a 1-1/2 years with no bargaining agreement being reached. During a decertification campaign, according to Prohl, the Auto Workers "walked away."

The General Counsel and the Union presented witnesses for the purpose of demonstrating the Respondent's union animus and discriminatory motivation for the Respondent's failure to grant or offer to grant the wage increase to the unit employees.[7]

Teresa Pendleton, a former unit employee, testified that she had an employment interview on May 7, 2007, with Raymond Teso, a supervisor. Teso told her there was a "union coming in." Pendleton indicated she was against unions. Teso encouraged her to not sign a union card, telling her that if the employees signed cards the Union would be voted in. Teso said the health insurance the Union wanted would cost the employees more money than they currently paid, and that employees would lose the pension plan they currently had if the Union's 401(k) plan was put into effect. These things, he said, would "greatly affect us." He said there would be a vote, and that "signing the union card would vote the Union in. And that would be in November."

Asked to clarify her testimony, Pendleton testified that from her date of hire and thereafter, Teso continued telling her:

> [T]he union has not been established. That's what he made me understand, had not been established. And that when they came, when the Union would come to me to sign a union card, to not sign it because if I sign it then I'm voting the union in. And as long as we don't sign the union cards to November, then the union would not be in Bridges. And that was in November of '07.
>
> Q. (BY THE JUDGE): And what was supposed to happen in November? Do you know?
>
> A. That the union would be gone. But, again, his whole thing was he made me understand that the Union had never, had never been established at Arc Bridges, even though they were representing us, they were working with us. He made me understand that they were doing this out of their own free will.

In August, according to Pendleton, Teso urged her to attend a union meeting and again said that voting the Union in would greatly affect the employees. He again said that the employees would not be able to afford the insurance the Union was proposing, and they would lose their current pension system. And he urged her to vote against striking, as the Union had announced a strike vote. Teso also asked Pendleton to talk to the

[5] The turnover for the managerial and supervisory staff was projected to be about 40 percent for 2008.

[6] The turnover for the unit employees and apparently the nonunit employees, was about 34 percent.

[7] The complaint alleges no independent 8(a)(1) violations. To the extent that the testimony of the witnesses may establish independent 8(a)(1) violations, these matters were resolved by means of an informal Board settlement agreement in settlement of prior charges brought by the Union against the Respondent.

other employees about "not standing for the Union," and said that Kris Prohl, the Respondent's executive director, "would pat us on the back."

Pendleton testified that on August 14, 2007, Teso asked her if she would talk to Norma, a coworker, about not voting for the Union because he felt that Norma was a major union supporter. Pendleton agreed to do so.

Also in August, Teso held a meeting with the nine unit employees under his supervision, including Pendleton. According to Pendleton, Teso talked to them about the Union's contract proposals, and essentially told the employees what he had previously told Pendleton alone, supra. He showed them the Union's proposal and said the Union wanted $4 million in benefits while the Company had only $56,000 to expend for wage increases. He encouraged them to go to the union meeting scheduled for August 18, 2007, because he wanted them to know exactly what the Union was demanding.[8]

Pendleton did attend the August 18, 2007 meeting. Teso asked her about the meeting several days later, and Pendleton told him that she had become a union supporter. She "straight up told him, yes, I support the union because the union is good," and suggested to Teso that the Company could sell some of its buildings to raise the money the employees were demanding. Teso said the Company could not do that. There was some pro and con discussion, and Teso said Prohl had intended to give the employees raises in June but did not do so because they were going to strike or were going to take a strike vote, and that the $56,000 the Company had for the employees was going to the Company's lawyers. After that conversation there were no further union-related discussions.

Teso, a member of the Respondent's bargaining committee, testified that during the course of his employment interview with Pendleton he mentioned that the Company was beginning contract negotiations with the Union. Pendleton told him that she was not interested in the Union, as her husband was or had been a member of the Teamsters Union and had experienced problems with that union. Teso admits that after learning Pendleton did not favor unions in general, he continued to have ongoing conversations with her about what the Union was proposing, and, after the Company received the Union's initial proposal, he did encourage her to speak with coworkers. He also had conversations with other employees who inquired about the status of negotiations, and urged them to attend union meetings. However, he said nothing to Pendleton about signing a union card, as the election had taken place and the Union had been established. Thus, it made no difference whether or not Pendleton signed a union card.

During a staff meeting in August 2007, Teso read the Union's proposal to the employees, as he had been asked by Pendleton and others about the contract negotiations. He told them he was happy with the Respondent's current pension program, in which he participated, and did not say that pensions would be lost. There was discussion about the Union's 50-percent proposed pay raise over 3 years.

After the strike vote in August 2007, Pendleton told him she had become a union supporter. Because of this, Teso discontinued his conversations with her about union matters.

Pendleton's testimony, standing alone, simply does not make much sense. And to make some semblance of logic or consistency from her testimony requires a degree of interpolation and supposition. Nevertheless it is clear she indicated to Teso, during her May 7, 2007 interview, that she did not favor unions, and this caused Teso to discuss the union situation with her on repeated occasions, during which discussions Teso attempted to convince her the Union was making demands on the Respondent that he, personally, did not like and that would "greatly affect" both himself and the employees. He asked her to speak to other employees about "not voting for the Union," or "not standing for the Union" (apparently referring to the strike vote that was to be taken), and said that Kris Prohl, the Respondent's executive director, "would pat us on the back" (again, apparently meaning that Prohl would pat them on the back for voting against strike authorization). And he urged her to attend union meetings so that she would have firsthand knowledge of what the Union was demanding. Despite these discussions, and the fact that she received leaflets regarding the strike vote, Pendleton claims she did not understand that the Union had been "established"[9] until she learned this when, following Teso's advice, she did attend the August 18, 2007 union meeting.

And, as noted above, Teso held a group meeting with the nine employees under his supervision, including Pendleton, during which meeting he read from the Union's contract proposal, voiced his objections to some of them, and urged the employees to attend union meetings.

Despite the difficulties with Pendleton's testimony, I find that Teso did tell Pendleton that Prohl had intended to give the employees raises in June but did not do so,[10] that the $56,000 the Company had for the employees was going to the Company's lawyers, and that "the Union would be gone in November." I credit this testimony of Pendleton because Pendleton seemed to be a forthright witness who, although confused about certain matters, was attempting to recount the conversations as she understood them, and because Teso, during the course of his testimony, did not specifically deny making such statements.

Shirley Bullock, a unit employee, testified that around the end of July or early part of August 2007, Area Manager Bonnie Gronendyke, during a work-related telephone conversation, told her that Kris Prohl "was going to give us a raise until we voted the Union in." Bullock asked her how much of a raise, and Gronendike said 3 percent. Bullock asked how much that amounted to and Gronendike replied it would amount to a raise

[8] The Union had announced that a strike vote would be taken at the August 18 meeting. However, apparently at the meeting, it was decided that the strike vote would be taken by mail ballot sometime thereafter in August.

[9] Pendleton apparently believed the Union would not be "established" until a contract was in place and the employees began paying union dues.

[10] However, I do not credit that part of Pendleton's testimony that the wage increase was withheld in June because of a strike vote, as the strike vote matter did not arise until August.

of about 25 cents per hour. Bullock indicated that this amount was insufficient.

Gronendike testified that she did not make this statement to Bullock. Rather, during a phone conversation in the summer of 2007, regarding staffing issues, Gronendyke asked Bullock whether there was anything else she wanted to discuss, and Bullock "jokingly" said, "[Y]ou can get me a raise." Gronendyke replied, "[N]ow you know that we're in a bargaining situation and all economic issues are up for bargaining, and that's something that we [can't] legally do at this time while its in bargaining." Gronendyke further testified she had received instructions from management consultants regarding the responses that managers were to give to employees' questions.

I credit the testimony of Bullock who testified in a spontaneous fashion and seemed to have a vivid and detailed recollection of the conversation. Gronendyke's testimony on this issue, in contrast, was abbreviated, more measured and less detailed, and less probable; thus, during the course of a casual "joking" question, it is not likely that Gronendyke would have responded to Bullock in such a formal, legalistic fashion.

Jaunece Ghant, a nonbargaining unit facility clerk, testified that several days prior to October 12, 2007, she asked her supervisor, Terry Lancow, why she had not received a T-shirt that certain other employees had received for participating in a particular program. Lancow advised her that she would be getting something better than a T-shirt, and would find out later what this was. Then, on October 12, 2007, she received a pay envelope that included the following note: "Please notice that your pay stub contains a budgets [sic] 3% cost of living adjustment for fiscal year 2008 retroactive to July 1, 2007."

As noted, no progress had been made during the course of bargaining over the economic items. On July 9, 2008, a year after the stalemate in negotiations and 3 weeks prior to the instant hearing, Prohl sent a memorandum to all employees entitled "Bargaining Update." Included in the memorandum is the following paragraph:

> The union has said we have not given pay raises to [unit employees] because they voted for the AFP. This is simply wrong. It is because of the union's unrealistic demands and strategy. We have been in lengthy negotiations because the union has refused to recognize the limits on the Agency's financial resources, and has not prioritized its demands. A year ago, we asked the union for its priorities and the union still has not responded. They refused, and continue to demand improvements that would put the Agency's financial health and the quality of care given to our clients in jeopardy.

C. Analysis and Conclusions

The complaint alleges, and the General Counsel and the Union maintain, that the failure to grant the wage increase to unit employees was discriminatorily motivated and therefore violative of Section 8(a)(3) of the Act.

Cases cited by the General Counsel or the Union that find precertification withholding of wage increases to be violative of Section 8(a)(3) of the Act, such as *Florida Steel Corp.,* 220 NLRB 1201 (1975), enfd. 538 F.2d 324 (4th Cir. 1976); *Choctaw Maid Farms*, 308 NLRB 521, 527 (1992); and *Associated Milk Products,* 255 NLRB 750 (1981), are inapposite. These cases hold that while Board representation proceedings are pending an employer is required to continue its established pattern or practice of granting periodic increases that have become a term and condition of employment. That is not the situation in the instant case.

Nor is there an allegation in this case that the Respondent has violated Section 8(a)(5) of the Act by unilaterally changing an established term or condition of employment, namely, the annual granting of wage increases.[11] Accordingly, the various cases relied on by the General Counsel in support of a unilateral change argument are also inapposite. Further, since it is not alleged that the Respondent unilaterally changed an established practice of granting annual wage increases, it makes no difference whether in fact such an established practice existed.[12]

It is clear that an employer may withhold wage increases from employees during the course of bargaining negotiations, even if those wage increases would have been granted in the absence of a union, provided the withholding of such increase is not discriminatorily motivated but is rather motivated by lawful considerations. *Shell Oil Co.*, 77 NLRB 1306 (1947); *Sun Transport, Inc.,* 340 NLRB 70 (2003); *Empire Pacific Industries*, 257 NLRB 1425 (1981); and *B. F. Goodrich Co.*, 195 NLRB 914 (1972).

The Respondent maintains that its determination not to grant the 3-percent increase to the unit employees in October 2007, was dictated by its bargaining strategy, namely, to use the wage offer to its best advantage by waiting until the Union offered a realistic package proposal. Thus, the Respondent reasoned that to simply grant the wage increase and thereafter bargain with no ability to make an additional monetary offer would serve no useful purpose. Moreover, Prohl testified that she was very concerned about the possibility of a strike, and believed the "little three percent" wage increase offer would make the employees "very unhappy" and a strike more likely.

I conclude from the foregoing, therefore, that in October, at the time the wage increase was granted to the nonunit individuals, Prohl was no longer concerned that the granting of the wage increase to the unit employees would precipitate a strike.

The position of the General Counsel and the Union is essentially as follows. The Respondent admits the unit employees would have received this increase absent the Union, and it seems likely under the circumstances that to have offered and granted the modest retroactive wage increase during bargaining would have neither advanced nor hindered the further course of the stalemated negotiations; and since there was no strike following the strike vote or following the granting of the wage increase to nonbargaining unit personnel, the Respondent was apparently no longer fearful of a strike. Further, such a timely wage increase would have helped ameliorate the 34-percent employee turnover problem; indeed, this was allegedly a prin-

[11] The charge, but not the complaint, contains an 8(a)(5) allegation that the Respondent "unilaterally changed its annual wage increase policy without bargaining with the Union."

[12] The parties litigated this matter extensively, and it seems clear, as noted herein, that an annual wage increase in July of each year, with some exceptions as noted in the record, had in fact become a condition of employment which the Respondent was not privileged to unilaterally change.

cipal reason for the granting of the increase to supervisory and managerial staff. Thus, while the granting of the increase would not have affected the course of bargaining, the withholding of the increase was detrimental to the Respondent's interests in terms of lowered employee morale and higher employee turnover; accordingly, it follows that the withholding of the increase was intended to punish the employees for bringing in the Union rather than for any legitimate purpose.

While such reasoning make sense, the Respondent's apparent rationale is equally viable. Namely, the wage increase was all it had to offer; under the circumstances as the Respondent viewed them the granting of the wage increase in October 2007 would have served no useful bargaining purpose; and therefore the Respondent decided to withhold the increase until such time as it could be used to the Respondent's best bargaining advantage. Further, regarding the matter of employee turnover, the outcome of contract negotiations took precedence over matters of unit employee retention.

The General Counsel contends the written and verbal statements by Respondent's managers and supervisors constitute strong evidence of Respondent's discriminatory motive for not granting the wage increase.

Following the first election, the Respondent's director of community services, Dorothy Shawver, made the Respondent's position clear to the employees that the Union was detrimental to the interests of both the Respondent and its employees; further, she stated, "In the weeks and months to come you will begin to see how things turn out and whether the 57 folks who voted for the AFP are able to get what they thought they would obtain." And prior to the election in the residential supportive living unit, Shawver advised the employees that she would take it "personally" if the employees voted for the Union, and urged them to vote no.

Further, I have found that Teso did tell Pendleton that Prohl had intended to give the employees raises in June but did not do so,[13] that the $56,000 the Company had for the employees was going to the Company's lawyers, and that "the Union would be gone in November." In agreement with the General Counsel, the only reasonable interpretation to attach to Teso's latter remarks is that he expected the Union's departure to be concurrent with the end of the certification year for the day services unit, which had been certified on November 15, 2006. Accordingly, the General Counsel argues that Teso was, in effect, letting Pendleton know that no contract would be agreed upon by that date and supports the further argument that Respondent planned "to oust the Union after a year of unsuccessful bargaining."

In addition, Shirley Bullock, was told by Area Manager Gronendike, during a work-related telephone conversation, that Kris Prohl "was going to give us a raise until we voted the Union in."

As noted above, the Respondent is not alleged to have violated Section 8(a)(5) of the Act by withholding the wage increase in order to impede the bargaining process or avoid reaching an agreement. Rather, the Respondent is alleged to have withheld the wage increase in order to punish and retaliate against the employees for bringing in the Union. Indeed, given the record evidence of Respondent's general antiunion bias as well as Shawver's adverse personal reaction to the employees' selection of the Union, and coupled with the Respondent's past practice of giving a wage increase to all employees in July of each year, such a discriminatory intent is clearly plausible.[14] However, as noted, the Respondent's asserted rationale is also feasible as a legitimate bargaining strategy,[15] and it has not been shown that the Respondent's rationale for withholding the wage increase is inherently implausible, or unsupported by the record evidence, or materially inconsistent with other conduct, or that it was advanced merely as a pretext to mask discriminatory behavior.

Accordingly, I find that the General Counsel has not sustained her burden of proof under *Wright Line*[16] by proving by a preponderance of the evidence that the employees' protected activity was a motivating factor for Respondent's withholding of the wage increase; and, assuming arguendo that such a burden has been sustained, I find that the Respondent has met its *Wright Line* burden of proof by demonstrating it would have taken the identical action for legitimate, nondiscriminatory reasons.

CONCLUSIONS OF LAW

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

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

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

[Recommended Order for dismissal omitted from publication.]

[13] However, I do not credit that part of Pendleton's testimony that the wage increase was withheld in June because of a strike vote, as the strike vote matter did not arise until August.

[14] I do not find that the credited testimony of Pendleton over Teso, or Bullock over Gronendike, adds additional weight to the showing of a discriminatory motive vis-a-vis the wage increase issue: Teso's statement that the Union would be gone at the end of the certification year simply indicates that he believed no contract would be negotiated; and Gronendyke's statement (and Teso's similar statement) to the effect that Prohl "was going to give us a raise until we voted the Union in," is a correct, albeit incomplete assertion that may be viewed either as an admission of discriminatory intent or as an abbreviated and imperfect summary of the rationale readily admitted by the Respondent.

[15] See *Shell Oil Co.,* supra.

[16] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).