

**Truckdrivers Union Local 164, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Bette Huey and Mishele McCann Wilkins and Marjorie Ann Lester.** Cases 7-CA-18089(1), 7-CA-19148(1), 7-CA-18089(2), 7-CA-18089(3), and 7-CA-19148(2)

5 August 1983

### DECISION AND ORDER

BY CHARIMAN DOTSON AND MEMBERS  
JENKINS AND ZIMMERMAN

On 28 December 1982 Administrative Law Judge Robert T. Wallace issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the Administrative Law Judge's Decision and cross-exceptions and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> of the Administrative Law Judge as modified herein and to adopt his recommended Order.

#### Amended Conclusions of Law

We hereby affirm the Administrative Law Judge's Conclusions of Law, as modified below:

Insert the following as paragraph 4(a) and reletter the subsequent paragraphs accordingly:

"(a) Laying off Huey on 4 April 1980."

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We note that the Administrative Law Judge in fn. 35 of his Decision incorrectly stated that Lester had intended to deposit the check for interest earned on a certificate of deposit on 5 December 1980. Lester intended to deposit said check on 12 December 1980.

<sup>2</sup> In Conclusions of Law 2(c) and 4(b), the Administrative Law Judge found that Respondent violated Sec. 8(a)(3) and (5) of the Act by removing work from the bargaining unit. It is clear from the Administrative Law Judge's discussion of the case and from the record that work was removed from the bargaining unit by Respondent's hiring of McGee to fill a nonunit position which included unit work. As a result of McGee's hire, Huey, the least senior member of the bargaining unit, was laid off. We have, therefore, amended the Administrative Law Judge's Conclusions of Law to specify this layoff as violative of Sec. 8(a)(3), which is in harmony with the Administrative Law Judge's remedy.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order<sup>3</sup> of the Administrative Law Judge and hereby orders that the Respondent, Truckdrivers Union Local 164, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Jackson, Michigan, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

<sup>3</sup> We note that the date of Lester's suspension was not 5 May 1980, as incorrectly stated in the Administrative Law Judge's Order, but rather 15 May 1980, as correctly stated in Conclusion of Law 4(f). The Order is to be read accordingly.

### APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to bargain collectively with Office and Professional Employees International Union, Local 10, AFL-CIO, or any other representative of our office employees.

WE WILL NOT discharge, lay off, suspend, or otherwise discriminate against any employee for filing charges with the National Labor Relations Board or for supporting Local 10 or any other union.

WE WILL NOT threaten any employee with economic sanctions and other retaliatory actions for filing grievances or for testifying in proceedings before the Board.

WE WILL NOT in any other manner interfere with, restrain, or coerce any employee in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL bargain collectively and in good faith with Local 10 and embody any understanding which may be reached in a signed agreement; and to that end, if requested, we will sign and give retroactive effect to the contract agreed upon by us and representatives of Local 10 on 4 March 1980.

WE WILL rescind (1) unilaterally established work rules and personnel policies, (2) coercive warnings given to Marjorie Ann Lester, Bette Huey, and Mishele McCann Wilkins, and (3) unlawful suspensions of Lester and Wilkins; and we will expunge from our records (including personnel files) any references to those warnings and suspensions as well as any other adverse actions which may have issued pursuant to unilaterally established work rules and personnel policies.

WE WILL offer Lester, Huey, and Wilkins immediate and full reinstatement to the jobs they held as of 4 March 1980 or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and WE WILL make them whole, with interest, for any loss of earnings or other benefits resulting from their discharges, layoffs, and suspensions, or from our unilateral establishment of work rules and personnel policies.

TRUCKDRIVERS UNION LOCAL 164,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA

## DECISION

### STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge: Upon charges filed by three clerical employees of Teamsters Local 164 (Respondent), an amended consolidated complaint was issued on May 29, 1981, in which it is alleged that Teamsters Local 164 violated Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act, by, among other things, refusing to bargain collectively with the duly designated representative of those employees (i.e., the Office and Professional Employees International Union, Local 10, AFL-CIO) and retaliating against them for supporting Local 10 and for filing charges with and testifying in proceedings before the Board. The case was heard before me at Jackson, Michigan, on June 13 through 17 and October 19 through 21, 1981.

Upon the entire record, including my observations of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel<sup>1</sup> and Respondent, I make the following:

### FINDINGS OF FACT

#### I. JURISDICTION

Teamsters Local 164 maintains an office in Jackson where it represents about 2,500 members employed in Hillsdale, Jackson, and Lenawee Counties and from which it annually transmits in excess of \$100,000 in per capita taxes to the Teamsters International Union in Washington, D.C. It admits, and I find, that (1) to the extent it employs office clericals, it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and (2) Local 10 is a labor organization within the meaning of Section 2(5) of the Act.

#### II. BACKGROUND

##### A. *The Prior Case*

In September 1977, the three employees who then comprised the office clerical staff of Teamsters Local 164<sup>2</sup> approached their supervisor (secretary/treasurer Martin Hands) and informed him that they wanted a contract and were about to choose Local 10 as their collective-bargaining representative. Hands' response to that development and to subsequent protected activities of the clerical employees was the subject of a prior decision in *Truck Drivers Union Local 164*, 243 NLRB 704 (1979), enfd. 651 F.2d 455 (6th Cir. 1981). Therein, Teamsters Local 164, principally through Hands, was found to have committed numerous unfair labor practices, including coercive interrogation, threatening loss of benefits, reducing McCann's salary, and discharging her and Wilkins on January 5, 1978—all for the purpose of discouraging continued membership in and activities on behalf of Local 10.

##### B. *The Instant Proceeding*<sup>3</sup>

On three occasions in December 1977, Hands offered Lester the job of office manager "with authority to hire and fire." Each time Lester declined because she wanted to remain a member of the three-employee bargaining unit. Upon firing McCann he again offered her the job but only as McCann had held it, i.e., with primary responsibility for bookkeeping and correspondence, and with the nonsupervisory function of coordinating office clerical operations—and Lester accepted at a wage of

<sup>1</sup> The General Counsel's brief contains a motion to correct the official transcript in various respects. The motion is unopposed, and it is hereby granted.

<sup>2</sup> Evelyn McCann who held the position of office manager and had been employed by Teamsters Local 164 since 1955; Mishele McCann Wilkins (Evelyn's daughter) who had been hired in January 1977 and was the insurance clerk; and Marjorie Ann Lester who had been general office clerk since 1972.

<sup>3</sup> The findings under this subcaption are based on evidence which was received solely for its tendency to explain subsequent events and not for the purpose of establishing violation(s) of the Act occurring outside the period specified in Sec. 10(b) of the Act.

\$250 per week. Shortly thereafter he hired Bette Huey as insurance clerk and Rosemary Cochrane as general office clerk. The latter, concerned about job security, inquired of Hands in June 1978 as to what would happen to her if the Board ordered reinstatement of Wilkins. He replied that the only way Wilkins would ever return would be over his dead body.<sup>4</sup>

In July 1978, Lester testified under subpoena at the hearing on the complaints which were the subject of the Board decision cited above. The next day, Hands accused her of telling lies at the hearing, adding that he never expected her to be "disloyal." He made no reply to Lester's request for an explanation. Instead, he offered, "as a piece of advice," a suggestion that she should avoid associating with McCann and Wilkins.

In early October 1978, Lester learned that in the course of contract negotiations with a representative of Local 10, Hands had proposed a wage package for office clericals which would have reduced her weekly wage by \$5 while increasing the wages of Cochrane and Huey by \$20 and \$35, respectively. In response to her inquiry, Hands (who had signed Lester's paycheck each week since January) claimed that the reduction was inadvertent. However, he went on to state that any increase for Lester was out of the question "because of what happened at the hearing." As signed on January 8, 1979, the contract contained no increase for Lester. Cochrane and Huey got raises retroactive to November 1, 1978. The bargaining unit was stated to include the position of office manager, a general office clerk, and an insurance clerk; and the agreement carried an expiration date of October 31, 1979. Lester was selected union steward and she continued to serve in that capacity until discharged on December 12, 1980.

The Board decision in the above-cited case was issued on July 26, 1979. Among other things, reinstatement of McCann and Wilkins was ordered. Although Teamsters Local 164 filed an appeal, it also offered reinstatement to both individuals by registered letters mailed in late August. At that time McCann resided in California. During the first week of September, Hands informed Cochrane and Huey that Wilkins would be returning, and he assured them that there would be no layoff "because Wilkins would not stay very long." On September 11, McCann and Wilkins appeared at the office. The latter was assigned to work on insurance claims. McCann, however, was told by Hands that she was not rehired. He gave no explanation.<sup>5</sup> Later in the day, Hands told Huey and Cochrane to refer all insurance work including telephone inquiries to Wilkins, but not to give her any instructions or other assistance.<sup>6</sup>

<sup>4</sup> Although the continued hearing in this proceeding was rescheduled at Respondent's request specifically to accommodate Hands, he was not called as a witness and Respondent has provided no explanation for his absence. In these circumstances, I have found at various points in this Decision that Hands in fact made statements attributed to him by witnesses. Those findings are based upon my evaluation of the witnesses' credibility and the absence of credible countervailing evidence.

<sup>5</sup> I infer that Hands never expected a response from McCann, and that he sent the letter to her hoping to limit liability for backpay in the event the Board's decision was upheld on appeal.

<sup>6</sup> Cochrane claims that on the same day she was told essentially the same things, successively, by William Bernard and Darrell Ellick. Both of those individuals were trustees and business agents of Teamsters Local

On the next day Hands spoke to Cochrane and Huey separately and urged them to vote against continued representation by Local 10. He pointed out that without the Union it would be easy to get rid of Wilkins and thereby obviate any need for a layoff. He also said he would deny ever having made those remarks. The conversation ended abruptly when neither Cochrane nor Huey evinced any desire to follow Hands' advice. Shortly thereafter (on Friday, September 14), Hands' assistant (Bernard) approached Cochrane and told her that "they" had to lay her off after all. According to Cochrane, he then added that she would be called back in 2 to 6 weeks ("or by Thanksgiving Day at the latest") because Wilkins could not handle the job and would leave.<sup>7</sup> She left that day after opting to take an additional week's pay in lieu of receiving a customary 7-day notice.

### III. ALLEGED UNFAIR LABOR PRACTICES

#### A. Contract Negotiations<sup>8</sup>

Negotiations for a new contract began on October 17, 1979, and continued for a period of approximately 5 months. There were 10 bargaining sessions. Of those, the first six were formal meetings<sup>9</sup> between Lester and the business agent for Local 10 (Bivins) on the one hand, and, on the other, Hands;<sup>10</sup> and the last four were impromptu meetings<sup>11</sup> between Lester and Hands. Ultimately, Hands agreed to a wage/benefit package (retroactive to November 1) which, while accommodating most of Local 10's demands, did not place the office workers of Teamsters Local 164 in a position of parity with their counterparts in other Teamsters locals. In that regard, Hands told Lester on February 25 that the disparity would have to be eliminated gradually.

During the course of the negotiations Hands also agreed that, in place of the Teamsters' "Western Michigan Board," arbitration would be handled by the Federal Mediation and Conciliation Service, provided that Local

164, and Bernard also served as part-time administrative assistant to Hands. Also, Lester claims that she was chided by Ellick 1 or 2 days later for showing Wilkins where insurance forms were kept. Assertedly, he inquired: "Don't you know that we were not supposed to show . . . [Wilkins] anything." Ellick denies ever having told clerical employees not to help Wilkins.

<sup>7</sup> Lester testified that later that day Bernard told her that Cochrane's layoff would last only for a few weeks. Bernard denies that he told anyone that Cochrane would return "in a few weeks."

<sup>8</sup> Many of the findings in this subsection are derived from what I have found to be credible testimony of Lester. Prior to giving that testimony she refreshed her recollection by consulting notes (G.C. Exh. 75) which she had typewritten during the evening or morning following each session; and in preparation of the typewritten notes she was aided by notes which she had written by hand during or immediately after each session. After preparing the typewritten notes Lester disposed of her handwritten notes. Contrary to the urging of Respondent, I decline to discredit her testimony or the typewritten notes because of the latter circumstance. Indeed it is not uncommon for a person to discard rough notes after they have been used in preparing a document. For the same reason I have not discredited other testimony of Lester (and Huey) because they did not retain notes used by them in giving affidavits to Board agents.

<sup>9</sup> These occurred on October 17 and November 15, 20, and 27, 1979; and on January 21 and February 21, 1980.

<sup>10</sup> Hands was assisted at several of these meetings by Bernard or Ellick, and the latter individuals represented Hands at the meeting on January 21.

<sup>11</sup> Held on February 25, 26, and 29, and on March 4.

10 bear half the cost of that "outside" service. At the time (February 21), he remarked to Lester that he hoped Local 10 could afford the cost "because there would be a lot of grievances taken to arbitration."<sup>12</sup> In addition, Hands opted to withdraw from consideration during the contract negotiations, a comprehensive set of work rules which he had proposed.<sup>13</sup>

At various times during the formal meetings Hands asserted a need for a confidential secretary/bookkeeper having authority to hire and fire, and he offered the job to Lester. She declined, again stating that she preferred to stay in the bargaining unit; and, on November 27, Bivins told Hands that Local 10 had no objection to the hiring of an additional employee as a confidential secretary as long as that person did not perform work of the bargaining unit. Hands' only response was a comment to the effect that "it was a three-person office." Thereafter, the subject of a confidential secretary was not mentioned at any subsequent negotiating session, except (according to Lester) for a brief reference by Bernard at the meeting on January 21;<sup>14</sup> and on February 21 Hands agreed that the job classifications would remain the same as in the prior contract.

On Friday, February 29, Hands broke an impasse by offering a cost-of-living increase but only for the 6-month period just prior to the expiration of the proposed 3-year contract. Lester said she wanted to confer with Bivins, Huey, and Wilkins, and that was agreeable to Hands. However, at 4:30 p.m. on the following Tuesday (March 4), he called her into his office and accused her of "blackmailing" him, adding that "things wouldn't be in this mess if you hadn't testified at that hearing." To her question, "What brought that on?," he made no reply. Instead, he told her that he had to have an answer on the contract before he left the office that day. She pointed out that Bivins' office in Detroit closed at 4:30 p.m. and reminded him that he agreed to give her time to consult with Bivins on the 6-month cost-of-living offer. Hands disclaimed having made any proposal of that kind and again insisted that the contract be ratified that day or otherwise "everything would be off the table." After hurriedly discussing the situation with Huey and Wilkins in the ladies' room, Lester obtained their assent to forgo any cost-of-living increase and to conclude the negotiations by accepting all other agreed-upon terms. The three women then proceeded to the

conference room where, at or about 5 p.m., they met with Hands and Ellick. In response to their questions, Hands restated his position that there would be no cost-of-living increase. However, he assured them that there would be no change in job classifications, that no one would be laid off, and that the executive board of Teamsters Local 164 would approve the contract on his recommendation. Lester then ratified the contract on behalf of the office clericals, and the meeting concluded with a round of handshakes.<sup>15</sup> The apparent accord did not last long.

On March 6, the executive board of Teamsters Local 164<sup>16</sup> met in evening session<sup>17</sup> and approved Hands' "recommendations . . . concerning the negotiations that were completed for the office personnel providing that . . . [he] has the right to have a confidential secretary/bookkeeper." When Hands apprised Lester of that action on the following day, a dispute ensued with Hands asserting, over Lester's denial, that she had not only agreed to the provision but also had promised to take the new nonunit job. The argument ended when Lester stated that she would not discuss the matter further until she contacted Bivins. On March 18 the latter arrived from Detroit and met with Lester, Hands, and Bernard.<sup>18</sup> The dispute was not resolved; and later in the day Hands directed Lester to type and post a notice of an available position, to wit; "a confidential secretary/bookkeeper with authority to hire and fire." No further negotiations took place; and, on March 31, Hands told Bivins that he would never sign a contract in which the office manager position remained within the bargaining unit.

<sup>12</sup> One day earlier, a civil suit against McCann and Wilkins was filed in a District Court in Michigan on behalf of Teamsters Local 164. The complaint involved allegations of wrongful use of funds of the Local (\$447.50) for the payment of gasoline and other personal auto expenses during a period extending from June 1974 to August 1975. The court dismissed the suit on October 28, 1980, as barred by a 3-year statute of limitations. The same claim had been advanced by Hands (and Ellick) as a reason for the discharge of McCann and Wilkins on January 5, 1978. In the decision cited above, the Board found the claim to have been entirely pretextual.

<sup>13</sup> The draft rules contained, among other things, proscriptions against possession of narcotics, gambling, and fighting while on "Company" premises, as well as a ban on unauthorized use of timecards. When questioned by Bivins about the latter, Hands stated that he intended to install a timeclock.

<sup>14</sup> As noted above, Bernard and Ellick sat in for Hands at the meeting on January 21. Both claim that Local 10 agreed at that meeting to removal of the office manager/bookkeeper position from the bargaining unit.

<sup>15</sup> This account of the meeting in the conference room is attested to by all three women, and I accept their version. On the other hand, I find improbable and decline to credit claims by Bernard (1) that at the 4:30 p.m. meeting Lester agreed to deletion of the office manager/bookkeeper position from the bargaining unit, to help train a new office manager, and to imposition of work rules, and (2) that Lester announced the abolition of her unit job to the group assembled in the conference room at 5 p.m. Moreover, I reject his uncorroborated claim that he was present at those meetings. As noted, Hands did not testify and Ellick's testimony is devoid of any reference to the meeting in the conference room.

<sup>16</sup> In addition to Hands, Bernard, and Ellick, the board included President Art McCann (brother-in-law of Evelyn), Vice President Bo Barden (brother of Huey), Recording Secretary Dave Segert, and John Hands, a trustee and brother of Martin Hands. These individuals had served continuously as board members at least since January 1975.

<sup>17</sup> In response to Hands' request, Lester appeared briefly before the Board and stated that a contract had been agreed upon. Bernard and Ellick claim, however, that she also said "Yes" to a question posed by Ellick: "Do we have a contract with the office manager out?" Here again I regard their testimony as implausible. Indeed, the question would have been superfluous if events at the negotiation meetings on January 21 and March 4 had been as per their accounts.

<sup>18</sup> The meeting had been scheduled for March 13. On the morning of that date, Huey told Hands that Bivins had called and was unable to come due to weather conditions. Hands commented that "Bivins was running scared." He then asked Huey what it would take to get a contract. She answered that there had been an agreement on March 4. Hands made no direct reply. Instead, he said: "Marge (Lester) was a problem . . . a cog in the wheel." She left his office puzzled by those remarks and by his further comment that "if the girls wanted to march the men would march beside them."

### B. Changes in Terms and Conditions of Employment

On March 25, after having received successive turn-downs by Cochrane and Huey, Hands hired Cathy McGee as confidential secretary/bookkeeper;<sup>19</sup> and she began to function in that capacity on Friday, March 28. Later that day, Lester and Huey presented a written grievance to Hands wherein they objected to performance of unit work by McGee. After calling Wilkins into the office Hands then advised all three employees that effective immediately there would be no more overtime and that work rules would be posted. Also he told Huey that she would be laid off on the following Friday; and in response to her inquiry as to why, like Cochrane, she was not given an option to take the week off with pay. Hands replied that "now we are on different sides of the fence . . . ."

On March 31, Huey and Lester asked Hands to put in writing his announcement that McGee was to take over Lester's job. Hands declined, stating that he "would not be put in that type of box." Then Hands pointed to Lester and said that she was the reason why Huey was out of a job . . . and that Huey should sue Lester and Local 10.

On April 3, Lester and Wilkins treated Huey to a farewell luncheon, having first obtained McGee's assent and assurance that she would attend to the front window while they were gone. On similar special occasions in the past Hands allowed the office staff to go to lunch together subject only to a requirement that they arrange to have someone cover the window. On this occasion, however, when they returned to the office they were given a verbal "warning" by Hands; and when advised by Lester of McGee's permission, Hands responded that "McGee was management and wasn't allowed to cover the window." Two weeks later Lester and Wilkins found on their desks identical written reprimands regarding the incident; and Huey received a copy of the reprimand by certified mail on August 21. The stationery on which the reprimands were written bore the legend "AVOID VERBAL ORDERS." That stationery was used frequently thereafter by Hands and McGee in communicating with Lester and Wilkins.

Effective on Monday, April 7, Lester was demoted from office manager to general office clerk, the position that had been held by Huey; and her weekly pay was reduced from \$287.50 to \$207. McGee continued to perform bookkeeping and other functions previously performed by Lester.<sup>20</sup>

On April 17, Lester found another AVO slip on her desk. Therein she was advised that her privilege of charging one tank of gas per week to Teamsters Local 164 was revoked effective April 10. She had enjoyed that benefit since January 1976, well prior to the time she became office manager. Also, she had always been allowed on Wednesdays to forgo lunch and leave the office an hour early. However, on April 30, Hands

<sup>19</sup> The position was not offered to Wilkins because, as he told Lester on March 18, Hands considered Wilkins a thief.

<sup>20</sup> Also on April 7, Lester was required to surrender office keys, and that matter is alleged in the complaint to constitute a separate violation of the Act. I view it as concomitant to the demotion and therefore dismiss the pertinent par. (15(h)) as multiplicitous.

(acting through McGee) revoked that privilege without explanation.

On May 5, Wilkins received an AVO slip signed by Hands wherein he warned her concerning two absences in April and one on May 2 and threatened more severe action in the event of additional absences. Wilkins had given timely indication of illness on all three occasions, and the written warning represented a departure from the prior liberal sick leave policy. Thereafter, Wilkins was absent on May 14, and Lester was out with influenza on May 7 through 14.<sup>21</sup> Both received telegrams from Hands on May 14 in which they were warned about excessive absences and told that they must present doctor's slips before they would be allowed to return to work. The latter requirement was new and it was duly, but unsuccessfully, protested by both women when they returned to the office on the next day; and when Lester was unable to produce a slip (because she had treated herself), McGee and Ellick successively ordered her to leave. She refused and was thereupon suspended for insubordination by McGee. The suspension lasted 7 days,<sup>22</sup> and Lester's grievance and claim for backpay with respect thereto were denied by Hands promptly upon presentation.

Lester returned to work on May 26, but on that day, and for an extended (4-month) period thereafter, Wilkins was absent under orders from her doctor so as to receive psychotherapeutic treatment for weight loss, nausea, headaches, lack of sleep, and other symptoms of nervous tension. Although office personnel had received pay for sick leave in the past,<sup>23</sup> Wilkins received none despite repeated requests therefor.

On May 29 Huey was recalled to fill in for Wilkins as insurance clerk. During the following day Bernard told her and Lester that work rules were to be posted soon and that compensation would no longer be paid for absences from work other than regularly scheduled vacations and holidays.

Huey took her scheduled vacation between June 2 and 13 and during that period the insurance work was sent to the Michigan Conference of Teamsters Welfare Fund, in Detroit, for processing. This represented a departure from a past practice of allowing office employees to cover for one another during vacation, a practice which entailed some overtime pay. Also, on June 4 a set of work rules for the office staff was posted. Among other things, the rules contained proscriptions against drinking "on company property" or incapacitating one's self immediately prior to reporting for work. On her return to work on June 16, Huey noted that a punch-in timeclock system had been installed, and she and Lester were in-

<sup>21</sup> Lester appeared at the office on May 12 but after a few hours her symptoms reappeared and she was excused by McGee.

<sup>22</sup> On learning that Wilkins had told some members of Teamsters Local 164, in response to their inquiries, that Lester had been suspended, McGee told Wilkins to tell members that Lester was still on sick leave, and she added that the suspension was "none of their (the members') business."

<sup>23</sup> For example, in April 1977 Wilkins was paid for a 2-week sick leave occasioned by a tonsilectomy.

structed by McGee to begin using the system.<sup>24</sup> They were the only employees of Teamsters Local 164 required to do so. The proscription of overtime, transfers of unit work to Detroit, and the initiation of work rules and the timeclock system were the subject of several grievances filed by Lester between June 10 and 17. All were promptly denied by Bernard acting as trustee and administrative assistant to Hands.

### C. Wilkins' Discharge

On June 16 Wilkins stopped by the office and gave McGee a disability certificate which she had received earlier that day from her doctor. It indicated July 7 as a return to work day subject to a qualification that the exact date would be determined in light of the patient's progress.<sup>25</sup> According to Wilkins, McGee read the note and then told her that on her return the doctor's slip should indicate whether she could perform regular or only light duties. She had no further instructions until June 30 when she received by certified mail a note, dated June 27 and signed by McGee, advising her that she was "suspended, subject to discharge . . . [for] failure to report to work as instructed."<sup>26</sup> She immediately called McGee and asked for an explanation. McGee said she could not explain it and suggested that Wilkins contact Bernard. Wilkins did so by telephone when Bernard returned to the office several days later. His explanation made no sense to her. For example, she understood him to say that she had been "laid off" for failing to give 5 days' notice before July 7. And when she expressed her confusion, Bernard told her that "if she didn't like it, she should file a grievance." She did so by mail on July 5, and the grievance was mailed back to her promptly with the notation: "Based on the facts presented, grievance is denied. /s/ William A. Bernard."

Wilkins continued to file weekly grievances for sick pay. McGee handed one such grievance back on July 25 with a comment that she could not accept it because Wilkins had "voluntarily quit." Later that day Wilkins again talked to Bernard on the telephone. He told her she had "voluntarily quit" because she had not shown up for work, once more adding that if she did not like the determination she could grieve the matter. Wilkins' response was to join Huey and Lester in filing, on August 4, charges alleging unfair labor practices by Teamsters Local 164 arising from failure to sign and implement an agreed-upon collective-bargaining contract and from discrimination practiced against them for their continued support of their union.<sup>27</sup> As examples of the latter, Wil-

kins cited her suspension and subsequent designation as a "voluntary quit."

By certified letter mailed on August 14 and signed by McGee, two other grievances of Wilkins for backpay were returned to her with a note as follows:

You were sent an answer on July 9, 1980 that your discharge was upheld and also you talked to Mr. Bernard on the telephone and he verbally told you the same thing.

So as not being employed by this office anymore, we are returning your grievances.

Wilkins disclaims having received any prior oral or written notification of discharge, and the matter was made a subject of a grievance filed on her behalf by Local 10 on August 25. At a meeting on September 16 with a Local 10 representative (Bridgewater), Hands (citing art. IX, sec. 2, of the collective-bargaining agreement signed on January 8, 1979) declined to discuss the grievance asserting that it was untimely because it was not filed within 7 days of notification of discharge; and he thereupon produced a copy of a "discharge letter" to Wilkins dated July 9 and signed by Bernard. The reason given in the letter for the discharge was Wilkins' failure to follow McGee's instruction on June 16 to provide, by June 19, a doctor's slip showing an exact date for her return to work. When requested by Bridgewater, Hands was unable to produce a receipt or other indication that the letter had been received by Wilkins.<sup>28</sup> There were no further meetings regarding the grievance and Wilkins was never recalled.

Bernard testified that he had his wife type the discharge letter and that he mailed it at a postal box near his home at a time when he could not send it as a certified letter because the post office had closed for the day. As to the substance of the letter, he explains that he viewed Wilkins as a malingerer having on a number of occasions observed her sunbathing and going to restaurants; that he felt she was "hoodwinking" Teamsters Local 164 by submitting "falsified" medical slips; and that, on June 16, he overheard McGee's instructions to Wilkins. Further, he claims to have suspended, rather than discharged, her on June 27 in order to give her an opportunity to explain why she did not provide an amended doctor's slip on June 19; and that she made no attempt to contact him until July 11, 3 days after he sent the discharge letter.

I credit Wilkins' version of the events leading to her suspension and ultimate discharge. I found her to be a candid witness and her account is consistent both internally and in relation to other events of record. In contrast, I find Bernard's explanation contrived and unbelievable. For example, I find disingenuous his recital of why the discharge letter, unlike other communications to Wilkins, was not sent by certified mail; and, in that re-

<sup>24</sup> During the afternoon of June 16, Bernard called Lester and Huey into his office and gave each an AVO slip in which they were reprimanded "for refusing to punch in that day as instructed." He took back the reprimands, however, when McGee indicated that she had not actually told them that the system was to be used that day.

<sup>25</sup> At the hearing, Respondent produced another note from the same doctor, also dated June 16, which recited that Wilkins would return on July 7, with no qualifications added. The record provides no explanation as to how Respondent obtained that note.

<sup>26</sup> Earlier in the day (June 30) Wilkins had given McGee another doctor's slip which extended her period of incapacitation to July 21, again subject to patient progress.

<sup>27</sup> These charges were followed, on September 30, by issuance of the original consolidated complaint in Case 7-CA-18089, subparagraphs (1), (2), and (3).

<sup>28</sup> At this meeting Bridgewater asked Hands to sign what he believed to be an agreed-upon collective-bargaining contract (G.C. Exh. 51). After reading the document, Hands said it accurately reflected the agreement except that the office manager position had been negotiated out of the bargaining unit; and for that reason he declined to sign.

spect, I note the absence of any explanation as to why it was not typed and mailed at the office by McGee. Also there is a variance between the reason for Wilkins' suspension given by McGee in her memorandum of June 27 ("failure to report to work (on June 19) as instructed") and Bernard's claim that Wilkins was discharged for not providing an amended doctor's slip on June 19. Further, I note that Respondent has provided no explanation as to why McGee, the person whose order allegedly was disobeyed by Wilkins, did not appear and testify in this proceeding.

#### D. Huey's Layoff

On September 26 a memorandum signed by McGee was placed on Huey's desk. Therein she was advised that effective on the following Friday she would be on layoff status in accordance with article V of the 1979 agreement with Local 10. The concluding sentence reads: "Rest assured that as work becomes available, you will be called in seniority order." Not having noticed any diminution of insurance work,<sup>29</sup> Huey (on November 4) grieved her layoff. The only response to that grievance was a note from McGee dated November 18, as follows:

Dear Bette:

First, as you are aware, this Local Union has had a severe financial crisis which resulted in the layoff of yourself as well as other employees. These layoffs were financially necessary, although regrettable.

Second, OPEIU Local 10 has taken the position that no contract exists between it and Teamsters Local 164; therefore, there is no grievance procedure in effect. In any case, even if a contract was in effect, your grievance is without merit.

We hope to recall you from layoff as financial conditions permit.

There is no indication on this record of a contemporaneous layoff of "other employees," or that Local 10 ever waived in its claim that a new contract was mutually agreed to on March 4. Nor has Teamsters Local 164 offered any explanation for what amounts, at least, to a pronounced shift of emphasis in the September 26 and November 18 memorandums of McGee as to the reason for Huey's layoff.

#### E. Lester's Discharge

On the Wednesday following Huey's layoff McGee told Lester that henceforth she was expected to handle insurance claims as well as her regular duties. Later that day Bernard confirmed that additional assignment. He seemed surprised, however, when Lester informed him that she would have difficulty in processing claims because, unlike Huey, she had never received formal training in the use of the office computer.<sup>30</sup> He made no re-

<sup>29</sup> Huey averaged 6 hours a day processing insurance claims and spent the remaining 2 hours answering the phone and doing miscellaneous clerical work.

<sup>30</sup> In an attempt to show that Lester had received formal training, Respondent produced David Griffore, manager of the Detroit office of the Michigan Conference of Teamsters, Health and Welfare Fund. He testi-

mony to her request for such training, nor was she later given any opportunity in that regard even when an official from Detroit (Griffore) was present in the office training McGee in mid-October.

On October 21 McGee handed a written reprimand to Lester citing her for "unnecessary delay" in processing insurance claims; and on October 31 Lester filed a grievance against McGee alleging that the latter was doing unit (insurance) work during evening hours and had denied her an opportunity for earning overtime. Lester filed an additional grievance on November 13 protesting nonreceipt of a 12-percent wage increase effective on November 1, as per the claimed new contract with Local 10.

Lester was given another note by McGee on the morning of November 19. Therein she ordered Lester to complete the processing of all pending insurance claims by 4 p.m. on the next day. She was noncommittal in response to Lester's claim of being overburdened with the demands of two jobs. Later that morning, however, McGee told Lester to accompany her to Hands' office. There an argument ensued with Hands accusing Lester of not doing all she could to get the work done. At one point he hit the desk and, among other things, told her that she and Huey were harassing and conspiring against him and had separated themselves from him by insisting on being represented by Local 10. He went on to say that he was tired of being a nice guy and if the work was not done he would lay her off and bring in someone who could do both jobs. To Lester's inquiry as to whether he viewed the filing of grievances by her and Huey as harassment, he replied that those were nothing . . . that it was because of her and Huey that he would have to appear at the Labor Board. Later that day Hands rescinded McGee's order and told Lester to try to get the work out as quickly as possible. Before leaving, however, he opined that the reason she was not able to get the work done was because "she had too much on her mind with this litigation" (i.e., the complaint issued by the Board on September 30 following receipt of charges filed by Lester, Huey, and Wilkins), and he assured her "that he didn't have a thing to worry about."

On December 11, the executive board (see fn. 16), minus one member, was reelected<sup>31</sup> by the membership of Teamsters Local 164 with some changes in positions.<sup>32</sup>

Lester was discharged on the following day when at 4:30 p.m. Hands, accompanied by McGee, presented her

ified that Lester had attended annual seminars at Boyne Highlands, Michigan, at which, among other things, workshops were given on use of computers in processing claims. Also, he recalled seeing her "about two years" ago at an updating session in Detroit. I find his testimony too general to be of value herein. For example, he did not say that he instructed her or saw her being instructed at those sessions. In addition, and in the absence of an adequate showing that he had sufficient opportunity for personal observation, I do not accept his opinion that Lester was a "very capable" computer operator or that insurance claims presented to Teamsters Local 164 required no more than 2 to 3 hours for processing each day.

<sup>31</sup> Bo Barden, Huey's brother was not a candidate having resigned after being laid off as a business agent in July 1980.

<sup>32</sup> Bernard and Ellick succeeded as president and vice president, respectively.

a memorandum (dated December 12 and signed by Hands) wherein she was advised that her termination, effective at 5 p.m. that day, was for careless handling of union records, checks, and cash funds. The memo recited that items of that type had been found in her desk drawer. As Lester read the note, Hands added orally that the discharge also was due to her not getting the work done. According to Lester, Hands responded to her request to see the items and for details concerning the circumstances under which and by whom they were found by stating that "he had removed them . . . [and] that he wasn't going to show his hand."

Bernard testified that he was the one who brought the items to the attention of Hands. He claims to have discovered them in the top right hand drawer of Lester's desk on the afternoon of Sunday, December 7. He explains that he went to the office that day to obtain pension forms which he intended to take on a business trip the following morning; that in searching for the forms he had occasion to enter Lester's desk; and that he was "stunned" to find cash and checks which should have been kept in a locked fireproof file. He proceeded to photograph each of the items<sup>33</sup> and then put them back in the drawer. Bernard claims that on the next morning while enroute to Chicago he advised Hands of the discovery and told him that Lester would have to be fired or else he (Bernard) would resign as an officer; and, assertedly, he presented the same ultimatum to the executive board on the evening of December 11 after showing them the contents of the drawer.<sup>34</sup> He also claims to have been present when Hands handed the discharge note to Lester on December 12. According to his ac-

<sup>33</sup> Among the items identified by Bernard as being in Lester's desk were:

—A stack of 198 blank identification cards purchased from Teamsters Central States Conference for \$1 each and intended for resale to longhaul drivers. Bernard claims that at least 175 of the cards should have been issued in January or February; and that non-issuance deprived Teamsters Local 164 of revenue and may have caused inconvenience (or even loss benefits) to drivers through inability to establish current membership.

—Letters postmarked during the last week in October from four unemployed members requesting "withdrawal cards," each containing 50 cents in coin. Bernard points out that failure promptly to record the members' change of status might have resulted in their being billed for dues in November and December.

—Payments from 4 members intended to maintain their health insurance benefits. The payments were in the form of checks payable to the insurance carrier (except one in which no payee was named) in the amounts of \$182.50, \$146.00, and \$219.00. Two were dated December 4, and the other two had dates of November 12 and 24, respectively. Bernard emphasizes the importance of prompt transmission of the checks to the carrier so as to avoid lapse of benefits and possible liability of Teamsters Local 164.

—Three checks in the amounts of \$40, \$106, and \$153.60 and dated, respectively, November 1, October 29, and October 15. They were made payable to the insurance carrier and represented return of overpayments for medical services rendered to members.

—Two completed forms intended for submission to the health insurance carrier whereby members sought to obtain continued coverage for dependent students, until they reached age 23. The certifications therein were signed on October 3 and November 5, respectively.

—A check dated December 4 payable to Teamsters Local 164 for \$866.50 representing 3 months' interest on a 6-month nonrenewable certificate of deposit bearing a maturity date of December 4 and a face value of \$40,000, together with the certificate of deposit.

<sup>34</sup> Ellick and Hands' son (Dennis) testified, credibly, that they were present at the viewing and saw some coins, checks, and insurance papers which Bernard took from the top right-hand drawer of Lester's desk.

count, Lester opened the drawer and took out the items in question, and her only reply to Hands' request for an explanation was that she had "just too much work."

With one exception, Lester claims not to understand how the items could have been in her drawer.<sup>35</sup> Indeed, she does not recall ever having seen them. She observes that many of the items involved insurance and should have been kept in or on top of a separate "insurance" desk. Also she recalls that, on December 1, McGee took the contents of her top right-hand drawer into Bernard's office and returned them one-half hour later without comment; and that on December 4, upon discovering McGee in the process of searching through her unlocked desk, McGee told Lester that she was gathering all pending insurance matters so that Ellick could take them to Detroit on the following day.

As between the conflicting accounts of what happened immediately after the discharge note was given to Lester, I credit her version. Here again I find her testimony candid and consistent with the overall portrait of Hands which has emerged unchallenged on this record. I note, also, that Bernard's version is not corroborated by the other two witnesses to the event, Hands and McGee. Further, I view the reason stated in the note for Lester's discharge to be pretextual even assuming that the contents of Lester's drawer were as stated by Bernard.<sup>36</sup> In that respect I accept Lester's uncontradicted testimony that McGee had, and availed herself of, ready access to Lester's desk during a period well before Bernard's purported "discovery" on December 7. Accordingly, I conclude that she at all times was aware of the contents of the desk; and I construe her failure to admonish Lester at least as an acquiescence in any breach of security.<sup>37</sup>

#### F. Subsequent Events

Promptly after Lester left the office on December 12 Hands placed two telephone calls. In the first, he asked Huey to take Lester's place as "general office and insurance clerk." She noted that that position was not in the bargaining unit and declined to accept it; whereupon Hands urged her to sign and return a resignation form which he would mail to her. Huey was unaware that both Bernard and Ellick were listening in on the conversation. Hands then called Cochrane and offered her the same position and a 1-week all-expense trip to Detroit for training on insurance matters. She reminded him that

<sup>35</sup> The exception relates to the certificate of deposit and the check pertaining thereto. Lester states that those items were assets of a special severance fund for which she and Hands were joint trustees; that she had intended to deposit the check after work on December 5 and had prepared a deposit slip (Resp. Exh. 61) to accomplish that result, that she kept all documents relating to the severance fund (including the two items in question) in the lower right-hand drawer of her desk; and that McGee had authorized that practice as far back as September or October in order to avoid having repeatedly to open and close the security cabinet at times when she (Lester) had to work on fund matters.

<sup>36</sup> Although I am inclined to believe that the items in question were placed in Lester's desk without her knowledge, I see no need to make a finding in that regard since, in my opinion, the pretextual nature of the discharge note is sufficiently established under the alternate rationale which follows above.

<sup>37</sup> As a supervisor McGee's acquiescence is chargeable to Respondent and is pertinent to the *bona fides* of the discharge note. *Montgomery Ward & Co.*, 115 NLRB 645, 647, aff'd. 242 F.2d 497, 501 (2).

she had been laid off when Wilkins was reinstated pursuant to an order of the Board and expressed concern that she might again be displaced if Lester were to prevail in an unfair labor practice charge. He assured her that it would not happen because Lester had been fired for cause. Also, he observed that officials of Local 10 had "washed their hands of . . . the girls,"<sup>38</sup> and he added that there was no longer any union in the office. Cochran declined the offer.

Shortly thereafter Hands hired his stepdaughter (Wendy Hein) to fill the position. She was replaced on July 20, 1981, by former Office Manager Evelyn McCann following Court affirmance and enforcement, in June 1981, of the Board's order in the prior case.

#### G. Respondent's Evidence

Respondent called four witnesses. Of those, Ellick, Griffore, and Dennis Hands testified for the limited purposes described in footnotes 6, 30, and 34. Its fourth and principal witness was Bernard, and much of his testimony has been previously considered. Other pertinent testimony of that individual is as follows: He stresses an alternate reason for Lester's discharge, to wit, poor performance of her duties. But his attempt to give substance to that claim is unavailing because (1) despite his assertion that he had full responsibility for overseeing the work of office personnel since late 1978, it is clear from the record that Hands (aided later by McGee) exercised day-to-day supervision of Lester and, admittedly, Bernard had little opportunity to observe her work since he was frequently absent from the office; and (2) the instances cited by him to show derelictions by Lester involve either claim of excessive backlogs with no indication of fault on Lester's part and/or matters about which he had no personal knowledge.<sup>39</sup>

With reference to changes in office personnel procedures and establishment of work rules, Bernard implies that those actions were taken only after he tried to arrange meetings with a representative (Bivins) of Local 10. In that regard, he states that Bivins did not return his telephone calls (date(s) unspecified) or answer a telegram sent on the afternoon of June 16, 1980, wherein he requested a meeting for an unspecified purpose. In light of my prior findings concerning the circumstances which led up to and accompanied the changes in rules and procedures, I decline to find that any attempt to negotiate those changes was made by Respondent. Further, I note that virtually all of the changes were implemented before the telegram was sent. For example, the work rules were posted on June 4 and the timeclock had been installed and was operational by the morning of June 16.

<sup>38</sup> This statement is not supported by any evidence of record herein.

<sup>39</sup> For the most part Bernard simply identified a series of documents as being in Lester's personnel file, for example: Resp. Exh. 39, an undated letter to Hands from a member (A. Hein, husband of Hands' stepdaughter Wendy) complaining that his dues were not being billed each month with the result that he had to pay 4 months' dues in one lump sum; Resp. Exh. 34, a "warning" memo from Hands to Lester, dated May 5, 1980, in which she was given 48 hours to submit written answers to questions given her on May 1 concerning delays in filing withholding and unemployment tax forms; and Resp. Exh. 40, a memo from McGee, dated July 11, 1980, reprimanding Lester for not posting withdrawal cards on the preceding day as instructed.

Finally, Bernard depicts the layoffs of Huey on April 4 and again October 3 as resulting from an ongoing effort to ease financial difficulties being experienced by Teamsters Local 164. In support of that assertion he points to evidence indicating erratic monthly fluctuations in the number of dues-paying members during 1980<sup>40</sup> and claims that this caused cash-flow problems<sup>41</sup> which, in turn, necessitated various cost-cutting actions during that year. He cites as included among the latter the implementation on March 28 of a no-overtime policy, the placement of business agents on one-half salary during a period of time commencing on May 5,<sup>42</sup> and the layoff of a business agent (Barden) as well as an organizer in July.

Assuming that Teamsters Local 164 was experiencing significant financial problems during the pertinent period of time, I am not persuaded that those problems had anything to do with the layoffs of Huey. Her first layoff was announced just 3 days after Hands had enlarged the office staff by hiring McGee; and patently was intended to restore the staff to its normal complement of three. Indeed that intent was made explicit by Hands when, as found above, he told Huey on March 31 that Lester was the reason why she was out of a job. In effect, he was telling her that need for laying off his least senior clerical employee would not have arisen if Lester had accepted the new position of confidential secretary/bookkeeper later filled from outside by McGee. As to her second layoff, I note that the only reason contemporaneously given by McGee was lack of work. But I find that reason to have been specious based on unrebutted testimony of Huey that no diminution in work had, in fact, occurred; and in light of that finding I decline to accord any credence to a claim (advanced by McGee for the first time nearly 2 months after the event) that the layoff was due to another reason; i.e., financial problems.

#### Overview

I have heretofore found false the reasons given by Respondent for the respective layoffs, and/or discharges of Lester, Huey, and Wilkins; and that circumstance warrants an inference that those actions were taken for unlawful reasons. *NLRB v. Thomas W. Dant*, 207 F.2d 165, 167 (9th Cir. 1953); *Shattuck Denn Mining Corp. (Iron King Branch) v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Atlantic Metal Products*, 161 NLRB 919, 922 (1966).

<sup>40</sup> Resp. Exh. 4 shows 2,745 such members in January and successive monthly declines to a low of 2,138 in May. Thereafter, the monthly totals were: 2,257 in June; 1,878 in July; 3,790 in August; 1,779 in September; 2,977 in October; 1,180 in November; and 2,359 in December.

<sup>41</sup> Resp. Exh. 5 shows an excess of cash outflow over inflow for each of 8 months in 1980; and during the entire year cash paid out (about \$577,000) exceeded cash received by approximately \$70,000. Respondent's data, however, do not reveal the nature of the expenses; and, accordingly, it cannot be determined on this record whether and to what extent the expenditures were for other than ordinary costs of operation; e.g., for enhancement of capital.

<sup>42</sup> On direct examination, Bernard claimed that the period of half-pay extended for about 6 months. On cross-examination, however, it was developed that the period, in fact, lasted 8 weeks and that the withheld amounts were paid in a lump sum to the business agents at the end of the eighth week (on June 27).

In this case, however, conclusions of wrongdoing need not be based on inferences because there is ample direct evidence that the layoffs/discharges were part of a deliberate sustained campaign of Teamsters Local 164 to frustrate and defeat efforts of its office employees effectively to be represented by a union (Local 10) of their own choosing.

The early phase of that campaign involved discharges of two union adherents (McCann and Wilkins) which were found unlawful in the prior case; and the record in this proceeding makes abundantly clear that that decision had not the slightest effect on the determination of officers of Teamsters Local 164 to rid themselves of any necessity to deal with the office employees through Local 10.

Thus when Wilkins returned to the office pursuant to the Board's order, other office employees had been instructed by their supervisor (secretary/treasurer Hands) not to update or otherwise assist her, and he announced that Wilkins "would not stay very long." Later he urged employees to vote against continued representation by Local 10 as a way of enabling him quickly to get rid of Wilkins. Although those efforts were unavailing his animosity toward Wilkins continued (see fns. 12 and 19) and expanded to include Huey because, by opting for the union, she and he were "now . . . on different sides of the fence."

The third of the three employees who comprised the office staff was Lester and, as office manager,<sup>43</sup> she was a special case. Hands regarded her as the key adherent of the Union (the "cog in the wheel"); and in his view, she had been disloyal by testifying in the prior case and, by declining to opt out of the Union by accepting a new position as confidential secretary with supervisory authority over the two other office employees.

The steps taken by Hands (aided by trustees Bernard and Ellick) to erode support for the Union are shown to have included arbitrarily refusing, after protracted negotiations, to sign a collective-bargaining contract containing terms he had agreed upon;<sup>44</sup> unilaterally introducing

<sup>43</sup> As found earlier, Lester's position as office manager entailed no supervisory duties; and it was specifically included in the bargaining unit recognized in the collective-bargaining agreement signed by Respondent on January 8, 1979. In those circumstances, and since it does not appear that Lester at any time assisted or acted in a confidential capacity in labor matters *vis-a-vis* Hands or any other officer of Teamsters Local 164. (See *Hendricks County Rural Electric Membership Corp.*, 102 S.Ct. 216 (1981).) I find that the inclusion was proper. In that connection, I regard as irrelevant Bernard's recitation of examples of "confidential" tasks performed by Lester's successor McGee under a new job description. Also, I note that virtually all of the materials cited as confidential by Bernard and to which Lester had access (e.g., general financial ledgers, reports to the IRS, data relating to ongoing campaigns to organize employees of business establishments) had no "nexus" to Respondent's labor relations with its own employees. See *Ford Motor Co.*, 66 NLRB 1317, 1322 (1946), *Air Line Pilots Assn.*, 97 NLRB 929, 930-931 (1951). Further, it appears that Respondent acted promptly to preclude her access to materials perceived by it to have a possible labor nexus; i.e., she was told by Hands not to open mail incoming from Respondent's attorney, the Board, and the State of Michigan.

<sup>44</sup> In this regard I accept Bernard's statement that Hands could have signed without approval of the executive board and, alternatively I find complicity in Hands' duplicity by at least a majority of that board. Also, I find that by refusing to sign Respondent violated its duty to bargain. *H. J. Heinz Co. v. N.L.R.B.*, 311 U.S. 514, 523-526.

a series of changes in conditions of employment (see par. 2(c) immediately below);<sup>45</sup> and retaliating and practicing discriminations against those employees in the manner indicated in paragraphs 3 and 4 immediately below, including successive and pretextual discharges/layoffs of Wilkins, Huey, and Lester.

#### CONCLUSIONS OF LAW

1. The bargaining unit recognized in the collective-bargaining agreement between Respondent and Local 10 signed on January 8, 1979, constituted, at all pertinent times herein, an appropriate bargaining unit within the meaning of Section 9(b) of the Act; and during that period Local 10 was, and it continues to be, the exclusive representative of employees in the unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

2. Respondent violated Section 8(a)(5) and (1) of the Act by:

(a) Failing and refusing to sign and give effect to a written contract (G.C. Exh. 51) embodying the terms and conditions of an oral agreement reached with Local 10.

(b) Not affording the membership of Local 10 adequate opportunity to confer with the officials of that local.

(c) Unilaterally changing conditions of employment for bargaining unit employees by (1) removing work from the bargaining unit, (2) establishing work rules and procedures for issuing reprimands, (3) eliminating opportunities to earn overtime, (4) instituting a more rigorous leave of absence policy including a requirement for a doctor's certificate in connection with absences due to sickness and elimination of pay for sick leaves, (5) changing procedures for taking lunch breaks, and (6) requiring use of a timeclock.

3. Respondent violated Section 8(a)(4), (3), and (1) of the Act by laying off Huey on October 3, 1980, and by discharging Lester on December 12, 1980, because of, and in retaliation for, their filing charges with the Board.

4. Respondent violated Section 8(a)(3) and (1) of the Act by discouraging its employees from continuing their membership in and support of Local 10 through the following discriminatory actions:

(a) Suspending Wilkins on June 27, 1980, and discharging her on or about July 25, 1980.

(b) Taking the actions specified in paragraph 2(c), above.

<sup>45</sup> Although no collective-bargaining agreement may have been in effect at the time of Respondent's unilateral actions, it had a duty to continue to apply the terms and conditions of employment provided for in the contract signed on January 8, 1979, at least until an impasse was reached after failure of a good-faith effort to bargain collectively with the employees concerning proposed changes. See *Sir James, Inc.*, 183 NLRB 256 (1970); *Wayne's Olive Knoll Farms*, 223 NLRB 260 (1976); *NLRB v. Haberman Construction Co.*, 618 F.2d 288 (5th Cir. 1980). By filing grievances and unfair labor practice charges, it is clear that the office employees did not acquiesce in Respondent's unilateral actions. *Schrafft's Candy Co.*, 244 NLRB 581, 584 (1979); *Shurtenda Steaks*, 161 NLRB 957, 971 (1966).

(c) Assigning extra duties to Lester beginning on October 3, 1980, and denying her an opportunity for training in connection with those extra duties.

(d) Failing to give Lester an agreed-upon wage increase on and after November 1, 1980, and withdrawing her authority to charge certain purchases of gasoline to Respondent's account.

(e) Issuing written warnings or reprimands to Lester, Huey, and Wilkins on April 3, 1980; to Wilkins on May 5, 1980; to Lester and Wilkins on May 14, 1980; and to Lester on October 21, 1980.

(f) Suspending Lester for 7 days beginning on May 15, 1980.

5. Respondent violated Section 8(a)(1) of the Act by (a) threatening, on February 21, 1980, to cause additional expense to employees by forcing them to resort to arbitration for resolution of grievances, and (b) by coercively accusing Lester, on March 4, 1980, of making things difficult for him and of blackmailing him by testifying in the prior proceeding herein.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I find it necessary to order it to cease and desist from engaging in those practices and to take certain affirmative action designed to effectuate the policies of the Act. Such affirmative action will include a requirement that, on request, it forthwith sign and give retroactive effect to the agreement, identified herein as General Counsel's Exhibit 51. Also, Respondent will be required to offer to reinstate Lester, Huey, and Wilkins to the positions they would have held under that agreement had it been signed on March 4, 1980,<sup>46</sup> and to make them whole for any loss of earnings or other benefits resulting from their respective layoffs, discharges, and suspensions (including Lester's 7-day suspension on May 15, 1980, Wilkins' suspension on June 27, 1980, and Huey's first layoff on April 4) or from Respondent's unilateral establishment of work rules, and hours of service and personnel policies. Any backpay is to be computed on a quarterly basis from the date of the layoffs or discharges to the date of proper offers of reinstatement in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon as established in *Florida Steel Corporation*, 231 NLRB 651 (1977); see, generally *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

In light of the persistent and egregious nature of Respondent's unlawful efforts to frustrate the right of its office employees to organize and bargain collectively through representatives of their own choosing a broad injunctive order is warranted. Compare *Hickmott Foods*, 242 NLRB 1357 (1979).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

<sup>46</sup> It is anticipated that Respondent will claim economic need to maintain a reduced office work force and that McCann's reinstatement on July 20, 1981, pursuant to court order, also should be taken into account in determining employee precedence on recall. Those claims are appropriate for determination in the compliance phase of this proceeding.

#### ORDER<sup>47</sup>

The Respondent, Truckdrivers Union Local 164, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Jackson, Michigan, its officers, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with Office and Professional Employees International Union, Local 10, AFL-CIO as to wages, hours, and other terms and conditions of employment covering employees in the unit herein found to be appropriate: (1) by refusing to sign the collective-bargaining agreement (G.C. Exh. 51) mutually agreed upon on March 4, 1980; (2) by not affording those employees adequate opportunity to confer with officials of Local 10, and (3) by unilaterally changing terms and conditions of employment of those employees.

(b) Discharging or otherwise discriminating against any employee for filing charges with the Board.

(c) Discharging or otherwise discriminating against any employee for supporting Local 10 or any other union.

(d) Threatening any employee with economic sanctions and other retaliatory actions for filing grievances or for testifying in proceedings before the Board.

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

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

(a) Upon request, bargain collectively and in good faith with Local 10 and embody any understanding which may be reached in a signed agreement.

(b) If requested by Local 10, sign and give retroactive effect to the contract (G.C. Exh. 51) mutually agreed upon on March 4, 1980.

(c) Rescind (1) the written warnings given to Lester, Huey, and Wilkins on April 3, 1980, to Wilkins on May 5, 1980, to Lester and Wilkins on May 14, 1980, and to Lester on October 21, 1980, as well as any others issued pursuant to unilaterally established work rules and personnel policies, and (2) the suspension given to Lester on May 5, 1980, and to Wilkins on June 27, 1980; and, with respect to both the warnings and the suspensions, expunge from Respondent's records (including personnel files) any reference thereto and notify Lester, Huey, and Wilkins, in writing, that such action has been accomplished and that the expunged warnings and suspension notices will not be used as a basis for future personnel actions against them.

(d) Rescind the work rules and hours of service and personnel policies unilaterally established, thereby returning to the *status quo ante*.

(e) Offer Lester, Huey, and Wilkins immediate and full reinstatement to the jobs they held as of March 4, 1980

<sup>47</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(or, if said jobs are no longer available, to substantially equivalent positions) without prejudice to their seniority or other rights and privileges previously enjoyed; and make them whole (in the manner indicated in The Remedy), with interest, for any loss of earnings resulting from their respective discharges, layoffs, and suspensions, and from implementation of the unilaterally established work rules and hours of service and personnel policies.

(f) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records and reports and all other records necessary to analyze the amount of backpay and other compensation due under the terms of this Order.

(g) Post in its offices in Jackson, Michigan, copies of the attached notice marked "Appendix."<sup>48</sup> Copies of the

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<sup>48</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted; and reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges unfair labor practices not found herein.

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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."