

S-B Manufacturing Co., Ltd. and Local 659, Allied Industrial Workers of America, AFL-CIO. Cases 30-CA-6403, 30-CA-6403-2, and 30-CA-6863

8 May 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 20 December 1982 Administrative Law Judge Hubert E. Lott issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed limited exceptions and supporting briefs.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² only to the extent consistent with this Decision and Order.³

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(5) and (1) of the Act by negotiating with the employee-management committee instead of the Union over bargainable issues, we note that although the Respondent's plant manager, Port, testified that an employee who had once served as the Union's sergeant-at-arms was at one time a member of the committee, there is insufficient record evidence to support a finding that the Union had an official representative on the committee or that it ever had knowledge of the committee's existence. In fact, Port admitted that the Union's chief negotiator, Praxel, had never been informed of the committee's existence. The Respondent argues that the Board's decision in *Citizen Bank of Willmar*, 245 NLRB 389 (1979), is applicable to the facts herein. In that case the Board found that a union that failed to exercise its right to demand bargaining over a unilateral change in working conditions could not later effectively claim that the respondent unlawfully refused to bargain. However, we find *Citizen Bank of Willmar* to be inapposite because, unlike the situation in this case, two union officers were actually present at the meeting in which the changes were announced and there was no contention that the union had no knowledge of the change in policy.

Member Hunter notes that the General Counsel's unfair labor practice allegations concerning the employee-management committee were limited to the contentions that the Respondent used these meetings in an effort to bypass and undermine the Union. Since the record herein amply supports the finding that the Respondent engaged in bad-faith bargaining, Member Hunter finds it unnecessary to consider the additional allegations concerning the employee-management committee. In addition, Member Hunter agrees with his colleagues that the Respondent's response to the Union's economic demands was equivalent to a claim of financial inability to pay. Although the Union is clearly entitled to some financial information, the Union's requests, inter alia, for the Respondent's tax returns, audit reports, and details on management salaries and benefits appear to be overly broad. In such circumstances, Member Hunter would leave the final determination of what constitutes "relevant information" to the compliance stage of this proceeding.

³ We shall issue an Order in lieu of the judge's recommended Order to correct his inadvertent failure to provide for the reinstatement of all

ORDER

The National Labor Relations Board orders that the Respondent, S-B Manufacturing Co., Ltd., Wauwatosa, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in Local 659, Allied Industrial Workers of America, AFL-CIO, or any other labor organization, by discriminatorily disciplining or otherwise discriminating against employees in any manner with regard to their hire and tenure of employment or any term or condition of employment.

(b) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with the Union as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees of S-B Manufacturing Co., Ltd., at the Wauwatosa, Wisconsin location, but excluding office employees, professional employees, guards, temporary summer/seasonal employees, foremen, assistant foremen and other supervisors as defined in the Act, as amended.

(c) Unilaterally and without notice to or bargaining with the Union, as the exclusive representative of the employees in the unit described above, terminating employees' health and other fringe benefits.

(d) Refusing to bargain collectively with the Union by negotiating directly with employees in the above-described unit about terms and conditions of employment without affording the Union an opportunity to be present; by prohibiting or frustrating communication between the Union and unit employees; and by refusing to furnish the Union with information relevant to and necessary for the effective performance of its role as collective-bargaining representative.

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

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Expunge from its files any reference to the final warning given to John Tews and notify him in writing that this has been done and that evidence of this unlawful discipline will not be used as a basis for future personnel actions against him.

health insurance and other fringe benefits to employee Anna Turtenwald and other employees, and to correct certain inadvertent errors therein.

(b) On request, bargain collectively with Local 659, Allied Industrial Workers of America, AFL-CIO, as the exclusive representative of all employees in the appropriate unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(c) Reinstate the health insurance and other fringe benefits for all employees in the above-described unit which were terminated by the Respondent 1 October 1981.

(d) Make whole the employees in the above-described unit in the manner set forth in the section of the administrative law judge's decision entitled "The Remedy," as amended, for the Respondent's failure to pay health insurance and other fringe benefits as required by its contract with the Union.

(e) Provide the Union with the information it requested 31 March 1981 regarding all finalized job standards, production quotas, employee pay rates, and the names and addresses of unit employees requested by the Union 21 May 1981.

(f) Provide the Union with the economic information it requested 28 May 1981, including Federal tax returns and audit reports for the last 3 years along with balance sheets and income statements; detailed supporting schedules of costs of goods sold, including breakdowns of labor costs and supervisory and other nonlabor wages and benefits; and interim financial statements for the last period for which the books were closed together with the same data for a comparable period the preceding year.

(g) Post at its plant in Wauwatosa, Wisconsin, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

WE WILL NOT discourage membership in Local 659, Allied Industrial Workers of America, AFL-CIO, or any other labor organization, by discriminatorily disciplining or otherwise discriminating against employees in any manner with regard to their hire and tenure of employment or any term or condition of employment.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with the Union as the exclusive bargaining representative of our employees in the following appropriate unit:

All production and maintenance employees of S-B Manufacturing Co., Ltd., at the Wauwatosa, Wisconsin location, but excluding office employees, professional employees, guards, temporary summer/seasonal employees, foremen, assistant foremen and other supervisors as defined in the Act, as amended.

WE WILL NOT unilaterally and without notice to or bargaining with the Union, as the exclusive representative in the unit described above, terminate our employees' health and other fringe benefits.

WE WILL NOT refuse to bargain collectively with the Union by negotiating directly with employees in the above-described unit about terms and conditions of employment without affording the Union an opportunity to be present; by prohibiting or frustrating communications between the Union and unit employees; and by refusing to furnish the Union with information relevant to and necessary for the effective performance of its role as collective-bargaining representative.

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

WE WILL expunge from our files any references to the final warning given to John Tews and notify him in writing that this has been done and that evidence of this unlawful discipline will not be used as a basis for future personnel actions against him.

WE WILL, on request, bargain collectively with Local 659, Allied Industrial Workers of America, AFL-CIO, as the exclusive representative of all

employees in the appropriate unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL reinstate the health insurance and other fringe benefits for all employees in the above-described unit which were terminated by us 1 October 1981.

WE WILL make whole the employees in the above-described unit for our failure to pay health insurance and other fringe benefits as required by our contract with the Union.

WE WILL provide the Union with the information it requested 31 March 1981 regarding all finalized job standards, production quotas, employee pay rates, and the names and addresses of unit employees requested by the Union 21 May 1981.

WE WILL provide the Union with the economic information it requested 28 May 1981, including Federal tax returns and audit reports for the last 3 years along with balance sheets and income statements; detailed supporting schedules of costs of goods sold, including breakdowns of labor costs and supervisory and other nonlabor wages and benefits; and interim financial statements for the last period for which the books were closed together with the same data for a comparable period the preceding year.

S-B MANUFACTURING CO., LTD.

DECISION

STATEMENT OF THE CASE

HUBERT E. LOTT, Administrative Law Judge. The consolidated cases were heard at Milwaukee, Wisconsin, on March 31 and April 1 and 2, 1982. The charge in Case 30-CA-6403 was filed by Local 659, Allied Industrial Workers of America, AFL-CIO (the Union), against S-B Manufacturing Co., Ltd. (Respondent), on March 26, 1981.¹ The charge in Case 30-CA-6403-2 was filed by the Union on May 4 and a first amended charge in the same case was filed on June 5. A consolidated complaint issued on these charges on July 22. The charge in Case 30-CA-6863 was filed by the Union on December 7 and a consolidated complaint in all the above cases issued on March 15, 1982. The issues in the above cases are whether Respondent engaged in violations of Section 8(a)(1), (3), and (5) of the Act by issuing a warning to John Tews and unilaterally terminating the benefits of employee Anna Turtenwald, and whether or not Respondent violated Section 8(a)(1) and (5) of the Act by: (a) unilaterally changing employees' hours of work, (b) refusing to furnish the Union with information during contract negotiations, (c) failing to give its negotiators sufficient authority to engage in meaningful collective bargaining, (d) unilaterally changing employee wage rates, (e) attempting to prevent the Union from

communicating with its employees concerning the progress of negotiations, (f) establishing an employee-management committee to undermine the Union's status as representative of its employees, and (g) engaging in "surface bargaining" or overall bad-faith bargaining. Respondent's answers to the consolidated complaints, duly filed, denies the commission of any unfair labor practices.

The parties were afforded an opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel and from counsel for the Charging Party and Respondent.

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 Company, a partnership, with its principal place of business located in Wauwatosa, Wisconsin, is engaged in the manufacture and nonretail sale and distribution of hardware products. It annually sells and ships goods valued in excess of \$50,000 directly to points located outside the State of Wisconsin. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent further admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

A. Background

The Union was certified as representative for Respondent's production and maintenance employees in April 1974. The parties signed their initial contract in June 1975. Thereafter, the parties signed a series of 1-year agreements, the last of which was the 1980-1981 agreement whose duration ran from May 1, 1980 through April 30, but which would continue in effect until the parties reached a new agreement. The 1980-1981 agreement was not signed until April 10 for two reasons. The Union refused to sign it because the contract for the first time did not incorporate the annual wage increase into the minimum wage scale. Respondent refused to sign unless the Union waived the contract provision requiring Respondent to furnish copies of the agreement to its employees. The Union eventually conceded on both issues and the agreement was signed on the above date. The parties stipulated that the 1980-1981 agreement is still in effect during all times material herein.

Respondent's employee handbook which is distributed to all employees states the following under the section entitled "Position Toward Union Affiliation":

Union membership is not a requirement at our Company. We try to see that every employee receives fair consideration and treatment regardless of mem-

¹ All dates herein refer to 1981 unless otherwise indicated.

bership or nonmembership in the union. Most (more than 70 percent) of the employees in the United States are nonunion. So are most of the companies. Many of the most successful companies are nonunion (IBM, Eastman-Kodak, Texas Instruments, etc.). We do not believe that a union contributes to the success of a company, or to the security of the employees. Where there are unions, there are strikes; where there are no unions, there are no strikes. We are in favor of job security and we are against strikes.

Our labor agreement with the union specifically states: "Employees do not have to belong to the union or pay a fee to the union in order to work at the Company."

On March 16, the parties began negotiations for a new collective-bargaining agreement; 13 negotiating sessions took place at Respondent's plant on the following dates: March 16; April 10, 21, 23, 24, and 28; May 1, 8, and 18; June 1 and 15; September 18; and December 16.

The following individuals attended the bargaining sessions for Respondent: attorney Barton Peck, Plant Manager George Port, and Assistant Personnel Manager Philip Kleba. The Union's negotiating committee consisted of union business representative Fred Praxel, Local president John Tews, Local vice president Scott Ellis, and committee member Ron Bard.

B. *The John Tews Warning*

On April 14, John Tews made a written request that Respondent post both parties' negotiating proposals on the union bulletin board. That same day Respondent, in writing, refused the Union's request stating that they had never done this in the past and that their attorney advised that they were not required to do it. In subsequent negotiating sessions, Respondent's spokesman, Barton Peck, told the union negotiating committee that he had refused the Union's request to post the parties' proposals on the bulletin board because, without adequate explanation, the employees would not understand the import of the proposals. The Union's spokesman asked Peck if he were implying that the employees were not smart enough to understand the proposals. According to some witnesses, Peck stated that he was not suggesting or implying that that was the case. According to other (union) witnesses, Peck asserted that the employees were not smart enough to understand the proposals without further explanation.

On May 30, John Tews mailed a letter to unit employees with copies of the parties' proposals attached. In the letter Tews reported on the progress of negotiations and concluded with a plea for more support from the rank-and-file employees. Some excerpts from the letter are as follows:

Early in April, I asked the Company to post both the Company's and the Union's proposed changes for the 1981-1982 contract.

They refused.

Their feeling is, that you are not smart enough to understand them. I don't agree.

I feel everyone at S-B is intelligent enough to understand what these proposals mean. This is why I took it upon myself to give you the opportunity to review them. The Company wants to make a lot of changes and very few, if any, will be any benefit to the employees of S-B and their families. It doesn't take a genius to figure that out.

We are not making much progress in our attempt to negotiate a fair contract. The Company wants to take a lot away and give nothing. We have one big obstacle, not enough support

The Company doesn't want the Union. They'll do anything they can to get rid of it. Don't help them!

On June 4 Tews received a "final warning" from Respondent for violating Rule 8 of the Company's rules which prohibits the publishing of false, vicious, or malicious statements concerning any employee, or member of supervision, or the Company. Respondent also cited Tews for violating article 3 of the collective-bargaining agreement which requires employees to be loyal and to protect and promote the Company's best interests. Respondent's position with respect to the warning is that Tews made a false statement in his letter to the employees when he asserted that Respondent took the position that they did not want to post the parties' proposals because the employees were not smart enough to understand them. The final warning issued to Tews also states that, if he commits another violation within 18 months, he will be subject to discharge.

Analysis and Conclusions

The General Counsel argues that Tews was engaged in protected union activity when he issued the letter with proposals to the unit employees and that the letter contains no language which would remove the communication from the Act's protection. Respondent argues that the Union under article 3 of the collective-bargaining agreement waived the right of employees to make false statements which demean the Company.

After reviewing the cases covering this issue, I conclude that Tews' remarks dealt exclusively with protected union activity and that they do not rise to the level which would remove them from the protection of the Act. I find that, at best, there was a difference of opinion over the interpretation of Respondent's reason for not wanting the proposals posted. The Board has long held that offensive, vulgar, defamatory, or opprobrious remarks uttered during the course of protected activities will not remove activities from the Act's protection unless they are so flagrant, violent, or extreme as to render the individual unfit for further service. *Dreis & Krump Mfg., Inc.*, 221 NLRB 309 (1975). The Board has also held that misstatements forfeit protection of the statute only when deliberately or maliciously false. I find the statements made by Tews who is the local union president and a member of the negotiating committee to be nothing more than the Union's position or opinion with respect to Respondent's bargaining tactics. His statements, when viewed in the context in which they were

made, in my opinion do not even rise to the level of ordinary campaign propaganda which employees encounter in Board-conducted elections.

Under these circumstances, I find that in disciplining Tews for issuing his letter Respondent has violated Section 8(a)(1) and (3) of the Act. The General Counsel further alleges that Respondent's action also violated Section 8(a)(1) and (5) of the Act by inhibiting the Union's attempts to communicate with the unit employees. This issue will be addressed in another portion of the decision.

C. *The Unilateral Termination of Benefits*

This allegation relates to the unilateral termination of benefits for Anna Turtenwald and is covered by several paragraphs in the complaint: allegations 8(b), 9(b), 11(b)(v), 12, and 13.

The parties stipulated that Turtenwald has been employed by Respondent since 1973 as an assembler. Between approximately 1976 and 1978, she was a member of the Union's bargaining committee. For approximately 1-1/2 years, between June 1979 and January 20, she was local union president. The parties further stipulated that Turtenwald has been off work as a result of an industrial-related injury since January 20 and has been receiving workmen's compensation during this time. On September 14 Respondent notified Turtenwald that it would not provide health insurance or other fringe benefits for her after the end of September. Pursuant to this notification, Turtenwald's benefits were terminated on October 1. The parties further stipulated that Respondent had not previously terminated benefits for any employee on workmen's compensation and that its policy relating to employees in such status applies to all employees of Respondent. The parties further stipulated that Turtenwald's benefits were terminated without notifying the Union. Respondent's witness, Philip Kleba, admitted in his testimony that there was nothing in the contract that covered employees who were absent due to an industrial-related injury such as Anna Turtenwald's.

Analysis and Conclusions

Respondent's admissions clearly give rise to a violation of Section 8(a)(1) and (5) of the Act. Respondent admitted that it terminated the benefits (Blue Cross-Blue Shield, dental, life insurance, sickness and accident, and long-term disability) of Anna Turtenwald without notifying or discussing its action with the Union. Further, Respondent admitted that the collective-bargaining agreement has no provision covering employees who are on leave of absence due to a work-related injury and that the decision relating to Turtenwald would apply in the future to all employees in a similar situation.

The benefits described above are clearly subjects of collective bargaining and their unilateral termination by Respondent violates Section 8(a)(1) and (5) of the Act as alleged in paragraphs 8(b), 9(b), 11(b)(v), and 13. However, I find that the General Counsel has not met his burden of proving that Respondent terminated Turtenwald's benefits because of her prior union activities as alleged in complaint paragraphs 8(c) and 12. The unrefuted evidence establishes that Respondent provided bene-

fits for Turtenwald for 8 months after her injury (and her union activities). Further, Respondent intended to apply its new policy to all employees. Under these circumstances, I will dismiss the 8(a)(1) and (3) portion of this allegation which is contained in paragraphs 8(c) and 12 of the complaint.

D. *Respondent's Unilateral Change in Hours of Work*

It was stipulated by the parties that on February 26 Respondent reduced the hours for all bargaining unit employees from 40 to 32 hours per week. Respondent's unilateral action was not alleged by the General Counsel as a violation of the Act. The Union wrote Respondent a letter concerning the February 26 reduction in hours which reads as follows:

Please be informed that the Union, in order to avoid a layoff, has decided not to protest the Company's decision to work a 4-day, 32-hour week. However, this decision applies to this occurrence only and such action may be subject to the grievance procedure in the future. The Union does not condone the Company making a unilateral change in the contract. We feel the Company should confer with the Union as stated in Article II, Section 1 of the contract. It must be understood that acceptance of the 4-day week on this occasion does not create a practice nor set a precedent. This action is taken by the Union without prejudice.

Respondent replied to the Union's letter on March 6 wherein it stated in pertinent part:

In order to avoid any misunderstanding, consistent with Article 22 of the current labor agreement, the Company has specifically reserved the exclusive right to "lay off" or to determine "the number of hours and the schedules of employment" for employees within the bargaining unit.

Within this framework, the Company had the right to unilaterally, without consultation from the Union, institute the new schedule of hours. Be advised, therefore, that the willingness demonstrated by the Company to offer the Union the opportunity to make suggestions in this regard before the Company's decision was finalized is not to be considered an abdication of its right to unilaterally institute changes in the number of hours worked. Consequently, whether or not the Union condones the change in the number of hours of scheduled work, whether now or in the future, is immaterial.

The parties stipulated that on March 19 Respondent unilaterally and without notifying the Union reduced the hours of all bargaining unit employees from 32 to 24 hours per week. This reduction remained in effect from March 22 to June 1. On March 26 the Union filed a grievance over this reduction which apparently was withdrawn after the third step. The March 19 reduction by Respondent is alleged by the General Counsel as a violation of Section 8(a)(1) and (5) of the Act in complaint paragraphs 9(a) and 11(b)(v).

Article 22 (Management Rights) of the current collective-bargaining agreement states, inter alia, "Except as otherwise limited by a specific provision of this agreement, the management of the plant and the affairs of the Company, and the direction of working forces are vested exclusively in the employer, including, but not limited to, the right to . . . determine the number of employees, the number of hours, and the schedules of employment . . ." Article 2, section 1 of the collective-bargaining agreement states that the Company "hereby recognizes the Union as the sole collective-bargaining agent on all matters relating to rates of pay, wages, hours of work, or other conditions of employment for all production and maintenance employees . . ." These provisions have remained the same in all the collective-bargaining agreements since the first agreement was signed in 1975.

Respondent's only other unilateral reduction in hours occurred in February 1975. During contract negotiations that year the Union made the following proposal: "The Company may at its discretion reduce the workweek to 32 hours (for a period of 4 weeks in the aggregate per contract year), or lay off employees as necessary." This union proposal was rejected by Respondent and the language in the management-rights clause stated above was agreed on by the parties. Respondent's witness, Philip Kleba, testified that prior to the 1980-1981 negotiations the Union in the last 2 years proposed changes in the management-rights clause to eliminate management's right to reduce hours. Respondent on all occasions rejected the Union's proposal and the parties agreed on the current management-rights contract language. In February at a grievance meeting a dispute arose over whether or not Respondent was obligated to bargain over the reduction in employee hours. Fred Praxel, the Union's negotiator, asserted that if Respondent reduced employee hours it would have to negotiate with the Union. George Port disagreed with Praxel, stating that Respondent had the authority under the management-rights clause of the current collective-bargaining agreement to unilaterally reduce employee hours. Barton Peck, Respondent's attorney, first agreed with Praxel's interpretation of the contract but apparently on further consideration changed his mind.

On March 16 the Union, in its initial proposals for changes in the collective-bargaining agreement, offered a management-rights clause which eliminated hours from the exclusive control of management. The Union during negotiations, probably in May, offered the following provision as a proposal to Respondent:

Because of lack of work the Company may reduce hours of work to 32 hours per week [sic] for a period of 4 weeks per calendar year. Extensions may be made by mutual agreement. If no agreement is reached the Company shall lay off the number of employees it deems necessary to adjust the work force.

During the current negotiations, Respondent rejected both of the Union's proposals which have just been stated above. Respondent's position throughout the current negotiations was that it needed the same contract

language with respect to hours in the management-rights clause as is currently in effect and has been in effect since the first collective-bargaining agreement.

Analysis and Conclusions

The Board and the courts have held that a statutory right can be relinquished by the union under the provisions of the bargaining agreement if it elects to do so. But such relinquishment must be in clear and unmistakable language. Silence in the bargaining agreement does not meet this test. *Timken Roller Bearing Co. v. NLRB*, 325 F.2d 746 (6th Cir. 1963). The Board has further held that a waiver will not be lightly inferred but must be clearly evidenced either by the terms of the parties' collective-bargaining agreement or in the nature of the prior contract proceeding. *Southern Florida Hotel Assn.*, 245 NLRB 561 (1979).

In the case before me Respondent relied on the language in the management-rights clause for justification for its unilateral action and the parties' prior bargaining history wherein the Union has unsuccessfully attempted to have the hours' language changed. The Union on the other hand relies on the language in the recognition clause in support of its position that it never relinquished its statutory right to negotiate over changes in employee hours. The General Counsel argues that Barton Peck's agreement with Praxel's statement that Respondent was obligated to bargain over a change in employee hours at a February grievance meeting indicates that Respondent had an obligation to bargain over a change in hours. She further argues that a notice posted by Respondent in 1978, wherein it cited the Union's opposition to closing the plant between Christmas and New Year's as justification for Respondent not closing the plant, as further evidence that Respondent recognized its obligation to bargain over hours reduction.

The management-rights clause currently in effect appears on its face to give Respondent exclusive control over employee hours. There is nothing unclear or unequivocal about the language as I read it. However, even assuming that the language in the management-rights clause is subject to interpretation, I find that throughout negotiations the Union has attempted to modify, eliminate, or reduce management's exclusive control over employee working hours. It has met with repeated failure, and has consistently agreed to the language proposed by management. There is little doubt, after reviewing the record evidence, that the Union has attempted to have the hours provision in the management-rights clause changed to no avail. The parties have negotiated over this issue for years but the clause has remained the same from its inception.

The Union by its action and negotiating position over the years has virtually conceded that management has the right to unilaterally change employee hours. That is the only explanation for its constant struggle to recover a statutory right which it obviously feels it bargained away and which it does not have the strength to reclaim. The General Counsel's arguments are not persuasive in light of the overwhelming documentary evidence to the contrary. I do not find, for example, that the remarks of

Barton Peck at a grievance meeting or the 1978 statement of Respondent concerning holidays in any way alters the import of the contract language when combined with the history of negotiations which reveals the true meaning of what the parties intended.

Therefore, I will dismiss complaint allegations 9(a) and 11(b)(v) relating to the unilateral reduction in hours.

E. Failure to Furnish Information

1. Noneconomic information

The parties stipulated that, on March 31, the Union requested in writing that Respondent provide information on all finalized job standards, production quotas, and employee pay rates. On May 21 the Union requested in writing the names and addresses of unit employees. Respondent refused to furnish any of the above information.

Analysis and Conclusions

In its brief Respondent admits that the Union was entitled to the information requested and further admits that it was derelict in failing to promptly comply with the request.

After considering the stipulation of the parties and Respondent's admissions in brief, I find that Respondent violated Section 8(a)(1) and (5) of the Act by refusing to furnish the requested information as alleged in paragraphs 10(a) and (b) and 11(b)(ix).

2. Economic information

On May 28 the Union in writing requested financial data from Respondent which included copies of Federal tax returns and audit reports for the last 3 years along with balance sheets and income statements. It also requested detailed supporting schedules of costs of goods sold, including breakdowns of labor costs and supervisory and other nonlabor wages and benefits together with selling, general and administrative expenses including details on management salaries and benefits. At the same time it also requested interim financial statements for the last period for which the books were closed together with the same data for a comparable period the preceding year.

John Tews testified that Barton Peck, the Company's chief spokesman, refused the Union's request for financial data not because they were pleading poverty but because Donald Schulz would under no circumstances open the books to the Union. Peck further stated that he would give no documentation or information even if it were to convince the employees of their situation which should be obvious because sales were down, costs were up, there was too much inventory, and employees were only working 3 or 4 days per week. According to Tews, Peck further stated that Donald Schulz feels the Company's records are company property and their business, and that the Company did not ask the employees for their financial information and the Union should not ask the Company for theirs. Tews further testified that, in May when the Union presented its economic proposals, Peck said he would have to discuss them with Schulz. Peck returned and stated that the Union's proposals on holi-

days, vacation benefits, and pension were rejected because it should be obvious to the Union that the Company was in no position to grant any of the requests. Peck further suggested that the Union should get the employees to solicit hardware stores to buy Respondent's products so their business would improve. Peck further stated that the Company was in no position to grant these items because of its business situation, orders were down, sales were down, there was too much inventory, and the Company was in recession. Tews further testified that Peck maintained throughout the negotiations that the Company was unable to grant a wage increase because its costs were up.

Fred Praxel testified that, when he presented the Union's economic proposals, Barton Peck told him that he would discuss them with Donald Schulz but that "we [Union] should look around us because the Company was working a short workweek." It had too much inventory and costs were up. He further stated that the economy was bad and that "we were making these proposals with our eyes closed and our fingers crossed." Praxel further testified that Respondent's proposal contained certain "give backs," i.e., the elimination of three paid holidays, sickness and accident insurance, and bereavement pay. Peck told the union negotiating committee that these "give backs" were necessary because labor costs were up, general costs were up, orders were down, and the employees were working a short workweek. Praxel testified that he requested the financial information in order to evaluate the reasons for the Company's position with respect to "give backs."

Respondent's witness, Philip Kleba, testified that Barton Peck instructed the Company's negotiating committee to be careful what they said during negotiations so that the Company would not be accused of pleading poverty because, if they did, they would be forced to "open up all of our records if requested." Kleba also testified that Peck proposed certain economic "give backs" because of increased costs, future costs, and high inventory. According to Kleba, Peck further indicated that benefits being paid presently were based on a 5-day week but that the employees were only working a 3-day week so that the cost of benefits was too high. Kleba then testified from his notes that, when the Federal mediator presented the Union's demand for financial information, Barton Peck presented the mediator with the Company's reply which was a refusal to furnish the data requested because the Company was not pleading poverty. Peck told the mediator that the Company was working 3 days a week and if the Union could not see the handwriting on the wall the Company did not know what else to do or say to make them understand. Peck then told the mediator that they were not refusing to grant a wage increase because they could not give more but because they would not give more.

Analysis and Conclusions

The testimony of Tews and Praxel which is unrefuted and credited indicates to me that the Company refused to grant any economic concessions because of its financial condition. Although the Company's chief negotiator

kept repeating that the Company was not pleading poverty, he gave as his reasons for refusing all of the Union's economic demands that: Costs were increasing, inventory was increasing, sales were decreasing, orders were decreasing, the Company was in a recession, employees were working a short workweek, and the Company was in no position to agree to the Union's economic demands. Moreover, the same reasons were given as the Company's justification for proposing certain economic "give backs." It is my conclusion that regardless of how many times Respondent uses the "magic words" or self-serving explanations for its bargaining position, the fact remains that it was pleading financial inability to pay or its equivalent. It is also apparent from the evidence that the Union demonstrated its need for the financial data requested. As Praxel testified, the Union was not only faced with Respondent's flat denial on all economic proposals but was also confronted with Respondent's demand for substantial economic concessions which it had gained over the years. In light of Respondent's credited reasons for its bargaining position, Praxel, as he testified, needed to know whether or not Respondent's claims were accurate so that he could evaluate the Union's bargaining position.

I further conclude, based on the unrefuted testimony of the Union's witnesses, that it would have made no difference what position Respondent took on economic issues since Respondent was unwilling to furnish financial data to the Union for any reason.

Accordingly, I find that by refusing to furnish the requested financial data, Respondent has violated Section 8(a)(1) and (5) of the Act as alleged in paragraphs 10(c) and 11(b)(ix) of the complaint.

F. Failure to Give Respondent's Negotiators Sufficient Authority to Engage in Meaningful Collective Bargaining

The parties stipulated that Donald Schulz, the company president, must approve all noneconomic proposals and that three other unnamed partners in addition to Schulz had to agree to all economic proposals before agreement could be reached with the Union.

The record indicates that the Union was told prior to negotiations that final authority for approval of all proposals was vested in Donald Schulz who was readily available in the plant during negotiating sessions. The record further indicates that no partner has been a member of Respondent's negotiating committee since 1977. The record evidence also indicates that Respondent's negotiating committee had authority to propose economic "give-backs" and to reject all the Union's economic proposals.

Philip Kleba testified that Respondent's negotiating committee had authority to propose the existing contract "as is." He further testified as follows to a series of questions asked by Loebel:

Q. Now the justifications in essence, do I understand you viewed your role and somewhat Mr. Peck's to be a conduit to take what the union says back to Mr. Schulz just to relate to him what is being said? And Mr. Schulz says something and you

relay that back at the bargaining meeting to the union people? Is that what your roles were?

A. Basically what we had to do was listen to the union give their justifications, their reasons.

Q. Yes.

A. Try and get the union to relay to us as fully as they can so we can take those answers back to Donald [Schulz] and justify them to Donald.

Q. And then explain to Mr. Schulz?

A. Yes.

Q. Is there any reason you didn't put a tape recorder on the table and take that to Mr. Schulz?

A. I believe that came up on several occasions. And I don't believe I remember what the answer is.

Analysis and Conclusions

It seems apparent from Respondent's admissions that its negotiating committee had no authority to agree to anything meaningful without first seeking the approval of Schulz who was available for that purpose with respect to noneconomic issues. It is equally clear that economic proposals had to be cleared with partners who were apparently not available. Although it was not alleged that this negotiating format caused any delay in negotiations, it seems clear that Respondent's methods prevented any give-and-take negotiating at the bargaining table, which is such an important ingredient for reaching agreement. While I am cognizant that Respondent is not required to be represented by an individual possessing final authority to enter into an agreement, Respondent is required to have someone present who can engage in meaningful negotiations. This was clearly not the case. By Respondent's own admissions, it seems apparent that its negotiating committee merely acted as a conduit, relaying the Union's proposals to Schulz and the other partners and then, in turn, relaying the partners' answers to the union committee. In my opinion, this system can do nothing but inhibit negotiations.

Respondent argues in brief that the Union was made aware of Respondent's negotiating procedure and negotiated on that basis, citing *Rockingham Machine-Lunex Co.*, 255 NLRB 89 (1981). I cannot accept Respondent's argument for two reasons. There is no evidence that the Union was ever informed that economic proposals had to be approved by all the partners who I find were not readily available for this purpose. Secondly, the *Rockingham Machine* case at least envisions that Respondent's negotiators have authority to reach tentative agreement, which is not the situation in this case.

Accordingly, I find that Respondent violated Section 8(a)(1) and (5) of the Act as alleged in paragraph 11(b)(i) by failing to give its negotiators sufficient authority to engage in meaningful collective bargaining.

G. Unilateral Change in Wage Rates

The record evidence indicates that throughout negotiations which lasted from March 16 to December 16, Respondent rejected all the Union's economic proposals including a proposed wage increase of 8 percent effective May 1, 1982, which was made on June 15 and presented in writing on December 16. However, on January 19,

1982, Respondent increased wages of unit employees by 21 cents per hour without notifying or negotiating over this increase with the Union. Wage increases have been granted in the past by Respondent at approximately this time of year and in the same manner. Throughout negotiations, the Union proposed changes in the current agreement which would remove unilateral wage increases and hours reduction from the agreement.

Respondent argues in brief that, under article 7, section 2 of the collective-bargaining agreement in effect at the time, it had a right to grant the wage increase and it has exercised this right in the past. Article 7, section 2 reads:

The wages and benefits set forth in this agreement are minimums, and the company may from time to time institute, change or establish benefits and wages in excess of the minimums provided in this agreement.

The General Counsel does not address this issue in her brief and the Charging Party approaches the issue not so much from the standpoint that the unilateral increase was a violation but that Respondent's position at the bargaining table with respect to wages evidenced bad-faith bargaining.

Analysis and Conclusions

Based on the contract language, Respondent's past history of granting unilateral wage increases, and the Union's current bargaining position with respect to wages, I find that Respondent did not violate Section 8(a)(1) and (5) of the Act as alleged when it granted the unilateral wage increase. However, Respondent's negotiating position vis-a-vis wages will be addressed in paragraph J of this decision. Accordingly, I will dismiss the General Counsel's allegation contained in paragraph 11(b)(vi) of the complaint.

H. Employee-Management Committee

Approximately 4 years ago Respondent formed a safety committee which was changed to employee-management committee after 2 years. The purpose of the committee as it is now constructed is to discuss safety problems and to obtain feedback from employees on most any subject. The committee is composed of six employees, the plant manager, and the assistant personnel manager who meet at monthly intervals. Employee members are chosen by Respondent on the basis of outgoing members' recommendations. The Union has no representative on the committee, and union representative Fred Praxel was never informed of the existence of the committee. In many cases, problems raised by employees are checked into and solved as a result of the meeting, and the resolutions are shown on the minutes which are posted monthly on each of the departmental bulletin boards.

Examination of the minutes of the monthly meetings for a 6-month period preceding the issuance of the complaint wherein the allegation is contained indicates that the following subjects were discussed and in many cases resolved: (1) written reprimands and personnel files, (2)

the need for union representation, (3) safety rules, (4) breacktime and quitting time, (5) posting of hourly production rates, (6) fire drills, (7) availability of tools, (8) disparate treatment of employees, (9) the amount of incoming orders, (10) government contracts, and (11) the Company's economic condition. Prior to the most recent 6 months such items as heating, lighting and ventilation, work rules, personnel policies applying to pregnant employees, and layoffs were also the subjects of discussion at these meetings.

Analysis and Conclusions

The General Counsel contends that Respondent's support and participation in the meetings had the effect of undermining the Union's status as exclusive representative of the employees. Respondent contends that the meetings are nothing more than safety meetings which the Union should have been fully aware; and since the Union did not object to the committee, it in effect condoned its existence, citing *Citizens National Bank of Willmar*, 245 NLRB 389 (1979).

None of the charges in this case refer to this allegation. However, the last complaint issued on March 15, 1982, raises this allegation for the first time. Respondent answered this complaint and the issue was fully litigated at the hearing. The General Counsel does not allege that the formation of the committee constituted a violation of Section 8(a)(1) and (5) of the Act, but argues instead that Respondent is using these meetings in an effort to bypass and undermine the Union. Under these circumstances I cannot find nor do I find that the formation of the committee violated the Act. On the other hand, there is little doubt that the subjects discussed and resolved at the committee meetings dealt with the very matters that are clearly within the exclusive province of the Union. I do not agree with Respondent's argument that the Union waived its right to negotiate over the subjects which Respondent chose to take up directly with its employees. The facts in the *Citizens National Bank* case are simply not analogous to those in this case.

I further find that Respondent's actions in meeting with its employees for the purpose of resolving bargainable issues violates Section 8(a)(1) and (5) of the Act and exhibits an intention to undermine the Union and destroy its effectiveness. I also find that Respondent's persistent conduct constitutes a continuing violation of the Act. *Walker Die Casting*, 255 NLRB 212 (1981), and *Limpro Mfg. Inc.*, 225 NLRB 987 (1976). Accordingly, I find that Respondent violated Section 8(a)(1) and (5) of the Act as alleged in complaint paragraph 11(b)(viii).

I. Respondent's Attempt at Preventing the Union from Communicating with Employees

Throughout negotiations Respondent refused to allow the Union to post the parties' negotiating proposals on the Union's bulletin board and further refused the Union's proposal to give the Union a key to its bulletin board. Respondent's reason for rejecting the Union's proposal was that the single key not only fit the union bulletin board but also several other company bulletin boards. When the Union proposed to have the lock changed at

its own expense, Respondent rejected the offer. Furthermore, Respondent refused to allow the Union to post its grievances over the John Tews discipline while at the same time posting its answers to those grievances on the company bulletin boards. Respondent argues that the contract language limits the use of the Union's bulletin board to "the notification of its members of meetings and/or events pertaining to the members of its local union." The General Counsel argues that this language sanctions much broader use of the bulletin board.

In further support of this allegation, General Counsel cites the discipline of John Tews for communicating with unit employees concerning the progress of negotiations and for attaching copies of the parties' proposals to the employee letters. Respondent told the Union that, because the Union circulated the proposals, Respondent might not give written proposals in the future. The General Counsel also supports this allegation with evidence of Respondent's refusal to furnish names and addresses of unit employees while, at the same time, it dealt directly with its employees through the employee-management committee on a monthly basis in an effort to thwart the Union and destroy its effectiveness.

Analysis and Conclusions

After reviewing all the evidence in support of this allegation, it appears abundantly clear and I find that Respondent made every effort to isolate the Union from the employees it represented. Some of Respondent's efforts bordered on the ridiculous and some were more serious; however, the cumulative effect achieved the desired result of destroying any meaningful communication between the Union and the employees. Denial of bulletin board privileges, which it freely gave to the employees for their bulletin board, was not alleged to be a violation of the Act and I cannot so find because of the contract language; however, the other allegations discussed above were found to be violations of Section 8(a)(1), (3), and (5) of the Act. Accordingly, I find that Respondent's conduct in preventing the Union from communicating with its employees during negotiations, while at the same time dealing directly with its employees over bargainable issues, to be a violation of Section 8(a)(1) and (5) of the Act as alleged in paragraph 11(b)(vii) of the complaint.

J. "Surface" or Overall Bad-Faith Bargaining by Respondent

1. General information on 1981 negotiations

The evidence with respect to negotiations is not in dispute since it was either unrefuted or stipulated.

(a) Respondent granted a general wage increase in January 1980 and insisted that these increases not be incorporated into the current agreement. Thus, the current contract contained 1979 minimum wage scales which were below what the employees were earning.

(b) During the course of the current negotiations, the Union made 22 proposals for contract modification and only the Union's proposal to change the dates of the contract was agreed upon. Respondent proposed 39 modifications to the contract and the Union agreed to 9 of these, as modified through negotiations.

(1) Proposal 7 was modified to provide for 10-day reporting deadline following recall from layoff rather than 5 days, as proposed by Respondent. The current contract has no deadline.

(2) Proposal 8 was modified to provide a 30-day limit for involuntary transfer unless "mutually agreed upon by employee and employer," rather than 90 days proposed by employer. The current contract has 30-day limit with no provision for extension.

(3) Proposal 11 was modified to provide for 25 work-days' trial period for employees transferred under job posting procedure, rather than 30 workdays proposed by Respondent. The current contract provides for 30 calendar days.

(4) Proposal 15 was modified to lower wage rate for employees on light duty, "commencing with next pay period," rather than immediately, as proposed by Respondent. The current contract provides that an employee's wage rate would not be reduced while on light duty.

(5) Proposal 22, as proposed by Respondent, requires a 1-week notice of quit before employee qualifies for vacation pay. No notice required under the current contract.

(6) Proposal 24 was modified to require doctor's certificate "submitted" rather than "approved" within 8 days of beginning of medical leave of absence, on pain of termination. The current contract has no deadline for submission of certificate.

(7) Proposal 27 was essentially as submitted by Respondent, with language changes which do not change intent to permit Respondent to reschedule lunch periods if needed. The current contract language places the lunch period at noon.

(8) Proposal 28 was modified to provide for 2-day time limit for union submission of second step grievance, rather than 1 day, as proposed by Respondent. The current contract has no time limit.

(9) Proposal 29 was modified to provide 2 days for third step answer, rather than 3 days proposed by Respondent. The current contract has 2-day limit.

(c) No economic changes were agreed to and no economic improvements were proposed by Respondent for the upcoming contract term.

(d) During the course of the 1981 negotiations, Respondent made no counterproposals to the Union's proposals on the following subjects: union security and checkoff, elimination of unilateral wage increases, union access to the union bulletin board, management rights, elimination of unilateral hours reduction, and all proposed improvements in economic benefits.

2. Wages and other economic issues

On June 15 the Union proposed an 8-percent wage increase to be effective May 1, 1982. From the commencement of negotiations the Union also proposed the elimination of unilateral wage increases from the current agreement. Respondent rejected both proposals throughout negotiations, insisting that it needed the right to grant unilateral wage increases above the minimum rates. Respondent made no economic counterproposals other than to propose the elimination of three paid holidays, bereavement pay, and sickness and accident benefits,

pleading financial inability to pay. The last negotiating session was held on December 16. On January 19, 1982, Respondent unilaterally granted a 21-cent-per-hour increase to all unit employees.

3. Management rights

From the beginning of negotiations, the Union proposed a management-rights clause which, inter alia, eliminated hours from the exclusive control of management. Respondent, throughout negotiations, insisted on the present management-rights clause which reads:

Except as otherwise limited by a specific provision of this agreement, the management of the plant and the affairs of the company, and the direction of working forces are vested exclusively in the employer, including, but not limited to, the right to hire, the right to discipline or discharge for cause, the right to lay off, terminate or otherwise relieve employees from duty for lack of work or other legitimate reasons, the right to promote or demote employees, the right to transfer employees between jobs, the right to change the content of jobs, the right to assign work, the right to determine the number of employees, the number of hours, and the schedules of employment, the right to prescribe and enforce reasonable work rules, the right to determine the work to be done and the manner and methods for efficiently doing the work, and the right to determine suppliers, prices, products, and the hours and whether any of the work will be subcontracted or be performed by supervisors. The listing of specific rights in this agreement is not intended to be nor shall it be restrictive nor a waiver of any of the rights of management, whether or not such rights have been exercised by the company in the past. The reasonableness of the company's rules will be subject to the grievance procedure.

Respondent also insisted that work rules would not be subject to the grievance procedure. No agreement was ever reached on these items.

4. Union security

During negotiations the Union proposed various forms of union security: standard union-shop clause with checkoff, agency shop, and a maintenance-of-membership clause. Respondent rejected all these proposals maintaining that the Company's position that open shop will be continued as it has for the past 7 years for reasons explained in the employee handbook. The Union offered to agree to accept liability for all strikes, whether authorized or not (which was one of Respondent's proposals), if Respondent agreed to some form of union security. Respondent rejected the Union's proposal.

5. Information to the Union

During negotiations Respondent proposed to eliminate provisions in the current contract which provide the Union with advance notice when an employee is to be terminated, and provide the Union with quarterly copies of the adjusted seniority list used to determine promo-

tions, recalls, vacations, and transfers. The reasons advanced by Respondent during negotiations for the elimination of the termination notice was that it wanted to avoid liability for a possible slander or libel suit for improper dissemination of reasons for discharges. Respondent justified its proposal regarding the seniority list by stating that it could not afford to furnish the list more frequently. The seniority list is three or four pages long since there are only 61 employees in the unit and is adjusted periodically because absenteeism reduces seniority. The Union countered with a proposal to agree to a yearly seniority list if Respondent would not adjust seniority for absenteeism. Respondent rejected this proposal.

6. Seniority

Respondent initially proposed changing the current contract from plantwide seniority to departmental seniority. On May 1 the Union countered with a proposal to agree to departmental seniority if Respondent would pay insurance premiums and provide supplemental unemployment benefits. This proposal was rejected by Respondent. On May 8 Respondent proposed to drop its proposals on departmental seniority if the Union would drop all noneconomic proposals. The Union countered with a proposal that it would drop all noneconomic proposals except those concerning adjustment of seniority, unilateral wage increases, and unilateral hours' reduction. Respondent rejected the Union's proposal. No other counterproposals were made on any subject by Respondent during negotiations.

7. Final offers

On June 15 the parties made their final proposals. Respondent proposed the current agreement with agreed-to modifications and the right to unilaterally change the insurance carrier. On the same date and again on December 16, in writing, the Union proposed: (a) maintenance-of-membership shop plus union shop for all new employees, (b) effective May 1, 1982, the Company may reduce the workweek to 32 hours for a period of 6 weeks in the aggregate each contract year. Extension of the 32-hour week may be made by mutual agreement of the parties, (c) change article 7, section 2 (wages) to read "All employees covered by this agreement shall receive a wage increase of 8 percent effective May 1, 1982," (d) 2-year labor agreement effective May 1, 1981, through April 30, 1983, (e) parties to drop all other open issues, and (f) the Union to drop all charges pending with the National Labor Relations Board.

Analysis and Conclusions

The totality of Respondent's conduct throughout negotiations in my view exhibits a total rejection of the principles of good-faith bargaining. With respect to every important issue, Respondent insisted on the Union relinquishing its statutory rights. In effect Respondent insisted on exclusive control over wages, hours and working conditions. While it could be argued that the Union relinquished these statutory rights in the past, I know of no case which holds that the Union has by its action

given up these rights in perpetuity. Therefore, Respondent's position throughout negotiations with respect to these statutory rights can only be viewed as an attempt to frustrate bargaining and destroy the Union. *Gulf States Cannerys*, 224 NLRB 1566 (1976); *Tomco Communications*, 220 NLRB 636 (1975). Furthermore, Respondent's bargaining position concerning wages and other economic issues was clearly a sham when viewed in light of Respondent's later action of granting a wage increase, notwithstanding the fact that it may have had the right to grant a unilateral wage increase.

Coupled with these major violations, Respondent took untenable positions on many minor issues to frustrate bargaining. Respondent refused to grant the Union a key to its bulletin board. It also proposed to eliminate notification to the Union in discharge cases for the spurious reason that it was concerned over libel or slander suits when, in fact, the contract never provided that the Union be given reasons for terminations. It further proposed to eliminate furnishing quarterly seniority lists for reasons which were patently unwarranted. Furthermore, it insisted on the right to unilaterally change insurance carriers for no apparent reason and made no meaningful counterproposals to anything proposed by the Union throughout negotiations.

Finally, during negotiations Respondent committed numerous violations of the Act. It unilaterally changed employee benefits, disciplined the Union's president, and refused to furnish relevant information. It also sent negotiators to the bargaining table who obviously had no authority to engage in meaningful collective bargaining, dealt directly with employees instead of the Union, and frustrated communications between the Union and the employees. In summary, I am hard-pressed to find any element of good faith in Respondent's total conduct. Accordingly, I find that Respondent's conduct from the beginning of negotiations was calculated to either frustrate negotiations or require the Union to surrender every statutory right. In my opinion and I so find, Respondent's actions in this respect constitute overall bad-faith bargaining in violation of Section 8(a)(1) and (5) of the Act as alleged in complaint paragraphs 11(b)(ii), (iii), and (iv).

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Local 659, Allied Industrial Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees of S-B Manufacturing Co., Ltd., at the Wauwatosa, Wisconsin location, but excluding office employees, professional employees, guards, temporary summer/seasonal employees, foremen, assistant foremen, and other supervisors as defined in the Act as amended, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, Local 659, Allied Industrial Workers of America, AFL-CIO, has been the exclusive representative for purposes of collective bargaining of all the Respondent's employees employed in the unit described above in Conclusion of Law 3.

5. Respondent has violated Section 8(a)(3) and (1) of the Act by disciplining John Tews.

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

(a) Disciplining John Tews.

(b) Unilaterally terminating the benefits of Anna Turtenwald and all other employees.

(c) Failing to furnish relevant information to the Union.

(d) Failing to give its negotiators sufficient authority to engage in meaningful collective bargaining.

(e) Negotiating with its employees instead of the Union over bargainable issues.

(f) Prohibiting communications between the Union and the employees.

(g) Refusing to engage in good-faith bargaining since March 16.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

8. Except as found above, Respondent has not engaged in other unfair labor practices as alleged.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take affirmative action necessary to effectuate the purposes of the Act and to post appropriate notices. I shall further recommend that Respondent be required to expunge from the personnel records of John Tews the final warning which was given to him on June 4 and all references thereto. For the reasons previously discussed, I shall further recommend that Respondent be ordered to reimburse Anna Turtenwald and any other employees, with interest, for losses sustained as a result of Respondent's unilateral termination of her/their health insurance and other benefits and to reinstate her benefits. It is also recommended that Respondent be ordered to bargain in good faith with the Union concerning any decision made by Respondent to change employee benefits and other terms and conditions of employment of employees in the unit set forth above, and the effects of such decision on the employees including the decision to terminate benefits of employees on disability leave resulting from a work-related injury. I shall also recommend that Respondent be ordered to cease and desist from bargaining in bad faith and to take appropriate affirmative action as set forth in the Order to remedy this bad-faith violation.

[Recommended Order omitted from publication.]