

**Associated Machine and International Association of
Machinists and Aerospace Workers, AFL-CIO.
Case 32-CA-5387**

24 July 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 6 February 1984 Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a response to the Respondent's exceptions.

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 conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Associated Machine, Santa Clara, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. This matter was heard on October 18, 1983, at Campbell, California.¹ The case was initiated by a charge filed against Associated Machine (the Respondent) on April 4 by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM). The formal proceeding is based on a complaint issued on May 17 by the Regional Director for Region 32 of the National Labor Relations Board on behalf of the General Counsel of the Board which alleges that the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act, by unilaterally reducing employee wages. On September 26, an amendment to the complaint issued alleging the Respondent made other unilateral changes and withdrew its recognition of the Union in violation of Section

¹ All dates refer to 1983 if no calendar year is specified.

8(a)(1) and (5) of the Act. The Respondent filed an answer to the complaint dated June 2 and an answer to the amendment to the complaint dated October 7, wherein it denied the unlawful conduct alleged.²

On the entire record in this matter, my observation of the witnesses as they testified at the hearing, and my careful consideration of the posthearing briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation with an office and place of business in Santa Clara, California, is engaged in the manufacture and nonretail sale of machined metal parts. During the past 12 months, the Respondent sold and shipped goods or services valued in excess of \$50,000 directly to customers located outside the State of California. On that basis, the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It would effectuate the purposes of the Act for the Board to exercise its jurisdiction to resolve the dispute here.

II. THE LABOR ORGANIZATION INVOLVED

IAM District Lodge No. 93 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.³

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Pleadings

The complaint, as amended, alleges that the Respondent violated Section 8(a)(1) and (5) of the Act by unlawfully: (1) reducing unit employee wages on April 1; (2) dealing directly with unit employees on or about August 8 in connection with implementing its "final offer"; and (3) withdrawing recognition from the Union on or about September 16. The complaint alleges that the changes described in 1 and 2, above, were made unilaterally and at a time when no valid impasse had been reached in negotiations.

The answer, as amended, denies the alleged unfair labor practices, including the specific conduct alleged to be unlawful. In addition, the answer alleges affirmatively that authorized representatives of the Union agreed to the April 1 wage reduction on the condition that any future wage agreement emerging from the negotiations then in progress would be retroactive to April 1. The Respondent also alleges affirmatively that authorized representatives of the Union failed to read or examine the Respondent's bargaining proposals during the period described in the complaint.

² The document filed on October 7 was also an amendment to its original answer dated June 2.

³ The Respondent's answer denied the Union's labor organization status. At the hearing, the Respondent stipulated this issue out of the case. Otherwise, the Union's status is evident from a bargaining history of 27 years.

B. *The Evidence*

1. Events prior to April 1

The Respondent has long operated a job shop in Santa Clara, California, where it is engaged in the manufacture of mechanical parts. The Union has represented the Respondent's production employees (at the time of the hearing there were about 60 of them) since 1956. Over the years, the Respondent and the Union have been parties to several successive collective-bargaining agreements, the most recent agreement being for a term of 3 years ending March 31.

In late January, the Union served the Respondent with a timely notice to open the then existing agreement for the purpose of negotiating changes. Enclosed was a list of changes the Union proposed to negotiate which was somewhat specific as to all items except wages. The Union proposed "[s]ubstantial wage increases for all classifications for each year of agreement."

Arrangements were made by the parties to meet and negotiate on March 16. Prior to that meeting, the Respondent's president Joseph Schiavo wrote a letter dated March 8 to John DeCarli, the Union's business representative who serviced the Respondent's employees, calling attention in general terms to the poor economic conditions and increasing competition. Schiavo closed the letter stating that he wanted to "clarify several items" including specific aspects of the contractual cost-of-living provision.

At the March 16 meeting, Schiavo and DeCarli served as the spokespersons but other executives accompanied Schiavo and some shop employees accompanied DeCarli.⁴ The opening session was typical of the collective-bargaining process; each side articulated desired changes and responded to the arguments for change by the other side. There is no evidence that the parties progressed toward either an agreement or a fixed, immutable position on any subject raised. Arrangements were made for a later meeting and Schiavo agreed to provide the Union by March 22 with a written list of the proposed changes he had orally presented at the meeting. DeCarli sought a written proposal from the Respondent because he plainly had been put on the defensive by Schiavo. DeCarli explained that he found himself arguing in front of shop employees that some of the language changes sought by the Respondent were unnecessary because, in his view, Respondent was already at liberty to take certain actions without the proposed contractual changes. DeCarli thought that his request for a written list of the Respondent's proposals would result in "some of that bullshit [being left] out of there."

⁴ Others who regularly attended bargaining sessions on behalf of the Respondent were Roy Evulich, vice president and production manager, and Gene Knowles, quality assurance manager. Clark Souza, the Union's steward, regularly attended the bargaining sessions and a variety of employees attended as "observers." Additionally, Clinton Miller, the Union's directing business representative since January 1, attended the April 4 session and one or two sessions thereafter. Knowles' primary purpose was to maintain notes for the Respondent throughout the bargaining period. The notes compiled by Knowles were received into evidence as R. Exh. 2, notwithstanding the shortcomings exposed on cross-examination.

DeCarli's expectations were dashed when he received the Respondent's letter dated March 22 containing the specific changes proposed by the Respondent. With one exception, the Respondent's proposals were very specific. The Respondent's proposed changes were keyed to particular contract sections, paragraphs, sentences, and words, and a copy of the last agreement, highlighted with a yellow marker, was enclosed to assist in understanding those portions which would be affected. The only change not articulated in detail was that involving the health plan. With respect to that fringe benefit, the Respondent advised the Union that "[t]he adjustments under this section, are awaiting additional information from our insurance carrier, upon receipt and confirmation, the new plan will be presented at a later date." That was accomplished by March 29 and the Respondent forwarded its written health plan proposal to the Union that day.

The Respondent's proposals were clearly significant in scope. For example, except for one minor seniority provision favorable to the Respondent, it sought the elimination of the entire seniority provision. In addition, the March 22 proposal called for the elimination of one holiday (the day after Thanksgiving) and doubling the length of service necessary to qualify for holiday pay; a reduction in the amount of vacation pay provided; a reduction in the wage base rate; elimination of certain overtime pay; a broad expansion of the types of work nonunit employees could perform; a reduction in the number of cost-of-living adjustments to one per year rather than bi-monthly; and a specific prohibition against the collection of union dues during "normal working hours." By contrast, in its reopening letter, the Union's proposals included two additional holidays, an increase in vacation pay, changes in seniority language to protect employees from layoffs due to subcontracting, increases in the pension provisions, improvements in the sick leave and funeral leave, "substantial wage increases" noted above, and a new provision concerning voluntary plant shutdowns or moves.

After DeCarli reviewed the Respondent's written proposal, he concluded that the services of a Federal mediator would be advisable and so informed Evulich of that fact by telephone. The Respondent was next contacted by a Federal mediator who advised that the first available meeting date on his calendar was April 4. According to Evulich, the Respondent protested the delay. In an apparent effort by the mediator to accommodate the Respondent, a meeting was scheduled in the afternoon of March 29 at Monterey, California, over 75 miles from the plant. However, the Union subsequently requested that this distant meeting be postponed and as a consequence the mediator rescheduled the meeting for April 4. In a letter dated March 29, Schiavo protested to DeCarli concerning the delay in negotiations. In particular, Schiavo noted that the Respondent was willing to meet without a mediator and chastized the Union for canceling even the March 29 meeting arranged with the mediator. The final two paragraphs of Schiavo's letter concluded:

Since it would appear that we will be unable to resolve or meet before our present Agreement concludes and the fact that you have requested a Mediator we must conclude that an impasse has been met. Therefore, as of 1 April 1983, the Company will remain open and continue to employ those who wish to work but not under the conditions of the old Agreement.

As of 1 April 1983, those, who wish to work, must do so under the conditions proposed in our current proposal dated 22 March 1983 and amendment 1 dated 29 March 1983, until a new Agreement is ratified by both Associated Machine and the Union.

Also on March 31, DeCarli wrote to Schiavo advising that the Union had met with its membership to discuss the negotiations and that they had "voted unanimously in favor of extending the present contract beyond the March 31, 1983, deadline and have no intent to have a work stoppage of any kind." Apparently this letter was hand-carried to the Respondent.

Schiavo telephoned the Union's office at approximately 4 p.m. on March 31 and, on learning that DeCarli was absent, he spoke to Clint Miller, DeCarli's superior.⁵ Schiavo claims that he informed Miller of his plan to implement the Respondent's prior wage proposal on April 1 and that Miller agreed that this change was okay as long as Schiavo was willing to make any wage rate agreed on in subsequent negotiations retroactive to April 1. Schiavo said he agreed to do so. Following this conversation, according to Schiavo, a letter to Miller dated March 31 was prepared and Souza was enlisted to hand-carry the letter to the Union's offices. The body of that letter states:

We agree with the local's latest counter proposal with the exception that the employees will be paid the wage rates stated in our proposal of March 22, 1983, and we will continue to negotiate all other aspects of the contract.

Your response will be required prior to 12:00 midnight March 31, 1983.

This constitutes our final offer.

After 6:00 P.M. call Ray Evulich at [telephone number listed].

Miller disputed the Respondent's claim that he agreed to the April 1 implementation of any wage proposal. Instead, Miller testified that he spoke by telephone with Schiavo and Evulich at approximately 4:15 p.m. on March 31 because DeCarli was not available to speak with them when they called the Union's office. Miller acknowledged that they sought his agreement to implement their wage proposal the following day but he refused. Miller explained that he refused this request because of general instructions from the IAM prohibiting wage concession agreements without prior approval and

because he, personally, had never agreed to a wage reduction without the prior approval of the affected employees in the 16-1/2 years he had served as a union business representative.⁶ Moreover, Miller claimed that he had never seen a copy of the Respondent's wage proposal prior to the March 31 telephone conversation. Miller acknowledged that he was apprised of the Respondent's intention to deliver a hand-carried letter to the Union's office that evening but asserted that he left his office before it arrived to attend another meeting. Miller specifically denied the statements attributed to him by the Respondent's agents which indicated that he assented to the implementation of the wage proposal on April 1. There is no evidence that Miller responded to Schiavo's March 31 letter by the midnight deadline or even saw the letter before the morning of April 1.

When employees arrived for work on April 1,⁷ they were provided with a notice containing the new base wage rates and a copy of the Respondent's March 31 letter to Miller. The notice distributed at 7 a.m. reads:

ASSOCIATED MACHINE HAS MADE ITS FINAL OFFER TO THE UNION PENDING FURTHER NEGOTIATIONS. IT IS OUR POSITION, THAT WE HAVE REACHED AN IMPASSE, THEREFORE THE FOLLOWING CONDITIONS WILL PREVAIL.

THE SHOP WILL REMAIN OPEN FOR THOSE EMPLOYEES WHO WISH TO WORK. FOR THOSE WHO CONTINUE TO WORK, MUST DO SO UNDER THE PROVISIONS OF ASSOCIATED MACHINES PROPOSAL TO THE UNION DATED 22 MARCH 1983, WITH THE EXCEPTION THAT THE PRESENT MEDICAL BENEFITS WILL CONTINUE FOR A PERIOD OF THIRTY (30) DAYS.

ATTACHED IS A COPY OF THE PROPOSED WAGE RATES AND THE FINAL OFFER TO THE UNION.

The schedule of wage rates attached noted that the announced base rates did not include the premiums paid by the Respondent. It also specified that the base rates were primarily for new hires, and that the "present rates" for journeymen would remain in effect but there would be an individual review to determine any premium which would be paid above the base rate for classifications below journeymen. Unlike the March 22 proposal, no mention was made of a yearly cost-of-living adjustment.

In the ensuing days between April 1 and April 6, the Respondent undertook to review the wage level of all unit employees. In some instances, the employee wage rate was adjusted downward while, in other instances,

⁵ This call was placed from Attorney Sims' office where Schiavo, Evulich, and Knowles had gone to confer with Sims. The evidence shows that neither Evulich nor Knowles was able to overhear Miller. Sims did not testify.

⁶ Miller further explained that, during his tenure as a business representative, he had specialized in automotive industry negotiations and had never participated in machine shop negotiations, including any negotiations, up to that point with the Respondent.

⁷ The first of the Respondent's two shifts reports for work at 7 a.m. The reporting time of the second shift varies from 3:30 to 5:30 p.m. The Respondent's office staff reports at 8 a.m.

the wage rate was left intact.⁸ By a letter dated April 6, the Respondent furnished the Union with a letter setting forth the new rates for the named employees whose wage rates had been altered. There is no evidence that the Union was apprised of the fact that an individual wage review was in progress.

Evulich testified that, between 8 and 9 a.m. on April 1, he telephoned Miller because he "wanted to confirm the conversation he [Miller] had with Joe Schiavo on March 31." Schiavo, who purportedly entered the conversation toward the end of this call, testified that Evulich called Miller on April 1 because "we had no response." Evulich testified that Miller responded to his question in this conversation as to what he should pay the employees on the following Wednesday by saying: "You pay them whatever you want to." Evulich claims that Miller told him that it would be "illegal for me to confirm anything in writing." Schiavo testified that Miller "reiterated that it was okay whatever we paid the employees, so long as it was retroactive to April 1st." Miller had no recollection of a conversation on April 1.⁹

Following Evulich's call to Miller, Respondent distributed (or posted) another notice, signed by Schiavo and dated April 1, to the unit employees stating:

CONTACT HAS BEEN MADE THIS DATE, WITH MR. CLINT MILLER OF THE UNION AND HE HAS REFUSED TO ACKNOWLEDGE ASSOCIATED MACHINE'S PROPOSAL OF 31 MARCH 1983. [Emphasis added.]

WE ARE THEREFORE INFORMING ALL EMPLOYEES WHO CONTINUE TO WORK, THAT THEY DO SO UNDER THE PROVISIONS OF ASSOCIATED MACHINE'S PROPOSAL OF 31 MARCH 1983, WHICH ARE AS FOLLOWS:

"WE AGREE WITH THE LOCAL'S LATEST COUNTER PROPOSAL WITH THE EXCEPTION THAT THE EMPLOYEES WILL BE PAID THE WAGE RATES STATED IN OUR PROPOSAL OF MARCH 22, 1983, AND WE WILL CONTINUE TO NEGOTIATE ALL OTHER ASPECTS OF THE CONTRACT."

That same day a second letter was forwarded to Miller. Among other statements, the April 1 letter purports to quote Miller as having stated during the March 31 telephone conversation that "Associated Machine could pay those wage rates we deemed proper until negotiations have been completed." The letter then continues:

⁸ An employee's wage rate consisted of the negotiated "base rate" contained in the collective-bargaining agreement plus a "premium" which the Respondent elected to pay the employees over and above the contract base rate. Actual wage reductions occurred following the employee reviews. Some employees were reduced to levels below the March 31 base rate, others were reduced but not below March 31 base rate levels, and yet others (primarily journeymen) were not reduced at all even though the base rate was reduced.

⁹ Miller's testimony that he spoke to both Schiavo and Evulich indicates that he probably confused the March 31 conversation and the April 1 conversation in his mind. Only Schiavo spoke to Miller on March 31 while both Schiavo and Evulich spoke to him on April 1.

Should you not agree to the above statements, we request that you respond in writing.

Based upon our conversation with you and the belief, that we are still at impasse, we will post a notice, notifying all of our employees, that as a condition of further employment with the company, they will be required to work under the requirements of our Proposal of 31 March 1983. [Emphasis added.]

2. Other post-April 1 events

The second bargaining session was held on April 4. Subsequent bargaining sessions were held on April 7 and 15, May 19, June 2 and 17, and August 6 and 7. All the foregoing meetings were presided over by a Federal mediator. According to DeCarli, the negotiators throughout bargaining sessions work from written proposals submitted by the Respondent.¹⁰ DeCarli said that, in the early sessions following the wage reduction, he told the Federal mediator in a separate session that "the Union's arm . . . was tied behind our backs on account of the wage reduction."

There is evidence that, at the April 15 meeting, DeCarli sought a postponement of the bargaining until the NLRB charge (filed April 4) was resolved. On April 21, Schiavo addressed a letter to the mediator explaining the basis for the Respondent's April 1 wage action. It states in pertinent part:

By reason of this letter, we are informing you that we have been in consultation with our Attorney regarding the changing of Labor Rates on 1 April 1983. As you are aware, it was this action that prompted the Union to file an Unfair Labor Practice charge against Associated Machine.

Our Legal Consul [sic] has informed us, that the steps we have taken in instituting the aforementioned change or the change itself, in his opinion has not violated any statutes, rules nor has it negated any agreement in his opinion that would cause an unfavorable ruling by the N.L.R.B.

Therefore, based upon his opinion, Associated Machine will take the position that the change instituted was not a unilateral one, based upon a telephone conversation with Mr. Clint Miller, the Union representative, on 31 March 1983 [confirmed by letter the same date to Miller] that the change would go into effect as of 1 April 1983. Mr. Miller stated, "We could pay any wage rate we wished to but would we be willing to make any change negotiated retroactive to 1 April 1983," and our response was yes.

Therefore these new rates will remain in effect and should the Union wish to proceed with the Unfair Labor Practice charge against us, we would still be willing to meet and continue negotiations until the matter is resolved by the Board.

¹⁰ There is no dispute about this point. Respondent's claim that the Union did not read its proposals is rejected even though DeCarli may have at some point made a passing remark to that effect.

Respondent's witnesses claim that Miller neither admitted nor denied he consented to the April wage reductions when the issue was raised in bargaining sessions. Instead, they say he only laughed.

Following the June 2 meeting, DeCarli held a meeting with the unit employees and, according to DeCarli, the sense of shop employees was that there was no purpose in continuing to negotiate until the NLRB charges were resolved. Although there is some indication that DeCarli was inclined to accede to that desire, Miller apparently overrode any such action. Nevertheless, at the bargaining session held on June 17, DeCarli reported this sentiment.¹¹ Schiavo threatened to report to the employees that the Union did not want to meet further but the mediator refused to discontinue negotiations completely absent an agreement from both sides to do so. The Respondent's letters of May 25 and July 29 also allude to the fact that DeCarli had sought to defer negotiations until the unfair labor practice charge concerning the wage reduction was resolved. Likewise, Knowles' summary of the August 6 meeting alludes to a statement made by DeCarli that his membership did not want to proceed with negotiations until after the unfair labor practice hearing. There is agreement that the negotiations from April forward related to nonwage matters.

Although the Respondent submitted new proposals to the Union on May 25 and July 29 and the Union submitted a proposal of its own on August 7, it is clear that the parties to these negotiations made little progress toward resolving their differences. Instead, there is evidence that the Respondent was hardening its resolve toward the Union.¹²

Schiavo described the circumstances surrounding the proposal submitted under the cover of the Respondent's July 29 letter. Immediately prior to its preparation, the mediator telephoned Schiavo to cancel the meeting scheduled for August 1 "because we hadn't accomplished anything in the last three or four meetings, and we were just jacking around both sides." The mediator told Schiavo: "If you have a new proposal, why don't you just mail it in." The July 29 proposal was in response to the mediator's suggestion. The cover letter accompanying the proposal noted that the August 1 meeting had been canceled and it continued by accusing the Union of dilatory tactics. Next, the letter described the enclosed proposal as the Respondent's "last and final offer to the Union." Finally, the Union was advised in the letter that the "contract will be implemented on 8 August 1983" and that "[a]ll employees electing to come

to work on or after that date will be employed under the terms and conditions of the enclosed proposal."

Thereafter, a bargaining session was held on August 6. During this session the Union advised the Respondent that it desired to tender a proposal the next day. A brief meeting was held the following day. During that meeting, Schiavo informed the Union that it was willing to meet but there was nothing further to negotiate.¹³ Although it appears that the Union distributed its proposal, Schiavo brushed it aside saying that he would have his counsel review it. No plans were made for a further meeting before adjourning.

When employees reported for work on August 8, Schiavo distributed to each of them a notice which stated that the Union had been notified that the Respondent intended to implement its final offer on August 8. The notice continues:

A MEETING WAS HELD 6 AUGUST 1983 WITH THE UNION AND THE COMPANIES [sic] POSITION REMAINS THE SAME.

THOSE EMPLOYEES WHO WISH TO CONTINUE TO WORK, MUST DO SO UNDER THE CONDITIONS OF THE COMPANIES [sic] LAST OFFER. ATTACHED FOR YOUR REVIEW, IS A COPY OF THE AFOREMENTIONED OFFER, SPELLING OUT THOSE CONDITIONS.

THE COMPANY IS SORRY THE RELATIONSHIP HAS DETERIORATED TO THIS POINT, BUT WE BELIEVE THAT WE CANNOT CONTINUE TO OPERATE UNDER THE OLD CONTRACT, THUS WE ARE IMPLEMENTING THIS OFFER AS OF THIS DATE.

On August 18, DeCarli wrote to the mediator requesting further negotiations. Evulich acknowledged that he was contacted by a mediator for another session but he refused, informing the mediator there was no point in further meetings as the Respondent had implemented its final offer. No further bargaining sessions were conducted before the hearing in this case.

Evulich distributed a notice to employees on August 25, reiterating the fact that employees were provided with a copy of the new terms of employment on August 8 and noting that it was apparent that they had been "found acceptable" because employees had continued to work thereafter. The third paragraph of the notice, signed by Evulich, states:

WE MUST AGAIN STATE, THAT THERE WILL BE NO FURTHER NEGOTIATIONS WITH ANY OUTSIDE GROUP. THAT THE TERMS AND CONDITIONS SPELLED OUT TO THE EMPLOYEES ON AUGUST 8 1983 ARE AND WILL CONTINUE TO BE THE CONDITIONS FOR EMPLOYMENT AT ASSOCIATED MACHINE HEREAFTER.

¹¹ DeCarli was uncertain in his testimony as to when this occurred. The finding here as to the timing of this event is based on Knowles' summary.

¹² This conclusion is grounded on the fact that by the time the Respondent made its July 29 proposal, it deleted the union-security provision in the old agreement requiring employees hired after the date of a new agreement to become members of the Union on completing the statutory 30-day period. In Knowles' summary for July 28 the purpose of this change is identified as being "to allow non-union help." However, Schiavo's testimony that the Respondent also altered its proposal on July 29 concerning the work jurisdiction provision of the old agreement "to provide the company with more leeway as to who could do certain" work appears to be simply incorrect if the reference is to the second paragraph of sec. 2 of the old agreement (Jt. Exh. 16). The Respondent's March 22 proposal (Jt. Exh. 4) requested that change.

¹³ Knowles' notes reflect that Schiavo made a similar statement at the conclusion of the August 6 meeting.

On September 16, a further notice was issued by the Respondent to its employees. That notice, signed by Schiavo, reads:

THERE CONTINUES TO BE A GREAT DEAL OF CONFUSION AS TO ANY RELATIONSHIP THAT MIGHT OR MIGHT NOT EXIST BETWEEN IAM LODGE #504 AND ASSOCIATED MACHINE.

TO REMOVE ANY MIS-CONCEPTION [sic], WE ARE REISSUING THE CONDITIONS FOR EMPLOYMENT WITH THE COMPANY. IT SHOULD BE NOTED, THAT THESE CONDITIONS HAVE BEEN REVISED TO REMOVE ALL REFERENCES TO THE UNION. OTHER THAN THAT, THEY REMAIN BASICALLY THE SAME AS THE TERMS AND CONDITIONS OF EMPLOYMENT GIVEN TO YOU ON 8 AUGUST 1983.

WE REPEAT, ASSOCIATED MACHINE DOES NOT HAVE A LABOR AGREEMENT WITH ANY SOURCE OUTSIDE OF THE COMPANY. THE ONLY AGREEMENT IS THE ONE BETWEEN THE EMPLOYEES AND THE COMPANY.

DeCarli testified that over the years he has been permitted to visit the shop approximately once a month for brief visits with employees for the purpose of servicing the unit. DeCarli said these visits would usually involve spending 2 or 3 minutes with four or five employees and that he made it a point to speak with different employees on each visit. DeCarli testified that, in September, he went to the shop for this purpose and was requested to wait in the outer reception area.¹⁴ Soon thereafter, Schiavo and Evulich approached DeCarli and told him that he could not enter the premises because there was "no Union out in that shop."

C. Contentions

Contrary to the Respondent, the General Counsel argues that the unilateral wage reduction implemented on April 1 was unlawful as there was no agreement with the employees' exclusive bargaining representative to implement the reductions or an impasse in bargaining which would permit the Respondent to act unilaterally. Anticipating that the Respondent would argue that Miller had agreed to the wage reduction during the March 31 telephone conversation because the Union failed to disavow such an agreement, the General Counsel contends that such inaction is without meaning where, as here, the Union filed an unfair labor practice charge on the first working day after the April 1 wage decrease was implemented and thereafter prosecuted that charge. In addition, the General Counsel believes that the Respondent's March 31 and April 1 letters to the Union, its April 1 notice to employees, and the general circumstances belie any notion that there was an agree-

¹⁴ Knowles' notes place the date and time of this visit as September 20, 9:45 a.m.

ment to implement the March 22 wage proposal. In the General Counsel's view, it is inconsistent for the Respondent to now claim that there was an agreement to implement its March 22 wage proposal on the ground that there was an agreement with Miller when many of its own documents on March 31 and April 1 attempt to justify this action on the ground that there was a bargaining impasse.

The General Counsel also argues that the Respondent's implementation of its July 29 proposal was unlawful because it was made in absence of "a good faith bargaining impasse and through efforts made only in bad faith." Continuing, the General Counsel asserts:

Respondent's initial attack of all but one section of the contract, its unlawful declaration of impasse and wage reduction, the fact that on key issues of health plan, wages and holidays, it made no movement from its March 22, to its July 29 proposals, and the fact that its last proposal sought the elimination of the union security clause, as well as curtailment of Union jurisdiction, all established that Respondent hoped to convey a bargaining demeanor that was adamant and inflexible.

Relying on *Leigh Lumber Co.*, 230 NLRB 1122 (1977), and *Cartwright Hardware Co.*, 229 NLRB 781 (1977), the General Counsel argues that the Respondent unlawfully withdrew recognition of the Union as its employees' exclusive representative following the last bargaining session and engaged in unlawful direct dealing with its employees by distributing its notices of August 8 and 25.

The Respondent contends that its implementation of the April 1 wage proposal was justified because Miller agreed that it could be implemented so long as any negotiated wage rate was made retroactive to April 1, a condition which Schiavo purportedly agreed to in the course of his March 31 telephone conversation with Miller. In its posthearing brief, the Respondent makes no contention that the implementation of the March 22 wage proposal was grounded in any manner on a bargaining impasse. However, the Respondent does argue that the implementation of its July 29 proposal on August 8 was occasioned by a bargaining impasse which occurred after several sessions before a Federal mediator. In support of this argument, the Respondent relies, in part, on the testimony by Schiavo that by August the negotiations were "going nowhere," by Evulich that negotiations had "deteriorated" after the Union filed its charges in this case, by Knowles that the negotiations were "worthless," and by Miller that negotiations were "stalled." The Respondent did not address the General Counsel's withdrawal-of-recognition allegation.

With respect to any potential backpay remedy, the Respondent argues that you "can't rob Peter to pay Paul." In this regard, the Respondent calls attention to the fact that the Respondent is owned in substantial part by an employee stock ownership plan (ESOP) and that any backpay remedy here would merely reduce the dividends payable to the employees' share in that plan.

The Respondent also asserts that this proceeding has been orchestrated by the Union rather than its own em-

ployees. The Respondent notes that, throughout the bargaining process, none of its employees filed any unfair labor practice charges or any grievances. Similarly, the Respondent observes that its employees voted not to strike the Respondent and had engaged in no work stoppages or slowdowns. Finally, the Respondent points out that as to its journeyman employees they have simply suffered no wage loss.

D. Additional Findings and Conclusions

I find that there is no credible evidence of an agreement between Miller and Schiavo, or any other of the Respondent's representatives, justifying the Respondent's unilateral implementation of its proposed base wage rates on April 1 and its subsequent reduction of the wage rates of specific employees pursuant to the review conducted between April 1 and April 6. Miller's denial that there was any such agreement is clearly the more credible and reliable version of the circumstances involved. Thus:

1. In his March 29 letter protesting the delay in scheduling the second session, Schiavo disclosed a predisposition to declare a premature impasse in an attempt to justify the unilateral implementation of the Respondent's March 22 proposal. Schiavo's claim of impasse at this early date, simply because the parties were unable to arrange a second meeting before the contract expired and because the Union had sought the services of a Federal mediator, is so clearly meritless that any serious consideration of a claimed impasse by April 1 risks according such a claim undeserved legitimacy.¹⁵ This letter exposes Respondent to the inference which I have made that it was seeking an excuse to claim there was a stalemate justifying unilateral action.

2. Schiavo's March 31 letter to Miller—written within an hour after his telephone conversation with Miller that day—makes absolutely no reference to any claimed agreement. Instead, that letter is couched in terms of a counteroffer to the Union's letter of the same date advising the Respondent that the employees had voted to extend the old agreement and had no intention of engaging in a work stoppage. Indeed, Schiavo's letter even set a midnight deadline for a response and threatens that "[t]his constitutes our final offer." The content and tenor of this letter are simply incompatible with Schiavo's subsequent self-serving claim that there was an agreement with Miller to institute the March 22 wage proposal. It is also noted that Schiavo's March 31 letter makes no reference to the important condition purportedly attached by

Miller that any subsequent wage agreement negotiated be made retroactive to April 1. To the contrary, Schiavo's language that "we will continue to negotiate *all other* aspects of the contract" (emphasis added) is susceptible to an interpretation that the Respondent was foreclosing further negotiation of wages.¹⁶ It is highly probable that Schiavo (a successful businessman of over 30 years), the two executives who accompanied him while he telephoned Miller, and the Respondent's attorney could have, collectively, prepared a letter that day which more clearly specified the terms of any purported March 31 agreement Schiavo described from the witness chair. The fact that they did not do so, until 21 days later in the letter to the Federal mediator, strongly supports the conclusion that there was no agreement made with Miller on March 31.

3. The notice distributed to employees at 7 a.m., April 1, likewise contains no reference to a purported agreement with Miller the previous day. Rather, the contents of this notice of the Respondent's unilateral action is consistent with its March 29 and 31 letters in that it asserts that the basis for Respondent's unilateral action (described as a "final offer pending further negotiations") was the claimed impasse which had been reached. It is impossible to believe that the Respondent would have announced to its employees as it did in this notice that its unilateral action resulted from an impasse if, in fact, there had been an agreement with Miller. Moreover, this notice announces the implementation of the Respondent's complete March 22 proposal—not just the wage rates. Even Schiavo never indicated that there was such a broad agreement with Miller. As this notice was issued immediately on April 1—even before the office staff arrived—it is fair to infer that the Respondent was poised and prepared to take action of some sort on April 1 regardless of the Union's position.

4. The second notice to the employees posted or distributed on April 1 which announced that Miller had been contacted that date and had "refused to acknowledge [Respondent's] proposal of 31 March 1983" is in further writing inconsistent with Schiavo's claim of an agreement. The choice of the words "refused to acknowledge" is inherently incompatible with any purported agreement. It is also worthy to note that this April 1 notice actually describes the document dispatched to the Union on the evening of March 31 as a "proposal" rather than a confirmation of some oral understanding—a fact which I believe to be self-evident.

5. Respondent treated the foregoing documentation as though it did not exist, making no attempt whatsoever to explain or clarify the apparent inconsistencies between it and its claim that there was an agreement with Miller.

6. Evulich's version of his April 1 telephone conversation with Miller only produced further ambiguity and inconsistencies. In that conversation, Miller purportedly

¹⁵ The existence of an impasse is a fact question. The Board summarized the meaning of a bargaining impasse in *Hi-Way Billboards*, 206 NLRB 22, 23 (1973) enf. denied on other grounds 500 F.2d 181 (5th Cir. 1974):

A genuine impasse in negotiations is synonymous with a deadlock: the parties have discussed a subject or subjects in good faith and, despite their best efforts to achieve agreement with respect to such, neither party is willing to move from its respective position. When such a deadlock is reached between the parties, the duty to bargain about the subject matter of the impasse merely becomes dormant until changed circumstances indicate that an agreement may be possible.

See also *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enf. 395 F.2d 622 (D.C. Cir. 1968). Where, as here, bargaining had proceeded through only a single exploratory session, it is evident no impasse—as defined above—existed. *Servis Equipment Co.*, 198 NLRB 266 (1972).

¹⁶ Although the record shows that there were, in fact, no further wage negotiations after April 1, it appears that the Respondent was never tested on this point because the Union preferred that the wage issue be resolved by the Board and the mediator preferred to deal with nonwage matters as a means of progressing toward an agreement since the wage issue was obviously quite volatile after April 1.

told Evulich that he could pay employees on the approaching Wednesday payday whatever he wanted to, in essence, a blank check to disregard the existing rates. Miller's denial, the length of Miller's experience as a business representative, the fact that Miller had not participated in the March 16 session, and the highly unusual nature of such an authorization persuade me that such a remark—if it were made at all—was made out of extreme frustration at the Respondent's impatience to implement a wage reduction before the completion of the bargaining process and not in a tone intended to convey acquiescence to unspecified wage reductions. Additionally, Evulich's claim that Miller authorized him to pay whatever he wanted is but another variant of the purported agreement. The various descriptions of the terms of the purported agreement described by the Respondent's representatives tend to strongly support the conclusion that there was no agreement at all. And Evulich's claim that Miller stated in the course of the April 1 conversation that it would be against the law for him to confirm the agreement in writing can only be deemed to be a self-serving gloss. Miller's claim that he told the callers from the Respondent that it was "agin the law" for him to agree to a wage concession because of the IAM's national policy of not making such concessions without prior approval is deemed to be a vastly more probable explanation of that remark than Evulich's assertion that Miller was refusing to memorialize a purported agreement because of some unspecified legal impediment.

7. The Respondent's April 1 letter to Miller again reiterates that Miller "would not accept Associated Machines Proposal [sic] dated as of 31 March 1983" and that "he refused [sic] to acknowledge in writing [sic] a response to this proposal, which we believe, would allow our employees to know the circumstances under which they would continue to be employed." Even though the April 1 letter claims in the next paragraph that Miller had stated in the April 1 telephone conversation that the Respondent "could pay those wages we deemed proper until negotiations have been completed," the Respondent still chose not to assert that Miller had conceded the Respondent's right to implement a new wage scheme. Instead, the Respondent claimed that "we are still at impasse" and for this reason it intended to post a notice saying, in effect, that it was implementing its March 22 wage proposal. The Respondent's continued assertion in its written documents that there was an impasse justifying its unilateral action as opposed to a bilateral agreement authorizing the important change it made on April 1 strongly belies the veracity of its claim of an agreement.

In my judgment, the foregoing adequately demonstrates that, throughout the period immediately before and after the Respondent's action concerning wages on April 1, it advanced the sham claim that negotiations were at an impasse, and that subsequently it substituted in place of this meritless assertion an equally unsupported claim that Miller had agreed to its April 1 action. It is my conclusion in the face of Miller's credible denial of an agreement and the overwhelming weight of the Respondent's documentary evidence that the claimed agreement with Miller is nothing other than a deliberate fabri-

cation and falsehood designed to mask the unlawful action the Respondent had decided to undertake when the old agreement expired, regardless of the Union's position.¹⁷ Accordingly, I find that the Respondent had no lawful justification for unilaterally reducing employee wages in the first week of April and that it violated Section 8(a)(1) and (5) of the Act by doing so. *NLRB v. Katz*, 369 U.S. 736 (1962); *Dust-Tex Service*, 214 NLRB 398 (1974).

The evidence also preponderates strongly in favor of the General Counsel's allegation that the Respondent's unilateral action on August 8 was unlawful.¹⁸ A bargaining impasse sufficient to justify unilateral employer action to alter the terms and conditions of employment in accord with proposals previously rejected or not accepted by the employee bargaining representative must occur in a context free of any indication that the impasse is the product of unlawful employer conduct. *NLRB v. Pacific Grinding Wheel Co.*, 572 F.2d 1343 (9th Cir. 1978); *NLRB v. Herman Sausage Co.*, 275 F.2d 229 (5th Cir. 1960); *United Contractors*, 244 NLRB 72 (1979); *Wayne's Dairy*, 223 NLRB 260 (1976); *Palomar Corp.*, 192 NLRB 592 (1971); *Taft Broadcasting*, supra at fn. 15. And see *NLRB v. Crompton-Highland Mills*, 337 U.S. 217 (1949).

By its very nature, it is likely that the Respondent's unlawful wage reduction in early April would so poison the bargaining atmosphere as to preclude any good-faith impasse especially where, as here, the Respondent steadfastly refused to rescind that action pending further negotiations. The wage issue here was particularly significant in view of the Union's general proposal for significant yearly increases in any new agreement and the Respondent's counterdemand for a wage reduction. Any effort by the Union to dissuade the Respondent from its position, or at least minimize its impact through the bargaining process, vanished when the Respondent seized the initiative after a single bargaining session by implementing its April wage reduction unilaterally. Even assuming that the Respondent's wage reduction position was necessitated by competitive industry conditions as it claimed, its precipitous April wage reduction precluded the Union from exploring the legitimacy of those claims and educating unit employees of any possible need to make concessions for survival if it was convinced that the Respondent needed relief. Likewise, the Union was deprived of any opportunity to spread any necessary economic relief over a broader segment of the unit employees. Hence, when the Union returned to the bargain-

¹⁷ This conclusion also accords with the unconvincing demeanor of the Respondent's witnesses while testifying. Evulich and Knowles in particular impressed me as subordinates who were overzealous in their efforts to corroborate their superior's claim that there was an agreement struck on March 31. Knowles' efforts in particular failed to withstand cross-examination. At one point he became so confused that he was reduced to mumbling to himself in an effort to sort out the obvious inconsistencies in his testimony.

¹⁸ This complaint allegation also is cast in terms of "direct dealing" with unit employees. There is no evidence that the Respondent dealt with employees in any fashion other than notifying them of the unilateral changes it intended to implement at the time such action was taken. For that reason, the analysis here treats this allegation solely from the perspective of a unilateral change.

ing table on April 4, its representative status was badly impaired.

The evidence shows that the sudden wage reduction did undermine subsequent negotiations. DeCarli told the mediator on April 4 that the wage reduction had the effect of tying the Union's hands behind its back. DeCarli's demeanor at the April 4 bargaining session was described by the Respondent's witnesses as that of an angry and hostile person. Evulich said that the April 4 session marked the beginning of the deterioration of negotiations. There were discussions about suspending negotiations until the Board resolved the April wage reduction issue, a position said to be favored by the affected unit employees. After the April wage reduction, bargaining about the wage issue effectively ceased. Schiavo accused the Union of misreading employee sentiment and DeCarli felt that the Respondent's claim that there had been an agreement struck on March 31 between Schiavo and Miller was a bold-faced lie. The Union immediately filed an unfair labor practice charge.

In these circumstances, it is concluded that the April wage reduction so undermined the bargaining process as to preclude any legitimate claim that an impasse subsequently occurred. Accordingly, I find that there was no true bargaining stalemate by August 8 and that the Respondent's further unilateral action on August 8 was also unlawful as the complaint alleges.

As noted, the Respondent offered no argument or justification concerning the General Counsel's allegation that the Respondent unlawfully withdrew recognition of the Union on or about September 16. Even assuming that there was a bargaining impasse on August 8, the Respondent was not at liberty to withdraw recognition of the Union. *Newspaper Printing Corp. v. NLRB*, 625 F.2d 956 (10th Cir. 1980). *International Medication Systems*, 253 NLRB 863 fn. 2 (1980). Following the expiration of a collective-bargaining agreement, such as happened here, there is a rebuttable presumption that the labor organization which was party to the expired agreement continues to enjoy the support of a majority of the unit employees. *Cartwright Hardware Co.*, supra, and the cases cited therein at fn. 3.

The Respondent offered no evidence to rebut the Union's presumed majority standing and there are no objective considerations claimed which would warrant any doubt of the Union's majority status especially in view of the Respondent's other unlawful conduct. *Lehigh Lumber Co.*, supra. As the Respondent amended its terms and conditions of employment for the unit employees on September 16 to delete references to the Union and thereafter refused DeCarli access to the plant to service unit employees as he had been permitted to do for a number of years on the ground that there was no union in the shop, I find the evidence sufficient to establish that the Respondent effectively withdrew recognition of the Union at that time. In the absence of any lawful justification for doing so, it is concluded that the Respondent thereby violated Section 8(a)(1) and (5) of the Act, as alleged.

The Respondent's other arguments lack merit. Entirely aside from the fact that the Board's Rules and Regulations permit the filing of a charge by any person, the fact

that the Union pursued the instant charge should not be surprising where, as here, it has functioned for 27 years as the employee representative. Similarly, the argument that the remedy here will be akin to robbing "Peter to pay Paul" is not entirely accurate. Rather, the remedy will reduce or eliminate the windfall to *all* participants in the stock ownership plan which resulted from the Respondent's unlawful conduct directed at some of the participants in that plan. Such a result should not be unexpected.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist therefrom. As the Respondent's unfair labor practices were deliberate, serious, and grounded on false claims which have had the effect of totally disrupting the bargaining process and depriving employees of fundamental rights guaranteed by the Act, I find the Respondent's conduct to be "egregious" within the meaning of *Hickmott Foods*, 242 NLRB 1357 (1979). Accordingly, it is recommended that the Respondent be ordered to cease and desist from any other interference with employee rights.

The General Counsel seeks no extraordinary affirmative remedy. Accordingly, it is recommended that the Respondent be ordered to rescind all unlawful changes instituted in April, on August 8, and on September 16, and restore the wages and all other terms of employment to those existing on March 31. It is also recommended that the Respondent be ordered to make its employees whole for any losses they incurred as a result of the aforementioned unilateral changes. Backpay, if any, shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest shall be added to said amount in accord with *Olympic Medical Corp.*, 250 NLRB 146 (1980), and *Florida Steel Corp.*, 231 NLRB 651 (1977). And see generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). Any trust fund reimbursements shall be in accord with *Merryweather Optical Co.*, 240 NLRB 1213 (1979). It is further recommended that the Respondent be ordered to recognize and bargain, on request, with the Union as the exclusive representative of its employees in the appropriate historical unit. In order to fully apprise employees of their rights under the Act and the Respondent's obligations to remedy its unfair labor practices, it is recommended that the Respondent be ordered to post the attached notice to employees for 60 consecutive days.

CONCLUSIONS OF LAW

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

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

3. At all material times, the Union has been the exclusive representative of the Respondent's employees within the meaning of Section 9(a) of the Act in the following appropriate unit:

All full-time and regular part-time production employees, including journeyman and apprentice machinists and tool and die makers, specialists, production inspection employees, production workers, hand deburring employees, janitors and leadermen, employed by Respondent at its Santa Clara, California, facility; excluding office clerical employees, draftsmen, foundry employees, pattern shop employees, professional employees, research employees, laboratory employees, time study employees, timekeepers, watchmen, mail employees, office janitors, blue print operators, engineers (including design, sales, mechanical, progress and industrial engineers), employees covered by collective bargaining agreements between the Employer and labor organizations other than District Lodge No. 93, guards, and supervisors as defined in the Act.

4. By unilaterally altering the wages, hours, and other terms and conditions of employment of its employees in the appropriate unit in early April, on August 8, and on September 16, and by withdrawing recognition of the Union as the exclusive representative of its employees in said unit, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

5. The unfair labor practices specified in paragraph 4, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I make the following recommended¹⁹

ORDER

The Respondent, Associated Machine, Santa Clara, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to recognize and bargain collectively, on request, with International Association of Machinists and Aerospace Workers, AFL-CIO concerning the wages, hours, and other terms and conditions of employment for employees in the following appropriate unit:

All full-time and regular part-time production employees, including journeyman and apprentice machinists and tool and die makers, specialists, production inspection employees, production workers, hand deburring employees, janitors and leadermen, employed by Respondent at its Santa Clara, California, facility; excluding office clerical employees, draftsmen, foundry employees, pattern shop employees, professional employees, research employees, laboratory employees, time study employees, timekeepers, watchmen, mail employees, office janitors, blue print operators, engineers (including design, sales, mechanical, progress and industrial engineers), employees covered by collective bargaining agreements between the Employer and labor organizations other than District Lodge No. 93, guards, and supervisors as defined in the Act.

(b) Unilaterally changing the wages, hours, and other terms and conditions of employment of the employees in the aforesaid unit without notifying and bargaining with International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 93.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the purposes of the Act.

(a) Reinstate the wages, hours, and all other terms and conditions of employment which existed when its collective-bargaining agreement with International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 93, expired on March 31, 1983.

(b) Make restitution to employees in the appropriate unit for any losses they incurred by virtue of the unilateral implementation of wages, hours, and other terms and conditions of employment different from those contained in the agreement which expired on March 31, 1983, together with interest, in the manner specified in the section of this decision entitled "The Remedy."

(c) Recognize and, on request, bargain collectively with International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 93, as the exclusive bargaining representative of its employees in the appropriate unit described above concerning their wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(d) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of wages and benefits accruing to employees under this Order, and to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Santa Clara, California, copies of the attached notice marked "Appendix."²⁰ Copies of

¹⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²⁰ 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 Na-
Continued

the notice, on forms provided by the Regional Director for Region 32, 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.

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

ational 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 Act gives employees the right to organize themselves, to join or assist unions, to engage in collective bargaining with their employer through representatives freely chosen by a majority of employees in an appropriate bargaining unit, to engage in other group activities for their mutual aid and protection on the job, and to refrain from any or all of the above activities.

WE WILL NOT refuse to recognize and bargain collectively, on request, with IAM District Lodge No. 93, as the exclusive bargaining representative of:

All full-time and regular part-time production employees, including journeyman and apprentice machinists and tool and die makers, specialists, production inspection employees, production workers,

hand deburring employees, janitors and leadermen, employed by Respondent at its Santa Clara, California, facility; excluding office clerical employees, draftmen, foundry employees, pattern shop employees, professional employees, research employees, laboratory employees, time study employees, timekeepers, watchmen, mail employees, office janitors, blue print operators, engineers (including design, sales, mechanical, progress and industrial engineers), employees covered by collective bargaining agreements between the employer and labor organizations other than District Lodge No. 93, guards, and supervisors as defined in the Act.

WE WILL NOT unilaterally change your wages, hours, or other terms and conditions of employment without giving notice to IAM District Lodge No. 93, and providing it with the opportunity to bargain concerning any such changes.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the National Labor Relations Act.

WE WILL reinstate all wages, hours, and other terms and conditions of employment contained in our labor agreement with IAM District Lodge No. 93, which expired on March 31, 1983, until such time as a new agreement is negotiated or all parties have fully complied with their obligations under the law.

WE WILL make restitution, with interest, to the employees in the above unit for any wages and benefits which may have been lost by virtue of any unilateral changes in the terms and working conditions of employment which we made, as is required by the remedy ordered by the National Labor Relations Board.

WE WILL give notice to and bargain with IAM District Lodge No. 93 before implementing any future changes in the wages, hours, and working conditions of the unit employees.

ASSOCIATED MACHINE