

**Pennsylvania Truck Lines, Inc. and Teamsters National Freight Industry Negotiating Committee (TNFINC).** Case 5-CA-20154

December 10, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND DEVANEY

On May 18, 1990, Administrative Law Judge Claude R. Wolfe issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed a reply brief, and the Charging Party filed a brief in opposition 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,<sup>1</sup> 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, Pennsylvania Truck Lines, Inc., Wynnewood, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice shall be substituted for that of the administrative law judge.

<sup>1</sup>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.

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 refuse to accept, give effect to, and implement the terms and conditions of the collective-bargaining agreement negotiated between Motor Carrier Labor Advisory Council and Teamsters National Freight Industry Negotiating Committee effective April 1, 1988, through March 31, 1991.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of

the rights guaranteed to them by the National Labor Relations Act.

WE WILL forthwith accept, give effect to, and implement the terms of the 1988-1991 collective-bargaining agreement referred to above.

WE WILL make whole our employees covered by said agreement for any loss of pay or other employment benefits they may have suffered by reason of our refusal to accept, give effect to, and implement the aforesaid collective-bargaining agreement.

PENNSYLVANIA TRUCK LINES, INC.

*Marc Stefan, Esq.*, for the General Counsel.

*Peter D. Walther, Esq.* and *Linda Doyle, Esq.*, for Pennsylvania Truck Lines.

*James A. McCall, Esq.*, for Teamsters National Freight Industry.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge. This proceeding was litigated before me at Washington, D.C. on December 19 and 20, 1989, and January 3 and 4, 1990, pursuant to complaint issued on April 27, 1989, alleging Pennsylvania Truck Lines, Inc. (PTL or Respondent), has violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to abide by and adhere to a collective-bargaining agreement negotiated between the Charging Party (TNFINC) and Motor Carrier Labor Advisory Council (MCLAC), and which is binding on PTL. Respondent denies the commission of unfair labor practices, and offers affirmative defenses.

After considering the record,<sup>1</sup> the demeanor of the witnesses testifying before me, and the posttrial briefs of the parties, I make the following

FINDINGS OF FACT<sup>2</sup>

I. BUSINESS OF THE RESPONDENT

PTL is a Pennsylvania corporation, with headquarters in Wynnewood, Pennsylvania, engaged in interstate and intrastate transportation of freight and commodities by truck throughout the eastern continental United States, and func-

<sup>1</sup>I have considered the contents of G.C. Exhs. 7 and 22, the testimony of the witnesses relating thereto, and the record statements of all counsel, both at trial and on brief on the subject, and conclude that General Counsel's motion to withdraw from that part of a stipulation regarding G.C. Exh. 7 which indicates items A and B attached thereto are appropriate appendices is well taken. I am persuaded, as General Counsel avers, items A and B were mistakenly attached. Although a party is normally bound by his or her stipulations, the rules of evidence are not designed to be used to obscure the truth, and the evidence before me, including the statements of all counsel at the hearing, clearly demonstrates the stipulation was not in accord with the facts. Accordingly, General Counsel's motion to withdraw from the above-described portion of the stipulation is granted. Cf. *Interstate Material Corp.*, 290 NLRB 362, 364-366 (1988), where the stipulation was not shown to be untrue.

<sup>2</sup>These is little disagreement on the relevant facts. To the extent there is, the findings of fact are based on a composite of credited testimony, exhibits, and considerations of logical consistency and inherent probability. I will not discuss every bit of evidence adduced for the simple reason much of it is irrelevant, surplusage, and lacking in probative worth.

tions as an essential link in the interstate transportation of freight and commodities. During the 12 months preceding the issuance of the complaint, a representative period, Respondent, in the course of these business operations, derived gross revenues in excess of \$50,000 from the interstate transportation of freight and commodities. Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. LABOR ORGANIZATION

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (the Union) and its affiliated local unions are labor organizations within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

MCLAC is an organization of employers engaged in the transportation of freight and commodities by truck, is the bargaining representative of those employers in negotiations with the Union, its affiliated local unions and TNFINC, and represents its employer-members in administering collective-bargaining agreements with the Union and its locals.

TNFINC is the authorized agent of the Union and its locals for the purpose of negotiating the National Master Freight Agreement (NMFA) with MCLAC and other multi-employer association and individual employers.

PTL has been a member of MCLAC since before 1982. Jere Kimmich, PTL's vice president of labor and personnel since 1985 or 1986, has been a member of MCLAC's board of directors since 1983 or 1984, is on its national negotiating committee, served as employer chairman of several subcommittees during the 1988 negotiations between MCLAC and TNFINC, and attended all national committee meetings during those negotiations until June 8, 1988. Kimmich, on behalf of PTL, gave the following letter of authority to MCLAC on January 4, 1985:

### LETTER OF AUTHORITY

The undersigned PENNSYLVANIA TRUCK LINES, INC. ("Company") hereby appoints MOTOR CARRIER LABOR ADVISORY COUNCIL as its official Representative in all matters related to negotiations with the Officers of all Local Unions identified with the International Brotherhood of Teamster's Union and the Teamsters National Freight Industry Negotiating Committee for a new National Master Agreement to replace the National Master Freight Agreement which terminates on March 31, 1985. In this regard, the Company agrees to become part of a multi-employer, multi-local union bargaining unit, but only with other employers represented by MOTOR CARRIER LABOR ADVISORY COUNCIL. However, the Company reserves the [sic] to itself the right to negotiate and approve, either through MOTOR CARRIER LABOR ADVISORY COUNCIL, or otherwise, a separate Rider, Addendum and/or Supplement covering its own special circumstances and operations.

In addition, the Company authorizes said MOTOR CARRIER LABOR ADVISORY COUNCIL to adjust, settle, compromise or submit to arbitration any grievances, demands, disputes or other matters arising out of,

or through, the National Master Agreement and all Riders, Supplements and/or Addendums thereto, including the individually negotiated and approved Rider, Supplement and/or Addendum covering its own special and unique operations.

This authorization shall be in full force and effect from the date of the signing hereof and shall continue there-after [sic] until thirty (30) days after written notice of desire to cancel or terminate the authorization is received at the offices of MOTOR CARRIER LABOR ADVISORY COUNCIL.

COMPANY Pennsylvania Truck Lines, Inc.  
BY Jere R. Kimmich, Sr.  
TITLE Director of Labor Relations

This authorization by PTL is conceded to have remained in effect until Kimmich's letter of December 12, 1988, to MCLAC reading, in relevant part, as follows:

This letter constitutes an official withdrawal of MCLAC's authorization pursuant to the existing Letter of Authority to act on behalf of Pennsylvania Truck Lines, Inc. ("PTL") in all bargaining agreement negotiations, whether on the National, Regional or Local Levels.

However, the portion of the Letter of Authority that authorizes MCLAC to administrate and represent PTL in the grievance procedure will still remain in full force and effect.

Thereafter, on December 23, 1988, PTL reappointed MCLAC as its representative only for matters related to grievance processing.

The bargaining for a new contract commenced with the exchange of proposals on January 14, 1988.<sup>3</sup> TNFINC and MCLAC agreed at the outset that their negotiations would be separate from those between TNFINC and Trucking Management Incorporated (TMI), another association of employers in the trucking business, which were going on at the same time. TNFINC did in fact conduct separate negotiations with MCLAC and TMI. Kimmich recalls there were 17 national negotiating committee meetings during the MCLAC negotiations, all of which he attended. Agreements reached at subcommittee level were presented to the joint national committee for acceptance or rejection. Kimmich recalls no instance where agreement reached in subcommittee was rejected at the national committee level. There were some agreements reached in subcommittees which he chaired. The various notes, workbooks of the parties, minutes, and testimony establish there was considerable discussion and agreement by the parties on several items, disagreement on others, and withdrawal of proposals by both parties. Many provisions of the expiring contract were adopted without change by agreement. Kimmich testified that although there was discussion of MCLAC proposals, there was no negotiation regarding them. This conclusion stems from Kimmich's view that "[N]egotiations in my mind are when two people or two parties sit down and agree mutually to terms of any contract or any meeting that they are having, that's negotiations, when two people sit down and discuss and come to agreement, that to me is negotiation." This is, happily, what does happen in

<sup>3</sup>All dates are in 1988 unless otherwise stated.

many bargaining relationships, but this description mistakenly equates negotiation with agreement. Negotiation often ends in disagreement. What the Act requires is that the employer and the union "meet at reasonable times and confer in good faith with respect to . . . the negotiation of an agreement or any question thereunder, . . . but require the making of a concession."<sup>4</sup> An examination of the evidence adduced respecting the negotiations persuades me that MCLAC and TNFINC did indeed "meet at reasonable times and confer in good faith" with respect to the proposals before them. There is no probative evidence of bad-faith bargaining on either side, and no one claimed otherwise so far as the record shows, until after the events of June 8 had taken place.

TNFINC and MCLAC met on June 8. TNFINC had reached agreement with TMI, who had accepted TNFINC's "national standard" in the NFMA agreed upon by them. MCLAC had not as yet accepted all the provisions of NFMA, but had agreed to many of its provisions. At the meeting, Jack Yager, the chief spokesman for TNFINC, read a prepared statement. The document read is not in evidence,<sup>5</sup> and Yager did not testify.

As Kimmich recalls, Yager's statement was, in essence, that the Union had a ratified national standard and MCLAC was going to have to accept it. Kimmich added that Yager said MCLAC would get nothing different from the national standards and Yager did make the statement that the Union's goal was to try to negotiate as close to the national standard as it could. Kimmich further testified that Yager said MCLAC would take the national freight standards or the Union would take economic action.

According to Linda Doyle, official secretary for the MCLAC negotiation committee, Yager read a prepared statement to the effect this was the bottom line monetary proposal, and if MCLAC did not accept it the Union would reserve the right to strike. According to Doyle and her contemporaneous notes, Yager said MCLAC must accept the national standards which had been negotiated with TMI and which had been repeatedly presented to MCLAC. In response to a question regarding alternatives, Yager said there were none and, if MCLAC refused to accept the national standards as negotiated with TMI, the Union reserved the right to selectively strike. Yager further advised there was no need for ratification because the standards negotiated with TMI had been ratified in accord with the Teamsters' constitution. Doyle was more impressive than Kimmich as a careful, conscientious witness, not given to unnecessary commentary or evasion, as was Kimmich on occasion, I therefore rely more on her testimony and notes than on Kimmich's testimony. In the long run it makes little difference because the evidence requires a finding that Yager conveyed a threat to strike if MCLAC did not accept the national standards as had TMI.

Kimmich opposed the June 8 proposal by TNFINC, and left the June 8 meeting when it was determined that a majority of MCLAC members would accept it. PTL never thereafter, by Kimmich or otherwise, participated in the remaining negotiations which involved several unresolved provisions. The contract has since been agreed upon and issued in printed form. Kimmich explained his and PTL's absence from ne-

gotiations commencing on June 8 and continuing thereafter as follows: "At that point when the carriers accepted what I considered to be the TMI negotiated contract, our power of attorney, the way it's written, we felt no longer bound us to MCLAC and we left the negotiations." The real reason for PTL's abrupt departure from MCLAC's bargaining team and PTL's position to date, as expressed by Kimmich, that it has not agreed to be bound to what MCLAC accepted is, I conclude, made clear by Kimmich's testimony that the MCLAC agreement put PTL at a competitive disadvantage; and his statement in his pretrial affidavit that PTL would not be able to recoup the increased costs resulting from implementation of the MCLAC/TNFINC agreement. In the final analysis, however, whether PTL's departure from the negotiations on June 8 was due to the economic impact the agreement might have on PTL or because the agreement was consummated under threat of strike is immaterial. In either case, PTL's attempt to divorce itself from MCLAC, absent itself from further negotiations, and refuse to accept the MCLAC/TNFINC agreement as binding on PTL is contrary to established precedent and a nullity of no legal force or effect for the reasons set forth below.

The initial question for resolution is whether Respondent is bound by MCLAC's June 8 acceptance of the agreement proffered by Yager on that date. The relevant portion of Respondent's letter of authority which Respondent concedes was in effect at the time reads as follows:

The undersigned PENNSYLVANIA TRUCK LINES, INC. ("Company") hereby appoints MOTOR CARRIER LABOR ADVISORY COUNCIL as its official Representative in all matters related to negotiations with the Officers of all Local Unions identified with the International Brotherhood of Teamster's Union and the Teamster's National Freight Industry Negotiating Committee for a new National Master Agreement to replace the National Master Freight Agreement which terminates on March 31, 1985. In this regard, the Company agrees to become part of a multi-employer, multi-local union bargaining unit, but only with other employers represented by MOTOR CARRIER LABOR ADVISORY COUNCIL. However, the Company reserves to itself the right to negotiate and approve, either through MOTOR CARRIER LABOR ADVISORY COUNCIL, or otherwise, a separate Rider, Addendum and/or Supplement covering its own special circumstances and operations.

Respondent's extensive argument in its posttrial brief with respect to the limits of MCLAC's authority to bind PTL is probably best summed up in Respondent's own words:

When MCLAC agreed to be bound by the TMI-negotiated agreement, an agreement clearly negotiated with employers outside the MCLAC bargaining unit, this action exceeded Respondent's limited power of attorney. MCLAC capitulation (albeit under duress—illegally imposed) was still done outside the scope of its authority as Respondent's bargaining agent. As a result, MCLAC's actions were not binding on Respondent.

The argument is imaginative and ably made, but unconvincing. It is certainly obvious that a contract between TNFINC and TMI was negotiated with employers belonging

<sup>4</sup> Sec. 8(d) of the Act.

<sup>5</sup> Although proffered by the Union as the text of Yager's remarks, C.P. Exh. 6 was rejected as lacking in foundation.

to TMI, not MCLAC. It is equally clear that MCLAC was only authorized by Respondent to bargain for it as one of the group of employers represented under the MCLAC umbrella. MCLAC was not a party to the TMI/TNFINC negotiations, nor was TMI a party to the MCLAC/TNFINC negotiations. The mere fact that TNFINC wanted MCLAC to agree to the same terms accepted by TMI cannot be logically construed as evidence that Respondent was by accepting the proposal being forced into a multiemployer unit including TMI. When MCLAC agreed to TNFINC's June 8 terms it was merely accepting a proposal, not accepting TMI as an associate or member. Whether or not TMI had earlier accepted the same terms is immaterial. There is no reason whatsoever that a union may not seek the same terms from one employer that it has obtained from another, and there is nothing in Respondent's letter of authority that allows Respondent to rescind that authority if and when MCLAC accepts contractual provisions that have been previously negotiated by TNFINC with another employer or group of employers not members of MCLAC. Moreover, there is no evidence the MCLAC accepted the June 8 proffer of TNFINC which related to the negotiation of the new NMFA in any way negated or otherwise affected Respondent's reserved right to negotiate riders, addendums, etc., peculiar to its own special circumstances, as it previously had done. MCLAC's agreement, or capitulation as Respondent calls it, to the terms proposed by Respondent was not illegally imposed. As I have previously noted, there is nothing in the evidence of the negotiations to support a contention the Union was engaged in a mere exercise, not seriously and thoughtfully considering and discussing proposals and counterproposals, or otherwise indulging itself in bad-faith bargaining. Notwithstanding all the argument pro and con about who did what in negotiations, when all the chaff is blown away it remains true that the only even arguable question of duress arises from what Yager said on June 8 when he presented the TNFINC proposal. He may not have said, in haec verba, the Union would strike if MCLAC did not accept the national standards sought by TNFINC, but he clearly conveyed that message. The right to strike is specifically reserved to employees, and by extension their bargaining agent by Section 13 of the Act providing, "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any the right to strike, or to affect the limitations or qualifications on that right." None of the exceptions set forth in the Act are applicable to the situation before me. It is beyond cavil that a union may engage in a lawful economic strike to secure contract demands, and that an employer may in certain circumstances lock out its employees as a bargaining weapon. If one may lawfully strike to get a contract, one may certainly threaten to strike as a means of securing bargaining goals.

Returning to the threshold issue of whether Respondent is bound by the collective-bargaining agreement negotiated by MCLAC and TNFINC. The law is well established that there must be a manifestation by an employer of an unequivocal intention to be bound.<sup>6</sup> The Board explained in *Custom Colors Contractors*,<sup>7</sup> and subsequently quoted with

approval,<sup>8</sup> its view that it must be kept in mind when evaluating the employer's intention that:

The manifestation of an "unequivocal intention" to be bound requires something less, however, than a solemnly executed document signed and sealed with hot wax. A commitment to bargaining on a multiemployer basis will not be made to depend on the presence of a formal associational structure among the bargaining participants or on the formal delegation of authority from the individual employer to the multiemployer group. Nor will the Board, faced with outward manifestations of intent to engage in group bargaining, consider as controlling an employer's private manifestations of dissent. An employer who, through a course of conduct or otherwise, signifies that it has authorized the group to act in its behalf will be bound by that apparent creation of authority.

Here there is an unambiguous executed letter of authority. There is a failure of Kimmich to in any way protest or take exception at the January 14, 1988, meeting between MCLAC and TNFINC when MCLAC's chairman of negotiations, Steve Bridge, presented TNFINC Representative Yager with a "list of member carriers who have designated MCLAC as their bargaining representative for bargaining purposes" and attached copies of powers of attorney which "grant the MCLAC association authority to bargain on a multi-employer basis for the purpose of concluding an agreement which will be applicable to all members of our unit."<sup>9</sup> Kimmich was present when Bridge made the quoted representations. Thereafter, Kimmich, on behalf of PTL, took an active part in the negotiations as chairman of subcommittees and member of the national committee whose meetings he never missed until after his June 8 departure. PTL, by its Agent Kimmich's letter of authority, failure to contest Bridge's representations to Yager, and leading role in the negotiations, delivered the clear and unequivocal message to both MCLAC and TNFINC that it intended to be bound by agreements reached during these negotiations.<sup>10</sup> Once so committed and bargaining commenced, PTL was not free to drop out at its pleasure merely because it did not like the results of the bargaining. The long-standing rule on withdrawal from a multiemployer relationship was succinctly set forth by the Board in *Retail Associates*,<sup>11</sup> as follows:

We would accordingly refuse to permit the withdrawal of an employer or a union from a duly established multiemployer bargaining unit, except upon adequate written notice given prior to the date set by the contract for modification, or to the agreed-upon date to begin the multiemployer negotiations. Where actual bargaining negotiations based on the existing multiemployer unit have begun, we would not permit, except on mutual consent, an abandonment of the unit upon which each side has committed itself to the other, absent unusual circumstances.

<sup>6</sup> *McAx Sign Co.*, 231 NLRB 957, 958 (1977); *J. D. Candler Roofing Co.*, 258 NLRB 341, 342 (1981).

<sup>9</sup> Compare *Steel Erectors*, 283 NLRB 314 fn. 2, 320, (1987).

<sup>10</sup> A union may rely on an employer's apparent delegation of authority to a multiemployer unit. *Joseph Stern & Sons*, 297 NLRB 1 (1989).

<sup>11</sup> 120 NLRB 388, 395 (1958).

<sup>6</sup> See, e.g., *City Roofing Co.*, 222 NLRB 786, 788 (1976).

<sup>7</sup> 226 NLRB 851, 853 (1976), enfd. 564 F.2d 190 (5th Cir. 1977).

There certainly has been no mutual consent to PTL's withdrawal, and the only possibility open to it as justification therefor would be unusual circumstances. Before turning to the issue of unusual circumstances, it is important to note that Kimmich, i.e., PTL, did not give unequivocal notice on June 8 that PTL was attempting to withdraw from the multi-employer unit, and therefore cannot now claim PTL in fact withdrew on June 8. Such notice was not forthcoming until Kimmich's letter of December 12.<sup>12</sup> By that time MCLAC and TNFINC had negotiated NMFA issues remaining after June 8, had come to full agreement, and executed a collective-bargaining agreement in mid-June. PTL has since refused to accept that agreement as binding on it, but claims it has applied its terms to employees.

The collective-bargaining agreement between MCLAC and TNFINC was executed prior to PTL's December 12 letter withdrawing bargaining authority. This withdrawal effort was untimely and Respondent is therefore prima facie bound to honor the MCLAC/TNFINC agreement. Neither MCLAC nor TNFINC have been shown to have acquiesced in PTL's attempted withdrawal, and Respondent's claim of bad-faith bargaining by TNFINC is without merit. Turning to the question of Yager's June 8 statement, being subject to a strike, standing by itself, is not a basis for concluding an employer is in such difficult economic straits that its very existence as viable business entity has or is about to end,<sup>13</sup> and this is the standard that must be met to justify an untimely withdrawal not acquiesced to.<sup>14</sup> If the strike itself is not enough, the mere threat of strike is not enough. There is no persuasive evidence of any other factor that might give rise to the "unusual circumstances" referred to in *Retail Associates*, supra. All we have here is an attempted severance of a bargaining relationship because PTL did not like the result thereof. For the foregoing reasons, I conclude and find PTL is bound by the multiemployer bargaining for the Master Freight Agreement negotiated by TNFINC and MCLAC and therefore must adhere to and abide by that agreement. Its refusal to so do violates Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union and its affiliated local unions are labor organizations within the meaning of Section 2(5) of the Act.
3. TNFINC is the authorized agent of the Union and its locals for the purpose of negotiating the National Master Freight Agreement with MCLAC and other employers.
4. At all times material, Respondent has been, and is now, an employer member of MCLAC which has been at all times material Respondent's authorized agent for the purpose of negotiating collective-bargaining agreements with the Union, its locals, and TNFINC covering employees of MCLAC's members including Respondent. The Union's affiliated locals represent the aforesaid employees for purposes of collective-bargaining.
5. By its refusal to accept, be bound by, and execute the collective-bargaining agreement concluded between TNFINC

and MCLAC, Respondent has violated Section 8(a)(5) and (1) of the Act, and thereby committed an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

In addition to the usual cease-and-desist and notice posting requirements, Respondent shall be required to adhere to, supplement, and apply the 1988-1991 agreement reached between MCLAC and TNFINC and give it retroactive effect to April 1, 1988, its effective date, make its employees covered by said agreement whole for any loss of earnings suffered since then as a result of its failure to apply the agreement, said backpay to be computed as set forth in *Ogle Protection Service*,<sup>15</sup> with interest as prescribed in *New Horizons for the Retarded*.<sup>16</sup> Respondent shall also be required to make payments, retroactive to April 1, 1988, into the various funds on behalf of those employees in the bargaining unit for whom such contributions would have been made had Respondent not repudiated the agreement. The extent to which Respondent may already have complied with these provisions is a matter to be determined in subsequent compliance proceedings.

On these findings of fact and conclusions of law, and on the entire record in this case, I issue the following recommended<sup>17</sup>

#### ORDER

The Respondent, Pennsylvania Truck Lines, Inc., Wynnewood, Pennsylvania, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to accept, give effect to, and implement the terms and conditions of the collective-bargaining agreement negotiated between MCLAC and TNFINC, effective April 1, 1988 through March 31, 1991.

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

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

(a) Accept, give effect to, and implement the terms and conditions of the 1988-1991 collective-bargaining agreement negotiated between MCLAC and TNFINC, and give it retroactive effect to April 1, 1988, making its employees covered by said agreement whole for any loss of earnings suffered since then as a result of Respondent's failure to apply the agreement.

(b) Pay to the appropriate trust funds the contributions required by the above-described agreement to the extent such contributions have not been made or that the employees have not otherwise been made whole for their ensuing medical and other expenses.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records,

<sup>15</sup> 183 NLRB 682 (1972).

<sup>16</sup> 283 NLRB 1173 (1987). Interest on and after January 1, 1987, shall be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

<sup>17</sup> 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.

<sup>12</sup> Compare *Anderson Lithograph Co.*, 124 NLRB 920 (1959).

<sup>13</sup> *Bill Cook Buick*, 224 NLRB 1094, 1096 (1976); *State Electric Service*, 198 NLRB 592 (1972), aff'd. 477 F.2d 749 (5th Cir. 1973).

<sup>14</sup> *Bonanno Linen Service v. NLRB* 454 U.S. 404 (1982).

social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities in Wynnewood, Pennsylvania, copies of the attached notice marked "Appendix."<sup>18</sup> Copies of the notice, on forms provided by the Regional Director for

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<sup>18</sup>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."

Region 5, 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.

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