

**88 Transit Lines, Inc. and Teamsters Local Union No. 872, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.** Cases 6-CA-20490, 6-CA-20984, and 6-CA-21380

September 28, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND DEVANEY

On April 4, 1989, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed limited exceptions and a supporting brief. Both the Respondent and the General Counsel filed reply briefs to the other party'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 only to the extent consistent with this Decision and Order.<sup>2</sup>

1. The judge found that the Respondent, by its overall conduct between November 1987 and June 1988, violated Sections 8(a)(5) and (1) and 8(d) of the Act by engaging in bargaining with the Union without an intention of reaching agreement. We disagree.

In finding that Respondent engaged in surface bargaining the judge relied primarily on the infrequency of the meetings coupled with the Respondent's insistence, without an explanation, on meeting solely during business hours (which in effect limited the negotiations to only 3 hours because the drivers on the negotiating committee went to work at 1 p.m.). The judge dismissed as an excuse the Respondent's refusal, citing business reasons, to meet on consecutive days, particularly in light of the Union's willingness to meet outside business hours. Moreover, the judge found the personal reasons that allegedly impeded the Respondent from meeting outside work to be a pretext designed to hide its true motivation, namely, the delay and frustration of the bargaining process. The judge found that these factors, when considered in conjunction with the Respondent's adamant refusal to agree to certain union

proposals, the Respondent's concern that all proposals be reviewed by its attorney, as well as its insistence on having the minority stockholders participate in the negotiations, reflected the Respondent's negative attitude towards the negotiations. Contrary to the judge, we find that the totality of the Respondent's conduct throughout the course of the negotiations, at most, demonstrates hard bargaining on the Respondent's part and not a calculated desire to frustrate the bargaining process and avoid agreement with the Union.

Following the Union's certification, Robert Lackner, the Union's representative, spoke to Aldo Nones, Respondent's president and majority stockholder, to request a meeting of the parties. Nones informed the Union that the Respondent was willing to meet only during business hours. The Respondent refused to meet with the Union on the weekends or evenings citing personal reasons, which were not explained to the Union. The parties met 11 times between December 11, 1987, and June 28, 1988. The meetings usually took place in the mornings starting at 10 o'clock and ending at 1 o'clock in the afternoon.<sup>3</sup> Although during the negotiating sessions the Union continued to insist that the parties meet at more frequent intervals and outside business hours, the Respondent refused. Nones also insisted that all three management officials be present at the negotiations and refused to agree to any proposals before the Respondent's attorney had been consulted.

At the initial bargaining sessions little progress was made in terms of specific contract proposals. However, negotiations on contract proposals became more fruitful after the Union filed for mediation and Federal mediators participated in the negotiations; indeed at the last meetings substantial progress was made.

We do not find that the Respondent's request to meet only during business hours or its failure to explain to the Union the reasons for its position unreasonable. There is no question that Nones' wife was ill and therefore that he had a legitimate nonbusiness reason that impeded his meeting outside work. He was not obligated to disclose that reason to the Union. Further, the number of meetings is only significant when considered together with the fact that most of the meetings lasted only from 10 a.m. to 1 p.m. The judge failed to accord any significance to the fact it was the Union's insistence on the presence of the drivers that led to the relatively short meetings. Thus, it was the Union that was responsible for adjourning the meetings at 1 p.m. because the drivers had to work, thereby, effectively limiting the meetings to only 3 hours. The Union could have sought to extend the meetings after 1 p.m. without the drivers. There is no evidence that

<sup>1</sup>We agree with the judge that the Respondent's change in the drivers' schedule violated Sec. 8(a)(3) and (1) of the Act. The judge also found that this conduct did not violate Sec. 8(a)(5). The General Counsel excepts, noting that the complaint does not allege an 8(a)(5) violation. We find merit in the General Counsel's exception and therefore find it unnecessary to pass on the judge's discussion of this nonexistent allegation.

<sup>2</sup>We grant the General Counsel's limited exceptions relating to the modification of the judge's recommended Order. Thus, we shall modify the judge's recommended Order to conform more closely with those findings and conclusions that we are adopting. We shall also issue a new notice.

<sup>3</sup>The negotiating sessions occurred on December 11 and 30, 1987, and January 12 and 16, February 16, March 10, 24, and 31, May 10, and June 2 and 28, 1988.

the Respondent would have opposed such an extension, as long as it did not go beyond business hours. Even if the presence of the drivers at the negotiating table was important because of their knowledge of the operations, there were issues that could have been negotiated solely by the Union's representative without requiring the drivers' presence. In fact there were occasions when some of the drivers did not attend the negotiating sessions and bargaining continued. In addition, the Union dictated meeting starting times, arguing that its drivers could not arrive before 10 o'clock in the morning. Again, the Union could have agreed to meet earlier if it had so wished. Further, it is undisputed that Nones made accommodations in the drivers' schedules to allow for their participation in the negotiations.

Nor was the Respondent's failure to meet more frequently unlawfully motivated. There is no evidence that conflicts with the Respondent's claim that meeting more frequently would have affected its operations. Further, we find that 11 negotiating sessions in a 7-month period is not unreasonable.<sup>4</sup> Even when considered with the Respondent's insistence that the parties meet only during working hours, this time frame might have sufficed had it not been for the Union's ending of the meetings at 1 p.m.<sup>5</sup> Under these circumstances, we find that the Respondent was not solely responsible for the limited time the parties spent at the bargaining table.

The judge also relied on Nones' insistence on having the principal stockholders participate in the negotiations as well as on consulting with his lawyer prior to agreeing to any proposals. The judge found that this position inhibited the negotiation process and that the insistence on deferring to the Respondent's attorney was tantamount to failing to designate an agent with bargaining authority at the negotiations. However, as the judge acknowledged, Nones had authority to negotiate a contract and in fact did reach agreement with the Union on a number of issues. The fact that Respondent was preoccupied with ensuring that the language of the proposals truly reflected the parties' intent, and that he consulted with his attorney to achieve that end, is not tantamount to failing to designate a bargaining agent at the negotiating table. This is particularly true here because this was the first time the Respondent had been involved in any collective-bargaining process and the Respondent was not being unreasonable in proceeding in a cautious manner. As to the participation of the minority stockholders, Nones had every right to choose who would be on its negotiating committee just as the Union selected its own committee. There is no evidence that the Respondent's

insistence on their presence affected the scheduling of the meetings.

The judge's conclusion that the Respondent was seeking to evade reaching an agreement was based also on his findings with respect to the Respondent's unwillingness to agree to the "common 'boilerplate' language" of various proposals made by the Union. This finding in part reflected the testimony of Union Representative Lackner, who complained about the Respondent's refusal to agree to what Lackner regarded as perfectly acceptable "boilerplate" language from Teamsters agreements that comprise the Union's initial bargaining proposal. Because, under Section 8(d) of the Act, the Board is constrained from making findings that would effectively compel a party to agree to particular proposals or make particular concessions, a fortiori, we risk running afoul of Section 8(d) if we predicate a finding of bad faith on a party's refusal to agree to the exact language of the other party's proposals. Indeed, a major function of the bargaining process is reaching common ground that represents modifications of language contained in parties' initial proposals.

Of course, if a party is so adamant concerning its own initial positions on a number of significant mandatory subjects, we may properly find bad faith evinced by its "take-it-or-leave-it" approach to bargaining. *NLRB v. General Electric Co.*, 418 F.2d 736, 756-757 (2d Cir. 1969), cert. denied 397 U.S. 965 (1970). Furthermore, there may be cases in which the substance of a party's bargaining position is so unreasonable as to provide some evidence of a bad-faith intent to frustrate agreement. *NLRB v. A-1 King Size Sandwiches*, 732 F.2d 872 (11th Cir. 1984), cert. denied 469 U.S. 1035 (1984). See also *Reichhold Chemicals*, 288 NLRB 69 (1988). But these extremes of conduct are not evident here.

While the judge was correct in finding, with respect to the discharge and discipline article, that the Respondent did not agree to the Union's "just cause" language, it is not the case that the Respondent was resisting agreeing to *any* contractual limitations on its discharge and discipline authority. Instead, the Respondent sought to provide specific grounds for immediate discharge in the contract. There is no evidence that the Respondent was disposed to resist any modifications whatsoever in the language of its own proposal. Indeed, it had been reaching agreements with the Union on other matters that reflected movement from the Respondent's initial proposals. For example, the "probationary period" article proposed by the Respondent on March 31 included language from both parties' proposals, with the Respondent agreeing to a somewhat shorter period than it had proposed and also to the provision from the Union's proposal that an employee who had successfully passed the probationary period would immediately be given seniority retro-

<sup>4</sup>*Atlanta Hilton & Tower*, 271 NLRB 1600 (1984).

<sup>5</sup>Further, the parties could have met on April 21 had Lackner not refused to meet on that day.

actively dating back to his original date of employment. Similarly, the grievance procedure agreed on June 28 included a modification of the filing limits that reflected the Union's position (counting by "working days" rather than "calendar days"). There is no evidence that the other agreements reached—on such subjects as scope of agreement, portions of the management-rights clause, stewards clause, workdays, non-discrimination, and holiday payments and procedures—deviated from this pattern of reaching agreement on a position that represented movement by both parties. While the record supports the finding that the Respondent was unwilling to agree to union security and dues checkoff, at least as of the last bargaining session, we cannot find that a failure to make these concessions to the Union is a sufficient manifestation of intent to avoid agreement, given the Respondent's approach to bargaining on other topics. See *Tritac Corp.*, 286 NLRB 522 (1987).

Finally, we disagree with the weight given by the judge to statements made by two of the Respondent's representatives at the early "get acquainted" bargaining sessions (in December 1987) to the effect that the negotiations were a waste of time. At least one of the statements appeared not to be a response to bargaining generally, but the result of momentary pique at what was viewed as a demand by the Union that the Respondent agree to the Union's entire initial contract proposal. Furthermore, the judge himself found that subsequent bargaining sessions produced agreement on a number of issues and that the final bargaining session on June 28, 1988, was the "most productive meeting" of all. In light of this actual conduct, we cannot find that those initial off-the-cuff remarks are sufficient evidence of an intent to avoid genuine bargaining.

In sum, when the record is considered as a whole, the evidence falls short of establishing surface bargaining on the Respondent's part. Accordingly, we find the General Counsel has not met his burden of demonstrating the surface bargaining violation.<sup>6</sup> Therefore, we dismiss this allegation of the complaint.

2. The judge found that the Respondent violated Section 8(a)(5), as well as Section 8(a)(3) and (1), when it demanded that employee Gregory Smith secure the original of the physical examination form required for his recertification. Although we agree, for the reasons set forth by the judge, that the Respondent violated Section 8(a)(3) and (1) by requiring employee Smith to secure the original of his physical exam, the Respondent did not in any way suggest that other em-

ployees had to follow that practice. The evidence indicates that the Respondent's unlawful request was directed solely at employee Smith and was not a change in policy. Therefore, we cannot agree that the Respondent's actions constituted a unilateral implementation of policy which violated Section 8(a)(5). See, e.g., *Cable Vision*, 249 NLRB 412, 416 (1980), enf'd. 660 F.2d 1 (1st Cir. 1981). Accordingly, we dismiss this allegation of the complaint.

#### AMENDED CONCLUSIONS OF LAW

1. Substitute the following for paragraph 5.

"5. By suspending employee Gregory Smith for failure to obtain the original of his physical examination form in retaliation for his union activities, the Respondent engaged in unfair labor practices in violation of Section 8(a)(3) and (1)."

2. Delete paragraph 7 and renumber the subsequent paragraph.

#### ORDER<sup>7</sup>

The National Labor Relations Board orders that the Respondent, 88 Transit Lines, Inc., Charleroi, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to close operations if its employees voted for the Union, and unqualifiedly prohibiting employees from talking about union business on company property and on company time.

(b) Making changes in the drivers' schedules in retaliation for their union activities.

(c) Unilaterally making changes in the terms and conditions of employment of the employees in the bargaining unit found appropriate, including changes relating to reimbursement, lodging, and other expenses, unless and until it notifies Teamsters Local Union No. 872, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO of such an intention and gives that labor organization an opportunity to bargain over any such changes.

(d) Suspending employees for failure to obtain their physical examination forms in retaliation for their union activities.

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

<sup>6</sup>We reach this conclusion despite our adoption of most of the judge's findings regarding a number of unfair labor practices committed by the Respondent. The judge did not find that these violations impeded bargaining nor do we. Thus, we find that even though some of these violations involved unilateral changes in mandatory subjects of bargaining, they were not of such magnitude as to have an impact on the negotiations.

<sup>7</sup>The judge inadvertently failed to include in his remedy a requirement that Respondent make employees whole for any losses employees may have suffered as a result of the unlawful changes in the schedule and the unilateral changes with respect to the reimbursement of lodging and other expenses. The judge's remedy is amended to provide that the Respondent shall make employees whole for any losses they may have suffered as a result of these unlawful actions as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

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

(a) Rescind the rule prohibiting employees from unqualifiedly discussing union business on company time or company property.

(b) Rescind work schedule C and reinstate schedule B.

(c) Rescind, on request, the November 1988 policy regarding reimbursements for lodging and other expenses to drivers assigned to charter runs to Atlantic City, New Jersey, and reinstate the policy that existed before November 1988.

(d) Make whole its employees for any loss of earnings and other benefits they may have suffered and expenses they may have incurred by reason of the unlawful change in schedule and the unlawful change in its policy regarding reimbursement for lodging and other expenses, in the manner specified in the remedy section of the judge's decision as modified herein.

(e) Make Gregory Smith whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner specified in the remedy section of the judge's decision and remove from its files any reference to his unlawful suspension, and notify him in writing that this has been done and that the suspension will not be used against him in any way.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(g) Post at its Charleroi and Speers, Pennsylvania facilities copies of the attached notice marked "Appendix."<sup>8</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

<sup>8</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."

## 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 have violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to close our operations if you vote for the Union or unqualifiedly prohibit you from talking about union business on company property or on companytime.

WE WILL NOT change your driving schedules in retaliation for your union activities.

WE WILL NOT unilaterally change your terms and conditions of employment, including changes relating to reimbursement, lodging, and other expenses, without notifying Teamsters Local Union No. 872, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO of such an intention and giving the Union the opportunity to bargain over any such changes.

WE WILL NOT suspend you for failure to obtain your original physical examination form in retaliation for your union activities.

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

WE WILL rescind the unlawfully implemented rule prohibiting you from unqualifiedly discussing union business on company time or company property.

WE WILL rescind the unlawfully implemented schedule C and reinstate schedule B.

WE WILL, on request, rescind the November 1988 policy regarding reimbursements for lodging and other expenses to drivers assigned to charter runs to Atlantic City, New Jersey, and reinstate the policy which existed before November 1988.

WE WILL make you whole for any loss of earnings and benefits suffered and expenses incurred by reason of the unlawful change in schedule and the unlawful change in policy regarding reimbursement for lodging and other expenses, plus interest.

WE WILL make Gregory Smith whole for any loss of earnings and other benefits resulting from his one

day suspension, plus interest, and WE WILL notify him that we have removed from our files any reference to his suspension and that the suspension will not be used against him in any way.

#### 88 TRANSIT LINES, INC.

*Julie R. Stern, Esq.*, for the General Counsel.

*Jason S. Shapiro, Esq.*, of Harrisburg, Pennsylvania, for the Respondent.

*Stephen Jordan, Esq.*, of Pittsburgh, Pennsylvania, for the Charging Party.

### DECISION

#### STATEMENT OF THE CASE

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in Pittsburgh, Pennsylvania, on December 12 and 13, 1988. Subsequent to an extension of the filing date, briefs were filed by the General Counsel<sup>1</sup> and Respondent. The proceeding is based upon charges filed November 16, 1987,<sup>2</sup> and May 17 and November 4, 1988, by Teamsters Local Union No. 872, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. The Regional Director's consolidated complaint, dated December 6, 1988, alleges that Respondent 88 Transit Lines, Inc., of Charleroi, Pennsylvania, violated Section 8(a)(1) and (3) of the National Labor Relations Act by promulgating and maintaining a ruling prohibiting employees from discussing unions on Respondent's property; by impliedly threatening to close its facility before allowing a union to represent its employees; by altering the work schedule of its employees because of the union activity of some employees; and by laying off its employee Herbert Wise because of his union activities; that Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally implementing a policy requiring employees to submit original physical examination forms and by unilaterally changing its lodging and expense payment policy for charter runs to Atlantic City, New Jersey; and that Respondent violated Section 8(a)(1) and (5) and Section 8(d) of the Act by advising the Union it would only negotiate during business hours; by refusing to negotiate unless all of Respondent's negotiators were present; by describing negotiations as a "waste of time"; by refusing to meet on consecutive days, weekends, during evening hours, or at reasonably frequent intervals; by refusing to engage in meaningful negotiations regarding certain union contract proposals; and by unilaterally instituting a new on-call procedure.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

Respondent is engaged in operation as both a local and interstate common carrier of passengers by motor vehicle. It

derives annual gross revenues in excess of \$1 million, and it admits that at all times material it has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent operates both a subsidized commuter route operations between Pittsburgh, Brownsville, Charleroi, and California, Pennsylvania, and intra- and interstate charter services, which include frequent trips to and from Atlantic City, New Jersey. On September 4, 1987, the Union filed a petition seeking to represent a unit of all full-time and regular part-time busdrivers, mechanics, office clerical employees, and cleaners/washers employed by the Employer. A mail ballot election was held between October 13 and 28, 1987, and a majority of the Respondent's approximately 30 employees voted in favor of representation and the Union was certified as the exclusive collective-bargaining representative as of November 9, 1987.

Aldo Nones serves as Respondent's president and general manager, Edward Burnworth is supervisor of maintenance, and Stanley Nabozny is secretary-treasurer as well as being in charge of sales and tour operations. All three are shareholders of the Company.

Driver Gregory Smith was the primary force behind the organization drive, which began in August 1987. He was assisted by Louis Cella, Russell Klose, Timothy Theakston, Herbert Wise, and Larry Boyd in distributing authorization cards. During the period of the organizational campaign, Respondent mailed numerous letters to its employees urging them to vote against the Union.

Theakston testified that at the end of September, he and Nones had a conversation during which Nones told him that Respondent could not operate under a union, and that not only his job but everyone's job depended on how the vote went. In early November, Nones also told Theakston not to talk about union business on company property or on companytime. Klose testified that he was present during this conversation and confirmed what was said by Nones (employees had not previously been told of any subjects about which they were prohibited to speak). Several employees testified that they previously had discussed other nonwork-related subjects in the presence of supervisory personnel during worktime on company property without repercussions.

Shortly after the ballot count on October 29, the drivers were given a new schedule, designated "Schedule C," to take effect on November 29. No attempt to bargain with the Union was initiated regarding the new schedule. For several years prior to this time, "Schedule B," had been in effect and it provided for 15 different jobs with each job was made up of a number of runs. The jobs were assigned following a bid which awarded jobs based on seniority and a new bid was conducted every 4 months. The change to "Schedule C" realigned and consolidated a few runs and eliminated one driving position; however, most of the routes remained essentially unchanged. Only 8 of these 14 jobs, however, were open for bid whereas all 15 of the jobs under schedule B had been bid jobs. The remaining six were run on what is called "extra board" when the run is assigned to a driver on the day before the run is scheduled. Nones testified that the

<sup>1</sup>The General Counsel's unopposed motion to correct transcript dated February 7, 1989, is granted and received into evidence as G.C. Exh. 11.

<sup>2</sup>All following dates will be in 1987 unless otherwise indicated.

change had been contemplated and worked on for a number of months and was an outgrowth of a statement from the Local Transit Authority that the Company should take steps to reduce its operating costs. There was no decrease in commuter business at this time and no scheduled runs were eliminated but were merely rearranged so that there were only 14 jobs. Driver testified that the extra board driver is not able to predict what his work schedule will be each week, nor can he expect the same salary each week.

In early November, prior to certification, the Union's secretary-treasurer and principal officer, Robert Lackner, called Nones and indicated its opposition to the change and it was discussed in subsequent bargaining sessions after it had taken effect.

Shortly before schedule C became effective, Respondent laid off the three drivers with the least seniority, including employee Herbert Wise. Wise, who has discussed the Union with other employees, attended union meetings, signed an authorization card, and voted in the election, was the only one of these three employees who had a regular bid job. Nones testified that it was a standard practice to furlough drivers in November or December when there is a seasonal decline in traffic and that all three were recalled in April 1988 when work picked up. Respondent record show that this occurred every year from 1982 on, except for 1984. Wise acknowledged that the previous year he had voluntarily requested lay off for the winter and that he did not tell anyone that he wished to be treated differently in 1987.

On December 2, Nones left a note for driver Smith, who had become the union steward, stating that he couldn't work the next day as his physical certificate had expired. Smith knew of Federal regulations requiring a physician's examination and certification every 2 years and had received his exam from the Company's usual doctor on November 25, Smith explained to Supervisor Nabozny that he had complied and showed Nabozny his green card (which reflected his up-to-date physical examination), and told him he had a photocopy of the physical examination report at home. He also explained to Nabozny that the doctor's receptionist would not give him the certificate but had said that she would mail it to the Company. Nabozny checked with Nones by telephone, then told Smith that Nones wouldn't accept the green card and that he wanted Smith to take the day off and go down to the doctor's office and get it straightened out himself.

When Smith went to the doctor's office, and asked for the original certificate, the receptionist acted upset and told him Nones had already called and been told the original certificate had previously been mailed out. After another doctor's employee called the Respondent, Smith was told they now would accept a photo copy from the doctor's records and that Smith could bring it to the Respondent's office. Smith lost 1 day of work but was returned to his regular schedule the next day.

Following the Union's certification, the parties met on 11 occasions between December 11, 1987, and June 1988. When Lackner, the Union's secretary-treasurer, first contacted Nones to make arrangements for bargaining, a conversation confirmed by letter, Nones told Lackner that Respondent would only negotiate during business hours and would not meet during evening hours or on weekends due to undescribed personal commitments. Lackner said he was willing to meet at any time, at any place and indicated that

while he was not accepting the restrictions Nones placed on the timing of negotiation sessions, he would agree to schedule their first meeting during business hours. He told Nones that he planned to discuss the scheduling dispute further, and stated as much in his follow up letter to Nones. Details related to negotiations are set forth in further detail in the discussion below.

By letter dated March 22, 1988, Respondent notified employees of a new on-call policy for employees on layoff status which required laid-off employees to be available by telephone during certain hours, so that Respondent could reach them to assign work as it became available. The Union was not consulted before this policy was announced but after Lackner raised the issue with Respondent it was discussed at the negotiation session on March 24, 1988, and the policy was rescinded, however, drivers who received the notice apparently were not directly informed of the rescission.

Prior to early November 1988, drivers who had to stay overnight in Atlantic City, a frequent charter trip destination, stayed in the same hotel as the passengers and were fully reimbursed by Respondent for the cost of his hotel, as well as for the cost of taxi fare between the area where the hotels are located and a bus holding area designated by local authorities. In early November 1988, again without consulting the Union, Respondent changed its policy for its Atlantic City runs. Respondent ceased reimbursing drivers for taxi fare, and only reimbursed drivers for hotel expenses up to the amount it would cost to stay in a hotel located across the street from the bus holding lot. The drivers were not required to stay at the hotel near the holding lot, but any cost for lodging over the amount of the established rate at that hotel were to be paid by the driver.

### III. DISCUSSION

The issues in this case arose from the events surrounding a union organizational drive at Respondent's bus company and the Union's subsequent certification as the employee's bargaining representative. As indicated here, the Company aggressively opposed the Union's efforts and engaged in several acts alleged to be unfair labor practices both before and after the election and the Union's certification. In addition, it is alleged that Respondent was reluctant to recognize or accept the Union's function in acting on behalf of the employees and that its overall conduct inhibited meaningful collective-bargaining negotiations and indicated a lack of good-faith bargaining.

#### A. Alleged Violation of Section 8(a)(1), (3), and (5)

I credit the testimony of driver Theakston that Respondent's president told him that the Company could not operate with a union and that his and everyone's jobs depended on how they voted. Although Nones denied making the statement, he otherwise testified that he spoke with employees about the Union, was careful about what he said, but could not remember if he spoke with Theakston. Theakston's recall was specific and the statement allegedly made by Nones is consistent with the context and tenor of the several letters (G.C. Exh. 8) that he sent to employees. These letters emphasis that employees should vote no, that no union can force it to grant a raise, that the Company would not be put in a position to pay wages that would put it in an unsound

position, and that it is not in the interest of the employees to have a union. Accordingly, I find that Theakston's testimony shows that Respondent implicitly threatened to close its operation if the employees voted in favor of the Union, an action which is clearly designed to influence and interfere with the union activities of employees. Accordingly, I conclude that Respondent is shown to have violated Section 8(a)(1) of the Act, as alleged, see *Hedaya Bros.*, 277 NLRB 942 (1985).

Nones admits that he told driver Smith not to talk about union business "or any other" to the mechanics on companytime, on company property, and asserts that a work rule was posted (for 1 week in 1986) which prohibited employees from speaking to mechanics while they were working.

Here, there is no indication that Nones' remarks were limited to Respondent's asserted rule, and no qualification was made in the order to Smith regarding speaking to mechanics while they were working. Even to the extent admittedly stated by Nones, Respondent is shown to have issued an unqualified order prohibiting talking about union business on companytime and on company property, a rule that clearly is unduly broad and discriminatory, see *Cerock Wire & Cable Group*, 274 NLRB 888 (1985). It otherwise is shown that employees regularly discussed "cars, politics, and family" in the presence of management, had not been told not to, and had not been reprimanded. Accordingly, I find that the stated rule interferes with employee's rights and I conclude that the General Counsel has shown that the Respondent's oral promulgation of this rule violates Section 8(a)(1) of the Act as alleged.

It is clear that a few days after the election, Respondent announced a new scheduling procedure for drivers. This schedule effected the condition of employment for many drivers because it changed six former "bid" jobs to less desirable "extra board" jobs. The Board has ruled that an employer who unilaterally changes terms and conditions of employment between the time of an election and a union's certification does so at its own peril, *Mike O'Connor Chevrolet*, 209 NLRB 701 (1974). Here, the General Counsel has shown that the Respondent displayed strong opposition to the Union's organizational efforts, including violations of employees' rights, prior to this unilateral change in its long-standing drivers' operational schedule. This change was made only a few days after a ballot count demonstrated that the Union had succeeded in its organizational efforts, and I conclude that this supports an inference that the employee's successful union activities were the motivating factor behind Respondent's implementation of a change in conditions of employment designed to take effect prior to the actual certification of the Union's status as statutory representative's of the employees. Respondent principal defense alleges that the change was founded on compelling economic reasons: namely, better utilization of manpower and, second, instruction by the transit authority to attempt to reduce cost on its scheduled route operations.

Nones testified that he had spent several months preparing the new schedule; however, Respondent also contends that the effect of the change is de minimis because it involved merely the consolidation and realignment of two routes; and the elimination of only 1 of 15 routes and driver positions. No financial analysis was presented related to the compara-

tive schedule differences (although one route was eliminated, additional time, and resulting cost would accrue to two other routes), and I find that the generalized request by the transit authority that the Company "attempt to reduce cost" falls far short of proving that "compelling" economic reasons required a change. Accordingly, I find that the Respondent was not free to make changes in the terms and conditions of employment when it did so by introducing its new work schedule.

The Respondent, however, further argues that although the Union's representative called him about the new schedule after it was posted and prior to certification, the Union failed to thereafter demand bargaining on the matter and thereby waived its rights by failing to pursue its opportunity despite its knowledge of the change.

The record shows that subsequent to certification, the issue of the scheduled changes became the subject of discussion only after the charge relating to the matter was filed by the Union at a bargaining session. Under these circumstances, it appears that although the Union clearly had knowledge of the Respondent's unilateral changes, it took no affirmative action to request a change, or to request or pursue bargaining on that issue prior to or during contract negotiations prior to the filing of a charge. The Union was obligated to act with due diligence in requesting bargaining and having failed to avail itself of its rights, I find that it has waived its rights to now complain in this regard. Accordingly, I find that with respect to these changes in terms and conditions of employment, Respondent is not shown to have violated Section 8(a)(5) of the Act as alleged, see *Talbert Mfg., Inc.*, 264 NLRB 1051, 1055 (1982); and *Citizens National Bank of Willmar*, 245 NLRB 389 (1979).

Otherwise, however, I conclude that the reasons Respondent's alleged justification for the change in schedule, especially in view of the timing of the change immediately after the Union won the election, are not persuasive, especially in the absence of economic data and in the absence of any explanation at all regarding the reason for changing so many driver positions (8 out of 15), from regular bid jobs to those on the "extra" board. Under these circumstances, I find that the schedule change at this particular time was in retaliation for and motivated by the Respondent's displeasure with the Union's success in the election and, accordingly, I find that Respondent violated Section 8(a)(1) and (3) of the Act in this respect, as alleged.

The record shows that driver Wise signed a union authorization card and attended some union meetings, however, he is not shown to have been a union activist nor is it shown that the Respondent was aware of his union support. Although Wise and two other employees were laid off on November 24, just prior to the time "Schedule C" became effective, all three were the least senior drivers, and the Respondent has shown that the layoffs were based on seniority; that it was a standard practice to furlough drivers for the usual seasonal decline in business; and that all these drivers were recalled when traffic picked up. Moreover, Wise previously had voluntarily told Respondent of his preference to not work in the winter and did not indicate that he had changed his position for the winter of 1987. Under these circumstances, I am not persuaded that Respondent's layoff actions were discriminatorily motivated and I conclude that the

General Counsel has failed to show that Respondent violated Section 8(a)(1) and (3) of the Act in this respect.

Driver Smith not only was an active union organizer but also acted as the Union's observer at the taking of ballots on October 29. When he learned of the necessity for his biannual physical examination and certification, he promptly followed the Company's usual procedures and, 1 full week prior to the required date, had the exam performed by the Company's usual doctor and successfully obtained his personal "green card" and an assurance that the certificate would be mailed to the Respondent.

Nones, in an unexplained fashion, became aware of the old certificates pending expiration and the day before it expired left a note for Smith. Smith asked Supervisor Nabozny what was going on and told him that he had the physical and had a green card to prove it as well as a photocopy of the new certificate at home. Nabozny called Nones at home but Nones would not accept the representation that Smith had complied and demanded the original of the new certification. He then imposed a new requirement that the employee should take his last valid day under the old certificate, as a day without pay, and assume the burden of obtaining for Respondent the original certificate from Respondent's regular physician.

In this instance, the Respondent asserts that it was required to have a certificate on file, however; its defense begs the question of why Smith was required to personally attempt to get the original rather than the Company's procuring the certificate in a normal business exchange between Respondent and the doctor's office, as had been done in the past. As noted above, Respondent is shown to have feelings of union animus, which it apparently extended to the Union's organizer and observer Smith. Under these circumstances, I infer that Respondent seized upon an opportunity to retaliate against Smith because of his union activities, and I conclude that Smith would not have been personally ordered to obtain an original physician's certificate and lose a day of work on the last day of his old certificate were it not for his actions and the success of the Union in the election. Accordingly, I find that the General Counsel has shown that Respondent violated Section 8(a)(1) and (3) of the Act in this respect, as alleged. It also appears that the Union was not given a notice and opportunity to bargain over this issue and, therefore, the unilateral change in Respondent's practice also is shown to be in violation of Section 8(a)(5) of the Act. See *Murphy Oil USA, Inc.*, 286 NLRB 1039 (1987).

On March 22, 1988, the three laid-off drivers were sent letters setting forth a new call-in procedure and a notice was placed on the board. No notice was given to the Union, however, the Union learned about the new call-in procedure and contacted the Respondent. Implementation of the procedure was delayed until it was discussed at the following bargaining session on March 24 and the letter was rescinded. Although it is apparent that the Respondent improperly announced a procedural change without first notifying the Union about it, the matter was subjected to bargaining and was withdrawn without implementation. Otherwise, there is no allegation that the new procedure was established in reprisal for the earlier union victory, as was the case in *Pennco, Inc.*, 212 NLRB 677, 684 (1974), cited by the General Counsel. Accordingly, I conclude that Respondent is not shown to have violated Section 8(a)(1) and (5) and Section

8(d) of the Act as alleged. Otherwise, however, I find that Respondent's actions in this regard are indicative of an intent to avoid its obligations to deal with the Union as the representative of its employees.

During November 1988, Respondent implemented a change in its practices regarding reimbursements for lodging and taxi fares to its drivers in connection with charter bus trips to Atlantic City. No effort was made to notify the Union and no bargaining on the matter occurred. Respondent contends (without citation of authority) that the employer's payment of such incidental expenses are not labor cost but cost "associated" with its charter bus operations and that, accordingly, such an exercise of control over fundamental business cost (other than labor) are not mandatory subjects of bargaining. Here, I find that reimbursement for lodging and taxi fares for busdrivers on overnight trips to locations remote from their residential area is an integral part of the employment relationship and clearly falls within the terms "wages" and "conditions of employment," see *Florida Steel Corp.*, 231 NLRB 923 (1977). Such reimbursement clearly is a labor cost and a mandatory subject of bargaining and, accordingly, I find that Respondent's unilateral changes in this respect are shown to violate Section 8(a)(1) and (5) of the Act, as alleged.

#### B. Alleged Failure to Bargain in Good Faith

The complaint alleges that Respondent's overall conduct between November 1987 and June 1988 demonstrates a refusal to bargain because Respondent advised the Union it would only negotiate during business hours; it refused to negotiate unless all of Respondent's negotiators were present; it described negotiations as a "waste of time"; it refused to meet on consecutive days, weekends, during evening hours, or at reasonably frequent intervals; it refused to engage in meaningful negotiations regarding certain union contract proposals; and it unilaterally made changes in mandatory subjects of bargaining.

As noted above, during the Union's first telephone conversation with Nones following certification, Nones stated that he would meet with the Union only during business hours and would not meet evenings or weekends due to unspecified personal commitments. Respondent maintained this position throughout the course of contract negotiations, despite the Union's repeated offers to meet at other times. As a matter of practice, meetings generally occurred between 10 a.m. and 1 p.m. because the drivers on the negotiating committee had to take commuter runs into Pittsburgh early in the morning and return from Pittsburgh in the midafternoon. All meetings were held at Respondent's office in Speers, Pennsylvania, and occurred on 10 occasions after an initial "get acquainted" meeting on December 11. Respondent was represented by Nones, Burnsworth, and Nabozny and the union representatives were Lackner and employees Smith, Cella, and Danielchak.

Although Lackner requested that the parties meet more frequently and in the evenings or on weekends so that the meetings would not have to be cut short by the drivers' work schedule, Respondent refused because it "had a business to run." As the negotiations progressed, written proposals were exchanged and the sessions began to be more productive, especially after the Union obtained a Federal mediator. The parties agreed on some clauses such as the declaration of

purpose and scope of agreement, probationary period, portions of a management-rights clause, stewards' grievance procedure, work days, and nondiscrimination.

Despite his position as principal stockholder and operations manager, Nones explained that the scheduling of meetings was difficult because it had been decided that as a result of the split in stock ownership, as well as operating responsibilities, all three management officials, Nones, Burnsworth, and Nabozny, would have to be present at all negotiating sessions. Similarly, Nones decided that his personal responsibilities regarding his wife's illness took precedence in the evenings and on weekends; however, no effort was made to convey the nature of this latter information to the Union. Nones also took the position that he did not have the effective authority to enter into final agreements at bargaining sessions and Respondent refused to agree to anything before it had the opportunity to run it by its attorney. It also made no apparent attempt to have the attorney attend the meetings or to consult him by telephone during the meetings (the union representative asserts that he had authority to make final agreement at the bargaining table).

Nones testified that when he saw the initial bargaining agreement proposed by the Union (an agreement described as typical of others negotiated by the Union's representative), he had quite a reaction and thought it was one sided, in favor of the Union. He admits that as a result of his feeling, he made a statement to the effect that the negotiations were a waste of time. This comment was reflected in notes Lackner took at the December 11 meeting. His notes also reflect the comment that Nones' attitude was very negative and antiunion, and that both Burnsworth and Nabozny followed with the same attitude. Subsequently, at another session when the parties were discussing a proposed union-security clause, Burnsworth said that there would never be a closed shop as long as he had anything to do with the Respondent, and that as far as he was concerned the negotiations were a waste of time.

After the initial "get acquainted" meeting, negotiations actually occurred at meetings on December 30, 1987, January 12 and 26, February 16, March 10, 24, and 31, May 10, and June 2 and 28, 1988. As can be seen from the dates listed, on one occasion the parties had two meetings separated by only 1 week, but on another occasion 40 days passed between two meetings.

Lackner's testimony and supporting notes indicate that the February 16 meeting was dominated by discussion of the charge filed by the Union and Nones lengthy explanation of how the Transit Authority operates and its relationship to the Respondent. This discussion apparently was generated after the Union suggested a talk about "Schedule B" versus "Schedule C." At the following meeting on March 10, Nones also spent time emphasizing a funding cut of \$40,000 from the Transit Authority and said he couldn't sign a contract without a fail-safe program that would cover any future cut in funding. He offered no proposal of his own but requested suggestions from the Union and one union representative made a suggestion regarding payroll reduction through cutting of Sunday runs.

Prior to the next meeting the Company made the unilateral change in call-in rules otherwise discussed above and that change was discussed and resolved at the meeting on March 24. Some contract proposals were discussed and several were

agreed upon, including a management-rights provision, however, the Company emphatically stated that it would not agree to a union-security clause and that it did not want to discuss it further. It also said that it wanted nothing to do with dues checkoff. Respondent also refused to agree to the inclusion of union-requested "just cause" language in the otherwise agreed-upon discipline and discharge provisions.

The Union continued to object to the infrequency of the meetings, and was met with the repeated response that Respondent had a business to run and couldn't meet more frequently. The Union filed for mediation and a Federal mediator attended the session on May 10. Alternate language for several provisions was discussed including language that the Union considered "boilerplate" regarding stewards. The specific clause in question read: "Stewards and alternates shall have no authority to take strike action or any other action interrupting the Employer's business except as authorized by official action of the Union." The Company, however, took the position that it wanted language that would hold the Union liable for any action that the steward took relative to any kind of strike issue, any kind of work stoppage, or occurrence that might be detrimental to the Company. At the end of that meeting, the Union repeated its request for more timely meetings in the presences of the mediator and received a response reiterating the same limitation against meeting on evenings or weekends.

A different mediator attended the next session on June 2. Agreements were reached on the stewards clause and on a grievance procedure in a meeting that lasted until 1:20 p.m. rather than the usual 1 p.m. adjournment. Respondent offered to meet during the week of June 20; however, Lackner had a conflict and the meeting was set for the following Tuesday, June 28, despite Lackner's desire that it be held prior to June 20.

The meeting of June 28 (attended by the second mediator) was characterized by the Union as the most productive held. It included agreements on several noneconomic subjects and holiday payments and procedures; however, the Respondent continued to disagree to "boilerplate" type language on the subject of protection of employee's rights.

The Board, in *Reichhold Chemical*, 288 NLRB 69 (1988), recently reviewed and endorsed the summary of legal principles set forth in *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984), which decision stated, in part:

It is necessary to scrutinize an employer's overall conduct to determine whether it has bargained in good faith. "From the context of an employer's total conduct, it must be decided whether the employer is lawfully engaging in hard bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement." A party is entitled to stand firm on a position if he reasonably believes that it is fair and proper or that he has sufficient bargaining strength to force the other party to agree. [Footnote and citation omitted.]

Although an adamant insistence on a bargaining position is not of itself a refusal to bargain in good faith, *Neon Sign Corp. v. NLRB*, 602 F.2d 1203 (5th Cir. 1979), other conduct has been held to be indicative of a lack of good faith. Such conduct includes delaying tactics, unreasonable bargaining demands, unilateral

changes in mandatory subjects of bargaining . . . failure to designate an agent with sufficient bargaining authority . . . and arbitrary scheduling of meetings. . . . [Footnotes omitted.]

Here, I find that the Respondent placed arbitrary restrictions on the scheduling and conduction of meetings as evidenced by its adamant insistence on negotiating only during regular business hours (which, in consideration of drivers' work schedules, effectively limited meetings to the 3 hours between 10 a.m. and 1 p.m.), and by refusing to meet more frequently or on consecutive days, weekends, or evenings. Respondent's excuse of "business reasons" rings hollow inasmuch as the Union freely made itself available to meet at times that would not have constrained normal business operations. In total, it appears that the Respondent approached bargaining with extreme rigidity in its announced policy to limit the time for meetings and it made no allowance for consideration of any accommodation to promote and assist bargaining. Compare *Borg-Warner Controls*, 198 NLRB 726, 729 (1972). Otherwise, Respondent never explained to the Union the "personal reasons," why its president, Nones, couldn't attend. I find that its purported justification is pretextual and merely an excuse to hide the true motivation for its behavior, namely, delay and frustration of the bargaining process.

In a similar vein, Respondent's rigid insistence that its minority stockholders, Burnsworth and Nabozny, be at most all negotiations in addition to Nones, the controlling owner, and its rigid position that its attorney review each item discussed before it would agree to any proposal, clearly tend to inhibit the progress of negotiations. While it is apparent that Nones had the final authority to make agreements, he consistently refused to exercise his authority and he purported to defer to his attorney (who never attended any meetings) and his minority stockholders. This is comparable to failing to designate an agent with appropriate bargaining authority. When it is viewed together with Respondent's pattern of conduct in its avoidance of meetings on consecutive days, weekly, or at all frequently (a total of 11, 3-hour meetings over a 29-week period), it demonstrates an arbitrary approach that is inconsistent with the concept of good-faith accommodation and appears to be designed to frustrate and prolong meaningful bargaining.

As noted, both Nones and Burnsworth verbally acknowledged their attitude toward the bargaining process by stating that it was a waste of time. Respondent then proceeded to conduct itself in such a way as to prove its self-fulfilling prophecy.

When meetings actually occurred, the Respondent consistently refused to recognize or accommodate the Union's attempt to use common "boilerplate" language. For example, the Respondent refused to agree to any "just cause" language in the discipline and discharge provisions. Also, the Respondent announced its philosophical opposition to union security and dues checkoff, and refused to discuss any such provisions, even when the Union attempted to explore a limited union-security proposal.

While it is recognized that the concept of good-faith bargaining does not require the yielding of positions fairly maintained and it does not require concessions or agreement on particular contract provisions, a respondent's overall con-

duct and approach to bargaining must be evaluated in order to determine its motivation in collective-bargaining negotiations and whether its conduct displays a predetermination to avoid or delay an agreement. Here, I find that the Respondent's approach to bargaining evidenced an inflexible attitude on many minor, as well as major issues, with little effort to reconcile differences, make accommodations, or exchange concessions. See *Borg-Warner Controls*, supra, and *Hospitality Motor Inn*, 249 NLRB 1036, 1040 (1980). Accordingly, I conclude that the evidence of the Respondent's generally fixed and inflexible approach to bargaining, especially as colored by its expressed opinions that it was a "waste of time," supports an inference that Respondent was seeking to avoid an agreement rather than reach a common ground with the Union and its employees and, I find that its conduct is inconsistent with good-faith bargaining.

Lastly, it is observed that on several occasions during the course of negotiations, the Respondent engaged in conduct away from the bargaining table (through its unilateral changes in layoff procedures and, subsequently, lodging expense payments and through the unfair labor practices otherwise discussed above) that reflects adversely on the appropriateness of its approach to bargaining. I find that a review of Respondent's total conduct relative to its responsibilities to bargain in good faith consistently shows conduct inconsistent with good faith under the criteria of *Atlanta Hilton & Tower*, supra, and under these circumstances, I conclude that Respondent is shown to have violated Section 8(a)(1) and (5) and Section 8(d) of the Act, as alleged.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in 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 and, at all times material, the Union has been, and is now, the exclusive representative of the employees at Respondent's Charleroi and Speers, Pennsylvania facilities for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

3. By implicitly threatening to close its operations if its employees voted for the Union, and by unqualifiedly prohibiting talking about union business on company property and on companytime, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

4. By unilaterally making a change in its drivers' operations schedule in retaliation for the Union's success in the election, Respondent engaged in an unfair labor practice in violation of Section 8(a)(1) and (3) of the Act.

5. By unilaterally implementing a change in the manner in which drivers obtained physical recertification and by suspending employee Gregory Smith in connection with the change in certification procedures because of his activities on behalf of the Union, Respondent engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act.

6. By unilaterally changing its policy relating to reimbursement for lodging and other expenses, Respondent violated Section 8(a)(1) and (5) of the Act.

7. By its overall conduct between November 1987 and June 1988, Respondent has refused to bargain collectively in good faith concerning wages, hours of employment, and other terms and conditions of employment in violations of Section 8(a)(1) and (5) and Section 8(d) of the Act.

8. Except as found here, Respondent has not engaged in any other unfair labor practices as alleged in the complaint.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it is recommended that the Respondent be ordered to cease and desist therefrom and to take the affirmative action described below which is designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to make employee Gregory Smith whole for any loss of earnings he may have suffered because of the discrimination practiced against him in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New*

*Horizons for the Retarded*, 283 NLRB 1173 (1987),<sup>3</sup> and that Respondent expunge from its files any reference to his suspension and notify him in writing that this has been done and that evidence of the unlawful suspension will not be used as a basis for future personnel action against them.

Having found that Respondent has refused to bargain in good faith in violation of Section 8(a)(5) of the Act, I shall recommend that Respondent be ordered to meet with the Union and, on request, bargain collectively in good faith concerning rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the unit and, if an agreement is reached, embody it in a signed contract.

Otherwise, it is not considered to be necessary that a broad order be issued.

[Recommended Order omitted from publication.]

<sup>3</sup>Under *New Horizons*, interest is 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.