

Pilgrim Industries, Inc. and United Food and Commercial Workers, Local 540. Case 16-CA-13792

April 17, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On February 21, 1990, Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Pilgrim Industries, Inc., Lufkin, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹The 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.

Timothy L. Watson, Esq. and *Ronald K. Hooks, Esq.*, for the General Counsel.

Allen P. Schoolfield, Esq., of Dallas, Texas, for the Respondent.

Johnny Rodriquez, of Dallas, Texas, for the Charging Party.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge. This case was heard in Lufkin, Texas, on September 14, 1989. The charge was filed October 31, 1988, and the complaint was issued on December 7, 1988.

Respondent admitted that it is engaged in the processing, packaging, and sale of chicken broilers in Lufkin, Texas, where during the past 12 months, a representative period, it sold and shipped products valued over \$50,000 directly to points outside Texas. On the basis of those admissions and the record, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act (Act).

Respondent admitted that the Charging Party (Union) is a labor organization within the meaning of Section 2(5) of the Act.

The Board (see 286 NLRB 244 (1987)) found the Respondent to be a lawful successor to Pluss-Tex, and ordered

Respondent to recognize and, on request, bargain with the Union as the exclusive representative of its employees in the following appropriate bargaining unit:

All production employees at the Respondent's Lufkin, Texas, plant; excluding all maintenance employees, truck drivers, office clerical employees, guards, watchmen, assistant managers, foremen, foreladies and all other supervisors as defined in the Act.

The complaint alleges that after meeting and bargaining with the Union from January 1988, without agreement, Respondent unilaterally, on September 1, 1988, announced and, on September 11, 1988, actually implemented, a 13-percent increase in employee contributions to its health insurance benefit fund; and on July 22, 1989, implemented a change in employee contributions to its health insurance plan by increasing the premium payment for an individual employee from \$6.75 per week to \$8.45 per week, and the premium payment for a family from \$14.45 per week to \$18.05 per week.

On September 1, 1988, Respondent wrote its employees including those employees in the bargaining unit:

The last time we raised the employee contributed portion of our Group Health Plan was 1983 which is 5 years without an increase. I would like to praise you for having had a part in controlling this most-needed benefit by cooperating and supporting our Group Medical Benefits cost-containment program we began about two years ago.

But now, effective the week of September 11, 1988, because of the high rate of increased medical costs, we are raising the employee contributed portion to \$6.75 per week for a single employee and \$14.41 for a family, which is approximately 13% increase over a 5 year period or less than 3% per year. Medical cost increases have gone up 81% for that five year period on the national coverage or approximately 16% per year. So, it is easy to see that our Medical Plan is holding up very well compared to the national average, and it has saved you money. Pilgrim's Pride pays 1/2 or more of your medical claims and the other 1/2 is paid by you as the covered employee.

Johnny Rodriquez, president of Local 540, testified that the Union and Respondent meet in negotiation sessions on January 22, April 12, July 7 and 8, and August 16, 1988.

Rodriquez testified that the Union made health and welfare proposals during the August 16, 1988 meeting. The union proposal was for substantial increases in the benefits section and the addition of

Dental plan, PCS plan, Vision plan, 1,000,000.00 lifetime M.M., Life Ins.—\$15,000.00, accidental—\$30,000.00, at no cost to employees.

Rodriquez testified that Respondent made no official response to the union proposal but "they did mention some concerns that they had with insurance costs." According to Rodriquez Respondent said

that they were considering to . . . or contemplating uh some increases in the premiums that the employees had to pay because the Company's insurance costs was going up.

On September 15, 1988, at a bargaining session, Respondent presented a written response to the Union August contract proposals. In regard to health and welfare, Respondent's written response indicated "rejected."

Respondent and the Union met in negotiating sessions on September 16 and 29, 1988. On September 29 Respondent presented written proposals to the Union's prior proposals. In regard health and welfare, Respondent proposed:

Union #26. Health and Welfare. Company will stay with present plan with discretionary right to change and modify both plan and employee contributions as necessary in the opinion of the company.

Rodriguez testified that he first learned of the Respondent's letter to employees announcing increases in health plan premiums when an employee showed him the letter on September 30.

During a negotiating session on September 30, Rodriguez brought up Respondent's September 1 letter to the employees:

I know there was quite a . . . we had an exchange there, and at times it gets a little heated at negotiations but I'm asking the Company why did they do that? I couldn't understand. I . . . I . . . we were in the process of negotiations with the Company and yet here they go in and implement a change in what we considered to be a mandatory topic of negotiations.

Basically (Respondent's spokesman) told me that he did not agree with my interpretation of the law; he reminded me that in our August meeting, that would have been August 16th meeting, that they had mentioned to me that they were having problems with the insurance costs or concerns and that they had to do this.

Rodriguez asked Respondent,

[Di]d you give me a specific amount that you intended to increase the insurance to or a specific date in our August meeting? He said, no, because we didn't know it at the time, what the amount would be or when the effective date would be.

On October 4 Respondent's attorney wrote Johnny Rodriguez:

At our last bargaining session in Lufkin, Texas, on September 30, 1988, you expressed dissatisfaction with the increase in the Medical Benefit Plan for bargaining unit people. You had been advised on August 16, 1988, that an increase in employee contribution was imminent. The company letter of September 1, 1988, set forth the percentage increase.

As you know, participation in the Medical Benefit Program is voluntary on the part of unit employees and the company pays approximately 1/2 the cost. The company offers to bargain with the union on costs and con-

tinued participation in the plan. If any employee wishes to withdraw from the program, the company will agree to return the increased cost and is willing to bargain on the plan and its cost. However, the company needs an agreement or solution to this matter by November 1, 1988. Since we have at least two sessions scheduled prior to this date, I would anticipate resolution of this issue.

Johnny Rodriguez replied by letter dated October 31, 1988, in which he disputed that he was warned of an imminent increase in employee premiums on August 16. He also pointed out that he was not advised by Respondent of their September 1 letter to employees and that he was not sent a copy of the letter. Rodriguez stated that he viewed Respondent's action as a unilateral change at a time when no impasse had occurred. He asked that Respondent rescind the changes and restore the status quo along with refunds to employees.

According to Rodriguez, during a November 11, 1988, bargaining session, he reminded Respondent that the Union's position remained the same as he expressed in his October 31 letter.

Subsequently, according to Johnny Rodriguez, the parties meet to negotiate on November 22, 1988, but the health plan premium issue was not discussed.

There have been no meetings after November 22, 1988.

By letter dated July 11, 1989, but stamped "Jul 12 1989," Respondent wrote the Union

I enclose the company proposal for an increase in monthly hospitalization rates for the Lufkin plant. The enclosed letter and notice is for all plants in the Pilgrim system, except Lufkin, and is not being disseminated at the Lufkin plant. However, the enclosed letter is a proposal for the Lufkin plant and will encompass all prior increases. This is an offer to bargain on the complete present package with the enclosed proposed increases and pretax premium plan. The company proposes to place this enclosed plan with increases by the week ending July 22, 1989, and will be available to discuss this entire matter with your union on request.

The enclosure to Respondent's July 11 letter to the Union included the following:

New Premiums

Effective week ending July 22, 1989, the new weekly payroll deduction for the Medical Plan is as follows:

<i>Current Premium Rates</i>	<i>New Premium Rates</i>
\$6.75/employee/week	\$8.47/employee/week
\$14.41/family/week	\$18.05/family/week

Johnny Rodriguez testified that he phoned and talked with Respondent's attorney regarding the July 11 letter:

I said, unless you're prepared to restore the conditions as they were prior to the implementation back in September, that I'm not in a strong position to bargain with you. And he advised me that he was not going to do that. And that was the gist of the conversation.

On July 21, 1989, the Union's attorney wrote to confirm the above phone conversation. The letter also stated:

[T]he Union’s position is that the prior change in cost to employees of insurance constituted a unilateral change and that this unfair labor practice must be remedied before there can be good faith negotiations between the parties.

The Union stands ready to negotiate a full package to reach a collective bargaining agreement, if the employer will restore the conditions which existed prior to the unilateral change and make the employees whole for the difference.

Until such actions are taken, the Union does not feel there can be good faith negotiations because of the Union’s belief that the Company has committed an unfair labor practice.

Dewayne Gilbreath, Respondent’s corporate director of human resources, testified that Respondent’s health insurance program is basically a company paid program and only in the case of catastrophic needs, is there some overage insurance coverage.

Under the program, in noncatastrophic situations, when a covered employee has a demand for covered hospital services, Respondent writes the check for the services.

Gilbreath testified that the hospitalization plan is basically a 50/50 premium contribution plan, designed to provide that employees pay 50 percent of the costs. Gilbreath testified,

Q. Okay. And it’s your testimony that from time to time that the Employer would adjust the 50/50 contribution so that they would continue to equal approximately that percentage amount?

A. Yes, I’m aware that they did that back in 1979 and uh then again in uh January of ’84, and uh, most recently was uh . . . or second most recently was September of ’88 and then in July, they proposed another increase. It was a different kind of increase, it was a pretax plan where there wasn’t a substantial increase either way, to some people it actually saved them a little money.

An examination of a stipulated record (G.C. Exh. 15), shows as follows regarding employee/employer contributions from 1983:

Year	Percent Employee-Contribution	Percent Employer-Contribution
1983	34.5	65.5
1984	38.8	61.2
1985	46.7	53.3
1986	60.7	39.3
1987	45.7	54.3
1988	41.2	58.8

Dewayne Gilbreath testified about the above document:

going back to GC15, uh, they would look at the claims paid and the contributions paid, and uh as ’83, the Company paid 65 1/2%; in ’84, they paid 61%; and ’84 is when they made their decision to try to get the thing back closer to the 50/50. They did that. They made a change and it got close to the 50/50. The Company paid 53%. And you’ll note, in every one of those years,

we’ve had an increase in claims. That’s actual insurance dollars spent in medical treatment

Q. . . . So, the Employer can wait, can look at figures for two years, I can look at figures for three years, I can look at figures for one year and decide whether it’s going to make any adjustment to meet the 50/50 ratio at any given year?

A. As far as I know, there’s no time set. No set period that they do that.

Discussion

The above-cited evidence was not materially disputed.

There was a question raised in a letter to the Union from Respondent’s attorney, dated October 4, 1988 (see above). In that letter the attorney indicated that the Union was advised on August 16, 1988, that an increase in employee contribution was imminent. Johnny Rodriguez in his letter to Respondent on October 31 disputed that contention.

There was no testimony contesting Rodriguez’ testimony as to Respondent’s actual comments in the August 16 meeting. Of course, Respondent’s October 4 letter is hearsay as to the truth of its contents and, at most, must be considered as carrying little weight to the extent it conflicts with non-hearsay testimony. I specifically credit the testimony of Rodriguez regarding the August 16, 1988 negotiating session. On the basis of that credited testimony I find that Respondent did not tell the Union that an increase in employee contributions was imminent. Instead I find that Respondent told the Union

that they were considering to . . . or contemplating uh some increases in the premiums that the employees had to pay because the Company’s insurance costs was going up.

As to the July 1989 letter to the Union, the date stamp on the letter, July 12, would, at best, result in the Union receiving the letter on July 13.

The week ending July 22, is the workweek starting with Monday, July 17, 1989. If Respondent’s letter was mailed on the stamped date, July 12, and the Union received the letter in the shortest possible time, July 13, the letter afforded the Union as little as 4 days’ notice, including a Saturday and a Sunday, of proposed changes in terms and conditions of employment.

Findings

Changes in employee contributions to health insurance premiums constitute changes in terms and conditions of employment, a mandatory subject of collective bargaining. *Garrett Flexible Products*, 276 NLRB 704 (1985).

Section 8(a)(5) of the National Labor Relations Act, 29 U.S.C. § 158(a)(5), makes it an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of his employees.” Until the parties bargain to an impasse, an employer’s unilateral change in the terms and conditions of employment constitutes a refusal to bargain. . . . An employer must maintain the *status quo* after the expiration of the collective bargaining agreement until a new agreement is reached or

until the parties bargain in good faith to impasse. . . . Where, as in this case, an impasse is reached, “the employer may unilaterally impose changes in the terms of employment if the changes were reasonably comprehended in the terms of its contract offers to the union.” . . . Unilateral changes not comprehended in pre-impasse proposals constitute a refusal to bargain in violation of sections 8(a)(5) and (1) of the Act. . . . [*Southwest Forest Industries v. NLRB*, 841 F.2d 270, 273 (9th Cir. 1988).]

Here, there was no impasse. In fact, as shown above, the Union was negotiating in September—until September 30—without knowledge that Respondent had made changes in employee premiums. Therefore, under the above rule, by making those changes at a time when the parties were not at impasse, Respondent violated Section 8(a)(1) and (5) of the Act.

The evidence shows that Respondent unilaterally announced to its unit employees on September 1, and implemented on September 11, changes in employee contributions to the health insurance plan.

Moreover, even if we ignore the fact that there was no impasse, under the above cited rule from *Southwest Forest*, an issue exists as to whether the changes announced by Respondent to its employees on September 1, were changes which “were reasonably comprehended in the terms of its contract offers to the Union.”

The undisputed and credited testimony of Johnny Rodriguez shows that, in response to a union proposal for increased health benefits, Respondent, during the August 16, 1988 bargaining session stated that they were considering increased employee contributions to the health plan. Neither then, nor at any time before September 1, did Respondent incorporate in contract proposals, the terms implemented on September 11.

The full record shows that Respondent did not offer the Union a contract which included the items implemented on September 11. In the August bargaining session, in response to the union proposal for increased medical benefits, Respondent rejected that proposal and mentioned that it was considering increases in employee premiums. That does not constitute notice of specific premium increases nor does the notice to employees on September 1 constitute notice to the Union. *Garrett Flexible Products*, 276 NLRB 704 (1985).

In *Southwest Forest*, the Employer notified the Union that it intended to implement unspecified changes some 7 days before those changes were implemented. The court discussed that matter,

Southwest contends, however, that the Union failed to respond to any of its bargaining overtures after receiving notice of the changes and that this failure resulted in a waiver of the Union’s statutory right to bargain prior to implementation. The Union cannot be found to have waived its bargaining rights unless the notice it received provided adequate time to consider and respond to Southwest’s proposals. . . . [*Southwest Forest Industries v. NLRB*, supra at 273 (9th Cir. 1988).]

Here, Respondent gave no notice to the Union before implementing its September 11 changes. Although employees were notified of those pending changes by letter dated Sep-

tember 1, the Union was not supplied with copy of that letter or otherwise notified by Respondent of the planned changes. See also *Cisco Trucking Co.*, 289 NLRB 1399 (1988); *Garrett Flexible Products*, 276 NLRB 704 (1985).

If I adopt an argument of Respondent, an issue exists as to whether the status quo before Respondent’s alleged September 1988 unilateral change is represented by the amount of employee premiums or by the 50/50 contribution formula. If the former, then, logically, any change in the dollar amount of employee premiums would constitute a change. While, under the 50/50 contribution formula, a change in dollar amount of employee premiums would not constitute a change as long as Respondent maintained the 50/50 formula.

The record shows that employee percentage of contributions may vary from year to year based on two factors: (1) the amount of claims paid by the Respondent during that year, and (2) whether Respondent decides to adjust employee premiums during that year to approximate the 50/50 formula.

While Respondent has no control over the amount of claims during a particular year, Respondent does have control over when it makes employee premium adjustments to approximate the 50/50 formula.

General Counsel’s Exhibit 15, above, which lists percentage contributions from the employees and the employer, shows that before September 1988, Respondent did not routinely make adjustment in employee premiums on a regular basis.

I find that the record does not support Respondent’s argument that it did not engage in a unilateral change even though the employee premiums changed. Respondent argues that it was simply adjusting the premiums in accord with the 50/50 formula.

However, the record shows that such an adjustment would itself constitute a change in working conditions. *Allis-Chalmers Corp.*, 234 NLRB 350 (1978).

Moreover, the record shows that Respondent’s actual practice was something other than a 50/50 costs distribution. General Counsel’s Exhibit 15, above, shows that Respondent’s contributions varied from a low of 39.3 percent in 1986 to a high of 65.5 percent in 1983.

Additionally, Respondent did not adjust the contributions on a regular routine basis. According to the testimony of Respondent’s corporate director of human resources, Respondent had “no time set” for adjustments in its employee medical contributions.

Even if I find meritorious Respondent’s argument that maintenance of the 50/50 distribution of costs does not constitute a change in working conditions, I find that Respondent failed to show that it did in fact maintain a 50/50 formula. Respondent also failed to show that it was its practice to adjust its contributions on a regular basis.

At best, from Respondent’s standpoint, if a 50/50 formula had been established, and, as shown above, it was not so established, then Respondent would have been obligated under the law, to notify the Union of its plan to adjust contributions in order to give the Union an opportunity to examine records and bargain.

Here, as in *Garrett Flexible Products*, Respondent by adjusting employee premiums at its convenience “has retained discretion with respect to the terms and conditions of employment,” and “unilateral exercise of that discretion will be

found violative of Section 8(a)(5).” (*Garrett Flexible Products*, 276 NLRB 704, 706 (1985).)

On July 11, 1989, Respondent notified the Union of its plan to make additional adjustments resulting in more increases in employee premiums. However, Respondent rejected the Union’s request that it first rescind the September 1988 increases in order to permit bargaining.

An employer may not establish an impasse by insisting on continuation of working conditions which it unlawfully implemented. *Lehigh Portland Cement Co.*, 287 NLRB 978 (1988).

It is unclear whether an impasse existed in July 1989. However, the parties had not met and negotiated since November 22, 1988. From September 30 there was a dispute, which Respondent refused to correct, stemming from Respondent’s illegal medical benefit premium changes in September.

Respondent gave short notice to the Union of its intention of promulgating an additional increase in premiums above those illegally implemented on September 11, 1988.

By insisting on continuing its illegal unilateral changes on July 1989, Respondent engaged in additional unilateral changes by again increasing the unit employees’ health premiums in July 1989.

In *NLRB v. Cauthorne*, 691 F.2d 1023 (D.C. Cir. 1982), the court held that if, following an employer’s illegal unilateral action, the parties bargained to impasse, restoration of the status quo may not be ordered beyond the date impasse is reached. The court in *Southwest Forest* distinguished *Cauthorne* as follows,

The court distinguished the facts in *Cauthorne* from the “usual case” in which “no substantial bargaining has occurred between the parties after the employer’s unilateral change,” and in which “consequently the typical make-whole order runs from the date of the unilateral change until the employer and union negotiate a new agreement or reach an impasse.” *Id.* at 1025. *Cauthorne* only serves to support the Board’s order here, for this is the “usual case.” *Southwest* and the Union engaged in no substantial bargaining following the unilateral changes and thus could not have reached an impasse. [*Southwest Forest Industries v. NLRB*, supra at 274–275.]

Here, like *Southwest Forest*, we have the “usual case.” Although the parties met, and negotiated until November 22, 1988, there was no substantial bargaining after the Union learned of Respondent’s unilateral changes. As indicated above, the record is unclear whether there was an impasse after November 22. However, the record regarding the communications between the parties in July 1989 shows that Respondent refused to correct its unfair labor practices. An employer may not establish a lawful impasse by insisting on continuation of working conditions which it unlawfully implemented. *Lehigh Portland Cement Co.*, 287 NLRB 978 (1988).

Finally, I find no support for Respondent’s argument that the Union waived its right to contest the changes alleged herein. The Union promptly complained to Respondent immediately upon learning of the changes and, again on receipt

of notice in July 1989, the Union complained of the unilateral changes.

CONCLUSIONS OF LAW

1. Pilgrim Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers, Local 540, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union has been at times material herein, the exclusive representative for the purposes of collective bargaining of the following employees:

All production employees at the Respondent’s Lufkin, Texas, plant; excluding all maintenance employees, truck drivers, office clerical employees, guards, watchmen, assistant managers, foremen, foreladies and all other supervisors as defined in the Act.

4. Respondent, by unilaterally announcing and implementing changes in terms and conditions of employment among its employees in the above-described bargaining unit in September 1988 and in July 1989, without having first proposed those changed terms and conditions of employment to the Union during contract negotiations in sufficient time to adequately permit the Union to negotiate over those items, at a time when it and the Union were not at a bargaining impasse, violated Section 8(a)(1) and (5) of the Act.

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

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent be ordered to restore to status quo conditions that existed before its unilateral changes in terms and conditions of employment in September 1988 and in July 1989, that it be ordered to meet and bargain in good faith with the Union, and that it make whole all employees who suffered financial losses as a result of the unilateral changes. Respondent’s liability which requires it to compensate employees for increased premiums and any actual losses because of loss of medical or hospital expenses that would have been paid but for Respondent’s unlawful action, shall run from the date of the unilateral changes until the terms and conditions are restored in accordance with the law. *Storer Communications*, 294 NLRB 1056 (1989); *Southwest Forest Industries*, 278 NLRB 228 (1986), enfd. 841 F.2d 270 (9th Cir. 1988); *Ogle Protection Service*, 183 NLRB 682 (1970). Backpay shall be computed as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings, conclusions of law and the entire record, I issue the following recommended¹

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is ordered that Respondent, Pilgrim Industries, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) refusing to bargain with United Food and Commercial Workers, Local 540, by unilaterally implementing changed terms and conditions of employment.

(b) 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.

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

(a) Recognize and bargain in good faith with United Food and Commercial Workers, Local 540, regarding terms and conditions of employment of unit employees.

(b) Restore unit employees' terms and conditions of employment as they existed before the September 1988 changes and continue them in effect unless or until a new agreement is reached or an impasse is reached in bargaining.

(c) Make employees whole for the losses they incurred as a result of the September 1988 and July 1989 unilateral changes in employees' terms and conditions of employment, in the manner set forth in this Decision.

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

(e) Post at its facility in Lufkin, Texas, copies of the attached notice.² Copies of the notice, on forms provided by the Regional Director for Region 16, 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.

¹If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²If 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."

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

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.

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 change unit employees' terms and conditions of employment at a time when we have not bargaining with the union regarding those changes. United Food and Commercial Workers, Local 540 represents our employees in the following unit:

All production employees at the Respondent's Lufkin, Texas, plant; excluding all maintenance employees, truck drivers, office clerical employees, guards, watchmen, assistant managers, foremen, foreladies and all other supervisors as defined in the Act.

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

WE WILL recognize and bargain in good faith with United Food and Commercial Workers, Local 540, regarding terms and conditions of employment of our unit employees.

WE WILL restore unit employees' terms and conditions of employment to the level in existence before the September 11, 1988 changes in employee health benefit premiums and continue them in effect unless or until a new agreement is reached in bargaining.

WE WILL make employees whole for the losses they incurred as a result of the September 1988 and July 1989 unilateral change in health benefit premiums.

PILGRIM INDUSTRIES, INC.