**Columbia Portland Cement Company *and* Local Lodge D24 of the Cement, Lime, Gypsum & Allied Workers Division of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, CLC.** Cases 8–CA–20252, 8–CA–21398, and 8–CA–21593

July 25, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

Upon a charge filed by Boilermakers Local Lodge D24, the Union, the General Counsel of the National Labor Relations Board issued an amended consolidated complaint and notice of hearing dated April 27, 1989. The amended complaint alleges that the Respondent engaged in certain unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the National Labor Relations Act by failing and refusing to reinstate employees who had participated in a protected strike; by withdrawing recognition from the Union as the exclusive representative of bargaining unit employees; by making changes in terms and conditions of employment without providing the Union notice and an opportunity to bargain; and by dealing directly with employees regarding these changes.[1]

On January 12, 1990, the parties jointly filed a motion to transfer the proceeding to the Board and a stipulation of facts. The parties waived a hearing before an administrative law judge, the making of findings of fact and conclusions of law by an administrative law judge, and the issuance of an administrative law judge's decision and recommended Order. The parties agreed that the stipulation, with attached exhibits, including, inter alia, the initial and amended charges, the complaint and notice of hearing, and the answer, shall constitute the entire record in this case and that no oral testimony is necessary or desired by any of the parties.

On May 17, 1990, the Board issued its Order approving the stipulation and transferring the proceeding to the Board. Thereafter, the General Counsel and the Respondent filed briefs in support of their respective positions.

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

The Board has considered the stipulation, the briefs, and the entire record in this proceeding and makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation with an office and place of business in Zanesville, Ohio, has at all material times been engaged in the operation of a cement making plant. Annually, the Respondent, in the course and conduct of its business operations, purchases and receives at its Zanesville, Ohio facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Ohio. The parties stipulated, and we find, that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties stipulated, and we find, that the Union is now, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Since at least September 1, 1984, the Union has been the exclusive collective-bargaining representative of the production and maintenance employees employed at the Respondent's Zanesville facility. On October 28, 1984, following a valid impasse in contract negotiations between the Respondent and the Union, the Respondent implemented the terms of its last contract offer. From that date until July 12, 1988,[2] there were no changes made in those terms of employment.

On June 18, 1985, certain employees of the Respondent ceased work concertedly and engaged in a strike that was found by the Board to be an unfair labor practice strike.[3] On April 29, 1987, the Union made an offer to return to work on behalf of employees who had engaged in the strike.[4] By letter dated May 7, 1987, the Respondent failed and refused to reinstate these employees, contending that they either had been lawfully terminated or were permanently replaced economic strikers who would be kept on a list for future vacancies. On April 20, the Respondent offered reinstatement without backpay to the employees named in the complaint. Pursuant to this offer, approximately 33 of the striking employees returned to work on May 2. Apart from this reinstatement offer, the Respondent has taken no other action to comply with the terms of the Board's Order in the earlier unfair labor practice proceeding.

On May 6, Union Representative William Smith asserted by letter to the Respondent's counsel that the

[1] The amended complaint also alleges that the Respondent violated Sec. 8(a)(2) by rendering assistance and support to another labor organization known as the Plant Committee. On December 14, 1989, the Union requested the withdrawal of those allegations, and the parties do not seek any findings concerning them.

[2] All dates are 1988 unless otherwise indicated.

[3] *Columbia Portland Cement Co.*, 294 NLRB 410 (1989), enfd. in relevant part 915 F.2d 253 (6th Cir. 1990), rehearing denied (1991).

[4] The offer listed the names of 75 strikers, of whom only 62 are at issue in this proceeding.

employee handbook given to returning employees contained working conditions different from the terms of the Respondent's implemented proposal of October 11, 1984. Smith demanded that any such changes be negotiated with the Union. Counsel for the Respondent replied on May 16 that no changes in working conditions had been effected.

On July 12, the Respondent, by letter, withdrew recognition from the Union. In its letter, the Respondent cited as the bases for its decision a petition signed by employees indicating that they did not wish to be represented by the Union, a lack of contact with union representatives during the previous 4 months and a lack of information as to the current union officers and stewards, and a very high rate of turnover, with no evidence that employees hired since the beginning of the strike desired representation by the Union. By letter dated July 27, the Union asserted that it remained the representative of the bargaining unit employees and challenged the validity of the petition relied on by the Respondent. The Union and the General Counsel do not dispute that on July 8, prior to its withdrawal of recognition, the Respondent received a petition signed by 81 of its employees and that based on a comparison with other records the Respondent reasonably satisfied itself that the signatures were genuine and that all signatories were employees within the bargaining unit. As of July 12, when the Respondent withdrew recognition from the Union, returning strikers made up only 20 of 161 bargaining unit employees.

About June 17, unit employee Darrell Thomas filed a grievance with the Respondent concerning the job in which he was placed on his return from the strike. The grievance was denied by the Respondent and arbitration was requested about June 28. In letters addressed to Thomas directly, dated July 19 and August 16, respectively, the Respondent provided a list of arbitrators and forwarded a letter from the selected arbitrator. In the second letter, the Respondent notified Thomas that he must pay the arbitrator a retainer of $100 and that he might bring a representative to the arbitration proceeding. The Respondent noted that it no longer recognized the Union as the representative of unit employees ''due to its loss of majority status within the bargaining unit.'' Thomas did not respond to the Respondent's August 16 letter or to the arbitrator's letter of August 25, in which the arbitrator stated that he was closing the file because he had not received the retainer or an authorization letter from Thomas. In a letter dated August 29, Union Representative Smith stated that in an August 22 telephone conversation he had informed the Respondent of the Union's belief that the Respondent had acted improperly in processing Thomas' grievance without union representation. The letter further requested that Thomas' grievance be reinstated and that the Union be recognized in the complaint procedure in the future.

About September 21, 1988, the Respondent granted all employees in the unit a wage increase of 20 cents an hour, established a retirement savings or 401(k) plan, and terminated the existing retirement benefit plan, which was originally created in 1984 under the proposal implemented by the Respondent. The Respondent announced the changes directly to unit employees. The parties stipulated that these subjects, as well as the processing of Thomas' grievance, relate to wages, hours, and other terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining. The Respondent's actions with respect to the grievance and the changes in working conditions were undertaken without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees.

### B. *Contentions of the Parties*

The General Counsel contends that the Respondent's failure and refusal to reinstate the 62 named employees following the offer to return to work made by the Union on their behalf violated Section 8(a)(1) and (3) of the Act, and that this violation is not negated by the Respondent's offer of reinstatement approximately 1 year later. The General Counsel further argues that the Respondent's withdrawal of recognition from the Union constituted a violation of Section 8(a)(1) and (5), because the grounds specified by the Respondent to justify its action did not provide a good-faith doubt based on objective criteria as to the Union's continued majority status. Finally, the General Counsel asserts that the Respondent violated Section 8(a)(1) and (5) by granting the September 21 wage increase, replacing the current pension plan with the 401(k) plan, and attempting to require Thomas to pay half of the costs of proceeding with his arbitration.

The Respondent contends that it was not obligated to reinstate the former strikers after receiving the Union's offer to return to work because the employees were economic rather than unfair labor practice strikers and because the Union's offer was not unconditional. The Respondent also contends that it lawfully withdrew recognition from the Union based on the employee petition received on July 8, 80-percent employee turnover, and the lack of activity by the Union. The Respondent argues that the unfair labor practices found in the Board's earlier decision had no effect on the Union's loss of majority status. With respect to the unilateral changes in wages and benefits, the Respondent contends that the charge filed by the Union addressed only the change in pension plans and not the wage increase. The Respondent concedes that if it is found to have unlawfully withdrawn recognition the

change in pension plans may also be unlawful. The Respondent argues, however, that the portion of the complaint pertaining to the arbitration fees for Thomas' grievance should be dismissed because no charge was filed by the Union addressing this allegation.

### C. *Discussion*

1. Considering first the allegation that the Respondent unlawfully failed and refused to reinstate the employees who had participated in the June 18, 1985 strike, we note that the Board has previously determined, and the Sixth Circuit has affirmed, that the strike was an unfair labor practice strike. Therefore, we reject the Respondent's contention that the employees were economic strikers. As unfair labor practice strikers, the employees were entitled to immediate reinstatement on their unconditional offer to return to work. *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938).

The Respondent argues that the Union's April 29, 1987 offer on the strikers' behalf to return to work was not unconditional. Specifically, the Respondent asserts that the Union's letter included the names of lawfully terminated employees and therefore conditioned the return of eligible strikers on the reinstatement of ineligible employees. We find no merit in the Respondent's contention. The letter sent to the Respondent by the Union stated, ''The employees of Columbia Portland Cement (SME), whose names appear on the attached list, unconditionally offer to return to work immediately.'' Thus, by its own terms, the offer was unconditional. Further, the inclusion of the names of employees who were lawfully terminated by the Respondent did not render the offer conditional as to the employees who were eligible for reinstatement. Where reinstatement offers are made on behalf of ''all striking employees'' or lists of employees, the Board does not infer that the reinstatement of one is conditional on the reinstatement of all. *Home Insulation Service*, 255 NLRB 311, 312 at fn. 8 (1981). We therefore find that following the April 29, 1987 unconditional offer to return to work the Respondent was obligated to reinstate the 62 striking employees named in the complaint, none of whom were lawfully terminated by the Respondent, and that its failure and refusal to reinstate these employees violated Section 8(a)(3) and (1) of the Act.

2. With respect to the Respondent's withdrawal of recognition from the Union, it is well established that an incumbent union is afforded a presumption of continued majority status, which an employer may rebut by showing a good-faith doubt based on objective considerations. *Laystrom Mfg.*, 151 NLRB 1482 (1965), enf. denied 359 F.2d 799 (7th Cir. 1966); *Burger Pits, Inc.*, 273 NLRB 1001 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 19 v. NLRB*, 785 F.2d 796 (9th Cir. 1986). An employer may not assert a good-faith doubt as to majority status in a context where employee defections are attributable to unremedied unfair labor practices. *Walker Mfg. Co.*, 288 NLRB 888 (1988); *Chesapeake Plywood*, 294 NLRB 201 (1989). As noted above, the Respondent argues that its withdrawal of recognition was justified by the petition signed by 81 of 161 employees, a high rate of employee turnover, and an asserted lack of contact by the Union.

The General Counsel contends that the employee petition may not be relied on as a basis for good-faith doubt because it was tainted by the Respondent's previous unfair labor practices, which had not been remedied. We find merit in the General Counsel's position. The Board found in its earlier decision that the Respondent had committed numerous serious unfair labor practices, including, inter alia, discharging or suspending approximately 15 employees for having participated in an unfair labor practice strike; refusing to bargain with the Union by refusing to process grievances under the appropriate procedure and by restricting the employees' choice of grievance representatives; and conducting investigatory interviews with employees after having denied their requests for union representation. The Board ordered the Respondent to make whole the unlawfully discharged or suspended employees and to offer reinstatement to those who were discharged; to reinstate the remaining unfair labor practice strikers on their unconditional offer to return to work; to process employee grievances in accordance with the applicable grievance procedures; to recognize the employees' chosen grievance representatives; and to post a Board notice at its plant. Furthermore, as discussed above, we have found that the Respondent unlawfully refused to reinstate the former strikers after the Union's April 29, 1987 unconditional offer on their behalf.

As of the time of the withdrawal of recognition, except for the April 20 reinstatement offer, the Respondent had taken no steps to comply with the Board's earlier Order. In response to the reinstatement offer, 33 employees returned to work, of whom only 20 remained employed at the time the Respondent withdrew recognition from the Union. We do not accept the Respondent's argument that its unfair labor practices affected only these 20 employees and therefore had no impact on the Union's loss of majority status. Rather, we are persuaded that unremedied unfair labor practices of the extent and seriousness described above are likely to have undermined the Union's authority generally and influenced the Respondent's employees to reject the Union as their bargaining representative. See *Guerdon Industries*, 218 NLRB 658, 661–662 (1975). We note that any uncertainty in this regard must be resolved against the Respondent, which is responsible for

the unlawful conduct and which has an affirmative obligation to demonstrate its good-faith doubt. *Walker Mfg.*, supra. Therefore, we find that the employee petition may not serve as a basis for the Respondent's asserted good-faith doubt of the Union's majority status.[5]

We further find that the Respondent is precluded from relying on employee turnover as a basis for a good-faith doubt of majority status. We note initially that the Respondent's unfair labor practices and its failure to remedy them, particularly by failing to reinstate the unlawfully discharged employees and to accept the unfair labor practice strikers' offer to return to work, must be considered to have had a substantial effect on the composition of the bargaining unit. In view of the Board's previous finding that the strike was an unfair labor practice strike, we find that the hiring of new employees as striker replacements would have been unnecessary but for the strike occasioned by the Respondent's own unlawful conduct. In addition, if the Respondent had accepted the April 29, 1987 offer to return to work, a larger number of strikers might have been employed by the Respondent at the time of the withdrawal of recognition approximately 1 year later.

Moreover, were the above factors absent, we note the Board will not presume that the striker replacements employed by the Respondent, simply by virtue of having crossed the picket line, repudiate the Union as their collective-bargaining representative. See *NLRB v. Curtin Matheson Scientific*, 110 S.Ct. 1542 (1990). More reliable evidence of the desires of replacement workers must be presented. In this case, even assuming that the petition signed by employees accurately expressed their sentiment regarding the Union, we have concluded that the petition was tainted by the Respondent's unfair labor practices. Under these circumstances, we find that the turnover among the unit employees is not an objective consideration justifying a good-faith doubt as to the Union's majority status.

The Respondent also cites a lack of contact by the Union as evidence of a loss of majority support. In this regard, the letter from the Respondent to the Union withdrawing recognition states that the Respondent had had no contact with representatives of the Local Union in approximately 4 months and that it did not know who the officers and stewards were. We find, however, that International Representative William A. Smith had corresponded with the Respondent's counsel as recently as May 6, approximately 2 months before the withdrawal of recognition. In that letter, Smith alleged that the Respondent had made changes in the working conditions established by the October 1984 implemented proposal, asserted that the Local Union remained the employees' exclusive bargaining representative, and demanded that any changes in conditions be negotiated with the Local Union. In its brief, the Respondent argues that this correspondence represents merely a complaint by the International representative and does not demonstrate activity by the Local Union. We do not find the Respondent's distinction persuasive. Although the letter originated from the International representative, it is clear that it was sent on behalf of the Local Union and that its purpose was to emphasize the continuing role of that Union as the representative of the Respondent's employees. We find that the letter thus demonstrates the Local Union's readiness to carry out its representative functions.

In addition, although the evidence does not show that the Respondent was aware of the Union's current slate of officers and stewards, we note that Smith's letter indicates that a copy was directed to ''LL-D24 Pres. M. Fisher.'' We find that this notation would reasonably be interpreted as identifying Michael Fisher–-one of the strikers unlawfully discharged by the Respondent and the Union's vice president at the time of the hearing concerning the Respondent's previous unfair labor practices–-as the current union president. Therefore, we conclude that the Respondent's asserted lack of contact with the Union and lack of knowledge as to the identity of current officers and stewards fails as a valid basis for a good-faith doubt of the Union's majority status.

For the reasons discussed above, we conclude that the Respondent lacked a good-faith doubt based on objective considerations with respect to the Union's continued support by a majority of bargaining unit employees. Therefore, we find that the Respondent's July 12 withdrawal of recognition from the Union violated Section 8(a)(5) and (1) of the Act.

3. The complaint further alleges that following its withdrawal of recognition from the Union, the Respondent also violated Section 8(a)(5) and (1) by making unilateral changes in working conditions and by dealing directly with bargaining unit employees concerning these changes. The parties stipulated that about September 21 the Respondent granted employees a wage increase of 20 cents per hour and replaced the retirement benefit plan provided in the Respondent's October 1984 implemented proposal with a retirement savings or 401(k) plan. In addition, with respect to the General Counsel's allegation that the Respondent failed to bargain with the Union when it required employee Thomas to pay one-half of the cost of arbitrating his grievance, the stipulated record includes a letter

[5] This case is clearly distinguishable from *Master Slack Corp.*, 271 NLRB 78 (1984), relied on by the Respondent. In *Master Slack* the Board found that the employer appropriately withdrew recognition from the union on the basis of an employee petition, notwithstanding the employer's continuing litigation of the scope of its backpay liability based on prior unfair labor practices. In that case, however, the Board noted that the unfair labor practices had occurred many years before the withdrawal of recognition; that the employer had complied with the Board's order in many significant respects by bargaining in good faith, executing an agreement with the union, offering reinstatement to all eligible employees, and posting a Board notice.

dated August 16 from the Respondent directly to Thomas informing him that the arbitrator required a retainer of $100 from each of the parties and instructing him to submit a check for that amount to the arbitrator. When Thomas failed to respond to the letter by submitting the required payment, the arbitrator closed the file regarding Thomas' grievance.[6] The stipulated facts reveal that the Respondent implemented the above changes in wages, retirement benefits, and grievance processing without prior notice to the Union and without affording the Union an opportunity to bargain, and that the changes in wages and benefits were announced directly to bargaining unit employees.

The Respondent acknowledges that if the withdrawal of recognition was unlawful the change in benefits may also constitute a violation, but states that the Union's charge alleging the unilateral change in pension benefits did not mention the wage increase, and that no charge was filed pertaining to Thomas' grievance. From this, the Respondent argues that the complaint allegation regarding the imposition of a requirement that the employee bear part of the cost of arbitrating his grievance should be dismissed.[7] We find no merit to the Respondent's position.

The Respondent's contention might be construed as equivalent to an argument that the allegations regarding the unilateral changes in wages and in provisions concerning access to arbitration should be dismissed pursuant to Section 10(b) of the Act because they were not the subjects of a timely filed charge. It is well settled, however, that Section 10(b) constitutes an affirmative defense, and as such must be pleaded and proven by the Respondent. The Respondent does not mention Section 10(b) specifically, or the matter of timeliness generally, in either its answer to the complaint or its brief, and as a result we find that the Respondent has waived that defense.

Even were we to find that the Respondent had not waived the 10(b) defense, however, we still would find that that defense lacked merit. The General Counsel is permitted to add complaint allegations outside the 6-month 10(b) period if they are closely related to the allegations of a timely filed charge, and are based on conduct that occurred within 6 months of the filing of that charge. *Redd-I, Inc.*, 290 NLRB 1115 (1988). The allegations concerning the unilateral changes in wages and access to arbitration meet that test. The wage increase took place on or about September 21, 1988; the Union filed its charge alleging unlawful unilateral changes in terms and conditions of employment (the Respondent's change in retirement benefits) on February 21, 1989, and served it on the Respondent on February 22, 1989, 5 months after the wage increase was granted. The Respondent's letter to Thomas, informing him that he would have to pay half the cost of arbitrating his grievance, was dated August 16, 1988; the Union's charge alleging unlawful direct dealing with employees was filed November 16, 1988, only 3 months later, and served the next day. Thus, both of the complaint allegations at issue are based on conduct that occurred less than 6 months before the filing and service of timely charges.

We further find that the two allegations are ''closely related'' to the allegations of the timely filed charges, as that term is explained in *Redd-I*. The September wage increase and the change in retirement benefits mentioned in the February charge are both alleged to be unlawful unilateral changes in terms and conditions of employment occurring on the same day. They thus involved the same class of violation (unilateral changes) and the same section of the Act (8(a)(5)); they involved similar conduct during the same time period; and the Respondent would be expected to raise similar defenses to both. And the allegation that the Respondent unilaterally changed terms and conditions of employment in August by requiring Thomas to pay half the cost of arbitrating his grievance is, a fortiori, closely related to the allegation in the November change that the Respondent engaged in direct dealing with employees, because the conduct regarding Thomas' grievance is alleged to have violated Section 8(a)(5) on both theories. Indeed, direct dealing and making unilateral changes in terms and conditions of employment may be aptly considered part and parcel of the Respondent's overall pattern of unlawful conduct, namely, ignoring the Union with which it was statutorily required to deal as the exclusive representative of its bargaining unit employees (see *Nickles Bakery of Indiana*, 296 NLRB 927, 928 fn. 7 (1989)); the charges and complaint allegations are ''closely related'' for that reason as well.

The parties stipulated that the changes instituted by the Respondent relate to mandatory subjects of bargaining, that the Union was not given notice and an opportunity to bargain concerning the changes, and that the changes in wages and pension benefits were announced directly to employees. The record also reveals that the requirement to pay half of the arbitration costs was conveyed to Thomas directly. Based on these facts, we find that by instituting the changes in wages, pension benefits, and the grievance-arbitration procedure after having unlawfully withdrawn recognition from the Union, and by dealing directly with employees concerning these changes, the Respondent violated Section 8(a)(5) and (1). *Parkview Furniture Mfg.*, 284 NLRB 947 (1987).

[6] The October 1984 implemented proposal stated with respect to arbitration fees: ''The Company and the Union shall split the cost of the arbitrator's fee, court reporter fee and any other expenses related to the hearing held for the grievance.''

[7] Although the Respondent does not specifically so contend, the logic of its argument in this regard, such as it is, would seem to apply equally to the wage increase.

## CONCLUSIONS OF LAW

1. Respondent Columbia Portland Cement Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local Lodge D24 of the Cement, Lime, Gypsum & Allied Workers Division of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed at the Respondent's Zanesville, Ohio facility, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material the Union has been the exclusive representative of all unit employees for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing to reinstate unfair labor practice strikers on the unconditional offer to return to work made by the Union on their behalf on April 29, 1987, the Respondent violated Section 8(a)(3) and (1).

6. By withdrawing recognition from the Union, the Respondent violated Section 8(a)(5) and (1).

7. By unilaterally terminating the existing retirement benefits plan, instituting a new pension plan, granting a wage increase, and requiring an employee to pay half of the cost of arbitrating his grievance, and by bypassing the Union and dealing directly with employees concerning these changes in their working conditions, the Respondent violated Section 8(a)(5) and (1).

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act. We shall order the Respondent to make the striking employees whole for any loss of earnings they may have suffered by reason of the Respondent's unlawful failure or refusal to reinstate them on the Union's unconditional offer to return to work on their behalf, by payment to each of them of a sum of money equal to that which they normally would have earned during the period from April 29, 1987, the date of the Union's unconditional offer, to April 20, 1988, the date of the Respondent's offer of reinstatement.[8] Backpay shall be computed in accordance with the method prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order that the Respondent recognize and bargain collectively with the Union as the exclusive representative of bargaining unit employees. The Respondent is also ordered to resume processing of employee Thomas' grievance at the arbitration level in accordance with the terms of the October 1984 implemented proposal and to deal only with the Union on matters concerning the payment of arbitration expenses. Finally, we shall order the Respondent, on request by the Union, to rescind any unilateral changes it made in wages and pension benefits; however, our Order should not be construed as requiring the Respondent to cancel any wage increase or other improvement in benefits without a request from the Union. See, e.g., *Elias Mallouk Realty Corp.*, 265 NLRB 1225 fn. 3 (1982).

## ORDER

The National Labor Relations Board orders that the Respondent, Columbia Portland Cement Company, Zanesville, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to reinstate unfair labor practice strikers on their unconditional offer to return to work.

(b) Withdrawing recognition from Local Lodge D24 of the Cement, Lime, Gypsum & Allied Workers Division of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, CLC as the exclusive collective-bargaining representative of production and maintenance employees at its Zanesville, Ohio facility, unless it can demonstrate by convincing objective evidence that the Union no longer represents a majority of the employees in that bargaining unit or that the Respondent has a reasonably grounded good-faith doubt that the Union no longer represents a majority of the bargaining unit.

(c) Unilaterally terminating the existing retirement benefits plan, instituting a new pension plan, granting a wage increase, and requiring an employee to pay half of the cost of arbitrating his grievance, or unilaterally making any other changes in the terms and conditions of employment for bargaining unit employees without notifying or bargaining with the Union.

(d) Bypassing the Union and dealing directly with employees concerning changes in their terms and conditions of employment.

[8] In other circumstances the Board has found that backpay for returning unfair labor practice strikers should commence 5 days after their unconditional offer to return to work, as a reasonable accommodation between the interests of the employees in returning to work as soon as possible and the employer's need to ensure an orderly return. The Board has also found, however, that when a respondent has rejected, unduly delayed, or ignored an unconditional offer to return to work, as the Respondent has in this case, the 5-day period serves no useful purpose and backpay should commence as of the date of the unconditional offer to return to work. *Northern Wire Corp.*, 291 NLRB 727 fn. 5 (1988).

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

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

(a) Make whole the striking employees whose names are listed below for any loss of earnings they may have suffered by reason of the Respondent's unlawful failure and refusal to reinstate them on the unconditional offer to return to work made by the Union on their behalf, by payment to each of them of a sum of money equal to that which they normally would have earned during the period from April 29, 1987, the date of the Union's unconditional offer, to April 20, 1988, the date of the Respondent's offer of reinstatement, with interest, in the manner set forth in the remedy section of this decision.

| | |
|---|---|
| Michael Fisher | Ray Kimble |
| Stephen Folden | Joseph Knaup |
| Donald Dalrymple | Tom McGee |
| Howard Price | Darrell Thomas |
| Donald Farus | Charles Schaeffer |
| Terry Frame | Allen Woodard |
| Sheila Lanning | Ervin Norris |
| Larry Jarvis | Wilbur Gilbert |
| Marvin Baker Jr. | Paul Fisher |
| Jack Lowry | Ronald German |
| Jimmy Hughes | David Morris |
| Mark Jellison | Alan Baker |
| Joseph Stoneburner | Richard Pettit |
| Terry Smith | Clarence Coen |
| Mark Lynsky | James Wofter |
| Keith Luzzader | Milton Merew |
| George Williams | Larry Tyo |
| Roger Fletcher | Floyd Mason |
| Frederick Fracker | Mark Baughman |
| Richard Doty | Franklin Norris |
| J. S. Miracle | Gary Price |
| Craig Brannon | John Morris |
| Steve Patterson | Michael Corbett |
| Perry Porter | James Harding |
| Warren Wapole | Dough Smith |
| Homer Searls | Ron Downey |
| Gary Ferguson | Russell Barrett |
| Brad Dalrymple | Larry Sprangler |
| Gene Swingle | James Morton |
| Lonnie Porter | Rodney Dickerson |
| John Smith | James Dalrymple |

(b) Recognize and bargain collectively and in good faith with Local Lodge D24 of the Cement, Lime, Gypsum & Allied Workers Division of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, CLC as the exclusive collective-bargaining representative of its production and maintenance employees employed at its Zanesville, Ohio facility.

(c) On request, rescind the new pension plan and the wage increase implemented unilaterally without notifying and bargaining with the Union.

(d) Resume processing the grievance of employee Darrell Thomas at the arbitration level in accordance with the terms of the October 1984 implemented proposal, and deal only with the Union on matters concerning the payment of arbitration expenses.

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

(f) Post at its Zanesville, Ohio facility copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 8, 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.

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

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

## APPENDIX

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

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

WE WILL NOT fail and refuse to reinstate unfair labor practice strikers on their unconditional offer to return to work.

WE WILL NOT withdraw recognition from Local Lodge D24 of the Cement, Lime, Gypsum & Allied Workers Division of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, CLC as the exclusive collective-bargaining representative of production and maintenance employees at our Zanesville, Ohio facility, unless we can demonstrate by convincing objective evidence that the Union no longer represents a majority of the employees in that bargaining unit or that we

have a reasonably grounded good-faith doubt that the Union no longer represents a majority of the bargaining unit.

WE WILL NOT unilaterally terminate the existing retirement benefits plan, institute a new pension plan, grant a wage increase, and require an employee to pay half of the cost of arbitrating his grievance, or unilaterally make any other changes in the terms and conditions of employment for bargaining unit employees without notifying or bargaining with the Union.

WE WILL NOT bypass the Union and deal directly with employees concerning changes in their terms and conditions of employment.

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

WE WILL make whole the striking employees whose names are listed below for any loss of earnings they may have suffered by reason of our unlawful failure and refusal to reinstate them on the unconditional offer to return to work made by the Union on their behalf, by payment to each of them of a sum of money equal to that which they normally would have earned during the period from April 29, 1987, the date of the Union's unconditional offer, to April 20, 1988, the date of the Respondent's offer of reinstatement, with interest.

| | |
|---|---|
| Michael Fisher | Ray Kimble |
| Stephen Folden | Joseph Knaup |
| Donald Dalrymple | Tom McGee |
| Howard Price | Darrell Thomas |
| Donald Farus | Charles Schaeffer |
| Terry Frame | Allen Woodard |
| Sheila Lanning | Ervin Norris |
| Larry Jarvis | Wilbur Gilbert |
| Marvin Baker Jr. | Paul Fisher |
| Jack Lowry | Ronald German |
| Jimmy Hughes | David Morris |
| Mark Jellison | Alan Baker |
| Joseph Stoneburner | Richard Pettit |
| Terry Smith | Clarence Coen |
| Mark Lynsky | James Wofter |
| Keith Luzzader | Milton Merew |
| George Williams | Larry Tyo |
| Roger Fletcher | Floyd Mason |
| Frederick Fracker | Mark Baughman |
| Richard Doty | Franklin Norris |
| J. S. Miracle | Gary Price |
| Craig Brannon | John Morris |
| Steve Patterson | Michael Corbett |
| Perry Porter | James Harding |
| Warren Wapole | Dough Smith |
| Homer Searls | Ron Downey |
| Gary Ferguson | Russell Barrett |
| Brad Dalrymple | Larry Sprangler |
| Gene Swingle | James Morton |
| Lonnie Porter | Rodney Dickerson |
| John Smith | James Dalrymple |

WE WILL recognize and bargain collectively and in good faith with Local Lodge D24 of the Cement, Lime, Gypsum & Allied Workers Division of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, CLC as the exclusive collective-bargaining representative of the production and maintenance employees employed at our Zanesville, Ohio facility.

WE WILL, on request, rescind the new pension plan and the wage increase implemented unilaterally without notifying and bargaining with the Union.

WE WILL resume processing the grievance of employee Darrell Thomas at the arbitration level in accordance with the terms of the October 1984 implemented proposal, and deal only with the Union on matters concerning the payment of arbitration expenses.

COLUMBIA PORTLAND CEMENT COMPANY