

Ron Tirapelli Ford, Inc. and General Chauffeurs, Sales Drivers and Helpers Union Local No. 179, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. Cases 33-CA-8767, 33-CA-8824, and 33-RM-294

August 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

On April 1, 1991, Administrative Law Judge Harold Bernard Jr. issued the attached decision. The General Counsel filed an exception and a brief in partial support of the judge's decision, and the Respondent filed cross-exceptions and a brief in support. The Charging Party filed a brief in opposition to the Respondent's cross-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, and conclusions,¹ and to adopt the recommended Order.²

1. The Respondent has not excepted to the judge's findings that it committed various violations of Section 8(a)(1) of the Act in connection with the circulation of a decertification petition and that the unlawfully assisted petition formed the basis for the Respondent's filing of an RM petition. It argues, however, that the Board may not dismiss the RM petition on which an election was held, (1) because the judge did not make a finding, as he would in a case involving a bargaining order under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), that a fair rerun election could not be held, and

¹The judge did not make conclusions of law, so we have included them as part of our decision. In so doing, we grant the General Counsel's exception which requested an express legal conclusion that the Respondent violated Sec. 8(a)(5) and (1) by unlawfully refusing to recognize and bargain with the Union. Although the judge failed to make this explicit conclusion, he did provide a remedy for this violation.

²The judge's decision concerning the payment of contributions on behalf of unit employees to fringe benefit funds as required under the collective-bargaining agreement is controlled by *Manhattan Eye, Ear & Throat Hospital*, 300 NLRB 201 (1990), in which the Board reaffirmed precedents requiring the payment of such fund contributions and expressly overruled *Hassett Maintenance Corp.*, 260 NLRB 1211 (1982), to the extent it held to the contrary. Accord: *Stone Boat Yard v. NLRB*, 715 F.2d 441, 446 (9th Cir. 1983), enfg. 264 NLRB 981 (1982), cert. denied 466 U.S. 927 (1984). Although the United States Court of Appeals for the Second Circuit recently denied enforcement of the fund repayment order in *Manhattan Eye*, it expressly relied on the special facts of that case—in particular, the fact that the repayment order included the period after the union had disclaimed any interest in representing the employees and the employees had no future interest in the stability of the fund. *Manhattan Eye, Ear & Throat Hospital v. NLRB*, 942 F.2d 151 (2d Cir. 1991). The court stated that it was not holding that the Board was "not empowered to order imposition of the status quo ante in other cases where an employer unilaterally discontinues payments to union-sponsored funds." *Id.* at 159. The considerations that influenced the court are not present in this case, where the employees continue to be represented by the Union and to have an interest in the viability of the funds.

(2) because the Union had stipulated to a consent election on the petition and did not file unfair labor practice charges on the petition-tainting conduct prior to the election. We find no merit to these contentions. The Respondent correctly observes that this is not a *Gissel* case; it is a case involving an incumbent union that was the object of an unlawfully assisted decertification effort. The judge accordingly had no reason to make the kinds of findings that would be necessary to support a *Gissel* bargaining order. As for the Union's failure to object to the petition-tainting conduct prior to the election, we note that the Union did not gain knowledge of the Respondent's unlawful conduct until after the election. The Union was therefore unable to file charges or otherwise object to that conduct before the election and was unaware of the inappropriateness of the Stipulated Election Agreement at the time it signed it.

2. The Respondent also argues that the date of filing the petition should be the cutoff time for considering alleged objectionable conduct, citing *Ideal Electric & Mfg. Co.*, 134 NLRB 1275 (1978). The Respondent's reliance on *Ideal Electric* is misplaced. The judge did not set aside the election on the basis of conduct affecting the election, as suggested by the Respondent. Rather, he found that the RM petition itself was tainted by the Respondent's unfair labor practices, and was thus void ab initio. This being the case, he recommended that the petition be dismissed; thus the question whether the election should be set aside never became ripe for decision. It is as if the election had never been held, and the parties are restored to the status quo ante with respect to their bargaining relationship.

CONCLUSIONS OF LAW

1. The Respondent, Ron Tirapelli Ford, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, General Chauffeurs, Sales Drivers and Helpers Union Local No. 179, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union has been and continues to be the exclusive representative for the purposes of collective bargaining of the following employees:

All full-time and regular part-time countermen and parts men; shipping and receiving clerks; stockmen; employees performing towing, emergency service, and minor repair work; pick up and delivery drivers; lubrication employees; car polishers; undercoat rust preventive employees; car washers; used car clean-up employees; watchmen and porters; and general helpers employed by the

Employer at its 2000 West Jefferson Street, Joliet, Illinois facility; but excluding office clerical employees, professional employees, all other employees, guards, and supervisors as defined in the Act.

4. By promising employees better benefits if they get rid of the Union, interrogating employees concerning their union activities, soliciting employees by threats or promises to sign a petition to get rid of the Union, assisting employees in the preparation and circulation of a petition to get rid of the Union, threatening employees with discharge if they supported the Union, creating the impression that employee union activities are under surveillance, promising an employee a better position with more money if he signed a petition to get rid of the Union, and threatening an employee with the loss of the Company's good will and owner's helpful association unless the employee signed a petition to get rid of the Union, the Respondent has violated Section 8(a)(1) of the Act.

5. The acts and conduct described in paragraph 4 above tainted the RM petition filed by the Respondent, and warrant the nullification and dismissal of such petition.

6. By withdrawing recognition from the Union, refusing to bargain with the Union as the exclusive bargaining representative of its employees in the bargaining unit described above, and by unilaterally changing or terminating fringe benefit plans contained in the collective-bargaining agreement, or unilaterally making any other changes in the terms and conditions of employment for bargaining unit employees without notifying or bargaining with the Union, the Respondent has violated Section 8(a)(5) and (1) of the Act.

7. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Ron Tirapelli Ford, Inc., Joliet, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Deborah A. Fisher, Esq., for the General Counsel.
Roger N. Gold, Esq., of Chicago, Illinois, for the Charging Party.
Lawrence M. Cohen, Esq. and *Diane Kristen, Esq.*, of Chicago, Illinois, for the Respondent.

DECISION

HAROLD BERNARD JR., Administrative Law Judge. I heard this case on November 29, 1989, in Joliet, Illinois, pursuant to charges filed on July 14, 1989, and a complaint issued August 23, 1989, alleging that Respondent solicited employees to sign a petition against representation by the Union to be used as a basis for Respondent to file an RM petition to

decertify the Union, threatened employee discharge, promised employees benefits, unlawfully interrogated employees regarding their union sympathies, and created the impression of surveillance of employees' union activities in order to discourage employee support for the Union in violation of Section 8(a)(1) of the Act.

The parties' briefs have been carefully considered.

On the entire record, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Delaware corporation located in Joliet, Illinois, where it sells automobiles. Annual sales exceed \$500,000, and annually Respondent purchases products valued in excess of \$50,000 directly from sources outside Illinois. I find Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

The Union became the collective-bargaining representative for employees in an appropriate unit¹ of parts department employees, nonmechanical employees, nonsales employees, porters, and washers, about 1959, when the automobile dealership was owned by Emich Ford. Respondent purchased the business in 1984 and continued recognition of the Union as representative for employees in the long-established bargaining unit. The parties' latest collective-bargaining agreement ran from August 1986 to July 1989. (G.C. Exh. 3 at 12.) On August 15, 1989, the Union wrote Respondent's Owner Ron Tirapelli requesting negotiations for a new agreement and the processing of an unanswered grievance filed earlier that month. Counsel for Respondent refused the request by letter on August 21, 1989, because "the union's right to continue representation of the bargaining unit employees is presently being determined by [the Board]." General Counsel Exhibit 9, counsel referring to a Board-conducted election in Case 33-RM-294 held on July 11, 1989, resulting in a 3-3 tie vote by employees on the question whether they desired union representation, and union objections to conduct affecting said RM election filed on July 14, 1989.

Counsel for General Counsel alleges that Respondent's basis for refusing to recognize and bargain with the Union lacks legal merit because Respondent unlawfully solicited employee support for the RM petition—based election by numerous coercive acts which warrant, inter alia, nullification of the RM case results and a bargaining order remedy.

¹The unit as described in more detail in the parties' stipulated election agreement is:

All full-time and regular part-time countermen and parts men; shipping and receiving clerks; stockmen; employees performing towing, emergency service, and minor repair work; pick up and delivery drivers; lubrication employees; car polishers; undercoat rust preventive employees; car washer; used car clean-up employees; watchmen and porters; and general helpers employed by the Employer at its 2000 West Jefferson Street, Joliet, Illinois facility; but excluding office clerical employees, professional employees, all other employees, guards, and supervisors as defined in the Act.

A. Edward Mance

Parts man for 30 years and still an employee in the unit at the time of this hearing, Mance responded to a call from Ron Tirapelli in May 1989 to meet in his office alone. Tirapelli told him he would get Mance shares in the Company if Mance would think about getting out of the Union; and, in addition would also put him in profit sharing, where he would be fully vested. Tirapelli told Mance he would have to sign a paper so Mance could get out of the Union, that he thought he had three signed and he'd like to have Mance as the fourth so he could get out of the Union; that there was only so much time before the contract expired in July. Mance said he'd have to consider losing the union pension but Tirapelli told him he'd probably get more out of the shares and profit sharing than the pension, telling Mance in another meeting a week later that the shares alone would get him \$350 to \$400 a month plus the profit sharing. Mance testified that at a third meeting that June Tirapelli also promised that he'd be put on a much better insurance plan than the one he was on, and also, that during meetings with Tirapelli, he asked Mance whether he had signed the petition yet. On cross-examination Mance testified in accord with his answers on direct testimony that Tirapelli told him he'd like to have the Union out so he could hire more people and not have to pay union scale. I found the veteran employee, still employed by Respondent and therefore with much to lose by testifying adversely to his employer's interests, candid and forthcoming in his testimony. Tirapelli carefully guarded his denials with qualifiers such as "not to my knowledge" where more forthright denials seemed appropriate in the context of questions put to him, evaded questions, was not responsive to many questions, gave wishy washy denials, was fed leading questions, and equivocated throughout. I credit Mance and find that Tirapelli promised Mance benefits, interrogated him concerning union activities in coercive circumstances and by communicating his belief to Mance that three other employees had signed the petition against further representation by the Union, created the impression that Respondent was keeping the union activities of its employees under surveillance, in violation of Section 8(a)(1) of the Act.

B. Ramiro Caudillo

Parts-driver and later counterman employee at the time of this hearing, Caudillo testified to a meeting alone with Tirapelli in his office late April early May 1989, during which Tirapelli granted Caudillo a requested advance asking him if he thought the Union would give him one, and telling him he could get rid of him whether there was a union there or not, and prefacing his further remarks by saying that if Caudillo discussed the conversation with anyone he'd deny it. Tirapelli told Caudillo he had money put away for "us" and "we'd" be entitled to full shares in January, stating that there was a petition going around to get rid of the Union and he needed one more signature, and the Union would be out. Tirapelli then said he'd appreciate it if Caudillo would sign the petition and that he'd look into getting some shares for Caudillo like other employees were getting in the parts department.

In a second conversation 2 weeks later on the car lot, Tirapelli approached Caudillo and told him he hadn't signed the petition yet that employee William Bellinghiere had

going around and if he was worrying about older employees not to because he had talked to his lawyer and "I'd be fully vested in this other funding (sic)—it took the place of the pension." Caudillo further testified he had not been aware of any fund referred to by Tirapelli before the latter mentioned it to him during their first discussion. During a third discussion at a parts department employees meeting with Tirapelli, Caudillo testified that Tirapelli promised employees a better insurance plan than the union plan, with more coverage, telling them he would appreciate it if the employees could help him get rid of the Union. Rather than simply denying outright that he had told Caudillo he was covered by the profit-sharing plan during the May conversation, Tirapelli testified it (the coverage) was "impossible," thereby again avoiding a direct response and leaving Caudillo's testimony on that subject undenied. Moreover, on further redirect examination by his own counsel, he testified that under the shares plan certain jobs were not previously (or then—at the time of his discussion with Caudillo regarding such benefit) covered, including the job of parts-driver then held by Caudillo, *whether the Union was in or not*. This fact fortifies the conclusion that Tirapelli was promising Caudillo a new benefit if he withdrew his support for the Union, rather than merely informing him he would automatically be covered by a pre-existing plan as a nonunion employee as contended by Respondent on brief.

Tirapelli admitted he told employees about a better health insurance plan than the union plan. He admits further that he had authority to terminate the shares plan at his discretion and to terminate the profit sharing plan and Respondent's insurance plan benefits in the future. I credit Caudillo's frank testimony over Tirapelli's versions of his conversation with Caudillo including the parts department meeting. I find Respondent engaged in an implied threat of discharge when he informed Caudillo in the context described above that he could get rid of him whether there was a union there or not, unlawfully promised him benefits if he would support the antiunion petition and withdraw support from the Union, and created the impression Respondent was keeping the union activities of its employees under surveillance when Tirapelli informed Caudillo he knew the employee had not yet signed the petition in early to mid-May 1989, in further violation of Section 8(a)(1) of the Act.

c. Jeff Momper

Tirapelli testified to meeting alone with parts counterman Jeff Momper, a unit employee in late April to early May 1989 in the computer room during which Tirapelli recounted at great length the past long and profitable relationship between the two men, that he thought a lot of Momper, recalling the weekends at Tirapelli's home, the yard work he had provided Momper, telling him to keep up the good work and "I'll move you up ladder and bring you into a position—you'll be able to make a lot of money and have a good position." Tirapelli admitted during this 611-c examination that he mentioned the petition, and added, "because of all of this I could really use your support" telling Momper if it comes to an election he'd really like to see him vote his way.

Momper recalls two conversations with Tirapelli in late April and early May and talks with him in June or early July concerning the petition. The first occurred when Tirapelli, who denied this, called Momper on his car phone while

Momper was at work, late April or early May, asking if he'd gotten together to sign a petition with Bill Bellinghiere saying there was a certain date this had to be done by. During the next conversation, admitted by Tirapelli and described by him above, Momper recalls Tirapelli also told him he needed Momper's help, that he was getting a certain number of people's names for the petition, that he had helped Momper before and now Momper could help him. Later in June or early July Tirapelli paged Momper to his office and said he needed three to vote the Union out—to get rid of it; told him of his better insurance and pension plans compared to the union plans, questioned him as to his union sentiments and told him he could get rid of Momper if he wanted to whether the Union was in or out. When questioned under cross-examination Momper, it became evident, was genuinely uncertain—if not confused about the existence, content and coverage of Respondent's existing benefit plans but recalled that during the conversations with him Tirapelli said when the Union was out "we" would get those benefits. Given all the foregoing, I consider the testimony of Tirapelli that he told Jeff Momper to vote anyway he wanted to, "it doesn't matter" unworthy of belief and a further basis to conclude his testimony was not reliable. I find the above further acts of coercive interrogation, promises of benefit to induce Momper to sign an antiunion petition and vote against the Union, implied threat of discharge, and the implied threat that Momper would lose the valuable good will of Respondent's owner stored up over the years unless he "helped" Respondent rid itself of the Union by signing the petition further violations of Section 8(a)(1) of the Act.

d. William Bellinghiere

Assistant manager in new car preparation, Bellinghiere testified as a witness called by Respondent. Fed leading questions during direct examination, he testified that he drafted the antiunion petition, General Counsel's Exhibit 7, and had called the National Labor Relations Board to learn he needed 60 percent to sign it, that he did not refer the matter to Respondent owner Tirapelli until after calling the NLRB. Bellinghiere said he told Tirapelli what he had done and made sure if this was the right thing to do, that it was filled out "right" and that Tirapelli said in response he'd have his attorney look at it. The next day, in the owner's office, Tirapelli told Bellinghiere "everything was exact (sic) thing to do . . . that as soon as I get it done to send it in." On cross-examination Bellinghiere testified to further involvement by Respondent, that Tirapelli told him he would send the petition in for him and that to this end, Bellinghiere left the petition on Tirapelli's desk with the signatures of four out of the six employees he solicited in the dealership, on worktime in work areas.

He also testified in corroboration of other employees that Tirapelli told him at the June parts department meeting that he would get Respondent's insurance and profit-sharing plan if the Union was voted out.

Tirapelli unpersuasively denied knowledge of how the petition initially appeared on his desk or that he asked anyone to put it there, but admitted he told Bellinghiere his attorney said he could send it directly to the NLRB or put it on Tirapelli's desk. Bellinghiere's testimony was left undenied in all major respects by Tirapelli's account.

Employee Eric Gunder in new car preparation, also called as a witness for Respondent, testified without denial that Bellinghiere told him in securing his signature on the employee petition that he had already spoken to Respondent owner Ron Tirapelli concerning the petition.

I find that Respondent assisted and encouraged the initiation or early stages in the formulation of the employee petition by the conduct of Tirapelli in reviewing the petition, having his attorney look it over and announcing to Bellinghiere that it was in an approved form exactly the way it should be done and offering to assist further in its "filing." Respondent further as a reasonable inference given Tirapelli's testimony that he is all over the dealership continually on a daily basis and the testimony of Bellinghiere, knew and tacitly approved the circulation of the petition throughout its premises in working areas on worktime, noting further in this connection that Bellinghiere used this implied approval when he secured the signature of employee Eric Gunder on the petition, telling him he had already talked to Tirapelli about the petition.

The record plainly shows that Respondent went further than putting its imprimatur on the petition when it confronted employees Mance, Caudillo, and Momper with unlawful coercive acts described above in order to induce them to sign the employee petition. This conduct occurred in the context of other unfair labor practices described above to force unit employees to support decertification of the Union and thereby interfered with the free exercise of employee rights guaranteed in Section 7 of the Act, thereby violating Section 8(a)(1) of the Act. See *Central Washington Health Services Assn.*, 279 NLRB 60, 64 (1986); *D & H Mfg. Co.*, 239 NLRB 393, 403 (1979); and *Placke Toyota*, 215 NLRB 395 (1974).

III. REMEDY

I have considered Respondent's argument against a bargaining order remedy on the ground that by proceeding to an election the Union waived its rights to seek such relief as opposed to a rerun of the election and alternatively that a bargaining order is not appropriate given the absence of pervasive violations of the Act, and find such contentions lacking in merit. As aptly noted on brief by counsel for the Charging Party, in light of Respondent's illegal conduct, its admitted withdrawal of recognition from the Union was improper for, as he notes, the Board has held:

It is well established that, where an employer has engaged in unlawful conduct tending to undercut its employees' support for their bargaining representative, the employer cannot rely on any resulting expression of disaffection by its employees because its asserted doubt of the union's majority status has been raised in the context of its own unfair labor practices directed at causing such employee disaffection," [citing *Hancock Fabric Warehouse*, 294 NLRB 189, 192 (May 1989)].

To like effect as further noted by counsel for General Counsel in her thorough briefing, the Board has held that an employee petition will be a valid objective consideration supporting an employer's belief that a union has lost majority status as required to rebut the presumption of such status enjoyed by an incumbent union under *United States Gypsum*,

157 NLRB 652 (1966), only if, prior to an employer's reliance on the petition, it has not engaged in conduct designed to undermine employee support for, or cause their disaffection with the Union. *Hearst Corp.*, 281 NLRB 764 (1986), affd. mem. 837 F.2d 1088 (5th Cir. 1988). Respondent cannot rely on the employee petition herein given its unlawful conduct and coercive role in its solicitation and support for the employee petition which conduct clearly sought to undermine employee support for, and cause their disaffection with the Union; therefore, the RM petition filed by Respondent and admittedly based on said employee petition was tainted and void from its inception and cannot support a valid election. *Hearst Corp.*, supra, and see *Alexander Linn Hospital Assn.*, 288 NLRB 103 (1988), and *Central Washington Health Services Assn.*, supra.

I shall accordingly, recommend the nullification and dismissal of Case 33-RM-294. *Hall Industries*, 293 NLRB 785 (1989). The Respondent having therefore unlawfully refused to recognize and bargain with the Union as the incumbent exclusive bargaining representative of unit employees, a matter thoroughly addressed by all parties at this hearing by way of testimony, exhibits, arguments during the hearing and in all parties' briefs, a bargaining order remedy is appropriate.

Respondent further contends that the promised benefits found herein to constitute unlawful promises were pre-existing benefit plans given its nonunion employees so that it was free to advise employees of such coverage should they vote against the Union. There was no sufficient probative evidence to support the existence of such plans, and employees testified credibly, in some instances that they did not know of such benefit plan, or their contents, coverage or eligibility standards, or were clearly confused about which plan Tirapelli maintained. Moreover, Respondent admittedly was free to terminate the benefit plans at his own discretion and his communications to employees promising them coverage is an implicit undertaking to exercise such discretion on their behalf should they withdraw support from the Union; as such, the promises were unlawful and a remedial order is appropriate. Moreover, while the matter of whether the Respondent had unilaterally terminated specific fringe benefit plans administered under its contract with the Union was left to the compliance stage of these proceedings by request of counsel for the General Counsel, she seeks a remedial order making employees whole for any losses they incurred in such case. Since Respondent is found to have promised to cover employees with its own better benefit plans if the Union was voted out, a natural concern arises from a reasonable view that employee rights may have already been derogated in such regard so that a remedial order, conditional in nature, is warranted should this be so, and to address any reasonably present employee concerns in such regard.

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall order the Respondent, on request by the Union, to rescind any unilateral changes it made in wages and benefits; however, this 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). I shall also order the Respondent to make its employees whole by reimbursing them for any

wages or benefits they may have lost as a result of its unlawful unilateral changes, with interest.² Finally, I shall order the Respondent to pay any contributions it has failed to make on behalf of unit employees to fringe benefit funds as required under its collective-bargaining agreement, if the Union requests it to cancel a unilateral change in benefits and reinstate the contractual fringe benefit fund payments instead, and to make its employees whole by reimbursing them for any other expenses ensuring from its failure to make such required contributions, with interest.³

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, Ron Tirapelli Ford, Inc., Joliet, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising employees better benefits if they get rid of the Union.

(b) Interrogating employees concerning their union activities.

(c) Soliciting employees by threats or promises to sign a petition to get rid of the Union.

(d) Assisting employees in the preparation and circulation of a petition to get rid of the Union.

(e) Threatening employees with discharge if they supported the Union.

(f) Creating the impression that employee union activities are under surveillance.

(g) Promising any employee a better position with more money if he signed a petition to get rid of the Union.

(h) Threatening any employee with the loss of the Company's good will and owner's helpful association unless the employee signed a petition to get rid of the Union.

(i) Withdrawing recognition from the Union as the exclusive bargaining representative of its employees in the following appropriate bargaining unit:

All full-time and regular part-time countermen and parts men; shipping and receiving clerks; stockmen; employees; performing towing, emergency service, and minor repair work; pick up and delivery drivers; lubrication employees; car polishers; undercoat rust preventive employees; car washers; used car clean-up employees; watchmen and porters; and general helpers employed by the Employer at its 2000 West Jefferson Street, Joliet, Illinois facility; but excluding office cler-

²In accordance with our decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), interest on and after January 1, 1987, shall be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

³The Board does not provide for the addition of interest at a fixed rate on unlawfully withheld fund payments. Instead, see *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), for the method of determining any additional amounts owed to such funds as reimbursement for losses attributable to the unlawfully withheld contributions. However, the Board does provide interest at a fixed rate on amounts owed to individual employees for their losses attributable to the unlawful withholding of benefit fund contributions. *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981). Interest on such amounts shall be computed in accordance with our decision in *New Horizons*, supra.

⁴If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

cal employees, professional employees, all other employees, guards, and supervisors as defined in the Act.

(j) Refusing to bargain over a new collective-bargaining agreement with the Union as the exclusive bargaining representative of the employees in the bargaining unit.

(k) Unilaterally changing or terminating any fringe benefit plans contained in the collective-bargaining agreement with the Union which was effective August 1986 to July 1989, or unilaterally making any other changes in the terms and conditions of employment for bargaining unit employees without notifying or bargaining with the Union until an agreement or impasse in such negotiations is reached.

(l) 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) Recognize the Union as the exclusive bargaining representative of its employees in the bargaining unit.

(b) On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(c) On request, rescind any changes in bargaining unit employees' benefit plans and any other unilateral changes in the terms and conditions of employment for bargaining unit employees it has made without notifying with the Union.

(d) Make its employees whole by reimbursing them for any wages or benefits they may have lost as a result of its unlawful unilateral changes, with interest, in the manner set forth in the remedy section of this decision.

(e) If the Union requests it to cancel a unilateral change in benefits and reinstate the contractual fringe benefit fund payments instead, pay any contributions it has failed to make on behalf of unit employees to fringe benefit funds as required under the collective-bargaining agreement and make its employees whole by reimbursing them for any other expenses ensuing from its failure to make such required contributions, with interest, in the manner set forth in the remedy section of this decision.

(f) 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.

(g) Post at its facilities in Joliet, Illinois, and at all other locations where its employee handbook has been distributed to its employees, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 33, 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.

IT IS FURTHER ORDERED that the representation petition filed in Case 33-RM-294 be, and the same hereby is, dismissed and the results of the election held pursuant thereto be, and they hereby are, nullified.

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 solicit you to repudiate your representation by General Chauffeurs, Sales Drivers and Helpers Union Local No. 179, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.

WE WILL NOT interrogate you regarding your union sympathies, activities.

WE WILL NOT promise you better benefits if you get rid of the Union.

WE WILL NOT solicit you by threats or promises to sign a petition to get rid of the Union.

WE WILL NOT unlawfully assist you in the preparation and circulation of a petition to get rid of the Union.

WE WILL NOT threaten you with discharge if you support the Union.

WE WILL NOT create the impression that we are keeping watch over your union activities .

WE WILL NOT promise you a better position with more money if you sign a petition to get rid of the Union.

WE WILL NOT threaten you with the loss of our good will or helpful association if you do not sign a petition to get rid of the Union.

WE WILL NOT refuse to recognize General Chauffeurs, Sales Drivers and Helpers Union Local No. 179, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO as the exclusive bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time counter men and parts men; shipping and receiving clerks; stockmen; employees performing towing, emergency service, and minor repair work; pick up and delivery drivers; lubri-

⁵ 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."

cation employees; car polishers; undercoat rust preventive employees; car washers; used car clean-up employees; watchmen and porters; and general helpers employed by the Employer at its 2000 West Jefferson Street, Joliet, Illinois facility; but excluding office clerical employees, professional employees, all other employees, guards, and supervisors as defined in the Act and will not refuse to bargain with the Union for a new contract.

WE WILL NOT unilaterally change or terminate any fringe benefit plan contained in our contract with the Union, or the terms or conditions of employment or bargaining unit employees without notifying the Union or bargaining with the Union.

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 recognize the Union as the exclusive bargaining representative of our employees in the bargaining unit.

WE WILL, on request, bargain with the Union about the terms and conditions of employment for our employees in

the bargaining unit and, if an understanding is reached, embody the understanding in the signed agreement.

WE WILL, on request, rescind any changes in bargaining unit employees' benefits plans and any other unilateral change in the terms and conditions of employment for bargaining unit employees we have made withholding notifying bargaining with the Union.

WE WILL make our employees whole by reimbursing them for any wages or benefits they may have lost as a result of our unlawful unilateral changes, with interest.

WE WILL, if the Union requests us to cancel a unilateral change in benefits and reinstate the contractual fringe benefit fund payments instead, pay any contributions we have failed to make on behalf of unit employees to fringe benefit funds as required under our collective-bargaining agreement and make our employees whole by reimbursing them for any other expenses ensuing from our failure to make such required contributions, with interest.

RON TIRAPELLI FORD, INC.