

General Truck Drivers, Office, Food & Warehouse Local 952, International Brotherhood of Teamsters, AFL-CIO¹ and Pepsi Cola Bottling Co. of Los Angeles. Case 21-CB-10133

September 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On February 23, 1989, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondent filed exceptions and a brief in support. The General Counsel filed a brief in support of the judge's decision and an answering brief to the Respondent's exceptions and brief. The Charging Party filed an answering brief to the Respondent's exceptions and brief.

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,² and conclusions and to adopt the recommended Order.

In adopting the judge's finding that the Respondent's filing, maintaining, processing, and insisting on arbitration of grievances violated Section 8(b)(1)(A), (2), and (3) of the Act, we find that the teachings of *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), are not applicable to this case. The Respondent, through its filing of grievances and its state court suit to compel the Charging Party to arbitrate them, sought, inter alia, to undermine the Board's prior decisions in two representation cases. There, the Board held that the Charging Party Employer's part-time merchandisers and the fountain service mechanics each constitute appropriate units, separate and distinct from the unit of full-time merchandisers represented by the Respondent. As the judge found, the Respondent, in effect, sought, through its grievances, to merge the three separate units and to apply the contract covering the full-time merchandisers to employees in all three units. The Court in *Bill Johnson's* specifically noted that it was not "dealing with a suit that is claimed to be beyond the jurisdiction of the state courts because of federal-law preemption, or a suit that has an objective that is illegal under federal law." 461 U.S. at 737

¹The name of the Respondent, has been changed to reflect the new official name of the International Union.

²The 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), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

fn. 5. Here, the grievances, in seeking to undermine the Board's prior decisions in the representation cases, had objectives that were illegal as a matter of Federal law. See *Longshoremen ILWU v. NLRB*, 884 F.2d 1407, 1413-1414 (D.C. Cir. 1989). Cf. *Hanford Atomic Metal Trades Council (Rockwell International)*, 291 NLRB 418 (1988) (no violation where a union demanded and sought to compel arbitration over its claim that an employer's work assignments violated the parties' contract, and the claim did not conflict with a prior Board determination). Further, we note, to the extent that the Respondent's grievances seek in effect a determination whether it is the collective-bargaining representative of the part-time merchandisers and fountain service mechanics, they intrude on matters within the exclusive jurisdiction of the Board. See *Chas. S. Winner, Inc. v. Teamsters Local 115*, 777 F.2d 861, 863 (3d Cir. 1985). Accordingly, in our view, *Bill Johnson's* does not apply.³

³Member Devaney agrees with his colleagues that, under the circumstances presented in this case, the Respondent violated Sec. 8(b)(1)(A), (2), and (3) by filing, maintaining, processing, and insisting on arbitration of the grievances claiming that employees in units which had voted to decertify their representative were performing unit work. The record in this case reveals that the Union filed the grievances in retaliation for the employees' decision to decertify it and the Operating Engineers as their representatives. Thus, Union Business Agent Pizzo stated on three occasions that the grievances concerning the work performed by the fountain service mechanics (FSMs) were filed because the FSMs had voted to decertify the Operating Engineers. Likewise, with regard to the grievance concerning the work performed by the part-time merchandisers (PTMs), prior to the decertification vote, Pizzo told the employees that they would not be able to continue to work during the week if they voted to decertify the Respondent.

Particularly when viewed in light of the direct conflict between the Respondent's grievance contentions and the Board's determinations in the prior decertification proceedings, these statements demonstrate that the Respondent's objective in filing and pursuing the grievances was to retaliate against the employees for voting to decertify their representative and not to assert legitimate contractual claims. See *Bill Johnson's Restaurants*, 290 NLRB 29 (1988) (retaliatory motive for lawsuit found where employer had previously threatened reprisal against striking employee). Thus, even under the principles announced in *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731, 737 fn. 5 (1983), these facts demonstrate that the Respondent's grievances had "an objective that is illegal under federal law."

Member Devaney does not believe that an unsuccessful grievance presenting a colorable contract claim which has representational consequences invariably intrudes on the Board's exclusive jurisdiction or is necessarily unlawful. In the absence of independent indicia of an unlawful objective such as those present in this case, Member Devaney believes that filing or pursuing a grievance which would be lawful if the grievant's factual assertions are true does not violate the Act unless there is no reasonable basis for those factual assertions.

Member Devaney also agrees with his colleagues that Pizzo's statement to the PTMs that they would not be able to continue working during the week if they voted to decertify the Respondent, and the Respondent's actions in partially refunding certain employees' initiation fees shortly before the election independently violated the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, General Truck Drivers, Office, Food, and Warehouse Union Local 952, affiliated with the International Brotherhood of Teamsters, AFL-CIO, Los Angeles, California, its officers, agents, and representatives, shall take the action set forth in the Order.

Neil A. Warheit, Esq., for the General Counsel.
Paul Crost, Esq. (Reich, Adell & Crost), of Orange, California, for the Respondent.
Richard R. Boisseau and Thomas Munger, Esqs. (Kilpatrick & Cody), of Atlanta, Georgia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Los Angeles, California, on July 19, 1988,¹ pursuant to a complaint issued by the Regional Director for the National Labor Relations Board for Region 21 on March 24, 1988, and which is based on a charge filed by Pepsi Cola Bottling Co. of Los Angeles (Charging Party or Employer), on January 26, 1988. The complaint alleges that General Truck Drivers, Office, Food and Warehouse Local 952, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Respondent) has engaged in certain violations of Section 8(b)(2), (3), and (1)(A) of the National Labor Relations Act (the Act).

Issues

(1) Whether Respondent filed, processed, and sought to compel arbitration of certain grievances to retaliate unlawfully against employees for having voted to decertify their collective-bargaining representatives.

(2) Whether these same actions, if committed, constitute a refusal to bargain collectively and in good faith with the Employer, in violation of the Act.

(3) Whether prior to a decertification election, Respondent, acting through its Business Agent Pizzo, threatened affected unit employees with loss of work, and with a continuing obligation to pay union dues, if they voted to decertify Respondent; and whether Respondent made a partial refund of union dues for the purpose of influencing the recipients' votes in the upcoming decertification election.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of General Counsel,² Charging Party, and Respondent.

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

¹All dates refer to 1987 unless otherwise indicated.

²General Counsel's motion to correct transcript is granted without opposition: At p. 90, L. 17, of transcript change "50" to "15."

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits that the Employer is a California corporation engaged in the business of bottling and distributing soft drinks and operates a facility located in Buena Park, California. Respondent further admits that during the past year, in the course and conduct of the Employer's business, the Employer has purchased and received goods and products valued in excess of \$50,000 directly from suppliers located outside the State of California. Accordingly, Respondent admits, and I find, that the Employer is engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent General Truck Drivers, Office, Food and Warehouse Local 952, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *The Facts*

1. Background

During 1987, Charging Party had a collective-bargaining agreement with International Union of Operating Engineers, Local No. 501, AFL-CIO. (G.C. Exh. 10.) Effective for the period April 2, 1984, through April 5, this agreement covered two classifications of employees called "Service Mechanic A" and "Fountain Service Leadperson." (G.C. Exh. 10, art. XII.) On March 20, pursuant to a Stipulated Election Agreement in Case 21-RD-2229, a decertification election was held. The appropriate collective-bargaining unit was described as follows:

All fountain service mechanics and fountain service managers or leadmen employed by the Employer at its Buena Park, California fountain service department; excluding all other employees of the Employer, including office clerical employees, plant clerical employees, guards and supervisors as defined in the Act. [G.C. Exh. 4a.]

The Operating Engineers lost the election and on March 30, the Board certified the results.

Also during 1987, Charging Party had a second collective-bargaining agreement with Respondent (G.C. Exh. 8). Called a "Sales Agreement," this labor contract was effective between April 6 and April 1, 1990. A prior "Sales Agreement" between the same parties, effective from April 2, 1984, to April 5, was also admitted into evidence. (G.C. Exh. 9.) Among other classifications covered in both "Sales Agreements" is one described as "Vending Mechanic."

Finally, there is a third collective-bargaining agreement in issue. Called a "Part-Time Merchandisers Agreement," this contract was between Charging Party and Respondent. (G.C. Exh. 11.) Effective March 11, 1983, through April 1, 1984, and automatically renewed each year thereafter, this labor

agreement was subject to the right of either party to provide notice of termination during a certain specified timeframe.

On January 15, a person named Brummel filed a petition in Case 21-RD-2226. After a hearing before a hearing officer of the NLRB, the Regional Director for Region 21 issued a Decision and Direction of Election. (G.C. Exh. 3a.) The appropriate unit was found to be

All part-time merchandisers employed by the Employer working out of its facility located at 6261 Caballero Boulevard, Buena Park, California; excluding all full-time merchandisers, all other employees, office clerical employees, guards, and supervisors as defined in the Act. [G.C. Exh. 3a par. 5.]

On August 31, the results of the election held a few days before were made official: Respondent lost the election and was decertified as the representative of the part-time merchandisers. (G.C. Exh. 3b.)

The results of these two decertification elections left Respondent continuing to represent the vending mechanics and the full-time merchandisers. After the two elections, Respondent, through its Business Agent Pizzo, filed certain grievances which General Counsel and Charging Party alleged were retaliatory and otherwise unlawful. In addition, as to the part-time merchandisers, certain preelection conduct of Pizzo is in issue as General Counsel and Charging Party claim Pizzo's statements and actions were unlawfully designed to influence the outcome of the election. To resolve these and related questions, I turn to the record for additional facts.

2. Fountain service mechanics

Since December 1984, General Counsel's witness, Steve Milovich, has worked for the Employer. Since February 1988, Milovich has been group manager of employee relations and before that, he has held various other positions relative to the Employer's labor relations. According to Milovich, the vending mechanics, represented by Respondent, install, maintain, and repair vending equipment in the shop or field. The fountain service mechanics and leadmen, formerly represented by the Operating Engineers, install and repair fountain equipment in the shop or field, but primarily in the field. Because the two classifications represented by two unions occasionally led to certain inefficiencies, such as two separate repairmen having to go to the same location to service different equipment, Respondent negotiated with both unions to resolve the problem. In early 1985, both unions agreed to permit a number of vending and fountain service mechanics to be cross-trained in each other's specialty.

The labor agreement with the Operating Engineers spelled out the agreement and the underlying rationale for it:

Employees covered by this collective-bargaining agreement may, at the discretion of the Company, be trained in the areas of vending mechanic repair work in addition to their fountain service responsibilities. Employees so trained in this new classification may, at the discretion of the Company, be required to perform vending mechanic repair work or service work in addition to the fountain service work performed in the past.

In addition, the Union recognizes the right of the Company to assign fountain repair and/or vending repair work to employees of the Company not covered by this collective bargaining agreement, but who are covered by collective bargaining agreements in effect between the Company and Locals of International Brotherhood of Teamsters, having the appropriate geographical jurisdiction.

The intent of the Company in exercising its rights in the preceding two paragraphs is to provide the Company with necessary, additional, operational flexibility in a highly competitive and changing market. [G.C. Exh. 10, art. I-F.]³

By mid- to late 1985, the Employer began hiring only vending mechanics represented by the Teamsters and covered by the sales agreement. The major reason for the Employer's new hiring policy was the Employer's decision to begin full-service vending in the Los Angeles market. Full-service vending means development of a sales force to blitz a market so the Employer can put new vending machines on a customer's property. As a result of this program, much more vending work occurred. In sum, this hiring practice was not related to the agreement on cross-training.

By the end of February, only four mechanics had been fully cross-trained. However, due to the opening of a new facility in San Fernando, about 60 miles north of the Buena Park facility, the Employer decided at this time to intensify its cross-training program.

Then in late March, the Operating Engineers were decertified. Less than 2 weeks later, Respondent filed the first of three grievances which are in issue here. On April 13, Respondent's witness Steve Pizzo filed Grievance 8770 alleging that on "April 6, Non-Union personnel [sic] were doing bargaining unit work." (G.C. Exh. 7.)

On April 21, General Counsel's witness Thomas Muldoon, the Employer's vice president for labor relations, was present in Respondent's Los Angeles headquarters for unrelated negotiations. While there and in the presence of two other employer officials who did not testify, Muldoon asked Pizzo about the grievance. Pizzo answered that it was about "501," but Muldoon responded that the Employer didn't have any employees represented by Local 501 at that time. Then Pizzo said the grievance is about "nonunion people doing our work." Muldoon asked, "What work," and Pizzo answered "All of it." When Muldoon asked Pizzo if he was referring to the work that the Local 501 people did in the past, Pizzo replied, that he was. Then Muldoon noted, "You never filed a grievance when the work was being done by people who belonged to a union." To this, Pizzo responded, "It wasn't a problem then." Muldoon then asked if Pizzo was filing the grievance because the fountain service mechanics are nonunion. Pizzo said "Yes." Muldoon next asked what Pizzo wanted the Employer to do. Pizzo answered, "We want to represent those people who are doing our work." The conversation ended when Muldoon suggested that Pizzo should check once again with union counsel about the Union's position.

³ Although the sales agreement did not have an equivalent clause, Respondent orally agreed to the cross-training without objection or reservation.

Milovich had a similar conversation with Pizzo in mid-June when the latter called him regarding the grievance. Pizzo said he filed the grievance because “nonunion people were doing our work.” When Milovich asked what work Pizzo was referring to, Pizzo replied, “All work.” Milovich pointed out the fountain service mechanics were doing certain work before they were decertified, i.e., vending work and fountain work, and “now you’re saying because they’re nonunion, they can’t perform that same work!” Then Milovich restated his original question, “you’re saying because the fountain service mechanics are now nonunion, they can’t perform the same work that they performed before they decertified?” Pizzo affirmed that’s just what he meant. (Tr. 96–97.)

By August 12, mechanics had been fully cross-trained, six represented by Respondent, and six formerly represented by the Operating Engineers, but now nonunion.⁴ At this time, the Employer decided that it had sufficient cross-trained mechanics. Accordingly, it suspended the program and reverted to hiring both vending mechanics and fountain service mechanics as the need arose. Thus, the practice of hiring only vending mechanics was discontinued and three fountain service mechanics were hired in August.

Meanwhile, the grievance referred to above remained. In an attempt to resolve the matter, both sides participated in three meetings. The first of these occurred on July 1 at Respondent’s hall in Orange, California. Milovich and Pizzo represented their respective sides, but others were also present. Essentially the conversation was similar to that which occurred in mid-June as reported above. Then the parties discussed an outline for a possible settlement. Milovich stated that the Employer needed operational flexibility. Pizzo said all mechanics hired in the food service department (includes both vending and fountain service) had to be members of Respondent. The meeting concluded when Milovich promised to prepare an outline of possible settlement for discussion at the next meeting.

The second meeting occurred on or about July 25, at the same place, with the same persons present. Milovich began by stating the grievance was without merit. The Employer would not agree that Respondent represented the fountain service mechanics or that the latter were covered by the sales agreement.

Further discussion ensued with respect to settling the grievance. Pizzo agreed to consider the Employer’s proposals and the parties met for their third and last meeting on November 5. This time representatives of the Employer and Respondent were joined by their respective attorneys—the same counsel appearing at the hearing.

The first matter discussed was the two additional grievances filed by Respondent between the second and third meeting. On September 15, Pizzo had filed Grievance 8319, alleging “Pepsi-Cola is violating the Collective Bargaining Agreement by having non-union employees and phasing them into positions that are covered under the terms of the sales agreement between Teamsters Local 952 and Pepsi-Cola, Buena Park.” (G.C. Exh. 12.) On September 25, Pizzo had filed Grievance 9851 alleging a matter relating to the

part-time merchandisers. (G.C. Exh. 13.) This will be discussed in the following section.

With respect to the April grievance, Attorney Crost stated that the fountain service mechanics who had decertified in March could not perform fountain and vending work because they are now nonunion. By the end of the meeting, Crost changed Respondent’s position: Respondent was no longer claiming that the fountain service mechanics couldn’t perform fountain work; only that those who had been cross-trained couldn’t perform vending work.

With respect to Grievance 8319 (G.C. Exh. 12), Crost stated that any future hires, whether fountain service or vending mechanic, had to be a member of Respondent. Attorney Boisseau, speaking for the Employer, rejected Respondent’s position saying that the Employer would look at the work to be done, and if vending mechanic work, the person hired would be under Respondent’s jurisdiction. But if the work was fountain service, the person hired would not be under the jurisdiction of Respondent or any other union.

In his testimony relative to the agreement for cross-training, Pizzo claimed that in return for Respondent’s orally agreeing to have some fountain service mechanics cross-trained, the Employer agreed that all future mechanics would be hired into Respondent’s unit. Pizzo was not present when this alleged agreement was made, but he supposedly had been told by a union official named Hetrick and an Employer official named McLaughlin that such an agreement had been reached in 1984 in union offices.⁵

Pizzo testified that at one of the three grievance meetings referred to above—he couldn’t recall which one—someone—he couldn’t recall who—confirmed that this agreement existed and McLaughlin did not refute the claim. In rebuttal, General Counsel recalled Milovich who had been present at all three grievance meetings to deny that anyone in his presence had referred to the agreement in question.

I find that no such agreement ever existed. Pizzo, who admitted learning of the agreement second hand, was unable to provide credible proof of its existence. The two persons with supposed firsthand knowledge of the agreement were absent and no one requested a continuance. Moreover, it is incredible that such an agreement would exist and yet Pizzo would not even mention said agreement in either of the two grievances dealing with the fountain service mechanics. (G.C. Exhs. 7, 12.)

Finally, Pizzo’s testimony that proof of the agreement’s existence is found in part by the Respondent’s actual hiring of only vendor mechanics between 1985 and the summer of 1987 cannot be credited. As noted above, Milovich’s description of the Employer’s full-service vending program in Los Angeles as the basis for hiring only vendor mechanics is entirely credible and I believe it.⁶

⁵ Neither McLaughlin nor Hetrick testified. McLaughlin was absent from the hearing due to a medical emergency involving his son. No reason was given for Hetrick’s absence. When asked, Pizzo could only say that Hetrick was supposed to be present, but no one knew where he was. (Tr. 232.) No one requested a continuance.

⁶ Pizzo also claimed that the Operating Engineers opposed the cross-training program to such an extent that it was referred to arbitration. When it was pointed out that the collective-bargaining agreement between the Operating Engineers and the Employer specifically allowed the cross-training (G.C. Exh. 10, art. I-F), the question

⁴ At this time, total vending mechanics numbered approximately 48 and total fountain service mechanics numbered approximately 50. These figures include the 12 who were cross-trained.

Before leaving the last grievance meeting, Crost stated that Respondent desired to arbitrate all three grievances. The Employer refused contending that the grievances were illegal in that they were filed in retaliation for the decertification votes.

On October 21, Respondent filed a complaint in the U.S. District Court seeking to compel arbitration (G.C. Exh. 14). According to Attorney Crost, proceedings in the district court are now stayed (Tr. 161) apparently awaiting resolution of the instant matter.

On March 28, 1988, Crost sent a letter to Boisseau which reads as follows:

Richard Boisseau, Esquire
Kilpatrick & Cody
100 Peachtree Street, Suite 3100
Atlanta, Georgia 30043

Re: Pepsi-Cola -and- Teamsters Local 952
(21-CB-10133)

Dear Rich:

On behalf of Teamsters Local 952, this is to inform you that Local 952 is withdrawing the grievance filed by it on or about April 13, 1987, protesting the assignment of non-bargaining unit personnel to perform bargaining unit work (Grievance #8770). Local 952 does not now claim that it is a violation of the collective bargaining agreement for Pepsi Cola to assign former Local 501-represented employees to perform work which they had performed prior to the decertification of Local 501 as their bargaining representative.

Local 952 maintains its position as asserted in its grievance filed September 15, 1987 (Grievance #8319), which alleges that Pepsi is violating the agreement by hiring new personnel as non-Union workers for positions that are covered by the Teamsters Local 952 agreement.

Very truly yours,
Reich, Adell & Crost
/s/ Paul Crost

PC:G
cc: Steve Pizzo
cc: Neil Warheit, NLRB Region 21 [C.P. Exh. 1.]

3. Part-time merchandisers

The Employer employs both full-time (FTMs) and part-time merchandisers (PTMs). Basically, the FTMs enter a retail store and build a display of the employer's products in a location and pattern to maximize sales. In addition, the FTMs also restock store displays, coolers, and vendors from store inventories. The PTMs restock the existing displays, coolers, shelves, and vendors with the Employer's products taken from store inventories.

As to workdays, the PTMs generally work Saturdays, Sundays, and holidays for a wage of \$5.30 per hour with no fringe benefits provided. Wages for FTMs are roughly double those of PTMs and include an array of fringe benefits. From time to time, the PTMs are assigned to perform duties

arose, what was arbitrated? Pizzo didn't know. (Tr. 233-234.) I also find this aspect of Pizzo's testimony unbelievable and I reject it.

of a FTM during the week on a replacement basis. When this occurs, the PTMs are paid wages set forth in the sales agreement for FTMs.

a. Preelection facts

After Lawrence Brummel, a witness for General Counsel, filed his petition,⁷ Pizzo called him in February to ask why he had filed the petition and why he was letting his union brothers down. Brummel replied that he was tired of having to pay union dues and initiation fees on the one hand, yet not receiving any fringe benefits on the other hand. Pizzo told Brummel that if Respondent were decertified, the PTMs would not be able to do a union job. Brummel interpreted this remark to mean that the PTMs could not work as replacements during the week.

At a subsequent union meeting for the PTMs in late July or early August, Pizzo was more explicit. If they voted to decertify, he said, the PTMs would not be able to do a merchandiser's job. If they worked during the week, they would still have to pay union dues. Respondent's proposals for a new contract for the PTMs were also discussed at this meeting.

A second PTM who testified for General Counsel was John Ortega, now employed elsewhere. He attended a union meeting in either mid-July or early August with other PTMs. This witness, too, recalled Pizzo saying that if the PTMs voted to decertify Respondent, they could not work during the week unless they paid union dues. Then within a week of the election, Ortega received a check from Respondent amounting to \$22. (G.C. Exh. 5a.) A note which Ortega no longer had, said the amount was a refund of some sort.

A third PTM, Kenneth Batdorf, also testified for General Counsel. Still employed as a PTM, Batdorf testified about the union meeting he attended in late July. Batdorf also described Pizzo's statement that if Respondent were decertified, the PTMs could not work during the week without paying union dues. Both Batdorf and Ortega agreed that Pizzo had not mentioned or discussed at the union meetings any refund of dues.

A short time later, Batdorf discovered that \$98 had been deducted from his paycheck, whereas Batdorf had expected a deduction of about \$24. After leaving a heated message on Pizzo's answering machine complaining about the deduction, Batdorf received a return call from Pizzo a short time later. Pizzo agreed that the deduction was too high. On or about August 17, Pizzo sent a check for \$46 (G.C. Exh. 5b) to Batdorf which the latter received on or about August 20, after his return from vacation. With the refund was a note from Pizzo which Batdorf, like Ortega, didn't keep.

On August 21, a day before the election, Pizzo called Batdorf and asked him how he intended to vote. Batdorf answered he intended to vote the right way. Pizzo also told Batdorf that some people thought he, Pizzo, was trying to buy votes with the refunds. When Pizzo asked Batdorf what he thought, Batdorf stated he didn't know.

In his testimony, Pizzo admitted hosting one or two union meetings with the PTMs. During the meetings, Pizzo testified that he discussed union dues and initiation fees. In this regard, he was corroborated by Respondent's witness, Ivar Vigrabs, a shop steward, who testified he was present at a

⁷Brummel is now employed as a FTM.

meeting of the PTMs, in late July or early August. I find Batdorf and Ortega more credible on this point and credit their testimony.

Pizzo testified that he had been aware of some dissatisfaction by the PTMs relative to union dues and initiation fees since he talked by phone to Brummel, after having received notice of the decertification petition. Following his telephone discussion with Brummel in February, Pizzo allegedly decided to make some changes. Normally the PTMs were subject to initiation fee deductions of \$75 after the first and second months of employment and \$72 after the third. Pizzo decided to change the deduction to \$50 per month, so that it took longer to pay the initiation fee. Pizzo claimed to have instructed his clerical employee, Carla, to make the changes in Respondent's billing system. For unexplained reasons, the deduction of at least one PTM, Batdorf, was not reduced, it was increased. Pizzo testified that this was a mere clerical error. This was corrected and later Pizzo caused a number of refunds to be mailed out including those to Batdorf and Ortega: (two at \$46 and six at \$22) (R. Exh. 2a-h). The computer printouts reflecting the computations were also admitted into evidence. (R. Exh. 3a-h.)

Curiously, the conversation between Pizzo and Brummel occurred in February. The refund checks were all dated August 17, and the decertification election was held on August 22. Although the Union's clerical employee, Carla, is currently employed by Respondent, she was never called as a witness.

Returning to the union meetings in July and August, I note Pizzo's testimony that he told those assembled that even if the Union were decertified, "and one agreement was gone and there is still another agreement remaining, so therefore they would fall under the terms and conditions of the sales agreement. And it still would have to be members of the union and they'd still have to pay dues." (Tr. 201.)

b. Postelection facts

After Respondent lost the election, Pizzo filed on September 25, a grievance with respect to the PTMs. In it, Pizzo alleged,

The Company is violating the sales agreement by its use of employees to perform merchandisers work without paying them the wages and fringe benefits required by the sales agreement. Any person performing merchandisers work is covered by Article Ia. of the Sales Agreement and is subject to all of the terms and conditions of the Sales Agreement. [G.C. Exh. 13.]

In his testimony, Pizzo explained that Respondent's position was that after the election, the PTMs were subject to the sales agreement for the merchandising work they were performing, "primarily on Monday through Friday, but also on the weekend." (Tr. 201.)

On November 5, the parties discussed this grievance along with the others already mentioned above. Speaking for Respondent, Crost stated that the PTMs could not perform any merchandising work. Pizzo added that if the PTMs worked during the week, they would have to pay union dues. Crost also stated that if the Union prevailed, then the Employer might have to tell the PTMs that they didn't have jobs.

Speaking for the Employer, Boisseau stated that the PTMs had the right to perform the same work they were performing before they decertified, i.e., both weekend work and during the week.

In response to Respondent's desire to arbitrate this grievance as well as the other two, the Employer's position is as has been described above.

B. Analysis and Conclusions

1. Does the Supreme Court decision in *Bill Johnson's Restaurants* apply to the instant case

Respondent contends (Br. 19, et seq.) that the case of *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), constitutes, in effect, a bar to the charges brought against it. In *Longshoremen ILA Local 32 v. Pacific Maritime Assn.*, 773 F.2d 1012, 1015 (9th Cir. 1985), the court discussed the *Bill Johnson's Restaurants* case:

[T]he Supreme Court held that an employer's prosecution of a retaliatory suit against picketing employees constitutes an unfair labor practice under section 8(a)(1) if the suit 1) is filed with an improper motive and 2) lacks a reasonable basis in law. Id. at 744, 103 S.Ct. at 2171; see *Sure-Tan, Inc. v. NLRB* . . . 104 S.Ct. 2803, 2811, 81 L.Ed.2d 732 (1984). Although *Bill Johnson's* only involved a section 8(a)(1) retaliatory lawsuit, its language was sufficiently broad, see 461 U.S. at 744, 103 S.Ct. at 2171 ("the prosecution of an improperly motivated suit lacking a reasonable basis constitutes a violation of the Act that may be enjoined by the Board"), that the few decisions thus far applying *Bill Johnson's* have extended the holding beyond the section 8(a)(1) context. See *Local No. 355, Sheet Metal Workers' International Association v. NLRB*, 716 F.2d 1249, 1258-64 (9th Cir.1983) (applying *Bill Johnson's* to a section 8(b)(1) retaliatory suit brought by a union); *Local 1115, Nursing Home and Hospital Employees Union and Smithtown General Hospital*, 275 N.L.R.B. No. 45 at 9 (April 26, 1985) (applying *Bill Johnson's* to find that union violated section 8(b)(1)(A) by seeking to confirm arbitrator's award).

In a later case enforcing a Board decision that found a respondent union committed unfair labor practices by filing and processing multiple grievances, the Ninth Circuit Court of Appeals again applied the *Bill Johnson's* analysis. See *Teamsters Local 25 v. NLRB*, 831 F.2d 1149 (9th Cir. 1987). However, in that case the court noted (at fn. 4, p. 1154), that in finding improper motivation for the filing of the grievances, the Board may not be required to satisfy the stringent *Bill Johnson's* benchmark before condemning a union's abuse of the grievance procedure. See also *NLRB v. Auto Workers Local 1131*, 777 F.2d 1131, 1141 (6th Cir. 1985).

Finally, the Board noted in *Teamsters Local 705*, 278 NLRB 1303, 1304 (1986),

Assuming, without deciding, that *Bill Johnson's* is applicable to the filing of a grievance, we find that Respondent's grievance . . . had an unlawful objective and therefore that the Court's decision is not applicable to this case. *Laundry Workers Local 3 (Virginia Cleaners)*, 275 NLRB 697 (1985).

See also *Elevator Constructors (Long Elevator)*, 289 NLRB 1095 (1988).

In light of these authorities it is clear that under certain circumstances the filing of one or more grievances by a union may properly be the subject of an unfair labor practice. Whether these circumstances exist here will be determined below.

2. Should this case be deferred to arbitration

Respondent also contends (Br. 21, et seq.) that the issues in this case should be deferred to arbitration. I reject this position and find that only the Board is authorized to decide the questions presented.

The Employer contends that the grievances in issue are unlawful and has refused to arbitrate. A Federal court proceeding seeking to compel arbitration is pending, although currently stayed. Arbitration is not available where the issue concerns more a question of law, i.e., an interpretation of statutory rights or duties under the Act—than a matter of contractual interpretation. I Morris, *The Developing Labor Law* 945 (2nd ed. 1983). See also *Communications Workers Local 1197*, 202 NLRB 229 (1973). The issues presented here concern primarily statutory rights of the employees who voted to decertify the unions.

Finally, the gist of this case constitutes a claim by the Employer that the grievances are illegal. Deferral to arbitration, would, in effect, constitute a decision on the merits. *Retail Clerks Local 588 (Raleys)*, 224 NLRB 1638, 1640 (1976), enf. denied 565 F.2d 769 (D.C. Cir. 1977). The claim of illegality is in turn based on the underlying allegation that both the fountain service mechanics and the PTMs are being punished for having resorted to the Board's processes to decertify a union. Deferral to arbitration is simply not warranted where the issue is whether employees are being coerced for resorting to the Board's processes. *Teamsters Local 814 (Beth Israel Medical)*, 281 NLRB 1130 (1986).

3. Did Respondent violate the Act by filing grievances relating to the fountain service mechanics

As a general rule, processing of disputes through the grievance machinery is a vehicle by which meaning and content are given to the collective-bargaining agreement. *Bache v. AT&T*, 840 F.2d 283 (5th Cir. 1988). Yet as has been shown above, not all grievances are proper. It is alleged here that the grievances in issue violate Section 8(b)(1)(A) of the Act.

Section 8(b)(1)(A) of the Act prohibits unions from penalizing employees for exercising their Section 7 rights. *Professional Engineers Local 151 (General Dynamics Corp.)*, 272 NLRB 1051 (1984). Employees have a Section 7 right to refrain from joining a union and to engage in activities in support of a decertification petition. Further, employees may not be punished or coerced for voting to decertify a union. Cf. *Teamsters Local 165 (Goodyear Tire)*, 211 NLRB 707 (1974).

More specifically, where a union's filing and processing of a grievance adversely affecting employees is prompted by an unlawful and discriminatory objective rather than by a genuine concern over the merit of the grievance or the integrity of the collective-bargaining agreement, the union's conduct falls within the proscriptions of Section 8(b)(1)(A) and (2) of

the Act. *Teamsters Local 515 (Cavalier Corp.)*, 259 NLRB 678, 681 (1981); see also *Commercial Workers District Union 227 (Kroger Co.)*, 247 NLRB 195 (1980).

To determine whether an unlawful and discriminatory objective exists here, I will analyze this case using the Board's *Wright Line* analysis.⁸ I find first that General Counsel has presented a prima facie case showing Respondent has violated Section 8(b)(1)(A) of the Act by filing two grievances to retaliate against the fountain service mechanics for decertifying the Operating Engineers. I base my conclusion both on direct and circumstantial evidence of unlawful motivation and objective as recited below.

First, grievance 8770, now withdrawn, was filed approximately 2 weeks after the decertification election. Accordingly, the timing factor weighs heavily in support of General Counsel's prima facie case, since Respondent never objected to the cross-training before the Operating Engineers were decertified.

On September 15, Pizzo filed grievance 8319, the second grievance dealing with the fountain service mechanics. I note that Respondent changed its position at the November meeting: there, Crost stated that Respondent was no longer claiming that the fountain service mechanics couldn't perform fountain work; Respondent was then claiming only that those who had been cross-trained couldn't perform vending work. When a Respondent changes its explanation, for its actions, this is frequently evidence of unlawful motivation.⁹

There is also direct evidence of Respondent's unlawful motivation. For example, I have credited above the testimony of the Employer's official, Muldoon, who described his April 21 conversation with Pizzo. While it is unnecessary to recite again the entire conversation, it is helpful to note Pizzo's admission to Muldoon that he was filing the grievance because the fountain service mechanics were now nonunion. Milovich had a similar conversation with Pizzo about 2 months later.

At page 23 of its brief, Respondent contends that by filing the grievances in question, it was merely trying to enforce an oral agreement which it claims to have had with the Employer: as noted in the "Facts" above, Respondent, through its official, Hetrick, claims to have agreed with certain employer officials to allow cross-training of the fountain service mechanics so long as the employer agreed to hire all new employees as vending mechanics under Respondent's jurisdiction.

Assuming for the sake of argument that such oral agreement would constitute a defense to the charges contained, I find no such agreement ever existed. I don't believe Pizzo on this point and he doesn't claim to have firsthand knowledge anyway. Hetrick, a superior of Pizzo, and the person with alleged firsthand knowledge was never called as a witness nor was his absence excused. I draw an adverse inference from Hetrick's unexplained absence and find, if called, Hetrick would have testified adversely to Respondent's claim

⁸ *Wright Line*, 251 NLRB 1083 (1980), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983).

⁹ In *Property Resources Corp. v. NLRB*, 130 LRRM 2266 (D.C. Cir. 1988), the court enforced a Board decision against an employer involving violations of Sec. 8(a)(3) and (5) of the Act. At pp. 2268-2269, the court relied on many of the circumstantial factors for drawing inferences of unlawful motivation as are found in the instant case.

of an oral agreement between the Employer and it. *International Automated Machines*, 285 NLRB 1122 (1987); *Greg Construction Co.*, 277 NLRB 1411, 1419 (1985).

In sum, I find Respondent's claim that it was filing the grievance in defense of an oral agreement to be pretextual and suggestive that Respondent's real motivation was unlawful. Cf. *Abbey's Transportation Services*, 284 NLRB 696 (1987).

Based on the above analysis, I find that in filing the two grievances in question, Respondent's motive was to retaliate against the fountain service mechanics and that the grievances lacked a reasonable basis. Accordingly, Respondent has failed to present credible evidence to show under *Wright Line*, that it would have taken the same action, i.e., filed the two grievances in issue, even in the absence of the fountain service mechanics' protected activity—voting to decertify the Operating Engineers.

I find further that Respondent's conduct violated other sections of the Act as well. In *United Technologies Corp.*, 292 NLRB 248 (1989), the Board noted that unit scope is not a mandatory subject of bargaining and, thus, neither party may be required to bargain about it. By filing the two grievances in issue, Respondent was, in effect, attempting to merge a distinct and separate unit, the fountain service mechanics, into the vending mechanics represented by Respondent. In the absence of mutual consent, one party may not insist on a change in the scope of an existing bargaining unit. Here Respondent's insistence on arbitration of the grievances over the Employer's objection was violative of Section 8(b)(1)(A) and (3) of the Act. *Chicago Truck Drivers (Signal Delivery)*, 279 NLRB 904, 906 (1986).

For the same reasons stated immediately above, I find that Respondent was attempting to apply the terms of the sales agreement to the fountain service mechanics, employees other than those for whom the agreement was negotiated. This restrains and coerces the fountain service mechanics in violation of Section 8(b)(1)(A) and (2) and I so find. *Smith Steel Workers v. Smith Corp.*, 420 F.2d 1, 8, 9 (7th Cir. 1969). See also *Retail Clerks Local 588 (Raleys)*, supra, 224 NLRB at 1641 (in case very similar to instant case, Board found violations of Section 8(b)(3), (2), and (1)(A) when Respondent Union's insistence on arbitration constituted insistence on bargaining for an inappropriate unit in breach of Respondent's obligation to bargain in good faith).

In conclusion, I address the question whether relief is proper with respect to grievance 8770, now withdrawn. I agree with Charging Party (Br. at 74–75) that relief is required.

It is unnecessary to decide whether an arguable claim of mootness is presented. However, I note that Respondent's Federal court lawsuit (G.C. Exh. 14), has never been amended to reflect the withdrawal of grievance 8770. It appears that in theory at least, this grievance could be reinstated. In *NLRB v. Methodist Hospital of Gary*, 732 F.2d 43 (7th Cir. 1984), the Respondent argued to the court that the Board's petition for enforcement should be dismissed as moot. In rejecting this claim, the Board stated

Notwithstanding an assertion of mootness, the Board is ordinarily entitled to have a decree forbidding resumption of the unfair practice. [Citation omitted.] It is reasonable to conclude that requiring an employer [Re-

spondent] to post a notice will carry significant impact in informing employees of their rights and effectuating the policies of the Act. [Citation omitted.]

Accordingly, I will fashion a proper remedy for both grievances in the remedy segment of this decision.

4. Did Respondent violate the Act by making certain preelection statements to the PTMs, by making certain preelection payments to the PTMs, and by filing a grievance relating to the PTMs

a. *Preelection allegations*

As noted in the "Facts," Pizzo hosted one or two union meetings for the PTMs in late July and early August. There, and in a February telephone conversation with Brummel, Pizzo is alleged to have made certain statements in violation of the Act. I have found in the "Facts" that Pizzo did make the statements in issue.

In deciding whether Pizzo's remarks violate the Act, I note that the relevant test is whether the remarks tended to restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act. In other words, the test is purely objective. *Laborers Local 496 (Newport News)*, 258 NLRB 1105 fn. 2 (1981).

I agree with General Counsel that Pizzo's statements violated Section 8(b)(1)(A) of the Act. See *Rupp Equipment Co.*, 112 NLRB 1315, 1316–1317 (1955). Thus, in February, Pizzo told Brummel that if Respondent were decertified, the PTMs would not be able to do a union job. Interpreting this somewhat ambiguous statement in its best light for Respondent, Pizzo was saying that the PTMs would not be able to work as replacements for the PTMs. Pizzo was also implying that support for the decertification would lead to an economic detriment caused by loss of work and might also be futile.

These same themes were repeated at the union meetings. Either intentionally or not, Pizzo's remarks regarding the consequences of a vote to decertify tended to confuse and mislead the PTMs: either they couldn't work during the week at all or they couldn't work without paying union dues.

I also find that Respondent violated Section 8(b)(1)(A) of the Act by refunding initiation fees to certain members shortly before the election. To summarize the facts here, Pizzo knew in February, after talking to Brummel, that some PTMs objected to the amounts deducted for union initiation fees. Pizzo did nothing about this issue for several months and, contrary to Pizzo's testimony, he did not discuss the issue at the union meetings referred to above. The refunds were all received a few days before the decertification election and were calculated to restrain and coerce the PTMs in the course of considering how to vote in the election.

In so finding, I rely on the timing factor which cannot be ignored. I also note Respondent's failure to call its clerical employee, Carla, who supposedly had firsthand knowledge with respect to the Employer's deductions for union dues, and Respondent's alleged change in policy regarding the amounts deducted from the PTMs' paychecks. Failure to produce Carla leads to an adverse inference which I weigh against Respondent. Finally, I rely on Pizzo's election-eve telephone call to Batdorf asking Batdorf how he intended to

vote and asking Batdorf for his opinion on whether it looked like Pizzo was trying to buy votes.

In sum, I find no legitimate reason for Respondent to have made the payments at the time it did. See *Flatbush Manor Care Center*, 287 NLRB 457 (1987). When the evidence is considered in the overall context of this case, the conclusion is inescapable: Respondent violated the Act as found above, by attempting to influence the PTMs in the casting of their ballots.

b. The filing of Grievance 9851 on September 25

To summarize the factual context, I note that as a result of the hearing in Case 21–RD–2226, the Regional Director ruled on July 16, contrary to Respondent’s position, that the PTMs constituted a separate unit and had a separate contract. (G.C. Exh. 3a.) Thereafter, Respondent was decertified by the PTM. (G.C. Exh. 3b.) As noted above, Grievance 9851 (G.C. Exh. 13), was discussed at the November 5 meeting, where Crost took the position, on behalf of Respondent, that the PTMs could not perform any work after they were decertified; Crost added, if Respondent prevailed, the Employer might have to tell the PTMs that they didn’t have jobs.

Much of the discussion and analysis relating to the fountain service mechanics applies here. Accordingly, extended discussion is not warranted. I find that General Counsel has established a prima facie case under *Wright Line* and that Respondent has failed to present a credible defense. More specifically, I find that in filing Grievance 9851, Respondent was attempting to retaliate against the PTMs for decertifying Respondent in violation of Section 8(b)(1)(A) and (2) of the Act. This conclusion is based primarily on the timing factor and the overall context of this case, including statements made by Pizzo and Crost.

I also find that Respondent was attempting to merge the PTMs into the FTM, in contravention of the Regional Director’s decision, which was not challenged on appeal, and in violation of Board law holding that in the absence of mutual consent, one party may not insist on a change in the scope of an existing bargaining unit. By seeking to compel arbitration here, Respondent was attempting to do just that. Accordingly, by this conduct, Respondent has again violated Section 8(b)(1)(A) and (3) of the Act.

I also find that Respondent was attempting to apply the terms of the sales agreement to the PTMs, employees other than those for whom the agreement was negotiated. This restrains and coerces the PTMs in violation of Section 8(b)(1)(A) of the Act and I so find.

CONCLUSIONS OF LAW

1. Pepsi Cola Bottling Co. of Los Angeles is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent, General Truck Drivers, Office, Food & Warehouse Local 952, 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, and at all times material has been and is, the exclusive representative of certain Pepsi Cola Bottling Co. of Los Angeles employees: vending mechanics and FTMs, for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. This case should not be deferred to arbitration.

4. By filing, maintaining, processing, and insisting on arbitration of three grievances, as retaliation for certain employees having voted to decertify the Operating Engineers and Respondent itself, Respondent has violated Section 8(b)(1)(A) and (2) of the Act because the grievances had an unlawful objective.

5. By filing, maintaining, processing, and insisting on arbitration of three grievances, Respondent was insisting on the merger of separate, established bargaining units, a non-mandatory subject of bargaining, and by such conduct Respondent has refused to bargain collectively with Pepsi Cola Bottling Co. of Los Angeles and thereby has violated Section 8(b)(3) of the Act.

6. By filing, maintaining, processing, and insisting on arbitration of three grievances, Respondent was attempting to apply the terms of a collective-bargaining agreement to employees other than those for whom the agreement was negotiated in violation of Section 8(b)(1)(A) and (2) of the Act.

7. Under the facts and circumstances present, Respondent’s withdrawal of one of the three grievances in issue does not render moot the controversy surrounding the grievance.

8. By telling bargaining unit employees that if Respondent were decertified, the PTMs would not be able to do union work, or they couldn’t work during the week, or couldn’t work without paying union dues, Respondent violated Section 8(b)(1)(A) of the Act by suggesting that support for the decertification would lead to loss of work or be futile, thereby restraining and coercing employees in the exercise of their Section 7 rights.

9. By refunding portions of union initiation fees to certain PTMs shortly before the decertification election, under the circumstances present here, Respondent has violated Section 8(b)(1)(A) of the Act.

10. The above-described 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 the Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act, including withdrawal of its grievance and arbitration demands and withdrawal of its lawsuit in federal court by which it seeks to compel the Employer to arbitrate.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondent, General Truck Drivers, Office, Food & Warehouse Local 952, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, Los Angeles, California, its officers, agents, and representatives, shall

1. Cease and desist from

¹⁰If 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.

(a) Filing, maintaining, processing, and insisting on arbitration for any grievances filed in retaliation for employees voting to decertify a union or otherwise exercising their Section 7 rights.

(b) Filing, maintaining, processing, and insisting on arbitration for any grievances filed, the effect of which would be to merge separate established bargaining units, a nonmandatory subject of bargaining.

(c) Filing, maintaining, processing, and insisting on arbitration for any grievances the effect of which would be to apply the terms of a collective-bargaining agreement to employees other than those for whom the agreement was negotiated.

(d) Telling bargaining unit employees that if Respondent were decertified, the PTMs would not be able to do union work, or they couldn't work during the week, or couldn't work without paying union dues.

(e) Refunding portions of union initiation fees to certain PTMs shortly before the decertification election, under the circumstances present here.

(f) In any like or related manner restraining or coercing employees of Pepsi Cola Bottling Co. of Los Angeles in the exercise of their Section 7 rights.

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

(a) Withdraw Grievances 8770, 8319, and 9851 which were filed in retaliation for the fountain service mechanics and PTMs having voted to decertify their respective collective-bargaining representatives, and which grievances seek to compel the merger of the fountain service mechanics and the vending mechanics or the PTMs and the FTMs, and which grievances attempt to apply the terms of a collective-bargaining agreement to employees other than those for whom the agreement was negotiated.

(b) Withdraw, with leave of court, if necessary, Respondent's complaint for breach of collective-bargaining agreement, No. CV-87-7022, an action to compel arbitration, filed in the U.S. District Court for the Central District of California on October 21.

(c) Post at its business offices and meeting halls in Orange and Los Angeles, California, copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Mail to the Regional Director for Region 21 signed copies of the notice attached hereto marked "Appendix" for posting by Pepsi Cola Bottling Co. of Los Angeles, the latter willing, at its premises in Buena Park, California, in places where notices to employees are customarily posted. Copies of the notice, to be furnished by the Regional Director for Region 21, after being duly signed by Respondent's rep-

resentative, shall be returned forthwith to the Regional Director for such posting.

(e) 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 file, maintain, process, or insist on arbitration of any grievances filed in retaliation for employees exercising their rights to decertify their collective-bargaining representative or for employees exercising any other rights guaranteed them by Section 7 of the Act.

WE WILL NOT file, maintain, process, or insist on arbitration of any grievances, the effect of which would be to merge separate established bargaining units, a nonmandatory subject of bargaining.

WE WILL NOT file, maintain, process, or insist on arbitration for any grievances, the effect of which would be to apply the terms of a collective-bargaining agreement to employees other than those for whom the agreement was negotiated.

WE WILL NOT tell bargaining unit employees that if Respondent were decertified, part-time merchandisers would not be able to do union work, or they couldn't work during the week, or couldn't work without paying union dues.

WE WILL NOT refund portions of union initiation fees to part-time merchandisers shortly before a decertification election for the purpose of influencing the vote.

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

WE WILL withdraw Grievances 8770, 8319, and 9851, which were filed in retaliation for the fountain service mechanics and part-time merchandisers having voted to decertify their respective collective-bargaining representatives, and which grievances seek to compel the merger of the fountain service mechanics and the vending mechanics or the part-time merchandisers and the full-time merchandisers and which grievances attempt to apply the terms of a collective-bargaining agreement to employees other than those for whom the agreement was negotiated.

WE WILL withdraw, with leave of court, if necessary, Respondent's complaint for breach of collective-bargaining agreement, No. CV-87-7022, an action to compel arbitra-

¹¹ 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."

tion, filed in the U.S. District Court for the Central District of California on October 21.

GENERAL TRUCK DRIVERS, OFFICE, FOOD &
WAREHOUSE LOCAL 952, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO