

**Industrial Chrome Company, Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local Union 307, AFL-CIO, affiliated with United Rubber, Cork, Linoleum and Plastic Workers of America International Union.**  
Case 17-CA-14963

January 21, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On May 8, 1991, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting 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,<sup>1</sup> and conclusions as modified, and to adopt the recommended Order as modified.<sup>2</sup>

<sup>1</sup>The judge found that it was not until April 2, 1990, that the Respondent advised the Union that it found the seniority language to be unacceptable. The record shows, instead, that Respondent's counsel, Larry Karns, by letter dated March 13, 1990, sent to Local Union President Tony Stattelmann a copy of Karns' letter to company official Ellis Needham dated March 12, 1990, indicating that the Respondent did not agree to certain provisions of the Union's seniority proposal. The judge's error as to the precise date on which the Respondent notified the Union of its disagreement with the Union's seniority proposal does not affect our conclusion, in agreement with the judge, that the parties had reached tentative agreement on the seniority issue on January 16, 1990, and that on April 2, 1990, the Respondent proposed an entirely different seniority proposal for the purpose of forestalling agreement on a contract.

<sup>2</sup>We shall modify the recommended Order to include specific affirmative language extending the certification year for a period of 6 months upon the resumption of bargaining. We conclude that a 6-week extension of time, as urged by the Respondent, would be insufficient for the parties to undertake fruitful negotiations after the passage of approximately 1-1/2 years. On the other hand, a full-year extension, as argued by the General Counsel, would be inappropriate, since the parties had bargained for several months and had reached tentative agreement on key areas. Accordingly, a 6-month extension properly takes into account the realities of collective-bargaining negotiations by providing a reasonable period of time for negotiations without unduly saddling the employees for an entire year with a bargaining representative that they may no longer wish to have represent them. See *Den-Tal-EZ, Inc.*, 303 NLRB 968 fn. 2 (1991); *Colfor, Inc.*, 282 NLRB 1173, 1174-1175 (1987).

The judge also recommended broad injunctive relief requiring the Respondent to cease and desist "in any other manner" from interfering with, restraining, or coercing employees in the exercise of their Sec. 7 rights. We note that the General Counsel did not seek a broad cease-and-desist order. We find that a narrow order is appropriate because the Respondent has not been shown to have a proclivity to violate the Act or a general disregard for employees' fundamental statutory rights. See *Hickmott Foods*, 242 NLRB 1357

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Industrial Chrome Company, Inc., Topeka, Kansas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

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

2. Substitute the following for paragraph 2(a).

"(a) Recognize the Union upon resumption of bargaining in good faith and for 6 months thereafter as if the initial year of certification has been extended for an additional 6 months from the commencement of bargaining pursuant to the Board's Order in this case and, if an understanding is reached, embody it in a written, signed agreement."

3. Substitute the attached notice for that of the administrative law judge.

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 refuse to bargain in good faith with United Rubber, Cork, Linoleum and Plastic Workers of America, Local Union 307, AFL-CIO as the duly designated representative of our employees in the following unit appropriate for purposes of collective bargaining:

All full-time and regular part-time production and maintenance employees employed by the Employer at its facility located at 843 N.E. Madison, Topeka, Kansas, but excluding office clerical employees, professional employees, part-time jani-

(1979). Accordingly, we shall modify the recommended Order and notice.

tors, guards, and supervisors within the meaning of the Act.

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

WE WILL rescind the last wage proposal which we made on March 29, 1990, and the last seniority proposal which we made on April 9, 1990.

WE WILL bargain, upon request, with the Union as the duly designated representative of our employees in the above-described appropriate unit for collective bargaining.

WE WILL regard the Union as the exclusive bargaining representative of the employees in the above-described appropriate unit as if the Union's initial year of certification has been extended for an additional 6 months from the commencement of bargaining pursuant to the Board's Order in this case. If an understanding is reached, WE WILL embody it in a written, signed agreement.

#### INDUSTRIAL CHROME COMPANY, INC.

*Stanley D. Williams, Esq.*, for the General Counsel.

*Larry G. Karns, Esq. (Glenn, Cornish, Hanson & Karns)*, of Topeka, Kansas, for the Respondent.

*Donald D. Northcraft*, vice president of Local 307, of Topeka, Kansas, for the Union.

#### DECISION

##### STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in Topeka, Kansas, on November 14 and 15, 1990. The charge was filed by United Rubber, Cork, Linoleum and Plastic Workers of America, Local Union 307, AFL-CIO, affiliated with United Rubber, Cork, Linoleum and Plastic Workers of America International Union (the Union), on April 19, 1990. The charge was amended on June 12, 1990. Thereafter, on June 12, 1990, the Regional Director for Region 17 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging a violation by Industrial Chrome Company, Inc. (the Respondent) of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (the Act).<sup>1</sup>

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel and counsel for the Respondent.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

<sup>1</sup>Prior to the hearing, the parties entered into a settlement agreement regarding one of the allegations of the complaint which alleged the unilateral layoff of employees without notification and bargaining. At the outset of the hearing the General Counsel withdrew this allegation of the complaint.

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent is a corporation with its principal place of business located in Topeka, Kansas, and is engaged in the business of fabricating and chroming hydraulic shafts and related items. In the course and conduct of its business operations, the Respondent annually purchases and receives goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of California.

It is admitted, and I find, that the Respondent is now, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the Union is, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Issues*

The principal issue raised by the pleadings is whether the Respondent has violated Section 8(a)(1) and (5) of the Act by engaging in surface bargaining and otherwise refusing to bargain in good faith with the Union as the certified collective-bargaining representative of its employees.

###### B. *The Facts*

On May 17, 1989, the Union was certified as the exclusive collective-bargaining representative of the Respondent's full-time and regular part-time production and maintenance employees. The employee complement consists of about 40 employees.

Negotiations for an initial contract commenced shortly thereafter. The Union's negotiators were Donald Northcraft, vice president of Local 307, and Ronald Hoover, field representative; Respondent's principal negotiator was Larry Karns, attorney, and he was assisted by Respondent's machine shop supervisor, John Alejos.

During the first several bargaining sessions the Respondent quizzed the union committee about why the employees had decided to organize, and the Union was advised that the Respondent's principal owner, Don Johnson, who did not attend any bargaining sessions, was totally bewildered as to why the employees has selected a union to represent them. The Respondent also stated that it did not appear that the Union was in a good bargaining position, and Karns said that he did not believe the Union had any strength within the skilled jobs, but rather that the people most involved with the Union were the general laborers.

During the initial negotiating session which was held on June 28, 1989, the parties discussed their negotiating priorities. The Union requested the wage rates and job classification of each of the unit employees. Karns initially took the position that he wasn't sure he had to provide this information to the Union. On another occasion he told the Union that he had the requested information in his briefcase, but refused to furnish it. Eventually, after repeated requests on at

least three negotiating sessions, certain wage information was furnished; however, it was inaccurate.

The parties also discussed the fact that the Respondent's owners had become accustomed over the years to deal with its employees on an individual basis; that there were no well-defined job classifications; that principles of seniority were not observed; and that there was a significant problem with extreme wage differentials among employees performing the same work. This latter concern was compounded by the fact that the employees who were earning the higher rates of pay were relatives of management.

Karns, during the course of posing questions to Northcraft at the hearing, established that at the outset of negotiations the parties were in agreement that the Respondent was unsophisticated in terms of labor-management relations, and had its own way of running the shop, and that no rational sense could be made out of the wage rates that were then in effect and which varied as much as \$4 per hour for employees working side by side performing the same work.

It became necessary, therefore, to establish job categories so that employees could be categorized according to their skills, thus facilitating the discussions on wage increases. The Respondent stated that it wanted to place the employees in three different categories, namely, skilled, semiskilled, and general labor. This was satisfactory to the Union, and the Union's proposals utilized these categories of employees. Further, the parties had spent a considerable amount of time determining which particular job classifications fell within each category.

The Respondent's first proposal presented to the Union on August 16, 1989, specified three categories of jobs, namely, skilled jobs, semiskilled jobs, and general labor jobs. This was consistent with prior discussions during the negotiations. However, opposite some of the job classifications within two of the three aforementioned categories, namely, semiskilled jobs and general labor jobs, the Respondent placed the letters "(A)" and/or "(B)," apparently to denote two different levels within the classification. Thus, for example, under semiskilled jobs, the Respondents proposed "Lathe Polisher (A) and (B)." These job levels had never been previously discussed, and Karns explained that the Respondent wanted the right to evaluate or grade employees within different classifications; however, according to Northcraft, Karns said he was not certain how the grading system would be implemented.

The Union took the position that it was not interested in such a grading system within the proposed classifications, as this proposal appeared to lend itself to a highly subjective evaluation of employees which, because of the existing disparity in wages of employees performing the same jobs and/or the favoritism toward relatives of management, the Union was attempting to eliminate. Thereafter, during ensuing negotiating sessions, the parties' discussions regarding classifications simply involved the moving of some of the classifications from one category to another. Although the Respondent had not yet withdrawn its aforementioned proposal designating different levels within the classifications, there was no further discussion of this concept.

During the negotiating session of October 18, 1989, Karns said that the Respondent was no longer looking at the A and B designations, but rather "was heading in a new direction." He handed the Union a new proposal which combined the

skilled and semiskilled categories into a single category entitled "skilled and semi-skilled jobs," and retained the "general labor jobs" category. However, within the proposal, the Respondent maintained the three-category distinction, listing the job classifications under the three aforementioned separate headings. Twenty separate job classifications were listed.

The next day, October 19, 1989, the Respondent identified the employees by name within each of the three categories, and listed current pay and proposed wage increases for the employees. Employee members of the Union's bargaining committee pointed out to the Respondent that the specified current pay of some of the employees was not accurate. On the next day the Respondent provided the Union with a similar proposal which contained accurate wage figures.

Northcraft testified that the single most important issue, seniority, had previously been resolved after much discussion, and that more time had been spent on that one subject than any other. Northcraft emphasized that because of the fact that relatives of management had been given preference over other employees in the past, the matter of seniority in connection with promotions, layoffs, and recalls was of the utmost significance to the Union's bargaining committee. Northcraft testified that the parties finally reached tentative agreement on seniority at the January 16, 1990 bargaining session. Karns said the only thing left for him to do was to "run this by management." Thereafter, the Union was never advised that the seniority item was unacceptable to the Respondent.

The agreed-on seniority provision is lengthy and complex, and includes detailed procedures for identifying and selecting employees for layoffs, bumping, recalls, filling of job vacancies, and shift preference. Essentially, the seniority provision provides that seniority, defined as continuous service with the employer, will prevail, provided that the senior employee is "qualified" to perform the job in question. The term "qualified" is defined as "having worked a cumulative time on the classification equal in time to the learning period on the job." Thus, if a senior employee is qualified to perform the job for which there is an opening due to any of the aforementioned contingencies, the senior employee is entitled to the job, regardless of the fact that some less senior employee is perhaps "more qualified," by reason of expertise or a longer tenure within a particular classification.

After additional bargaining sessions, during which wages and other issues were discussed, the parties met with a Federal mediator on February 20, 1990. The mediator asked each side to prioritize the three most important outstanding issues, and the parties agreed that the primary items of concern were, in order of importance: the fact that temporary employees were continuing to work in the plant while regular employees were on layoff; health care; and wages of employees within the skilled category.

Regarding the latter issue, namely, wages of employees within the skilled category, the Union had advised the Respondent that it accepted the Respondent's January 16, 1990 proposal which embodied the three-category system and provided for wage increases for employees in each of the categories over the term of a 3-year contract; further, the Union announced that it was willing to accept the wage increases proposed for the employees in the general labor category and the semiskilled category; and the only area of disagreement was with the proposed wages for employees within the

skilled category. Karns advised the Union and the mediator that the Respondent had gone as high as it intended to go, and was unwilling to increase its wage proposal for the skilled employees.

A considerable amount of bargaining over the health insurance issue had taken place prior to the meeting with the mediator on February 20, 1990. The matter of health care was of major importance, as the Respondent's existing health care plan provided that 40 percent of the monthly cost of the insurance would be paid by the employee. Because of the considerable monthly cost to the employee, very few employees elected to purchase insurance coverage. The Union attempted to negotiate affordable medical insurance for the employees, and initially proposed that the Respondent pay the entire cost of the insurance. Karns said this would not be possible and that the Respondent would pay no more than it had been paying. However, during the course of negotiations, the Respondent had agreed that it would pay 60 percent of any increased costs of the insurance during the contract period up to a maximum of a 10-percent increase in insurance costs.

At the February 20, 1990 meeting the Union advised the mediator that it had previously requested that the Respondent accept an alternative health insurance plan if the cost to the Respondent did not increase the Respondent's health insurance costs beyond the increase the Respondent had indicated it was willing to accept. The mediator asked Karns why this would be unacceptable to the Respondent, and prevailed on Karns to phone Johnson, Respondent's owner, and ask him if there was any objection to this.

Karns did phone Johnson in the presence of both the union negotiating committee and the mediator, and, following the phone call, announced that there would be no problem with another health insurance plan "as long as it doesn't affect our bottom line." During the ensuing discussions that day Karns agreed that regardless of any savings derived from a less expensive plan (the Union had proposed deleting the dental coverage from the current plan, thus making the plan less expensive) the Respondent would continue to contribute the monthly amount it had been contributing, together with the aforementioned additional amount of increased costs during the life of the contract, and the savings would be utilized to reduce the amount of the employees' 40-percent contribution.

On March 3, 1990, the Respondent submitted a document to the Union that, according to Northcraft, was identical to the aforementioned seniority proposal that had tentatively been agreed to earlier on January 16, 1990. It contained a significant amount of underlining, and Northcraft testified that Karns stated that the underlining was to insure that there would not be any ambiguity as to the interpretation of the provision. Northcraft testified that this caused the Union to become very optimistic that the parties could reach agreement on a complete contract within the next 8 or 10 days.

Bargaining negotiations were held throughout the week of March 5, 1990, and on about March 9, 1990, the Union presented the Respondent with a wage proposal that provided more money for the employees during the early months of the proposed contract than the Respondent's wage proposal, but, according to the Union, would cost the Respondent some \$5000 to \$6000 less than the Respondent's proposal during the life of the 3-year contract. Karns said that he would have to figure out the costs, and that if it in fact totalled less than

the Respondent's proposal he would not know why the Respondent would object to it. It was believed that if the parties reached agreement on wages, a tentative contract was imminent, with relatively minor matters to be resolved thereafter. Karns said he would review the wage proposal with his client and would get back to the union committee that night. The union committee waited for Karns' call, but Karns never responded.

On March 19, 1990, Union President Antony Stattleman sent Karns a letter regarding certain contract items, and enclosed the Union's latest contract proposal which, it was believed, the Respondent had previously accepted. The union proposal is as follows:

The current Health Insurance in effect on the signing of this contract shall be maintained with the employer paying 60% of the current cost of single or family coverage and the employee paying 40% of the current cost of single or family coverage for plan year 1990. The parties agree to drop the dental portion of the plan with the total cost savings to be applied to the employee's portion of the premium payment. The parties further agree to examine the Blue Select concept and other viable cost containment procedures for future plan years. Any cost savings realized by the use of said programs will be applied to the employee's portion of premium payment. The Company will pay 60% of up to a 10% increase in premium during the term of this agreement.

Several days later Stattleman received a phone call from Karns, who said that the Respondent did not like the Blue Select plan, which was different than the current health insurance plan, and would be too difficult to administer and too difficult for the employees to understand.

The next, and final, negotiating session was held on March 29, 1990. Northcraft testified that at the outset of this bargaining session Karns presented the Union with an 8-page handwritten wage proposal which provided for 4 different "pay grades" rather than the previously agreed-on 3 labor categories, and which listed 26 job classifications within the pay grades, rather than the previously agreed-on 20 job classifications. Karns also announced that there would be other significant changes forthcoming. Northcraft testified as follows:

He [Karns] admitted at the table that our [wage] proposal was less than theirs, significantly, but the company was now looking at a new direction, that the company had reviewed it and now they were not—no longer looking at classifications, categories, they were now looking at grades.

I have absolutely no comprehension of what grades mean as I sit here today. It was never discussed at the table before this time. We had spent the 10 or 12 months negotiating on classifications and categories; and as I sit here today, I still don't know what these grades mean.

Mr. Karns informed us that this was just a direction that the company preferred to go; and, when we asked why after all this time and all the efforts that went into this why, you know, this drastic, capricious change of

direction, he said just—the company just decided this was a better direction to go.

Northcraft testified that he was “livid” on being presented with this new concept as well as other changes which Karns said would be forthcoming, and the negotiating session apparently ended abruptly. Northcraft testified that Hoover became so exasperated that he took the “proposal in front of him” which apparently was the Respondent’s wage proposal, and tore it in half and threw it in the wastepaper basket.

On April 2, 1990, Karns sent a new seniority proposal to the Union, containing the subheadings of job vacancies, laid-off employees, shift preference, and leaves of absences. With regard to layoffs, the new proposal states that if further reductions are necessary after new-hire probationary employees are laid off within any particular classification, “employees in the general labor classification” will be laid off. However, under the Respondent’s new March 29, 1990 wage proposal there is no “general labor classification,” as the Respondent had substituted four “pay grades.” Further, under the layoff procedure previously agreed to on January 16, 1990, “the employee or employees with least seniority will be removed from the classification [and] those affected employees will have the option to go on lay-off, fill an open job or bump the least senior employee in any classification of [sic] which they are qualified.” Thus, although there is no explanation in the record as to how the Respondent’s new proposal would work, it is clear that the proposal is fundamentally different from what had been agreed to. Moreover, unlike the agreed-on provision, the new proposal does not provide for bumping rights; and, regarding the matter of filling job vacancies, the new proposal introduces the concept of “most qualified” which it does not define and which differs materially from the previously agreed-on provision which provides that a “qualified” employee with the most seniority, rather than the “most qualified” employee, is entitled to the vacant position.

At some point an employee apparently began circulating a decertification petition among the unit employees. Northcraft testified that during a negotiating session in early March 1990, when Northcraft believed the parties were getting close to an agreement, Karns said that the Respondent “was, in fact, looking at decertification.” On another occasion, during a private conversation, Karns told Northcraft “that the company was of the opinion that [the Union] did not have the numbers to substantiate a strike and that [the Respondent] could win the decertification election.” Northcraft replied that Karns was in error and was underestimating the Union’s strength, but that if it came to a decertification election it might be a close vote considering the layoffs and discharges that had occurred during the course of bargaining. The decertification petition was filed with the Regional Office on May 18, 1990, exactly 1 year from the date of certification.

Randy Terhune, a current employee of the Respondent and a member of the Union’s negotiating committee, testified that shortly after the Union was certified, he overheard John Alejos, machine shop supervisor, talking to Don Johnson about the Union in Johnson’s office. Terhune happened to be in an adjoining office using some testing equipment. Terhune heard Alejos telling Johnson that the Company “didn’t have to bargain. All they had to do is sit, sit there and listen to the proposals and not have to sign a contract.”

Similarly, a former employee, Keith Van Sickle, testified that in the early summer of 1989, shortly after the negotiations had commenced, he and Alejos were having a discussion about the Union. Alejos told him that:

[All] that the company had to do was sit there and they didn’t have to agree to anything or listen to any, you know, they had to listen, that was it.

They just had to sit there. Nothing else. Didn’t have to agree on anything and they could basically just drag this on as long as they wanted.

Alejos was present in the hearing room throughout the hearing. Although he was called as a witness by the Respondent, he did not rebut the testimony of Terhune or Van Sickle. Moreover, although Alejos apparently attended all the bargaining sessions, he was asked no questions regarding the course of bargaining or the various respective proposals of the parties, and did not rebut any of the foregoing testimony of the various representatives of the Union.

Karns testified that the parties met on March 6, 7, 8, and 9, 1990, and that this was a critical point in negotiations as the Respondent believed the Union was going to strike. In fact, the Respondent had made arrangements for the security of the plant believing that a strike was imminent, as he had been told by either Northcraft, Hoover, or Stattleman that a strike vote was being taken on March 9, 1990; and Hoover had told him during a phone conversation on March 6, 1990, that if there was no agreement or significant movement by the end of the week, there would be a strike.

Karns testified that the seniority item had never been agreed to and continued to be the subject of negotiations. He did not believe that either the Respondent’s March 29, 1990 proposal specifying four pay grades, or its April 9, 1990 proposal on seniority differed materially from the Respondent’s prior proposals. Moreover, he did not explain the proposals to the Union after submitting them because, “No one bothered to ask, and they refused to meet with us;” and he did not discern that the members of the Union’s negotiating committee were particularly perplexed over the proposals. When asked what motivated the Respondent to make such changes in its wage and seniority proposals, Karns replied, “We thought we were going to have the employees accept a contract and we wanted a contract we could live with . . . we thought we were close.” Karns was unable to recall whether, on presenting the proposal at the March 29, 1990 meeting, he said anything to the effect that by such a proposal the Respondent wanted to go in a new direction. Further, Karns was unable to recall whether he promised to get back to the Union on the evening of March 9, 1990, after conferring with his client, regarding the open contract items which were then in issue.

Northcraft, Hoover, Stattleman, and Terhune denied that they had told Karns that the Union intended to strike the Respondent. Hoover testified that Karns phoned him and questioned him about a notice that had been posted on the bulletin board at Respondent’s plant. The notice was of a special union meeting for “Union Members of Industrial Chrome” to be held on Friday afternoon, March 9, 1990. The notice states that “The purpose of this meeting is to report on the status of negotiations and to decide a further course of action to be taken including strike.” Hoover told

Karns that the notice contained standard language and that the meeting was simply for the purpose of advising the membership of the status of negotiations and not to initiate strike action. Hoover assured Karns that a strike was not imminent.

#### Analysis and Conclusions

I credit the testimony of Union Representatives Northcraft, Hoover, and Stattleman, and bargaining committee member Terhune. I find that their recollections of the collective-bargaining negotiations, including the statements made by the parties, the proposals presented, and the agreements or tentative agreements reached, are supported by the record as a whole and reflect an accurate account of the bargaining process.<sup>2</sup>

I do not credit the testimony of Attorney Karns to the extent that it differs with that of the aforementioned individuals. Karns' testimony was not corroborated by any other witnesses, and his recollection of the significant events in question appeared to be highly selective and implausible. To cite a glaring example, he was unable to recall whether he told the Union, on March 29, 1990, that the wage proposal he was presenting reflected the Respondent's intent to move in a "new direction."

I find that Karns did, in fact, so advise the Union, and that the Respondent's March 29, 1990 wage proposal and its subsequent April 9, 1990 seniority proposal were significantly different proposals from those that had previously been presented by the Respondent and/or the Union, and formulated, discussed, and tentatively agreed to by the parties after many bargaining sessions over a difficult 10-month period of bargaining. Karns' testimony to the effect that the Respondent presented its new proposals because "We thought we were going to have the employees accept a contract and we wanted a contract we could live with . . . we thought we were close," shows that the Respondent was fearful of reaching an agreement which the Union could live with, and therefore sought to preclude this eventuality by presenting its "new direction" proposals. At this point it became clear to the Union, as the record evidence abundantly demonstrates, that although the Respondent claimed it was willing to continue bargaining with the Union, the Respondent had no intention of bargaining in good faith, but rather was intent on forestalling any agreement because of the prospect of the Union's decertification at the conclusion of the certification year, approximately 6 weeks in the future. Indeed, there appears to be no other plausible rationale for the Respondent's abrupt change of course at a time when the parties were admittedly approaching agreement on a 3-year collective-bargaining contract; and this conclusion is supported by Karn's various statements concerning the decertification petition then being circulated.

Indeed, the Respondent's March 29, 1990 wage proposal and its April 2, 1990 seniority proposal are incompatible; the former introducing the concept of pay grades, and the latter referring to layoffs within the no-longer existing general labor classification. Moreover, the Respondent has provided no rationale for the unusual and seemingly illogical concept

<sup>2</sup>I also credit the testimony of Terhune and Keith Van Sickie regarding the statements made by Alejos which reflect that, from the outset, the Respondent had no intent of reaching an agreement with the Union.

of laying off unneeded skilled or semiskilled employees by first laying off general laborers, whom the Respondent believed constituted the Union's strongest support, rather than, as previously agreed on, directly laying off the employees who are no longer needed.

The aforementioned proposals by the Respondent, apparently hastily conceived, inconsistent, and with no feasible rationale, indicate that the Respondent's professed "new direction" was nothing more than a sham designed to prolong and stalemate bargaining and thwart its bargaining obligation. Such proposals, advanced after many months of bargaining and at a time when a total collective-bargaining agreement appeared to be clearly within reach, is incompatible with the Respondent's obligation under the Act to bargain in good faith with the Union. See *Luther Manor Nursing Home*, 270 NLRB 949 (1985); *San Antonio Machine Corp.*, 147 NLRB 1112, 1116-1117 (1964); *Midvalley Steel Fabricators*, 243 NLRB 516, 522 (1979), *enfd.* as modified 621 F.2d 49 (2d Cir. 1980); *Hotel Roanoke*, 293 NLRB 182 (1989); *United Technologies Corp.*, 296 NLRB 571 (1989).

Contrary to the position of the General Counsel, I do not conclude that the evidence shows that the Respondent's principal negotiator, Attorney Karns, was without the requisite authority to engage in meaningful negotiations. See *Coastside Scavenger Co.*, 273 NLRB 1618, 1628 (1985). Karns did, in fact, reach agreement with the Union on significant contractual items. The fact that Karns was instructed by his principal to modify or withdraw certain significant items late in the bargaining process, while indicative of bad faith, does not demonstrate that Karns lacked authority to effectively bargain with the Union.

The evidence shows that negotiations regarding a 401(K) pension plan, initially proposed by the Respondent but immediately retracted as having been inserted in the Respondent's proposals by mistake, really never evolved into serious, detailed discussions regarding the formulation or implementation of the plan. I conclude that the Respondent's withdrawal of this proposal for the reason enunciated by Karns, did not hinder the bargaining process.

The General Counsel also maintains that the parties reached tentative agreement on a health insurance provision which provides, according to the Union's draft of the agreement, for the continuation of the existing health insurance benefits for the first year of the contract, after which time the parties were to "examine the Blue Select concept and other viable cost containment procedures for future plan years." The record evidence is not entirely clear regarding the parties' precise agreement on this issue. Assuming, *arguendo*, that the Union's draft correctly sets forth the tentative agreement reached, it is clear that the language of the open-ended tentative agreement does not bind the Respondent to any particular health insurance plan for the second and third year of the contract. Thus, it appears that the Respondent, by advising the Union that it had changed its mind and had decided against the Blue Select concept for the second and third year of the contract, was not reneging on a significant contractual item; nor did the Respondent unequivocally state that it was unwilling to explore "other viable cost containment procedures." Under the circumstances, I conclude that the record evidence is insufficient to support the conclusion that the Respondent, by such conduct, further obstructed the bargaining process.

I find that by the aforementioned conduct, namely the Respondent's belated announcement of a "new direction" in bargaining, accompanied by the wage and seniority proposals discussed above, and under the circumstances set forth, the Respondent has violated, and is violating, Section 8(a)(5) and (1) of the Act, as alleged.

#### CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees employed by the Respondent at its facility located at 843 N.E. Madison, Topeka, Kansas, but excluding office clerical employees, professional employees, part-time janitors, guards, and supervisors within the meaning of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since May 17, 1989, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By withdrawing its tentative acceptance of wage and seniority proposals at a time when the parties were approaching agreement on an entire collective-bargaining agreement, and by presenting new proposals designed to preclude an agreement, the Respondent has violated Section 8(a)(1) and (5) of the Act.

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

#### THE REMEDY

Having concluded that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, including the requirement that the Respondent withdraw its March 29, 1990 wage proposal, and its April 9, 1990 seniority proposal.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

#### ORDER

The Respondent, Industrial Chrome Company, Inc., Topeka, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the Union by withdrawing agreement on contract items in order to prolong bargaining or preclude the reaching of a collective-bargaining agreement.

(b) In any other manner interfering with, restraining, or coercing 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) Continue to recognize and bargain with the Union as the duly designated representative of its employees in the aforementioned appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(b) Rescind the March 29, 1990 wage proposal and the April 9, 1990 seniority proposal.

(c) Post at its Topeka, Kansas facility copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, 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.

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

<sup>3</sup>If 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.

<sup>4</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."