

Chinese American Planning Council, Inc. and CPC Independent Workers Union. Cases 2-CA-23016, 2-CA-23277, and 2-CA-23597

April 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On September 30, 1991, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the judge's decision. The General Counsel and the Charging Party filed briefs in response to the Respondent's exceptions, and the Respondent filed a reply brief.¹

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,² findings,³ and conclusions and to adopt the recommended Order.⁴

Citing *Postal Service Marina Center*, 271 NLRB 397 (1984), the Respondent contends that Section 10(b) bars the complaint insofar as it alleges that the Respondent discriminatorily discharged certain of its

¹The General Counsel and the Charging Party filed a motion to reopen the record to admit into evidence the transcript of the hearing in Case 2-RC-20520. The Respondent's response consents to the motion and notes that the representation proceeding includes the September 23, 1988 supplemental hearing. The motion is granted.

The Respondent has requested oral argument. The request is denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

²Members Devaney and Oviatt agree with the judge that the Respondent's failure to contest the Board's jurisdiction on the basis of *Res-Care, Inc.*, 280 NLRB 670 (1986), in two previous cases precludes it from raising that issue here. The standard set out in *Res-Care* is an exercise of the Board's discretionary authority, and a question concerning it must be raised in a timely manner. See *Training School at Vineland*, 301 NLRB 217 (1991). Accordingly, jurisdiction is properly asserted here.

Chairman Stephens, relying on his concurring and dissenting opinion in *Res-Care*, continues to regard it to be a question of statutory, not discretionary, jurisdiction whether the control of a Sec. 2(2) exempt entity over an employer's labor relations is sufficient to make the Act inapplicable to the employment relationship. Because matters going to the Board's statutory jurisdiction under the Act may be raised at any time, Chairman Stephens does not agree that the Respondent was precluded from litigating the jurisdictional issue here. Chairman Stephens adopts instead the judge's alternative finding that the Respondent offered no evidence to warrant a finding that the Board lacks jurisdiction over the Respondent.

³The judge inadvertently referred to May 4 in the penultimate paragraph of sec. III.B of his decision. The correct date is May 24.

⁴Member Oviatt would leave to the compliance stage of this proceeding the effect, if any, of the New York City Board of Estimate's 1989 decision to include limits on training cycles in the contracts with the Respondent and other Supportive Work Program contractors.

employees. Specifically, the Respondent claims that the 10(b) period commenced on January 4, 1988, when the Respondent notified 17 trainees that they would graduate on December 30, 1988. Because the Union did not file the charge until January 18, 1989, the Respondent argues that the Board must find that Section 10(b) bars any claim of discriminatory discharge as to these 17 employees. We disagree.

In *Postal Service Marina Center*, supra, the Board held that henceforth it would focus on the date of unequivocal notice of an allegedly unlawful act, rather than on the date the act's consequences become effective, in deciding whether the period for filing a charge under Section 10(b) has expired. "Where a final adverse employment decision is made and communicated to an employee," the Board stated, he "must [file an unfair labor practice charge] within 6 months of that time rather than wait until the consequences of the act become most painful." 271 NLRB at 400. However, as the Board emphasized in a subsequent decision, "*Postal Service Marina Center* . . . was limited to unconditional and unequivocal decisions or actions." *Stage Employees IATSE Local 659 (Paramount Pictures)*, 276 NLRB 881, 882 (1985). Further, the burden of showing such clear and unequivocal notice is on the party raising the affirmative defense of Section 10(b). *Service Employees Local 3036 (Linden Maintenance)*, 280 NLRB 995, 996 (1986). In the instant case, the Respondent has failed to satisfy its burden.

Assuming the Respondent represented on January 4, 1988, that the 17 employees' tenure would end on December 30, 1988, the Respondent's subsequent conduct undercut the representations. For example, in a May 24, 1988 memorandum to employees, the Respondent conveyed a graduation schedule with a series of graduation dates beyond December 30, 1988. Further, the memorandum characterized the graduation schedule as a proposal to be presented to "upper management around the end of June" and stated that it was subject to further discussion with the employees.

We find that, at best, the Respondent's messages about a December 30, 1988 graduation were equivocal. Therefore, we reject the Respondent's contention that Section 10(b) bars the discriminatory discharge complaint allegation.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Chinese American Planning Council, Inc., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Burt Pearlstone, Esq., for the General Counsel.

Lawrence A. Marcus, Esq. and Nicholas J. Pappas, Esq. (Skadden, Arps, Meagher & Flom), of New York City, New York, for the Respondent.

Amy Gladstein, Esq. (Gladstein, Reif & Meginniss), of New York City, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint in these cases, which were consolidated for hearing, alleges that Chinese American Planning Council, Inc. (the Respondent) has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondent's amended answer denies the commission of any unfair labor practices and contends also that the Board should not exercise its jurisdiction in these cases.

The hearing was held in New York City on various days from mid-November 1990 to its close on April 18, 1991. Upon the entire record,¹ including my observation of the demeanor of the witnesses and after due consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

At the hearing the Respondent raised the contention that the Board should decline to exercise its jurisdiction on the ground that the city of New York effectively controls the labor relations policies of the employees involved.

General Counsel and the Charging Party, CPC Independent Workers Union (the Union) contended that the Respondent is now precluded from adducing any evidence in support of that assertion as Respondent had failed to raise it in two previous Board cases. They moved for an order precluding the Respondent from adducing evidence to support its assertion. I declined to issue an order from the bench. However, upon consideration of the cases discussed below and in view of the earlier proceedings before the Board involving the Respondent, I find that Respondent's assertion lacks merit. As much as of evidence relating to that assertion, however, bears on other issues, I shall not strike that evidence.

In 1987, the Respondent, then known as *Chinatown Planning Council, Inc.*² discharged an individual whom the General Counsel alleged in the complaint in Case 2-CA-22244 to be an employee discharged in violation of Section 8(a)(1) of the Act. The Respondent defended that case on the ground that that individual was a student, and not an employee within the meaning of the Act. The Respondent did not contend then that the Board should decline to exercise jurisdiction based on the Respondent's relationship to the city of New York. The Board found that the Respondent had violated Section 8(a)(1) of the Act as alleged. See *Chinatown Planning Council*, 290 NLRB 1091 (1988). Also in the representation case referred to above at footnote 2, the Board asserted

jurisdiction over the Respondent, again rejecting its contention that the individuals, whom the Union sought to represent, were students and not employees under the Act. Nor did the Respondent assert in that case that the Board should decline to exercise its jurisdiction by reason of the Respondent's contractual relationship with the City of New York.

Recent decisions by the Board have reaffirmed that an employer who fails to raise a question as to the Board's discretion in exercising its jurisdiction, is thereafter precluded from doing so. See *Training School at Vineland*, 301 NLRB 217 (1991); *Ryder Student Transportation*, 297 NLRB 371 (1989); *Princeton Health Care Center*, 294 NLRB 640 (1989).

It is therefore appropriate for the Board to assert jurisdiction in this case.

In the event that the Board may wish to consider the jurisdictional issue raised by the Respondent, I make the following alternative finding. Parenthetically, I note that counsel for the city of New York appeared at the hearing in connection with matters relating to subpoenas duces tecum served on city officials. In the related discussion, the city made it clear that it did not consider the employees in any way to be city employees. The facts pertinent to the alternative finding are now set out.

Respondent was incorporated in 1965 as Chinatown Planning Council, Inc., a nonprofit corporation; it was established to help Asian immigrants adjust to life in the United States. In 1988, it had a \$10 million budget in operating 46 programs to serve approximately 6000 clients. Among the 46 programs it operated, 6 were focused on training young Chinese immigrants for work. Its other programs included service functions, such as a job placement center, two senior citizens centers, and a house attendants program. Of the 46 programs it operates, only one is involved in this case. That program was termed, by the Respondent, its In Rem apartment program, and is known by the acronym, the IRAR program. The IRAR program was funded, as discussed below, in conjunction with a program administered by the city of New York, with moneys granted by the Department of Housing and Urban Development of the Federal Government.

New York City had taken title to a number of abandoned apartment buildings via In Rem tax foreclosure proceedings. It devised a supportive work program (SWP) as a means of rehabilitating those buildings and also as a means of providing on-the-job training for groups of unemployed, unskilled individuals. The New York City Department of Housing Preservation and Development (HPD) was given the responsibility for implementing SWP.

HPD requested community organizations to submit their proposals if they wanted to participate in the SWP. The Respondent submitted its first proposal in 1986. Its proposal was quite voluminous. It stated that the Respondent planned on having 40 participants who would be assigned to work on the abandoned buildings and also to be given classroom training in English. On any given day, 30 would be working and the other 10 were to receive training. HPD would reimburse the Respondent for the work done by the 30 participants who were working on city buildings. The HPD proposal had set out detailed schedules for payment, e.g.,—installation of a shower head was to be paid at 7 cents of a \$90 person-day. The initial proposal submitted by the Respondent sought a funding based on its having 30 workers

¹The Respondent's motion to reopen the record, General Counsel's statement of opposition thereto and my ruling thereon are added to the record as ALJ Exh. 1.

²See fn. 1 of the Decision and Direction of Election issued in Case 2-RC-20520

a day for 246 days a year—a total of 7380 person-days—at \$90. Respondent would use that money to pay the 40 participants, its supervisory staff, and its administrative staff, and other costs related to operating its IRAR program.

HPD approved the Respondent's proposal and processed it through administrative channels, as discussed in further detail elsewhere herein, before issuing a contract to the Respondent for the balance of 1986 and for the calendar year 1987. The contract set forth general provisions, including the posting of fidelity bonds by the Respondent and the payment schedules to be followed by HPD as work was done. HPD reserved the right to change the number of workers supplied by the Respondent's IRAR program, depending on the amount of work HPD wanted done at the worksites it specified.

The contract further obligated the Respondent to conduct life skills classes "to teach trainees how to dress, behave and respond in job interviews, to budget their salaries and to obtain the general skills necessary to function in society." Each crew would work a 7-hour day, Monday through Friday. The Respondent was obligated to provide the basic tools and equipment used by the employees. The Respondent was further required to furnish HPD with monthly reports as to the work performed and also training reports which were to contain information regarding the placement of employees into permanent employment.

Exhibit C of the contract set out productivity standards which were used in evaluating the validity of Respondent's vouchers seeking payment for work done. For example, the sheetrocking of a complete wall in a room was to be reimbursed at the rate of 1.25 person days.

In determining whether assertion of jurisdiction over an employer providing services for or to an exempt entity is appropriate, the Board focuses on the extent of control retained by the employer over essential terms and conditions of employment as well as the degree of control exercised by the exempt employer over the employer's labor relations. See *H. W. Harmon & Sons*, 297 NLRB 562 (1990). In essence, the Board will assert jurisdiction if the employer has the final say on the entire package of employee compensation, i.e.—wages, fringe benefits. See *Res-Care, Inc.*, 280 NLRB 670, 674 (1986).

The Respondent has the burden of showing that it is not free to set the wages, fringe benefits, and other terms and conditions of employment for its employees in the IRAR program. See *Firefighters*, 292 NLRB 1025 (1989). The Respondent has offered no evidence to warrant a finding that HPD controlled the wage levels and fringe benefits of these employees. I thus find that the Respondent is an employer as defined in Section 2(2), (6), and (7) of the Act and that it would be appropriate for the Board to assert jurisdiction as to the Respondent's IRAR program. See *Koba Associates*, 289 NLRB 390 (1988), and cases discussed therein.

II. LABOR ORGANIZATION

As the Board has already determined in Case 2-RC-20520, the Union is a labor organization as defined in Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Contentions*

The complaint alleges that the Respondent, in order to discourage its employees from supporting the Union, denied wage increases promised to its IRAR employees, threatened to close its IRAR operations and engaged in other independently coercive conduct, discharged 31 employees, temporarily closed down its IRAR program, and reopened it with new employees whom it unilaterally scheduled to work only for 6 months and at lower wage rates. The complaint further alleges that the Respondent failed to bargain collectively with the Union. Based on the foregoing allegations, General Counsel contends that Respondent has violated Section 8(a)(1), (3), and (5) of the Act.

The Respondent denies that it unlawfully coerced any of the IRAR participants and it asserts that its actions, at all times, were motivated solely by its efforts to provide young immigrants from China with training in basic building and construction industry skills and in English-language usage so that they may find work with construction companies. Respecting the refusal-to-bargain allegation, the Respondent contends, as it had contended in Case 2-RC-20520, that the IRAR participants are not employees as defined in the Act. It also asserts that the changes it made in its IRAR program were not matters over which it was obliged to bargain collectively. Concerning the alleged unlawful discharges of the IRAR employees and the alleged unlawful failure to recall them in 1989 the Respondent asserts that they were graduated when their training program ended and that they were not eligible for recall as new trainees in 1989.

B. *Background*

On June 20, 1986, the Department of Housing Preservation and Development (HPD) of the city of New York published a 22-page request for proposals (RFP) to solicit responses from nonprofit organizations to take part in the supportive work program (SWP) described in the RFP. As discussed above, SWP was designed as a way for the city to have abandoned apartment buildings rehabilitated by disadvantaged youths.

In response to HPD'S request of June 20, 1986, the Respondent submitted a detailed proposal. That proposal contained no indication that employees whom it would hire to participate in the program would be graduated at the end of any prescribed time but it simply noted that the participants would be trained throughout the year. That proposal was approved, the Respondent entered into a contract with HPD, and the Respondent began operating its IRAR program. The contract was extended from August 31, 1987, to the end of that year. In early 1987, as discussed next, events arose which led up to a prior Board case involving the Respondent.

On February 18, 1987, the Respondent had discharged Young Shi Lee from its IRAR program. On May 13, 1987, he filed the unfair labor practice charge in Case 2-CA-22244, alleging that he had been discharged in violation of Section 8(a)(1) of the Act because he had, with coworkers, protested working conditions. On June 26, 1987, a complaint was issued in that case. The answer thereto filed by the Re-

spendent raised various affirmative defenses. One defense it offered was that Lee was not an employee protected by the Act as he was only a student or trainee.

On September 8, 1987, the Respondent submitted its proposal to continue operating its IRAR program, for the calendar year 1988. The Respondent sought from HPD \$1,187,500 to fund the program in 1988, an amount based in part on a \$95-per-person day for 10 teams of 5 workers each. Its proposal related that the average hourly rate for the participants will be \$6.50, that the starting rate of \$4 per hour will increase to \$5 after 2 weeks and that there will be periodic increases commensurate with monthly evaluations with a "possible maximum of \$10.00 per hour."

The proposal for a 1988 contract also contained the following paragraphs.

Training will last for a period of one year from the date of acceptance into the program. At the end of a successful one year training period, Trainees will receive a Graduation Certificate of Achievement and one letter of recommendation from program staff explaining the program and detailing any special capabilities of the Trainee. If any Trainee is dismissed from the program for breaking program rules, he will not receive a graduation certificate or recommendation letters.

At the end of the training cycle, Trainees will be encouraged to find a non-subsidized, training—related job. The success of the In-Rem Apartment Repair Training Program will be determined in large part by the ability of the Trainees to find jobs at the completion of their training. In this way, it is hoped that they will become self-supporting and integrated members of the community.

The first proposal filed by the Respondent, the one it filed in 1986, had referred to the IRAR employees as "participants" and "workers" as well as "trainees"; the proposal it submitted in September 1987 referred to them, for the most part, as "students" and "trainees." Further the 1986 proposal had contained a sentence to the effect that the Respondent "acknowledges that these participants will be employees of [the Respondent] and as such will be covered by insurance that meets the minimum federal labor standards." The proposal submitted in September 1987 contained the same sentence, except that the words "will be employees of [the Respondent] and as such" were omitted and, in their place, there is a blank space.

The reference in the September 1987 proposal to the issuance of a graduation certificate and a letter of recommendation, and the deletion from the 1986 proposal of the phrase acknowledging that the IRAR participants are employees of the Respondent—both are in line with the argument, being advanced by the Respondent in 1987 in the Young Shi Lee case, that Lee was a student, and not an employee protected by the Act.

The hearing in the Young Shi Lee case, Case 2-CA-22244, was held on September 30 and October 1, 1987, before Administrative Law Judge Steven Davis. As noted further below, his decision issued in the spring of 1988.

On October 19, 1987, the Respondent hired Diana Pang as the director of its IRAR program. She replaced the individual

who had held that position since the inception of the IRAR program.

Pang met with the IRAR employees on January 4, 1988. She gave each an employee handbook and reviewed its contents with them. The handbook noted, in part, that the maximum pay rate was \$8 per hour. There was no reference made to the \$10-per-hour maximum set out in Respondent's 1987 proposal. The handbook also noted that, "[a]t the end of a successful 1-year training period, trainees will receive a graduation certificate of achievement and one letter of recommendation from program staff explaining the program and detailing any special capabilities of the Trainee."³ Further, the handbook observed that a participant's wage rate will be reviewed every 3 months and wages may or may not be raised periodically.

On April 7, 1988, Administrative Law Judge Davis issued his decision in Case 2-CA-22244 finding that the Respondent had unlawfully discharged Young Shi Lee in early 1987. Soon after that decision was issued, Lee met with various groups in the Chinese community in New York City to discuss his intention to return to work for the Respondent and his interest in forming a union among the IRAR employees. The local Chinese press reported Lee's views. The Respondent's executive director, John Wang, was aware of these press reports and, indeed, he himself presented to the press the Respondent's views as to Lee's case.

The Respondent filed exceptions to Judge Davis' decision. It did, however, reinstate Lee in May 1988. Later that month, on May 24 Program Director Pang distributed a memorandum to the IRAR employees which stated that, because long time participants in the IRAR program were not leaving the program for outside employment, the Respondent has found it impossible to raise the wages for new hires. Her memorandum further noted that it was impossible for the Respondent to give raises to the newly hired employees, as to do so would violate the contract the Respondent had with HPD. Her memorandum then went on to state that she was proposing that those individuals who joined the IRAR program before January 1, 1987, would have a graduation date at the end of their second anniversary year; that those who joined after January 1, 1987, but before October 19, 1987, would graduate at the end of 1-1/2 years of training; and for those hired after January 1, 1988, their graduation would be at the end of their first anniversary year. She closed the memorandum by stating that she would be meeting "with upper management" at the end of June and by assuring the IRAR employees that any ideas they had would be carefully considered.

It may be that the May 4 memorandum Pang distributed to the IRAR employees was construed by those of them who were newly hired as an attempt to blame Lee and other senior employees for their not getting wage increases. If so, it had little effect. The IRAR employees not only failed to re-

³The Respondent contends that Sec. 10(b) of the Act bars issuance of a complaint to allege the discriminatory discharge 12 months later of employees who were graduated pursuant to the handbook provisions and where the related unfair labor practice charge was filed in January 1989. That contention is rejected. It begs the issue as General Counsel and the Union argue, as discussed infra, that there was no valid graduation and that the Respondent seized upon that word in an effort to conceal its discriminatory motive in discharging the IRAR employees.

spond to her invitation to submit their ideas to her, but they also began to discuss forming a union.

Young Shi Lee and a coworker, Li Kei Man, after obtaining advice from friends in the Chinese community, prepared authorization cards with the Union's name on them and obtained signatures thereon from employees in the IRAR program. On June 5, 1988, they, together with an interpreter, went to the Board's Regional Office where they filed, on behalf of the Union, the petition in Case 2-RC-20520. The hearing on the petition was held on June 28, 1988.

C. The Alleged Discriminatory Denial of Wage Increases and the Alleged Unlawful Threat by Program Director Pang in the Summer of 1988 that the IRAR Program Would Cease to Operate

An IRAR employee, Li Kei Man, testified that he had received increases at approximately 3-month intervals (on October 17, 1987; on January 22, 1988, and on April 25, 1988) and that, in late July 1988, he asked Program Director Pang, just before she left for vacation, about his next raise. He testified that she told him that he was not an employee and that he was a student who should not be forming a union. He related also that Pang further stated that, as there was a matter pending before "the Labor Board for the establishing of the union," everything had to wait until the election.

Pang testified that she could not recall having any such meeting with Man.

Another IRAR employee, Kong Ktwan Wu, testified that he went to Pang's office in June 1988 and told Pang that he was due for a raise as he had been working for the Respondent for 3 months. He testified further that she told him that she could not give him a raise until employees, who had started before he did, leave. She also said, according to Wu, that now that "You have organized the [U]nion," wages are frozen and that he should ask the Union for a raise.

Pang testified that, around the end of June 1988, Wu came to her office in the evening and angrily demanded a wage increase. She related that she explained to him that she was experiencing a budget crisis and that his attitude, especially in class learning, was not good. She testified that she also told him that Respondent "had already hit the ceiling of the average \$6.50 and that she would not be able to give anybody a raise until someone leaves the program so "there is [an] amount available."

I credit the vivid accounts given by Man and Wu. Further, it seems unlikely that a new employee, Wu, would angrily demand a wage increase, as Pang's account would have it. In an effort to buttress her account, the Respondent placed in evidence various forms which contained evaluations of Wu's performances. The last evaluation of Wu that Pang had been given prior to their discussion in June 1988 was dated June 1 and was for the month of May. In that evaluation, his rating numbers were above average; there is nothing in it to support Pang's testimony as to Wu's attitude in class learning. The next evaluation as to Wu was not given her until August, long after the discussion she and Wu had in June.

Based on the credibility resolutions above and in view of the Respondent's stated policy of granting periodic wage increases, I find that General Counsel has made out a prima facie showing that the Respondent has failed to grant periodic wage increases to its IRAR employees since June 1988

in order to discourage them from supporting the Union. Under Board precedent, the burden shifted to the Respondent to demonstrate that, absent the union activities, the wage increases would still have been withheld. See *Wright Line*, 251 NLRB 1083 (1980).

Respondent contends that, in any event, the wage increases would have been withheld as the average wage rates then exceeded what it contends is the allowable average wage rate of \$6.50 under its contract with HPD. In support thereof, it noted the reference to the \$6.50 average rate as set out in its proposal, which had been incorporated by reference in the HPD contract. It placed in evidence a summary of the average rates for the months—June to December 1988. That states that the average for June was \$6.48; for July, \$6.56; for August \$6.52; and for the ensuing months increasingly higher rates until the rate reached \$6.60 per hour in December. It is noted that the proposal the Respondent submitted to HPD in 1986 contained no statement as to an average hourly rate.

Despite the budgetary restraints cited by Pang and the statements in Pang's May 24 memorandum that newly hired employees could not be given raises and notwithstanding that the average rate exceeded \$6.50, Pang did give wage increases to some IRAR employees later in 1988, about the time of the election in Case 2-RC-2050.

I am not persuaded that, absent the Union, the Respondent still would not have given wage increases to its IRAR employees. First of all, it later did grant such raises although the average exceeded \$6.50. Secondly, there is no basis for me to hold that it would have been a violation of the HPD contract by the Respondent, as Pang had asserted, for raises to be given when the average exceeded \$6.50. One could point to another provision and the Respondent's proposals to HPD, that it would periodically review wages, and to the practice of granting periodic increases, for possibly a better argument that the withholding the periodic increases would constitute a contract violation. It is of course unnecessary to decide which provision might be controlling, if either can be said to be binding. It is enough to note that Respondent has the burden here to prove that it would not have granted the increases and it offers little to carry that burden. I note too that, in its initial proposal, it has calculated a possible \$10-per hour rate as the maximum but, after the advent of Young Shi Lee's case, this figure was reduced without explanation to \$8.

As the General Counsel has established a prima facie case and, as that showing has not been rebutted, I find that the Respondent has, since June 1988, withheld periodic wage increases for its IRAR employees in order to discourage support for the Union.

Paragraph 7 of the complaint, as amended at the hearing, alleges that Pang threatened, in late July or early August 1988, to close its IRAR program in order to discourage support for the Union among the IRAR employees. No evidence was offered by the General Counsel thereon and I shall therefore dismiss that allegation.⁴

⁴ Young Shi Lee testified, during his cross-examination, as to a threat that the IRAR program would be closed down once the Union is established. Neither the brief by General Counsel nor that of the Union urge that his testimony is supportive of par. 7. It is thus unnecessary to speculate thereon.

D. *Refusal to Bargain*

The Union was certified on November 15, 1988, in Case 2-RC-20520 as the exclusive collective-bargaining representative of the IRAR employees. The Respondent thereafter rejected the Union's demand for bargaining, maintaining as it had in the hearing in the representation case and also during the course of the Young Shi Lee case that the IRAR employees were students, not employees under the Act.

Respondent, by rejecting the certified Union's bargaining request, on grounds previously litigated, has refused to bargain collectively within the meaning of Section 8(d) of the Act. The Respondent has repeatedly contended that it was under no duty to bargain as to the employment tenure of the "trainees," as to the "stipend" paid them or as to the terms and conditions of their overall training program as set out in Respondent's contract with HPD. That assertion is but another way of stating its basic contention, which the Board has rejected—that the IRAR employees are students.

E. *Alleged Coercive Conduct in Late 1988*

1. Alleged threat on November 23, 1988, to close down

The complaint alleges that, on November 23, 1988, the Respondent's deputy executive director, John Wang, threatened IRAR employees with the closedown of the IRAR program, in order to discourage them from supporting the Union.

Li Kei Man testified that, on November 23, 1988, he and five other IRAR employees spoke to John Wang in the sitting room next to his office. He related that, when Wang was asked "about the closing at the end of the year," Wang answered that the Respondent was in the processing of negotiating a renewal contract with HPD.

Young Shi Lee testified that he attended that meeting and that, when he asked Wang about a newspaper report that the Respondent would close down because of the Union, Wang replied "that's only reported in the newspaper." Lee testified that he understood Wang's response to mean that the Respondent did not plan to close down.

The testimony given by Li Kei Man and Young Shi Lee relevant to this allegation is insufficient to sustain it.

F. *Alleged Threat to IRAR Employees by Charles Wang that the Respondent Would Close its IRAR Program because of the Union; the Alleged Statement by Wang to those Employees that it was Futile for Them to Support the Union; and Alleged Unlawful Promise of Benefit*

The complaint alleges that on December 9, 1988, the Respondent, by Charles Wang engaged in the coercive conduct set out above.

General Counsel presented witnesses who testified as to a meeting the IRAR employees had on December 9, 1988, with Charles Wang and other officials of the Respondent. The Respondent, in turn, presented testimony to rebut those accounts.

During the cross-examination of Charles Wang, the General Counsel produced a tape recording of that meeting which had been made surreptitiously by an IRAR employee. The discussion was in Mandarin. Pursuant to arrangements at

the hearing, a 38-page English translation of that recording was prepared and received in evidence.

The discussion on December 9 as disclosed by the transcript of the recording and viewed in overall context is summarized as follows. The IRAR employees raised three points with Charles Wang—recognition of the Union, the wage freeze, and whether the IRAR program would continue in 1989.

Wang addressed the last issue first. He stated, in essence, that the Respondent may enter into a contract with HPD for 1989 but that depends in part "on what decision the court will make." (In overall context, he was referring to the Board's petition before the U.S. Court of Appeals, Second Circuit, to enforce its order in the Young Shi Lee case. Oral argument was then scheduled to take place in that case on February 17, 1989 and the argument would, of course, focus on whether Lee, as an IRAR participant, was an employee under the Act as found by the Board, or a student as Respondent contended.)

Wang went on to note that the Respondent will have to wait for the ruling of the court in deciding whether it would recognize the Union as bargaining agent.

One employee protested that "everybody will be gone" by the time the court rules. Wang endeavored, in general language, to allay their concern. There was discussion back and forth as to the Respondent's goals, its operations, and whether the Respondent had treated the IRAR employees fairly or whether they had been "cheated." In the course of the discussion, Wang observed that the Respondent did not freeze salaries but simply ran out of money. He indicated that the Respondent would grant raises as soon as it has moneys available to do so. He was informed that six employees had gotten "secret" raises. Wang stated that raises could be given only if some employees left the program. He observed that HPD was not satisfied with some work and refused to pay for it.

Wang then went on to state that the Respondent "is open" and that its accounts are audited but that "the key to the current issue is because we have different opinions, so we cannot let you check the account," unless there is agreement. When asked what he meant by an agreement, Wang replied, in effect, that the Respondent operates "a training course." He further stated that "if everyone can think the same way, then the business can continue. If everyone cannot think along the same line, it will be very difficult to go on. We hope that, come February when a court decision is made, we can again sit down and discuss."

Again, a protest was made that, by February 1989, everyone will be gone. Wang stated that the Respondent will comply with the law and that he hoped each of the IRAR employees will "think again carefully, sincerely and calmly because . . . jeopardizing [the Respondent's] interest will not do [them] any good either."

Later on during the meeting, Wang indicated that if the Respondent's "training program won't be jeopardized," the IRAR employees will be invited back. The discussion following that comment had to do with whether management or the workers were incompetent and whether the problem was one of communication.

Wang informed the IRAR employees then that they have different views from those of the Respondent, that "the key to the entire problem" is that the Respondent considers the

IRAR participants as trainees and not workers, that “if [they] say [they] are not going to form a union, then we can discuss about other things . . . [but no] matter, we will have to discuss it after February.”

Incidentally, the transcript of the December 9 meeting, to a great extent, corroborates the testimony that had been given by General Counsel’s witnesses as to that meeting and does not corroborate the accounts of the Respondent’s witnesses as to that meeting.

The clear impact of Charles Wang’s statements to the IRAR employees at the December 9 meeting was that the Respondent had no intention of renewing its contract with HPD by the end of 1988 and that they would be discharged then because they had persisted in viewing themselves as employees who had the right to join the Union. He also implied, quite obviously, that if they were to agree with him that they were trainees, and not employees, the Respondent could discuss with them “other things,” one of which was expressly brought to his attention, the wage freeze.

I find that the Respondent thereby had impliedly warned the IRAR employees that their continued insistence on asserting their rights as employees under the Act, including supporting the Union, would result in their discharges at the end of the year and that it also impliedly indicated to them that, by surrendering those rights, the Respondent was willing to adjust their concerns, including the wage freeze. Charles Wang’s statements, in overall context, establish too that the Respondent informed the IRAR employees that they would have a long wait, well after they were discharged, before the Respondent would even consider honoring the Union’s request for recognition. In so many words then, he told the IRAR employees that it was indeed futile for them to continue to support the Union. I thus find merit to these allegations of the complaint.

G. Alleged Unlawful Promise in January 1989 to Reemploy the Discharged IRAR Employees

The complaint alleges that, in mid-January 1989, the Respondent, by Charles Wang, promised benefits to the IRAR employees if they abandoned their support for the Union.

As discussed separately below, all the IRAR employees were terminated at the end of 1988. A former supervisor⁵ of the Respondent, Wu Yao, testified credibly that, as a member of the Chinese community, he sympathized with the discharged employees and took it upon himself to try to persuade Charles Wang to reemploy them. He and a discharged IRAR employee approached Charles Wang in mid-January 1989. He told Wang that those employees should not have been let go, as the Chinese New Year was approaching. Wang replied that, as long as they do not insist on having a union or that they are workers, not students, they can return to work at anytime. Otherwise, Wang said, nothing can be done. Wu asked Wang what would happen if the court of appeals rules that the IRAR participants are workers, Wang answered that the program would be terminated but, if the court ruled that they were trainees, the Respondent could have the “old group” back.

⁵He had been discharged for poor performance. His candid testimony thereon indicated that he was not testifying adversely to Respondent out of pique.

Based on the credited testimony, I find that Respondent, in mid-January 1989 coercedly promised IRAR employees their jobs back if they abandoned their support for the Union.

H. The Alleged Unlawful Discharges

The complaint alleges that the Respondent discriminatorily closed down its IRAR program on December 31, 1988, for several months, discharging all its IRAR employees and failed to recall them when the program resumed in May 1989. The Respondent contends that the IRAR participants were graduated at the end of the 1988 contract year, that the program which started in May 1989 is a wholly new training program and that it would not have hired the graduates of the IRAR program as they were ineligible for participation in it. To put these respective contentions in proper perspective, a brief review of the supportive work program is required.

Respondent and two other nonprofit groups participated in that program; VERA which provided HPD with work crews comprised of parolees and WILDCAT which provided crews comprised of former substance abusers. The proposals filed by the Respondent, Vera and Wildcat with HPD to take part in that program were chosen over other proposals. They signed standard form contracts which HPD then submitted for approval, first to the city’s board of estimate, then to the mayor’s office for approval, and lastly to the comptroller’s office where they were registered so that payments could be disbursed in accordance with the respective contracts.

As discussed above, the Respondent modified its proposal in September 1987 in deleting its acknowledgement that IRAR participants are its employees and in other ways. No explanation for those changes exists other than that they were made to offset the possible adverse effect of General Counsel’s contentions, then being presented in the Young Shi Lee case, that IRAR participants were employees, not students. The Respondent’s proposal for 1988 was incorporated into the HPD standard contract without incident; as noted earlier, it provided inter alia that the training program would continue throughout 1988.

In September 1988 the Respondent submitted its proposal to participate in the supportive work program in 1989. That proposal contemplated that Respondent would operate two 6-month training cycles and included other modifications from its earlier proposals. While HPD was processing the September 1988 proposal, the Board issued its decision in the Young Shi Lee case, discussed above, and the Union unanimously won the representation election among the IRAR employees, discussed above.

In early December 1988, the Respondent retained an attorney, Jenny Lind, who approached HPD officials in a determined effort to effect various changes in contract language which HPD officials resisted. One HPD official, Claire Moise, testified that the Respondent had sought these changes as the Respondent “felt that [they] would clarify what the program was all about and would therefore help to clarify the Union issue.” HPD’s legal counsel testified that the standard contract incorporated by reference the proposal submitted by the Respondent and that the proposed changes in the training program were matters that, in any event, were always under the Respondent’s control. It thus appears that the determined efforts by Lind to have the standard contract revised to specifically include the changes urged by the Re-

spendent were unnecessary, insofar as the efficacy of the contract was concerned. That these same efforts served to delay the signing and approval of the 1989 contract until well into 1989 was also obvious. In connection with those efforts, I note the finding above that the Respondent had made clear, on December 9, 1988, that it would wait into 1989 for a ruling of the U.S. court of appeals in the Young Shi Lee case before it would decide whether it would continue its IRAR program.

Relevant to the matter of Respondent's motivation are the commitment forms prepared by the Respondent in June 1988 and signed by many of the IRAR employees. Those forms committed the IRAR employees to remain in the IRAR program until completion of a full year's training. Some of the employees who signed these forms were let go at the end of 1988 although they had started working for the Respondent in the spring of 1988.

On December 30, 1988, Respondent's IRAR employees reported to its office. There, Yong Chen, Respondent's program counselor, informed them that that was their last day of work and that they "have already graduated." Protests were voiced. One employee asked Chen how is it that they got no diplomas. Chen then wrote, in Chinese, a statement, translated as follows:

Due to [the] expiration and course completion of the training class, December 30, 1988 is the last training date.

Best wishes for a Happy New Year.

Respondent's executive director, Charles Wang, then entered the room. Three of General Counsel's witnesses—Li Kei Man, Konh Htyan Wu, and Young Shi Lee—testified that, in the ensuing discussions, Wang said that Respondent had to close down because it does not have a contract for 1989 and that they should have known that that would be the result of their having formed the Union. General Counsel's fourth employee witness testified to another discussion he had with Wang; he further testified that he observed Wang talking with other employees but did not hear their conversation.

Wang testified that Chen asked him to the meeting as the trainees, who had come to pick up their final checks, were creating a disturbance. He testified that he then went to the meeting and told the employees that they had signed on with the understanding that there was a beginning and an end to the IRAR program and that they should be fully aware of the fact that they would graduate. Wang then answered in the negative to a series of questions put to him by the Respondent's counsel, including whether he made any promises if the employees were to "drop the Union," and whether he had said then that they should know what the result would be from the time they organized the Union.

I credit the candid accounts of General Counsel's witnesses over Wang's summary denials.

Graduation certificates were later mailed to all these IRAR employees. These employees have not been recalled to work for Respondent since then.

On January 12, 1989, the board of estimate approved HPD contracts for the year 1989 with the Respondent, with Vera, and with Wildcat. The latter two organizations continued without interruption to operate under the supportive work

program whereas the Respondent, as discussed above, was still seeking language revisions in the contract itself.

After having signed the 1989 HPD contract, the Respondent hired, in May 1989, new employees for its work crews. It did not recall any of the IRAR employees who were discharged at the end of 1988. The newly hired workers, according to the proposal that the Respondent had submitted, were scheduled to work only for a 6-month term and were to be paid at \$5 per hour.

Under the principle set out in *Wright Line*, supra, the General Counsel has the burden of establishing, prima facie, that a motive in Respondent's decision to end the IRAR program on December 30, 1988, and not to recall the discharged employees in May 1989, was to discourage its employees from asserting their rights under Section 7 of the Act, including their right to support and to be represented by the Union. The General Counsel has met that burden. The evidence before me demonstrates that, long before the advent of the Union, the Respondent was hostile to the efforts of its IRAR employ to exercise their rights as employees under the Act, and that the Respondent thereafter repeatedly made clear to those employees that their continued employment depended on their surrendering those rights and abandoning the Union. Simultaneously, it engaged in efforts to delay the operative dates for a renewal contract by insisting on changes in HPD contract language that were superfluous. The first part of the graduation scenerio itself was almost comedic in form; Wang's comments later, according to the credited testimony, removed all doubts as to the Respondent's motivation.

The evidence also establishes, prima facie, that the Respondent did not recall the discharged IRAR employees, when operations resumed in May 1989, because they still insisted they were employees under the Act and that they still supported the Union.

In view of the above findings, the burden then shifted to the Respondent to prove that it would have discharged these employees and that it would not have recalled these employees, absent their union activities. To that end, the Respondent contends that it had to discharge these employees as the HPD contract terminated on December 31, 1988, that it could not continue to operate the program until it was funded again in May 1989 and also that it could not recall them as the 1989 contract effectively precluded the Respondent from doing so. The Respondent, however, cannot rely on the contract language that it itself brought about by its persistence in seeking those very changes and where it sought those changes as part of its campaign to delay the renewal of the IRAR program until at least after the Young Shi Lee case was heard by the U.S. court of appeals. Cf. *Champ Corp.*, 291 NLRB 803, 866 (1988), where the Board adopted, inter alia, the holding by Judge Wieder that the employer there could not use, as a defense, a situation which it itself had created. Further, the other two HPD contractors, Vera and Wildcat, continued to operate in January 1989, notwithstanding that the board of estimate did not approve their bids until January 12, 1989; the testimony of HPD officials made it clear that the Respondent too could have continued to operate but for its insistence on changes that it could have made on its own in its own proposal.

I find that General Counsel's prima facie case has not been rebutted and therefore, I further find that the Respondent discharged the IRAR employees on December 30, 1988,

because they insisted on exercising their rights under Section 7 of the Act as employees, including giving support to their Union.

As to the Respondent's assertion that the 1989 HPD contract precluded it from enrolling the trainees who had graduated, the Respondent relies on its own construction of contract terms. That construction appears to be directly at variance with the fact that, in previous years, IRAR employees continued to participate in the program on an indefinite basis. Were Respondent allowed to defend its failure to recall the IRAR employees on the ground that they did not meet trainee requirements it itself set would enable the Respondent to evade its obligations under the Act itself, especially where the changes it implemented were, as discussed below, also unlawful. In any event, there is no persuasive evidence that the Respondent, absent the protected activities engaged in by the IRAR employees, would not have recalled them to work upon resumption of the program in May 1989.

I therefore find that the Respondent discharged the following named employees on December 30, 1988, and failed to recall them to its employ when the IRAR program was, in effect, resumed in May 1989—because they had continued to assert their Section 7 rights as employees, including joining and supporting the Union.⁶

Kam Shing Chan	Hao Hui Li
Kam Tai Chan	Kei Man Li
Ping Wing Chan	Wai Tai Li
Jing Yi Chen	Bing Zhao Lo
Bak Lok Chu	Sheng Hua Lu
Kok Kun Chu	Cheuk Ming Ng
Israel Gonzalez	Kin Chung Ng
Kwok Wo Ha	Ten Jen Shen
Thieng Pao Hou	Hau Wing Sin
Sui Bin Huang	V. Din Sintroung
Jieng Ning Jiang	Wing Sing Tse
Moon Shuen Kwong	Wai Man Wan
Kam Taie Kwok	Kon Atyan Henry Wu
Young Shi Lee—dead	Ming Zhang

I. Alleged Discriminatory and Unilateral Changes in May 89 of Wage Rates and Tenure of Unit Employees

The proposal submitted by the Respondent for the 1989 contract provided that it would pay the participants \$5 per hour and, in effect, that their term of employment will end 6 months after they began work. As noted above, the evidence proffered by the General Counsel, including that developed via the testimony of a HPD official that the changes proposed by the Respondent from its prior HPD contract were addressed to the union problem it faced, established prima facie that the union activities of the IRAR employees were a definite factor in the decision of the Respondent to make those changes. The Respondent offered no evidence to

⁶While the parties stipulated that these were the names of the IRAR employees as of December 30, 1988, the Respondent later stated that recheck of its payroll records showed that Sui Bin Huang and Jian Ning Jiang had left its employ by then. If the compliance stage determines that they were not employees then, their names are to be deleted. Another employee, Young Shi Lee, has since died. His estate is entitled to backpay. See *Lauderdale Lakes General Hospital*, 239 NLRB 895 (1978).

prove that it would, absent those union activities, still have effected those changes. Rather, the Respondent offered only an assertion that it was motivated only by its attempt to create an incentive for trainees to move on to employment elsewhere. To restate a contention is not to prove it.

I find that General Counsel's prima facie showing has not been rebutted and that therefore the Respondent effected these changes in order to discourage its IRAR employees from supporting the Union.

As a corollary, and noting that the Union is the certified exclusive collective-bargaining agent of the IRAR employees, I further find that the Respondent, by its unilateral implementation of those changes, has failed to bargain collectively with the Union.

CONCLUSIONS OF LAW

1. The Respondent 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. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by having:

(a) Warned its employees that it would terminate its IRAR program and discharge them unless they abandoned their support of the Union;

(b) Informed its IRAR employees in effect that it was futile for them to continue to support the Union;

(c) Impliedly promised its IRAR employees that they would receive periodic wage increases if they abandoned their support of the Union;

(d) Informed its IRAR employees that they would be returned to its employ if they abandoned the Union;

(e) Engaged in the conduct described below in paragraphs 4 and 5.

4. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act by having:

(a) Discontinued granting IRAR employees periodic wage increases to discourage them from asserting their rights under Section 7 of the Act, including supporting the Union;

(b) Discharged all its IRAR employees on December 30, 1988, because they supported the Union;

(c) Reduced the wage rates and employment tenure of IRAR employees in order to discourage support of the Union.

5. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act by having:

(a) Refused to honor the Union's request to bargain collectively with it as the exclusive representative in the unit of employees for which it was certified in Case 2-RC-20520;

(b) Unilaterally and without bargaining collectively with the Union changed the wage rates and employment tenure of employees in the unit represented by the Union, as referred to above.

6. The Respondent did not engage in the other unfair labor practices alleged in the complaint.

THE REMEDY

The Respondent did not have a contract with HPD after 1989. Nonetheless, the matter is not moot insofar as issuance of a remedial order, including one as to the Respondent's refusal to bargain collectively, is concerned. See *Redway Car-*

riers, 301 NLRB 1113 (1991), and cases cited therein at footnote 1.

Further, as requested by the General Counsel, the Respondent shall be required to mail signed copies of the notice to employees, in English and Mandarin to all IRAR employees who were discharged on December 30, 1988.

The Respondent shall further make whole all IRAR employees for losses incurred by them by reason of the Respondent's discontinuance of its general practice of granting them periodic wage increases, with interest thereon from the dates of the respective wage increments, to be determined via compliance proceedings if necessary; interest to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent will also be ordered to make whole for losses incurred as a result of their unlawful discharges on December 30, 1988, from then and until December 31, 1989, when the IRAR program was permanently closed, less net interim earnings, and in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and with interest, as prescribed in *New Horizons for the Retarded*, supra.

The General Counsel has sought an order requiring the Respondent to bargain as to the effects of the December 31, 1989 closedown. There is no reason to specify each and every aspect of the bargaining duty.

On these findings of fact, conclusions of law and the entire record, I issue the following recommended⁷

ORDER

The Respondent, Chinese American Planning Council, Inc., New York, New York, its officers, agents, successors, and assigns shall

I. Cease and desist from

(a) Warning its employees that it would discharge them unless they abandoned their support of C.P.C. Independent Workers Union.

(b) Informing employees in effect that it was futile for them to continue to support the above-named Union.

(c) Impliedly promising employees that they would receive periodic wage increases if they abandoned their support of the above-named Union.

(d) Informing employees that they would be returned to its employ if they abandoned the above-named Union.

(e) Discontinuing granting employees periodic wage increases to discourage them from asserting their rights under Section 7 of the Act, including supporting the above-named Union.

(f) Discharging employees because they supported the above-named Union.

(g) Reducing the wage rates and employment tenure of employees in order to discourage support of the above-named Union.

(h) Refusing to honor the above-named Union's request to bargain collectively with it or the exclusive representative in the unit of employees for which it was certified in Case 2-RC-20520.

⁷If 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.

(i) Unilaterally and without bargaining collectively with the Union changing the wage rates and employment tenure of employees in the unit represented by the above-named Union, as referred to above.

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

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

(a) Reimburse its IRAR employees for losses incurred by them by reason of the Respondent's failure to grant them periodic wage increases and for losses they incurred by reason of their having been discharged unlawfully, with interest computed as provided for in the remedy section above.

(b) On request bargain collectively with the above-named Union as the exclusive representative of the unit employees for which it was certified in Case 2-RC-20520.

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

(d) Mail copies of the attached notice marked "Appendix" to all IRAR employees discharged on December 30, 1988 as provided for in the remedy section above.⁸ Copies of such notices to be provided to the Respondent by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt thereof.

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

IT IS FURTHER RECOMMENDED that allegations of the complaint, to which merit has not been found, are dismissed.

⁸If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

WE WILL NOT warn our employees that we will discharge them unless they abandon their support of the C.P.C. Independent Workers Union.

WE WILL NOT inform our employees in effect that it is futile for them to continue to support the above-named Union.

WE WILL NOT impliedly promise our employees that they will receive periodic wage increases if they abandoned their support of the above-named Union.

WE WILL NOT inform our employees that they will be returned to our employ if they abandoned the above-named Union.

WE WILL NOT discontinue granting periodic wage increases to our employees to discourage them from asserting their rights under Section 7 of the Act, including supporting the above-named Union.

WE WILL NOT discharge employees because they support the above-named Union.

WE WILL NOT reduce the wage rates and employment tenure of employees in order to discourage support of the above-named Union.

WE WILL NOT refuse to honor the above-named Union's request to bargain collectively as the exclusive representative in the unit of employees for which it was certified in Case 2-RC-20520.

WE WILL NOT, unilaterally and without bargaining collectively with the Union, change the wage rates and employment tenure of employees in the unit represented by the above-named Union, as referred to above.

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

WE WILL make whole, with interest, losses incurred by our IRAR employees for our failure to grant periodic wage increases because they support the above-named Union.

WE WILL make whole, with interest, the employees named below for losses they suffered as a result of our having discharged them on December 20, 1988, because they supported the Union.

WE WILL, on request, bargain in good faith with the above-named Union as the exclusive representative of our IRAR employees.

WE WILL make whole, with interest, losses incurred by our IRAR employees for our failure to grant periodic wage increases because they support the above-named Union.

WE WILL make whole, with interest, the employees named below for losses they suffered as a result of our having discharged them on December 20, 1988, because they support the Union.

Kam Shing Chan	Hao Hui Li
Kam Tai Chan	Kei Man Li
Ping Wing Chan	Wai Tai Li
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Kok Kun Chu	Cheuk Ming Ng
Israel Gonzalez	Kin Chung Ng
Kwok Wo Ha	Ten Jen Shen
Thieng Pao Hou	Hau Wing Sin
Sui Bin Huang	V. Din Sintroung
Jieng Ning Jiang	Wing Sing Tse
Moon Shuen Kwong	Wai Man Wan
Kam Taie Kwok	Kon Atyan Henry Wu
Young Shi Lee—dead	Ming Zhang

WE WILL, on request, bargain in good faith with the above-named Union as the exclusive representative of our IRAR employees.

CHINESE AMERICAN PLANNING COUNCIL, INC.