

Gartner-Harf Co., Pagewood N.V., Pagewood Meat Packing Co., and GH Processed Beef, Inc. and United Food and Commercial Workers District Union, Local 1, AFL-CIO-CLC. Cases 6-CA-23012, 6-CA-23062, 6-CA-23275, and 6-CA-23294

August 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On February 14, 1992, Administrative Law Judge Karl H. Buschmann issued the attached decision. The General Counsel filed limited exceptions and a brief in support.

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 brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

The General Counsel has excepted to the judge's dismissal of Respondent Gartner-Harf from these proceedings and to his failure to find that Gartner-Harf, either as a sole employer or as a single employer with the Respondent,² is obligated to remedy the unfair labor practices it committed prior to its closing on August 23, 1990. The General Counsel has also excepted to the judge's failure to find that Gartner-Harf and the Respondent constitute a single employer, a finding that

¹ The General Counsel excepts to the judge's failure to find that the Respondent violated Sec. 8(a)(3) by laying off driver Edward Garbulinski on January 11, 1991. The General Counsel argues that the judge "misconstrue[d] Garbulinski's complaints and the extent to which these complaints were rooted in the Union collective-bargaining agreement." We disagree. From Garbulinski's testimony it is clear, as the judge found, that Garbulinski's conversations with the Respondent's officials regarding lack of work were in the nature of personal complaints about his own lack of work hours.

The judge's decision contains certain inadvertent errors which we correct below. These errors do not affect our results. In the third paragraph of the "Facts" section of his decision, "Pagewood N.V." should read "Acredraw Ltd." In the 10th paragraph of the same section, the date "August 31, 1990" should read "July 31, 1990." Finally, in the seventh paragraph of the "unfair labor practices" section of his decision, the judge states that Hank Garbulinski, the Respondent's production manager, informed Maisner that it was his understanding that the foreman's rate was \$9.25. Maisner testified without contradiction, however, that he asked Garbulinski what the rate would be and Garbulinski said \$8.25. Maisner replied that he (Maisner) "was under the impression that the foreman's rate was \$9.25."

² Unless otherwise noted, the term "the Respondent" refers to GH Processed Beef and Pagewood Meat Packing, which, as admitted in its answer and as found by the judge, constitute a single employer. The judge also found, and we agree, that the Respondent is Gartner-Harf's successor and that it was obligated to assume Gartner-Harf's contract with the Union when it commenced operation on September 7, 1990.

would, in effect, obligate the Respondent to remedy Gartner-Harf's violations discussed above. As to the judge's dismissal of Gartner-Harf, the General Counsel asserts that since Gartner-Harf was still in existence at the time of the hearing, its viability and obligations arising from its unfair labor practices should be left to compliance. As to the single employer issue, the General Counsel contends, *inter alia*, that since the judge found that Gartner-Harf and the Respondent are alter egos and since under Board law alter egos are a "subset" of single employers, the judge should have found that Gartner-Harf and the Respondent constitute a single employer. For the reasons set out below, we find this latter exception without merit and conclude that Gartner-Harf and the Respondent are neither a single employer nor alter egos.

We find merit in the General Counsel's exception to the judge's dismissal of Gartner-Harf as a party respondent, and we further find that Gartner-Harf, as the sole employer of the employees prior to its closing, violated the Act as alleged.³ For the reasons set out below, however, we find no merit in the General Counsel's contention regarding the liability of the Respondent for Gartner-Harf's preclosing violations because we conclude that Gartner-Harf and the Respondent were neither a single employer nor alter egos.

Because the General Counsel's exceptions concern the legal relationship of the four named Respondents, we shall set out briefly their financial relationship and their officers' day-to-day interaction.

Gartner-Harf operated for many years as a slaughterhouse and meatpacking operation in Waterford, Pennsylvania. Walter Harf was the Company's president and Jack Gartner its vice president and secretary. For

³ Accordingly, we shall include a part "B" in our Order that applies to Respondent Gartner-Harf alone. We also add an "Appendix II" which corresponds to part B of the Order.

As to Gartner-Harf's violations encompassed within part B of the Order, par. 47 of the amended consolidated complaint alleges that "GH/Pagewood" (i.e., Gartner-Harf and the Respondent) failed and refused to adhere to the collective-bargaining agreement by failing to remit contractually mandated pension and health fund payments, by failing to remit union dues pursuant to checkoff authorizations, and by failing to provide its employees contractually required severance benefits after the cessation of operations. Although our finding of these violations runs to Gartner-Harf alone, we conclude that Respondent Gartner-Harf is not prejudiced thereby. In this regard, we note that although the General Counsel timely served Gartner-Harf with the complaints in this matter, including the amended consolidated complaint, Gartner-Harf failed to file an answer or to otherwise defend against these alleged violations. In addition, although Gartner-Harf chose not to be represented by counsel at the hearing, we note that Harf, one of its owners, was present and testified at the hearing. Accordingly, we find that Respondent Gartner-Harf was timely apprised of the violations alleged against it and had ample opportunity to defend against those allegations. In these circumstances, we conclude that Gartner-Harf rightfully can neither claim surprise nor a violation of its due-process rights merely because we find that it alone is liable for the alleged contractual viola-

many years the Union had represented Gartner-Harf's employees, with the most recent contract extending from May 1989 to May 29, 1994. After late 1987, Gartner-Harf experienced financial difficulties and in August 1988 it signed a letter of agreement to sell the Company to Odimayo, the Respondent's president, but the parties failed to reach final agreement on the sale. In October 1989, due to financial difficulties, Gartner-Harf decided to close. One of its officers contacted Odimayo regarding its financial condition and the parties renewed their negotiations. On December 5, 1989, the parties executed a "stock purchase agreement" providing for the sale of the Company on February 28, 1990.⁴ The agreement was signed by Harf and Gartner for the Company and by Odimayo as president of Pagewood N.V., a holding company registered in the Dutch Antilles. The agreement provided for a \$200,000 downpayment to Gartner-Harf. The agreement was not consummated, however, and the parties negotiated an "Assets Purchase Agreement" dated March 1 that set May 31 as the closing date. Odimayo signed this agreement as president of GH Processed Beef, a Delaware corporation.⁵ Under the terms of this agreement, Odimayo paid Gartner-Harf \$100,000, thus increasing his investment in the Company to \$300,000.

The parties did not execute the agreement on May 31, however, but agreed to extend it another 2 months. On June 28 Odimayo advanced Gartner-Harf \$600,000 to provide the Company with working capital and to pay off a demand note held by the bank. As consideration for the payment, Harf and Gartner executed a "voting Trust Agreement" which transferred 50 percent of their stock ownership to Odimayo. The parties also agreed to extend the closing of the contract to August 31, 1992. Gartner continued to run the business with "due consultation" with Odimayo. In August the Company again ran into financial difficulty. Odimayo advanced another \$500,000 although he was under the impression that his tenure on the board had expired on July 31. The parties, Odimayo, Dawodu (Odimayo's brother-in-law), Harf, and Gartner, met on August 10 and executed a "Stock Purchase Agreement" that was not a formal sales agreement, but indicated that the March 1 agreement was no longer valid. The parties

⁴Unless otherwise noted, all dates hereafter refer to 1990.

⁵Odimayo testified that it would be easier for a U.S.-based company to negotiate Gartner-Harf's purchase, so GH Processed Beef was incorporated to replace Pagewood N.V. as the vehicle through which Odimayo would purchase Gartner-Harf. Odimayo further testified that after GH Processed Beef was incorporated, Pagewood N.V. was voluntarily liquidated and died a "natural death." After the hearing, the Respondent filed a Motion for Summary Judgment seeking to dismiss Pagewood N.V. from the proceeding on the ground that it no longer exists. The judge, in effect, granted the motion by concluding that Pagewood N.V. is no longer an employer engaged in commerce within the meaning of the Act. As explained above, we find that the judge properly dismissed Pagewood N.V. from the proceedings.

were in the process of negotiating a new agreement when on August 23 the bank foreclosed on its \$4 million loan to Gartner-Harf.

The bank's foreclosure ended any possibility that Odimayo could purchase the Company in accordance with the prior agreement. Odimayo instead negotiated with the bank (which was selling the Company's assets) and Harf and Gartner as the owners of the Company's stock. On August 27, Gartner-Harf and GH Processed Beef executed an agreement that provided for the sale of all assets of Gartner-Harf to GH Processed Beef. On August 29, Pagewood Meat Packing was created to operate the meatpacking business. Odimayo was its president and Dawodu its secretary. GH Processed Beef and Pagewood Meat Packing (the Respondent) began operations on September 7.

As to Odimayo's actual participation in the day-to-day operation of Gartner-Harf during the period at issue, on March 9, after he had invested \$300,000 in Gartner-Harf, Odimayo was made a director of the Company along with Harf and Gartner. Odimayo was also made "Vice Chairman and Chief Executive Officer." Harf remained chairman and Gartner became "President and Chief Executive Officer" and was responsible for running the Company on a daily basis. About March 15, the Company's management, including Odimayo, met with Fromm, the Union's business agent. At that meeting Odimayo stated unequivocally that he intended to honor the obligations of the union contract when he became owner. At about the same time, and at Odimayo's direction, most of the senior executives received a pay raise. In April, Gartner-Harf hired Dawodu to participate in the day-to-day running of the Company and to represent Odimayo's interests during Odimayo's extended absences.⁶ In addition,

⁶Dawodu testified that he did not have a job description, but that he just went "to who was in charge of any particular thing that [he] was interested to find out. It was more of a discussion or consultation with them than giving directives or whatever." In this regard, Dawodu testified that he attended several meetings on work rules and plant safety as an observer, but that he never attended any meetings concerning employee grievances. Contrary to Dawodu, Fromm testified that Dawodu attended and actively participated in two such meetings in early May. The judge did not resolve this credibility conflict. We are reluctant to credit Fromm's testimony for the following reasons. At the hearing, the General Counsel introduced G.C. Exhs. 14 and 15 which were respectively Fromm's notes of the May 1 and 7 grievance meetings. At the top of each sheet, as Respondent's counsel pointed out, the names of the participants, including Dawodu, seemed to have been inserted after the notes were taken and appeared not to be in Fromm's handwriting. When the Respondent's counsel asked Fromm why the signatures seemed to be in a different handwriting, Fromm failed to provide a satisfactory explanation, but stated "[w]ithout trying to be a smart aleck, I guess that is your call, not mine." In these circumstances, we find Dawodu's testimony that he did not attend any grievance meetings between April and August 23 to be more credible. Moreover, even assuming that Dawodu did actively participate in two grievance meetings, the record does not establish sufficient involvement by Dawodu in the

Odimayo hired a consultant, Shade Munro, to make certain improvements at the plant in preparation for doing business with the European Economic Community.

A determination of whether two or more employers constitute a single employer depends on an analysis of four criteria: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. Of these criteria, the Board has stressed that the first three “are more critical than common ownership” and has placed “particular emphasis on whether control of labor relations is centralized.” *Hydrolines, Inc.*, 305 NLRB 416, 417 (1991). Applying these criteria here, we emphasize that between March and August 1990, the period Odimayo was negotiating the purchase of Gartner-Harf, only Respondent GH Processed Beef was in existence. (Pagewood Meat Packing was incorporated on August 29 to run the meatpacking operation through a lease agreement with GH Processed Beef.) As noted above, GH Processed Beef was a holding company. It employed no employees and conducted no operations. Moreover, the factor on which the Board places “particular emphasis” in its single employer determination, centralized control of labor relations, is absent here. In this regard, we note that Odimayo and Dawodu, his personal representative at the Gartner-Harf facility during the period at issue, played no part in the hiring, firing, or disciplining of the unit employees or any other role in the determination of the unit employees’ terms and conditions of employment. Although Odimayo signed an EEO memo that was posted at the plant in May and Dawodu attended two or three meetings at which employees were present during the spring, we find that these facts do not establish that Gartner-Harf and GH Processed Beef together exercised centralized control of Gartner-Harf’s work force.⁷

We also find that while Odimayo’s financial interest in Gartner-Harf increased over the spring and summer, Odimayo’s contributions, made through GH Processed Beef, were made in furtherance of Odimayo’s plan to purchase Gartner-Harf and to maintain its viability until the purchase went through. As the payments toward the purchase were memorialized in letters of intent and contractual agreements, we find that the busi-

ness relationship between the two companies is best characterized as “arm’s length” and does not evidence centralized financial control of the two companies. See *Hydrolines*, supra, at 418.

ness relationship between the two companies is best characterized as “arm’s length” and does not evidence centralized financial control of the two companies. See *Hydrolines*, supra, at 418.

Finally, while Odimayo did gain an ownership interest in Gartner-Harf in March, we find that this factor, standing alone, does not warrant a finding that Gartner-Harf and the Respondent are a single employer.⁸ Consequently, as noted above, we find that Gartner-Harf, as the sole employer of its employees prior to its closing, violated Section 8(a)(5) by failing to make contractually required payments from August 15 to September 7. We shall leave to compliance the determination of Gartner-Harf’s continued viability and its obligations arising from its unlawful conduct.⁹

ORDER

A. The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, GH Processed Beef, Inc. and Pagewood Meat Packing Co., Waterford, Pennsylvania, a single employer, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

B. The National Labor Relations Board orders that the Respondent, Gartner-Harf Co., Waterford, Pennsylvania, its officers, agents, successors, and assigns, shall

⁸The judge found that Gartner-Harf and the Pagewood group were alter egos. As noted above, the General Counsel points out in his brief that “in Board law, alter ego is in effect a subset of the single employer concept (i.e. not all single employers are alter egos, but all alter egos by definition met [sic] the criteria for single employer status).” Since we find that Gartner-Harf and GH Processed Beef are not a single employer, a fortiori Gartner-Harf and the Respondent are not alter egos. We note also that the record does not show that the Respondent is “merely a disguised continuance of the old employer.” See *Il Progresso Italo Americano Publishing Co.*, 299 NLRB 270, 288 (1990), citing *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942).

⁹We modify the judge’s Conclusions of Law accordingly. In addition, we modify the remedy portion of the judge’s decision as follows. We shall order Gartner-Harf to make the required pension and health contributions to the trust funds that have not been paid and that would have been paid but for the unlawful conduct found here, with any additional amounts as set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). We shall also order Gartner-Harf to make whole the unit employees for any losses attributable to its failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order Gartner-Harf to reimburse the Union, with interest as prescribed in *New Horizons*, supra, for union dues that it failed and refused to remit the Union in accordance with the collective-bargaining agreement. Finally, we shall require Gartner-Harf to make whole its employees for its failure to make the severance payments required under the contract, with interest as prescribed in *New Horizons*, supra.

employees’ terms and conditions of employment to render the Respondent a single employer with Gartner-Harf.

⁷In *Hydrolines*, supra at 418, by contrast, the Board found that respondents TNT and Hydrolines exercised centralized control over labor relations despite the fact that TNT had no labor force. In reaching its finding, the Board relied, inter alia, on the facts that TNT’s president, Bruyere, screened Hydrolines’ prospective employees before Hydrolines made a hiring decision, that Bruyere “exert[ed] some influence” over Hydrolines’ labor force, and that Bruyere, after receiving the union’s bargaining demand, passed it on to Hydrolines’ chief executive officer who responded on behalf of both respondents. Such evidence of centralized control of labor relations is absent in the present case.

1. Cease and desist from

(a) Refusing to bargain collectively with United Food and Commercial Workers District Union, Local 1, AFL-CIO-CLC, the exclusive representative of its employees in the bargaining unit, by failing to make the contractually required pension, health, dues, and severance payments.

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

(a) Make the contractually required payments to the Union's trust funds, reimburse the Union for the dues it unlawfully withheld, and make the unit employees whole in the manner set out above.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the terms of this Order.

(c) Post at its facility in Waterford, Pennsylvania, copies of the attached notice marked "Appendix II" and mail copies thereof to all employees of Respondent Gartner-Harf who were laid off as a result of the Respondent's closure.¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent to each laid-off employee and additional copies shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous 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 consecutive days from the date of this Order what steps the Respondent has taken to comply.

¹⁰If 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 II

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

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

WE WILL NOT refuse to bargain collectively with the United Food and Commercial Workers District Union, Local 1, AFL-CIO-CLC as the exclusive bargaining representative of our employees in the bargaining unit, by refusing and failing to make the contractually required pension, health, dues, and severance payments.

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

WE WILL make the contractually required payments to the Union's trust funds, reimburse the Union for the dues we unlawfully failed to remit, and make our unit employees whole, with interest, for any losses that they may have suffered as a result of our failure to make the contractually required payments.

GARTNER-HARF CO.

Barton Meyers and Patrick Berzai, Esqs., for the General Counsel.

Frank L. Kroto Jr. and Kenneth Wargo, Esqs., of Erie, Pennsylvania, for the Respondent.

Richard Lipsitz, Esq. (Lipsitz, Green, Fahringer, Robb, Salisbury & Cambria), of Buffalo, New York, for the Charging Party.

Walter Harf, pro se, of Erie, Pennsylvania.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried on May 13-16, 1991, in Erie, Pennsylvania. The charges (Case 6-CA-23021 on September 19, 1990, amended on January 24, 1991; Case 6-CA-23062 on October 9, 1990, amended on January 24, 1991; Case 6-CA-23275 on January 14, 1991; Case 6-CA-23275 on January 17, 1991, amended on February 11, 1991) were filed by United Food and Commercial Workers District Union, Local 1, AFL-CIO-CLC (the Union). Consolidated complaints issued on January 25, 1991, in Cases 6-CA-23012 and 6-CA-23062 and February 12, 1991, in Cases 6-CA-23275 and 6-CA-23294, as amended on April 26, 1991. The allegations in the amended consolidated complaint charge several corporations, Gartner-Harf Co., Pagewood N.V., GH Processed Beef, Inc., and Pagewood Meat Packing Company, with violations of Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act (the Act). The 8(a)(1) violations include unlawful interrogations of employees about their union sympathies, threats of plant closure, and the solicitation of a petition to decertify the Union. The 8(a)(1) and (3) allegations accuse the Respondents with the discriminatory discharge of employee Edward Garbulinski and the discriminatory refusal to recall Timothy Maisner. The Respondent's layoff of Garbulinski is also alleged as an 8(a)(4) violation. The alleged violations of Section 8(a)(1) and (5) of the Act involve the refusal and failure of several Respondents, as alter ego, as a single employer, or as successor corporations (1) to recognize and bargain with the Union, and (2) to abide by the collective-bargaining agreement in such areas as the hiring of employees, the payment of wages, the payment of pension,

insurance, and legal assistance funds, and the workweek of its drivers.

The Respondents¹ filed answers on February 11, March 6, and May 10, 1991, in which certain allegations are admitted. The Respondents denied the allegations dealing with the "single employer" status and the successor relationships of the corporate entities. Also denied are the commission of any unfair labor practices.²

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Gartner-Harf Co., was a Pennsylvania corporation with an office and place of business in Waterford, Pennsylvania, where it was engaged in the slaughter, nonretail sale, and distribution of meat. During the 12-month period ending August 31, 1990, Gartner-Harf in the conduct of its business sold and delivered goods and products valued in excess of \$50,000 to points outside the State of Pennsylvania. It was admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondents Pagewood Meat Packing Company and GH Processed Beef Co. are Delaware corporations with an office and place of business in Waterford, Pennsylvania, where, as a single-integrated enterprise, they are engaged in the slaughter, distribution, and nonretail sale of meat products. With projected purchases of products in excess of \$50,000 directly from points outside the State of Pennsylvania, GH Processed Beef and Pagewood Meat Packing Co. are admittedly a single employer or an integrated enterprise engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.³

Affiliated with GH Processed Beef or Pagewood Meat Packing and alleged as one of the Respondents is Pagewood N.V. The Respondents denied the allegations that Pagewood N.V. is a Dutch corporation with an office and place of business in Leatherhead, England, or that it was engaged in the purchase and sale of real property in the United States. In view of the Respondents' answer stating that Pagewood N.V. is a foreign company registered in the Dutch Antilles, the Board's jurisdiction over Pagewood N.V. can be asserted only if it can be determined that it was doing business within the territorial United States or if it constituted a single employer with one of the corporate entities which meet the Board's criteria. *IL Progresso Italo Americano Publishing Co.*, 299 NLRB 270 (1990).⁴

The Union, United Food and Commercial Workers District Union, Local 1, AFL-CIO-CLC, is admittedly a labor organization within the meaning of Section 2(5) of the Act.

¹The answer was filed on behalf of Pagewood N.V., GH Processed Beef, Inc., and Pagewood Meat Packing Co. The other corporate entity, Gartner-Harf Co., did not file an answer and was not represented by counsel.

²The parties filed briefs. By letter of July 17, 1991, the Respondent filed a short reply brief which the General Counsel opposed with a motion to strike. Consideration of the brief is, in my opinion, not prejudicial to the General Counsel. I, accordingly, deny the motion.

³R. Br. p. 21, see also R. answer p. 4.

⁴On June 24, 1991, the Respondent filed a Motion for Summary Judgment requesting the dismissal of the allegations against Pagewood N.V. The General Counsel filed an opposition to the motion on July 18, 1991.

Facts

The complaint alleges that the following four corporate entities constituted a single employer: Gartner-Harf Co., Pagewood N.V., GH Processed Beef, Inc., and Pagewood Meat Packing Co. In the alternative, it is alleged that the latter three entities, Pagewood N.V., GH Processed Beef, Inc., and Pagewood Meat Packing Co., constitute a single employer and are a successor to Gartner-Harf Co.⁵

Gartner-Harf operated for many years as a meatpacker or a slaughterhouse in Waterford, Pennsylvania. With a work force of approximately 165 employees, the Company was owned and operated by Walter Harf and Jack Gartner. Walter Harf was the president and Jack Gartner, the vice president and secretary, and Margaret Gartner served as treasurer (Tr. 90). The employees had for many years been represented by the United Food and Commercial Workers. Their latest collective-bargaining agreement was negotiated to last from May 1989, to May 29, 1994 (G.C. Exh. 3, Tr. 189).

In late 1989, Gartner-Harf experienced financial difficulties and decided to act. On October 20, 1989, the Company notified the Union and the Governor of Pennsylvania under the State's Worker Adjustment and Retraining Notification Act that the plant would close, "unless there is a dramatic change in the economic conditions of the industry in which the company is engaged." As early as 1987, Gartner-Harf had been looking for a buyer of the Company. It had contacted a broker and advertised in the Wall Street Journal. The Company received 140 responses, including one from Pagewood N.V. and its principal owner, A. O. Odimayo, a Nigerian investor (Tr. 192, 493). Negotiations ensued between Jack Gartner and Walter Harf, the owners, and A. O. Odimayo of Pagewood N.V. In August 1988, the parties signed a letter of intent for the sale of the Company to Pagewood N.V. (Tr. 193, 494). However, the parties did not comply with the letter of intent.

In October 1989, after Gartner-Harf had notified the Union of the closing of the plant, an employee of Gartner-Harf called Odimayo by telephone in London, England, advising him of the precarious financial position of the Company (Tr. 194, 498). As a result, the parties resumed negotiations and, on December 5, 1989, executed a "stock purchase agreement" providing for the sale of the Company on February 28, 1990 (G.C. Exh. 17, Tr. 195, 504). The agreement was signed by Walter Harf and Jack Gartner as selling shareholders and by A. O. Odimayo as president of Pagewood Company N.V. The agreement provided for a \$200,000 downpayment to Gartner-Harf (Tr. 195). The parties, however, did not consummate the contract on February 28, 1990, because of certain financial considerations. The individual parties negotiated another agreement dated March 1, 1990, entitled "Assets Purchase Agreement" (G.C. Exh. 18, Tr. 200, 507). Odimayo signed the agreement as president of GH Processed Beef, Inc., a company identified in the contract as a Delaware corporation. Odimayo explained the reasons for the

⁵The complaint also alleges that Gartner-Harf and Pagewood N.V. operated as a single employer and that GH Processed Beef and Pagewood Meat Packing Co. constituted a single employer.

change of corporate entity from Pagewood to GH Processed Beef (Tr. 444-445):

Basically when we decided to go ahead with this contract, it was found that it would be better for ease of information or ease of access to information that we should have a U.S. based company to take over whatever negotiation, contract, conclusion or completion of what you call closing here regarding this transaction, and for that my lawyer at that time, Mr. John Leo, recommended that we should have a Delaware company put in place as the successor to this company Pagewood Company N.V. and to that effect I was empowered to incorporate the company. It was later known as G.H. Processed Beef Inc., and that company took over the activities of Pagewood Company N.V.

This is the reason why subsequent contracts and draft contracts were in the name of G.H. Processed Beef, and no longer Pagewood because one was to take over the activities of the other.

Under the terms of the March 1, 1990 contract, Odimayo paid \$100,000 to Gartner-Harf, which brought Odimayo's total investment in the Company to \$300,000 (Tr. 509). At the advice of his counsel, Odimayo requested and Gartner Harf agreed to include Odimayo in the management of Gartner-Harf (Tr. 203, 509). Accordingly, pursuant to a special meeting of the board of directors of Gartner-Harf on March 9, 1990, Odimayo was made a director of the Company along with Jack Gartner and Walter Harf. Odimayo was elected "Vice Chairman and Chief Executive Officer," while Harf remained Chairman and Gartner became "President and Chief Operating Officer" (G.C. Exhs. 19-22, Tr. 203).

Harf's testimony shows that his executive role was diminished and that Odimayo and Gartner would be in control of the Company (Tr. 203):

A. Because I was no longer going to be staying with the company as its future head, it was suggested that people knew—should know who to report to and that Jack Gartner was to be the President of the Company after I was no longer going to be the President and in that way there would be no confusion among the employees as to who was the boss. I was to leave, physically leave the premise and not be there on an everyday on-going situation as Chief Executive Officer.

A. Mr. Gartner assumed the Presidency and those responsibilities with it, yes.

Q. And it was contemplated that he would continue that role under—after the sale was finalized?

A. That would be between he and Mr. Odimayo.

On about March 15, 1990, management of Gartner-Harf, including Odimayo, met with George Fromm, business agent of United Food and Commercial Workers District Union, Local 1 (Tr. 32, 544). Odimayo unequivocally indicated during the meeting that he expected to honor the obligations of the union contract under his ownership. Fromm recalled the conversation as follows (Tr. 32-33):

A. I was introduced to Odimayo and he let me know that he was—spoke several languages. He talked about

his Nigerian culture and that he, himself, didn't have any fear of labor unions. He said he had looked at the contract. He found it workable and made a remark that we would reach a point where we would welcome concession. I took exception to that and told him that I doubted it. We both seemed kind of confused at that point. He indicated to me that his brother-in-law, [Adesina Dawodu] his representative, would be on the premises as his representative.

A. I asked him point blank, "Are you assuming the contract on the men?" and he said, yes, he was and I asked him if we could put that in writing and he said he didn't really feel that was necessary, that things would only get better. He talked a great deal about improvements in the plant and getting the plant ready for distribution of beef to Europe and that he felt things would only go up from there.

A. He pointed out that he was the Chief Executive Officer of the company and that Jack Gartner would be the President.

Odimayo similarly testified as follows (Tr. 545):

A. Yes. I told Mr. George Fromm in the presence of such persons as Mr. Jack Gartner who was President of the company, Mr. Michael Harf, Mr. Henry Garbulinski and maybe Mr. Jim Graves that I would on the acquisition and assumption of ownership and responsibility of the company Gartner and Harf Company also take on board as it have been expected and natural the contract with the union. I had no problem with that and I told him that.

Odimayo became increasingly involved in the management of the Company. Adesina Dawodu, his brother-in-law, was hired as a paid employee of Gartner-Harf and served as Odimayo's representative. He participated in the day-to-day management of the business (Tr. 44-50, 214, 227). At the direction of Odimayo, most of the senior executives were given pay raises (Tr. 218). Shade Munro, a consultant to Odimayo, supervised and directed that certain improvements be made to the physical facility so that it was prepared to do business within the standards of the European Economic Community. An example was the installation of a fence around the entire plant (Tr. 227). Even though Odimayo maintained his residence in England, he became involved in the purchase and acquisition of Union Meats, a major customer of Gartner-Harf (Tr. 236-238, 510-514, G.C. Exh. 26). Union Meats was indebted to Gartner-Harf for more than \$400,000 and could not pay. In an effort to preserve both companies, Odimayo and Gartner decided to acquire Union Meats (Tr. 514). In addition, Odimayo encouraged Harf to work with the Kosher customers like Alle Processing and to undertake various changes necessary to accommodate them (Tr. 230).

Gartner-Harf's financial situation continued to deteriorate. The parties to the March 1, 1990 agreement did not consummate the closing set for May 31, 1990. Instead, the parties—with the consent of the First National Bank of Pennsylvania—extended the date for a period of 2 months. Furthermore, on June 28, 1990, Odimayo advanced to Gartner-Harf

the sum of \$600,000 as a loan from his bank, the United Bank of Africa, to provide working capital to the Company and to pay a demand note held by the First National Bank of Pennsylvania. (Tr. 516–517). As the consideration for the payment, Jack Gartner and Walter Harf executed a “voting Trust Agreement” which transferred 50 percent of their stock ownership to Odimayo. The parties further agreed to extend the closing of the contract to August 31, 1990 (G.C. Exhs. 29, 30). During this time, according to Odimayo, Gartner “ran the business with due consultation with me [Odimayo]” (Tr. 521).

In August 1990, the Company again ran into “red ink” and was unable to cover \$490,000 in issued checks. Odimayo was willing to advance an additional \$500,000, even though he was under the impression that his tenure on the board of directors had expired on August 31, 1990 (Tr. 522–524).⁶ He advanced an additional \$500,000 through his bank, the United Bank of Africa, in the form of a loan, to Gartner-Harf (Tr. 253, 524–526.)

The parties met on August 10, 1990, in Erie, Pennsylvania, in order to renegotiate the agreement for the sale of Gartner-Harf on reduced terms to reflect the Company’s deteriorated financial position. The four individuals, Gartner, Harf, Odimayo, and Dawodu, agreed to certain terms and signed a handwritten document entitled “Stock Purchase Agreement” on August 10, 1990 (G.C. Exh. 31, Tr. 255, 527–530). But this document was not a formal sales contract and indicated that the parties considered the March 1, 1990 asset purchase agreement no longer valid (Tr. 254, 527). Attempts to reach an agreement continued but proved futile because of certain conditions imposed by the creditor, the First National Bank of Pennsylvania (Tr. 256–257, 529–530). Odimayo returned to England, but the parties had not abandoned their efforts. Gartner agreed to keep Odimayo informed about any further developments and Odimayo expressed his intentions to proceed with the purchase of the Company (Tr. 257, 532).

The record shows that from March until August Odimayo continued to be involved in managing the Company in spite of his frequent absences. He testified as follows (Tr. 533):

A. About—from about the 15th of March when I got involved with the management I was here about 10 days in March, I was here about another 10 in April and I was here for about five in May, but I did not return to the United States between the 22nd of May until the 7th of August when I came straight into New York.

During this period, Gartner handled the day-to-day affairs, Dawodu, Odimayo’s representative at the plant, was kept informed of all important matters and was in frequent contact with Odimayo by telephone (Tr. 533–534). In this manner, Odimayo learned what Harf described as the “disaster” (Tr. 257, 535).

On August 23, 1990, the First National Bank of Pennsylvania decided suddenly to foreclose its \$4 million loan to Gartner-Harf (Tr. 257). Harf explained that an official from the bank called the Company’s comptroller stating “that they were on their way out to foreclose the company . . . they said you owe us—Gartner-Harf Company owes the First Na-

tional Bank \$4 million plus interest of August which was \$53,000.00. . . . We would like a check now.” (Tr. 257–258). The Company was in no position to pay the amount and agreed to shut down the plant and sell its inventory (Tr. 258–259). Harf testified: “We had 300 cattle . . . in the barn. We requested that we should kill them, turn them into inventory, cancel whatever cattle were in route and begin the orderly shut down of our company.” (Tr. 258). At the Bank’s insistence Walter Harf and Jack Gartner signed an agreement outlining the procedures governing the liquidation of all assets (G.C. Exh. 32). The agreement was signed on August 29, 1990, but the Company commenced to comply with the terms of the agreement as of August 23 (Tr. 259). Harf informed George Fromm, the Union’s business representative, on August 24, 1990, that the plant was closing and that management would take steps for an orderly layoff of the employees (Tr. 259).

Odimayo was stunned by the news and instructed Dawodu “to attend the negotiations and see how to close the gap in [their] relationship” and, if necessary, sign an agreement. Dawodu was authorized by Odimayo’s power of attorney to sign an agreement (Tr. 536). However, any efforts to purchase Gartner-Harf in accordance with the prior agreement were unsuccessful as a result of the bank’s foreclosure. Nevertheless, Odimayo did not abandon his efforts. In the words of Harf, “he still indicated his desire to purchase the company” (Tr. 260). Odimayo testified that he “had an exposure which at that time totaled about direct cash infusion to Gartner and Harf family and to the company of \$1.5 million.” (Tr. 536–537.) According to Odimayo, he then negotiated with “the parties that were selling the assets of Gartner and Harf which was . . . the First National Bank of Pennsylvania that had seized the assets as of the 23rd of August, 1990 and the rightful owners of the stock of Gartner and Harf Company Jack and Walter.” (Tr. 539.)

With the cooperation of the First National Bank of Pennsylvania, an agreement was executed on August 27, 1990, between Gartner-Harf and GH Processed Beef Co., Inc., the corporate entity owned and controlled by Odimayo (G.C. Exh. 33). The agreement provided for the sale of all assets of Gartner-Harf to GH Processed Beef, including the real and personal property. Another contract entitled “Assets Purchase Agreement” was negotiated on September 5, 1990, between Odimayo on behalf of GH Processed Beef, Inc. and Gartner-Harf Co. (G.C. Exh. 34). This transaction avoided the formal foreclosure procedure which could have taken several months and accomplished a quick transfer of all assets (Tr. 534–540).

Odimayo explained the relationship between the name GH Processed Beef Company and Gartner-Harf as follows (Tr. 543–544):

A. First, I had agreed to let the name continue because it had a lot of good will accumulated over the years. Two as a commitment to that realization because of the fact that I wanted to do business not only here but also in the United Kingdom and the rest of the E.E.C., I had caused to be set up this company in Delaware known as G.H. Processed Beef which derives the first two letters from the word G as in Gartner and H as in Harf so that there would be a link through the records that were available. They were a holding company some-

⁶ However, the record indicates that Odimayo continued as a director (G. C. Exh. 30, 41).

where in Delaware which owned 100 percent the assets, the business which was known as Gartner and Harf Company.

GH Processed Beef, incorporated in March 1990 and controlled by Odimayo, is directly related to a company known as Pagewood Meat Packing Company which was created on August 29, 1990, to operate the meatpacking business. Odimayo became the president of Pagewood and Dawodu its secretary. Odimayo explained the relationship as follows (Tr. 465):

A. Well there is a verbal understanding, but there is lease agreement. The verbal understanding is subject to the approval of the bank that the properties and the assets which are owned by G.H. Processed Beef Inc. will be leased onto Pagewood Meat Packing Company, but the bank has not yet given its consent because as you know the bank is the financier and they have a lien on the assets. So we need their consent which has not come yet.

In substance, the record shows that GH Processed Beef is simply the owner of the assets which were formerly held by Gartner-Harf and that Pagewood became the operator of Gartner-Harf's business. As conceded by the Respondent, "Pagewood and G. H. Beef themselves are a single employer" which began operations on September 7, 1990, or about 2 weeks after the attempted foreclosure by the bank on August 23 (Tr. 706-707, 712).

Pagewood employed essentially the same supervisory hierarchy as that which formerly managed Gartner-Harf (G.C. Exh. 2, Tr. 708-709). Dawodu testified that everybody in middle management was brought back. Even the previous personnel director was offered a job as a foreman in the plant (Tr. 709). Supervisors were then instructed to call the employees and offer them employment with Pagewood. Dawodu explained the process as follows (Tr. 710):

A. We had a meeting Mr. Odimayo and myself and Shade. We had a meeting which was conducted by Mr. Odimayo and at that meeting it was with the supervisors as well. At that meeting Mr. Odimayo told them in general terms where we were at that point that we finally purchased the assets of the company what the aspirations of the company are, his own goals and so on and so forth, the support that he wanted from the staff generally and he basically gave a directive that employees should be hired on a phased out basis based on our production levels and that if any employee who used to work with the old company was interested to come back to work with us that they should give him a chance.

Odimayo testified that he envisioned "a gradual build up of the activity because of his limited resources and that he "gave directives that they should start hiring people department by department." (Tr. 552-553.) Eventually the work force consisted of approximately 115 employees, all with the exception of 5 had previously been employed by Gartner-Harf (G.C. Exhs. 2, 9).

During the interviews, the employees were told that Pagewood would operate as a nonunion employer (Tr. 397,

624). The wages offered to the employees differed from their wages with Gartner-Harf, and the health insurance plan was entirely different because Pagewood was self-insured. The employees' pension plans were also changed (Tr. 468-469). All employees were regarded as new employees for purposes of vacation time. Accordingly, some employees who had accumulated seniority or vacation time, lost the benefits (Tr. 469). In short, the working conditions of the employees at Pagewood differed substantially from those which the same employees had at Gartner-Harf. Moreover, it is undisputed that Pagewood accomplished the changes unilaterally and without the Union's participation. Pagewood's hiring process disregarded the recall provisions of the collective-bargaining agreement with Gartner-Harf (G.C. Exh. 3). Article 5 of the agreement, entitled "Seniority, Layoff, Recall," provides for a recall procedure based on seniority on plantwide and departmentwide basis. Many of the more senior employees of Gartner-Harf were therefore not among the employees at Pagewood. As pointed out by the General Counsel, a comparison of the employee lists shows that more than 20 employees were adversely affected (G.C. Exhs. 44, 45).

When asked whether Pagewood adhered to the collective-bargaining agreement, Odimayo stated that "Pagewood was a new entity [which] did not know of it in a legal sense" (Tr. 467). Odimayo conceded that the rates of pay of some employees at Pagewood differed from their pay at Gartner-Harf. He also admitted that health benefits, pension plans, and vacations for Pagewood employees had been changed (Tr. 468-469). That Pagewood had decided not to recognize the Union nor be governed by the terms of the collective-bargaining agreement was confirmed by the testimony of the Union Representative Fromm.

Fromm testified as follows about a meeting on September 7, 1990, with Dawodu and Shade Munro (Tr. 65-66):

A. I suggested to the company that we sign our recognition and talk about the issues that the company had pointed out to us. . . . There was a reluctance on the company's part to discuss really anything and I sensed that there seemed to be a change in attitude. I asked them what was wrong. The company said that they really didn't feel that they had any responsibility to the men or to the contract. We had a little bit of silence for a few minutes and I said, well, that was a change in position than what Mr. Odimayo told me back in March. What had been said through these—all these many months. He said, well, that they really didn't feel that they had any responsibility I kept asking Shino, "That isn't what your brother-in-law said back in March." He acknowledged the fact that Mr. Odimayo had told him that but that things had changed. I asked him what had changed and he said, "Things have just changed." We got talking out the contract again and recall of people, bringing them back to work and I asked if it would be done in seniority. The company said, no, they doubted that. I said, "You mean you will selectively recall?" and they said yes and I said, "Well, that isn't sticking to the contract" and they said, "Well, we don't feel we have to do that. We don't have to feel—we don't feel we have to stick to the contract."

In spite of Odimayo's earlier commitment to the Union, Pagewood did not bargain with it and refused to abide by the bargaining agreement, yet the Company employed approximately 115 of the 165 employees of Gartner-Harf, operated the same business, albeit at 60 percent of its former level, from the same location in the same plant with basically the same customers. The record shows that Pagewood's manner of operation was similar to that of Gartner-Harf for the remainder of 1990 and that in 1991 Pagewood increased its emphasis on processed beef from 45 percent to 70 percent (Tr. 746-747). In short, Pagewood's operation was substantially the same as that of Gartner-Harf, except that the production volume was reduced (Tr. 748-749).

During the ensuing period, the Respondent engaged in other conduct which gave rise to the complaint. For example, on about September 21, 1990, Odimayo had a conversation with Edward Garbulinski, a truckdriver at Pagewood. According to Garbulinski, Odimayo said the following (Tr. 357-358):

A. Well, the first statement I believe that Mr. Odimayo made to me was he asked me why the Union was trying to hurt him . . . and I reminded him that back in April, he had told us and the union that he had no problem with the men, the labor contract or the union being in place.

I made the statement that if he was the union, what did he expect the union to do but fight, [and] about that point, he made a comment that he needed someone to step forward on his behalf and speak up in rejection of the union. . . .

He said—He told me that he did not feel that he was obligated to the union because he did not buy the company from Walter or Jack.

On September 28, 1990, a petition was circulated among the employees which stated (G.C. Exh. 16):

We former employees of Gartner-Harf Co. and UFC Local One and now present Employees of Pagewood Company, here signed refuse to see the Union NFCW Local 1 Return Back into Pagewood Company.

This petition was circulated by employees Dave Enterline, Frank Schultz, and Robert Loughery and was signed by 75 employees (Tr. 122-124). Supervisors John Pacilio or John Jagels observed the employees circulating the petition, briefly inquired about it, but did not prohibit it. One of the employees estimated that this activity lasted approximately 4 to 5 hours including working time (Tr. 124). Dawodu explained the general working environment on that day as follows (Tr. 712-713):

Like I said it was a general clean up of the plant inside and outside. Our production pattern at that time when we first started was very inconsistent. There were days that we killed. There were days that we didn't kill because that we were in the process of trying to regain customer confidence. So it was a very, very slow start and on that particular day everybody was out there painting, building shacks and so on and forth. I wasn't particularly involved, but there were people all around moving all over the place cleaning up. Sometimes I

went out and was inspecting what they were doing talking to the guys, that type of thing.

The employees handed the petition to Odimayo during a meeting as described by Dawodu (Tr. 714):

Mr. Odimayo was conducting the meeting, and some people knocked at the door and they came in, and it was Bob Laughery, Dave Enterline and Frank Schulz, Jr. and they had a piece of paper in their hand and said Mr. Odimayo something to the effect they just handed him the paper. Mr. Odimayo was sitting at the head of the table and everybody was interested in what was going on. He started smiling and so on and so forth. He got up and shook their hands and said thank you I am so surprised and so on and so forth and the guys just left.

Garbulinski recalled Odimayo's reaction to the petition in this conversation (Tr. 360-361):

A few minutes after Dave and Frank left, Mr. Odimayo came walking up with I believe that it was John Pacilio, they were looking at the work that was being done. He came walking up the driveway.

I said that I had and he told me—he says,—He says this was a nice gift for me. He was very happy that the men would have done something for him like this. It made him very happy that the men did this for him.

He also asked me if I had signed it.

I told him that I hadn't and he asked me why not and I told him that I was not prepared to. I told him that I felt that we still needed a union in place because of some of the managers that he had at the plant.

The Respondents refused to employ Timothy Maisner following an interview on September 11, 1990 (Tr. 407-409). Maisner, a 16-year veteran of Gartner-Harf and most recently employed as a cooler foreman was interviewed by Hank Garbulinski (Tr. 407-409). Maisner had served as a union steward and during the interview questioned the rate of pay which Pagewood was offering. Maisner's repeated reference during the interview to the union contract and his steward's reputation, caused the Respondent's refusal to employ Maisner, according to the General Counsel.

In the fall of 1990, Gartner-Harf laid off truckdriver Edward Garbulinski. Garbulinski had worked for Gartner-Harf for 9 years and served as a union steward for the last 2 years (Tr. 350-351). He was interviewed by Pacilio, a supervisor with Pagewood. Pacilio asked him whether he "had any problem coming to work in a non-union shop" to which Garbulinski replied that he "did not feel a union was needed to protect [his] job but . . . that a union was needed to protect [his] rights as a worker" (Tr. 353). When Garbulinski proceeded to ask questions about the pension plans and the health and welfare package and made notes of the conversation, Pacilio told him that he was not ready to return to work (Tr. 353-354). Garbulinski was hired on September 17, 1990, after a second interview. During his tenure, Garbulinski repeatedly urged management to increase his working hours and, if necessary, reduce the drivers' work force (Tr. 363-372, 663-664, 716). The Company had hired all of Gartner-Harf's drivers but did not have sufficient full-

time work. On one occasion, Garbulinski observed the scheduling of a junior driver to the Pittsburgh run, considered a coveted assignment. He complained to his supervisor, Enterline, and also to Odimayo and suggested that the most capable and qualified driver should be assigned to that work. Odimayo agreed and instructed Enterline to schedule Garbulinski for that assignment (Tr. 362). Garbulinski observed that management was making an attempt to equalize the available work among the drivers, so that drivers would alternate and work 5 days one week and 3 days the next. Garbulinski repeatedly urged management to lay off or reassign a driver and suggested that Odimayo set the precedent to select the most experienced drivers. Even though Garbulinski worked 5 days a week, some of the hours were considered overtime and not a basis for his pension and profit sharing plan.

In December 1990, Dawodu held a meeting with the drivers to discuss their sentiments about the working hours because Odimayo was concerned about Garbulinski's persistent complaints (Tr. 719). The drivers expressed their approval of the Company's efforts to divide the available work (Tr. 664-720). But Garbulinski, who did not attend the meeting, continued his criticism. On January 7, 1991, Garbulinski told Enterline that he had heard rumors of a layoff of one or two drivers. Enterline confirmed the rumors but reassured him because he was considered a good driver. Several days thereafter, Garbulinski called Odimayo at his home in London offered numerous suggestions to improve the efficiency of the operation at the plant and again suggested that one or two of the seven drivers be laid off (Tr. 369-370). Garbulinski told Dawodu about his conversation with Odimayo and Dawodu confirmed that layoffs were imminent.

On January 11, 1991, at a meeting with the drivers, it was announced that Paul Haines, the yard driver, and Garbulinski were laid off (Tr. 371-372). Dawodu, who made the decisions, explained to Garbulinski that he had been getting most of the available hours, that the Company tried to accommodate him but that he continued to be unhappy and critical of management's efforts and that he was not a team player (Tr. 372, 726-727).

On January 4, 1991, representatives of Pagewood, and the Union met at the offices of Region 7 of the National Labor Relations Board to discuss the pending charges. However, the meeting ended without a resolution of the matter. In response to a rumor at the plant that the Union had prevailed at that meeting and that the Company would have to recognize the Union or close down the plant, Dawodu scheduled a meeting with the employees to allay their concerns (Tr. 728, 733). Among other remarks, Dawodu told the employees that the plant might close down. The context of these remarks according to employee Gregory Wells was as follows (Tr. 337-338):

Shino [Dawodu] said that nothing happened and they came to no conclusion about the meeting and he went on saying that if the Union came back we might have a problem with that because of back pay and all that. If the Union came back, we might have to close the doors.

Yes, there could be a problem with back pay, you know, the Union coming back wanting back pay and everything else.

Probably we would have to close the doors.

Yes, he said, about the Union picketing the other customers, that could hurt the business. They should not have to picket other customers.

According to another employee, Bruce Chrzanswski, Dawodu said (Tr. 401):

A. Recognize the union and then he started to say that if we wanted the union out, we could vote on it ourselves to get it out. And if the union asked too much of us, that he would sit down—if we wanted the union in, they would sit down and negotiate with them but if the union wanted too much, that they would have to close the doors.

A. Oh, he said, if the union would picket, it would hurt our business and it would hurt us.

Following the meeting, the Company posted a notice designed to respond to employees' concerns about the Union (G.C. Exh. 42).

Analysis

1. The corporate relationship

The complaint as well as the General Counsel's brief, proposes alternative theories, on the one hand taking the position that all four corporate entities (Gartner-Harf, Pagewood N.V., G.H. Processed Beef, Inc. and Pagewood Meat Packing Co.) constitute a single-integrated enterprise and a single employer, or, on the other hand, that the Pagewood Group (identified as Pagewood N.V., GH Processed Beef, Inc. and Pagewood Meat Packing Co.) has continued the employing entity of and is a successor to Gartner-Harf. The complaint also alleges that Gartner-Harf and Pagewood N.V. constitute a single-integrated enterprise and a single employer and that the Pagewood Group (Pagewood N.V., GH Processed Beef Co., and Pagewood Meat Packing Co.) are an integrated enterprise and a single employer. To complicate the issues, the Respondent has filed posthearing motions dealing with these issues; a Motion for Summary Judgment filed June 24, 1991, to dismiss Pagewood N.V. as a party from this action and a motion, filed September 3, 1991, to open record to include as exhibit H the Decision and Order of an administrative law judge of the Occupational Safety, and Health Review Commission (O.S.H.R.C.). The General Counsel filed motions in opposition dated July 16, 1991, and September 27, 1991, respectively.⁷

According to the O.S.H.R.C. decision, Gartner-Harf Company is bankrupt and totally unrelated to GH Processed Beef, Inc. and Pagewood Meat Packing Company, because "[t]his was not a sale or take-over of an existing operating plant but rather a shut down, repossession and sale of the plant followed by the opening of a similar but financially unrelated business at the same physical facility." The decision held that there was no successorship for the purpose of that Act.

⁷The motion to open the record for the receipt of an O.S.H.R.C. decision dated October 16, 1990, is denied pursuant to Sec. 102.35(h) of the Board's Rules and Regulations. The decision is a public document which the Board may nevertheless consider on its discretion.

The record in the case before the National Labor Relations Board, however, shows that there existed a financial relationship between Gartner-Harf on the one hand, and GH Processed Beef and Pagewood on the other. The latter purchased the assets of Gartner-Harf. Moreover, the principals of Gartner-Harf, notably Odimayo and Dawodu, were the principals of GH Processed Beef. It is accordingly clear that the O.S.H.R.C. decision can be of little guidance in this proceeding before the Board.

With respect to the Respondent's Motion for Summary Judgment dismissing Pagewood N.V. from the proceeding, it is necessary to consider that Pagewood was a party to the December 5, 1989 Stock Purchase Agreement which Odimayo signed as president (G.C. Exh. 17). Under the terms of the agreement, Pagewood N.V., owned and controlled by A. O. Odimayo, made a cash payment of \$200,000 to Gartner-Harf. According to Odimayo, GH Processed Beef was incorporated in Delaware as a successor to Pagewood N.V. (Tr. 444). Pagewood N.V. is a foreign corporation which, according to the record, is not engaged in any other business activity in the United States and does not have any employees. Under these circumstances it is clear that the Board would not exercise its jurisdiction over Pagewood N.V. unless it can be established that it is considered a single employer with another corporate entity which meets the Board's jurisdictional criteria. *Il Progresso Italo Americano Publishing Co.*, 299 NLRB 270 (1990). Under the criteria of a single employer status, it is clear that Pagewood N.V. cannot be considered a single employer with Gartner-Harf. *Radio Union Local 1264 v. Broadcast Service*, 380 U.S. 255 (1965). However, it is conceivable for the Board to exercise jurisdiction over Pagewood N.V. because of its interrelationship with GH Processed Beef and Pagewood Meat Packing. The four factors which are determinative for a single employer status are: (1) interrelation of operation; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. *Ibid.* Here the record shows that the connections of Pagewood N.V. with the two corporate entities, GH Processed Beef and Pagewood Meat Processing, might be sufficient to establish a single employer relationship. Not only is the name "Pagewood" common to two corporations, but it is clear that Odimayo owns and controls the corporations which establishes at least two criteria, common ownership and common management. However, according to Odimayo, Pagewood N.V. does not have any employees, it has no offices and no assets except those belonging to Odimayo and his family (Tr. 442-448). Although the Board's finding of a single employer status can be supported when less than the four indicia enumerated above are present, it appears that the significance of Pagewood N.V. to this proceeding is remote. Its relevance diminished with the creation of the domestic corporate entities. The sole relevance of this foreign entity is to provide an understanding of the background and to explain the dealings between the parties leading to the operations of GH Processed Beef, Inc. and Pagewood Meat Packing Co. Under these circumstances, I find that the Respondent's Motion for Summary Judgment is justified in favor of Pagewood N.V. I accordingly grant the Respondent's motion and dismiss Pagewood N.V. from this proceeding.

According to the Respondents' brief "it is conceded that Pagewood [Meat Packing Co.] and G.H. Beef themselves are

a single employer" (R. Br. p. 21). The Respondents' position in this regard is well supported by the record. Both entities are domestic companies and operate on an integrated basis, the business which had been Gartner-Harf. The issue which remains to be resolved is the relationship of Gartner-Harf with the GH-Pagewood entities. The complaint alleges that Gartner-Harf and GH-Pagewood companies constitute a single employer or, in the alternative, GH-Pagewood are successor corporations to Gartner-Harf. The record fully supports the successor relationship. *NLRB v. Burns Security Services*, 406 U.S. 272, 284 (1972); *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987); *Phoenix Pipe & Tube*, 302 NLRB 122 (1991). The business of Gartner-Harf and that of GH-Pagewood is essentially the same, the employees of the new company are doing the same jobs under the same supervisors under similar working conditions (with the exception of those matters alleged as unilateral changes); GH-Pagewood sells the same products from the same plant at the same address and deals with essentially the same customers. Beginning in early 1991 the production process at GH-Pagewood has emphasized more boxed or processed beef and less "swinging beef" and the customer list has changed due to changing market conditions. GH-Pagewood continued with approximately 60 percent of the original customer base and discontinued in due course most of the smaller Kosher customers. Many of these changes were the result of an overall reduction in the business activity. In this regard the Board has rejected the argument that "the reduced size of [the] operations in comparison to that of the predecessor" is of any significance. *Phoenix Pipe & Tube*, supra. It must also be emphasized that Odimayo initiated certain changes at Gartner-Harf which were merely continued by the successor firms. Any suggestion that the temporary closure of the plant and a 2- or 3-week hiatus in the continuity of the operation is of significance is also without merit. In *Fall River Dyeing*, supra at 46, the Court stated "that there was a 7-month hiatus between Sterlingwale's demise and petitioner's start-up" was not determinative of the successorship issue. See also *Nephi Rubber Products*, 303 NLRB 151 (1991). Of little consequence in the consideration of this issue is the role of the First National Bank of Pennsylvania. Although its action threatening foreclosure precipitated the urgency of the sale of the assets of Gartner-Harf, the record shows that the successor firms under Odimayo were organized for the sole purpose of acquiring the assets from Gartner-Harf and that the transition was accomplished pursuant to an Asset Purchase Agreement, executed by the parties on September 5, 1991, subject to the bank's approval (G.C. Exh. 34). The record fully supports a finding that GH-Pagewood succeeded to the collective-bargaining obligation of Gartner-Harf because the vast majority or almost all employees are former employees of the predecessor and because the operations manifest a "substantial continuity" between the enterprises. *Hydrolines, Inc.*, 305 NLRB 416 (1991).⁸

Where as here the successor firms have expressly adopted the collective-bargaining agreement, they are bound by it. In *Burns*, supra at 291, the Court stated, "in a variety of circumstances involving merger . . . or assets purchase, the

⁸The Respondent conceded "that the successorship issue is a close one, and that there is probably sufficient evidence to support a decision one way or the other by the court." (R. Br. p. 38.)

Board might properly find as a matter of fact that the successor had assumed the obligation under the old contract.” See also *World Evangelism*, 248 NLRB 909, 916 (1980). *Eklund Sweden House Inn*, 203 NLRB 413 (1973). Contrary to Respondents’ argument, the record here shows that Odimayo unequivocally consented to the continuation of the labor agreement. Fromm credibly testified that Odimayo assured him at a meeting on March 15, 1990, that he would assume the collective-bargaining agreement (Tr. 32–33). Indeed, Odimayo testified that he gave that assurance to Fromm in the presence of Jack Gartner and Walter Harf (Tr. 54). And Odimayo and especially Dawodu participated in the daily management of the selling company pursuant to the contract with the Union. The mere fact that the bank had interrupted the negotiations in process between the corporate entities and commenced a foreclosure, does not detract from this conclusion, particularly in the instant situation where (1) the purchaser had continuously indicated its intentions to own and control Gartner-Harf, (2) the acquisition was accomplished pursuant to direct negotiations and agreements with the former employer, and (3) the principals, mainly Odimayo and Dawodu, had assumed a managerial role in both the selling entity and the purchasing companies. *Signal Communications*, 284 NLRB 423, 427 (1987). I, accordingly, find that Pagewood Meat Packing Co. and GH Processed Beef, Inc. are legal successors to Gartner-Harf with obligations to recognize and bargain with the Union and with a duty to abide by the collective-bargaining agreement.

I have also considered the alternative theories, and find merit in the argument that the three corporate entities, Gartner-Harf, GH Processed Beef, and Pagewood Meat Packing Co., constitute a single employer, or that there existed an alter ego relationship. The unique factual circumstances here, not only demonstrate the continuity of the employee complement linking the seller and the buyer typical in a successor relationship, but they also show common ownership and control of the corporate entities. Prior to the actual transfer of all assets to the purchasing firms, Odimayo had invested more than \$1 million of his own money in Gartner-Harf, he was a member of the board of directors, controlled 50 percent of the voting stock and served as vice chairman and chief executive officer. During his frequent absences, his representatives, Dawodu and Munro, were involved in managing the Company. Towards the end, Odimayo with his representatives exercised more control than Harf and equaled Gartner’s powers over the affairs of Gartner-Harf. Dawodu participated in the labor policies of Gartner-Harf and, as already stated, Odimayo had met with the Union’s representative and given his assurance to abide by the collective-bargaining agreement. Under these circumstances, it can be concluded that the successor corporations are in reality the alter ego of Gartner-Harf, and that the corporate entities reflect “a mere technical change in structure or identity of the employing entity.” *Howard Johnson Co. v. Detroit Local Joint Executive Board*, 417 U.S. 249 (1974). *NLRB v. Omitest Inspection Services*, 937 F.2d 1112 (3d Cir. 1991).

Finally, the established criteria of a single employer status are met at least partially by the instant scenario. The Board considers the four factors in determining whether two or more corporations should be treated as a single employer: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common own-

ership or financial control. However, not all criteria need be met so long as the control of labor relations are satisfied. *Radio Union Local 1264 v. Broadcast Service*, 380 U.S. 255 (1965); *Blumenfeld Theatres Circuit*, 240 NLRB 206 (1979). The record is clear that most of the enumerated indicia are present in the instant scenario between Gartner-Harf, GH Processed Beef, and Pagewood Meat Packing. The Respondent makes the following observation concerning the single employer status: the one factor, interrelation of operations, indicates “that the single employer doctrine is meant to cover situations involving two or more ongoing entities.” (R. Br. p. 23). In *Blumenfeld Theatres Circuit*, supra at 214–216 (1979), the Board found a single employer relationship even though one operation closed and another opened. In any case, the record shows in substance that Jack Gartner and Walter Harf intended to sell their operation and A. O. Odimayo intended to purchase their Company. Both parties succeeded and the companies organized by Odimayo are now operating the business.

Without belaboring the point and considering the totality of the circumstances, it is more appropriate to conclude that GH Processed Beef and Pagewood, admittedly single employers, are successors to Gartner-Harf with a duty to bargain with the Union and to abide by the collective-bargaining agreement.

2. The unfair labor practices

Section 8(a)(1) and (5). Alleged in the complaint as violations of Section 8(a)(1) and (5) are the Respondent’s refusal to recognize and bargain with the Union and its failure to abide by the collective-bargaining agreement.

The record shows and it is not disputed that the Respondent and single employer, GH Processed Beef and Pagewood Meat Packing Co. (GH-Pagewood), refused to recognize and bargain with the Union and that management informed all prospective employees that it was a nonunion employer. The Union requested the Respondent by letter of September 13, 1990, to bargain and to recognize the Union (G.C. Exh. 9). Such requests were denied (G.C. Exh. 12). The Respondent failed to abide by the collective-bargaining agreement generally and in several specific instances. For example, the contract provided for a specific recall procedure of employees. The Respondent’s failure to abide by that procedure adversely affected up to 27 employees who were not recalled. The Respondent unilaterally changed the employees’ working conditions, including the paying of different wages, the failure to make contributions to the employees’ pension, legal aid, and health insurance funds, and the failure to collect union dues pursuant to the checkoff authorization. By the Respondents’ refusal to recognize and bargain with the Union and its failure to abide by the collective-bargaining agreement and its layoff and recall provisions and by unilaterally changing the employees’ working conditions, the Respondent violated Section 8(a)(5) and (1) of the Act.

Also alleged as a violation of Section 8(a)(1) and (5) of the Act was the Respondent’s meeting with the drivers in December 1990. Dawodu elicited the employees’ sentiment concerning the shrinking working hours and dealt with the problem by initially equalizing the hours and by subsequently laying off two drivers. The Company’s conduct in bypassing the employees’ elected representative and dealing

directly with the employees violated Section 8(a)(5) and (1) of the Act.

Section 8(a)(1). The complaint alleges a violation of Section 8(a)(1) Odimayo's interrogation of Edward Garbulinski on September 28, 1991. On that day, several employees who had circulated a petition against the Union handed it to Odimayo during a meeting with the employees. Following the meeting, Odimayo, approached employee Garbulinski and told him that he was happy about the petition. He also asked Garbulinski if he had signed the petition; Garbulinski replied in the negative. Odimayo then inquired why he had not signed it. Garbulinski expressed his opinion that a union was needed at the plant (Tr. 360-361). To be sure, the record shows that Garbulinski was an employee not easily intimidated by management. However, the test is whether the interrogation reasonably tends to restrain, coerce, or interfere with rights of the employee in the light of the surrounding circumstances. *Rossmore House*, 269 NLRB 1176 (1984), *enfd. sub nom. Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). The surrounding circumstances here fully support a finding of coercion. Odimayo is the owner and the chief executive of the Respondent, he expressed his favorable reaction to the petition and then asked the employee whether he had signed it and why not. The Respondent clearly interfered with the Section 7 rights of the employee in violation of Section 8(a)(1) of the Act.

Another 8(a)(1) violation occurred in January 7, 1991. Adesina Dawodu, a supervisor and second in command at the GH-Pagewood, held a meeting with the employees and reported about the discussion between representatives of management and the Union at the Board's offices. One of his remarks was that the plant would "close the doors" if the Union returned and demanded too much during negotiations. Dawodu also said that business would be hurt if the Union picketed customers (Tr. 337-338, 401).⁹ Even though Dawodu may have attempted to quell certain rumors, his remarks were clearly not an attempt to predict adverse consequences of unionization on the basis of objective facts. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617-618 (1969). Here, management speculated and referred to the adverse consequences of a strike on business and the unsubstantiated possibility that the Union might ask for too much. The message clearly conveyed the impression that the Employer might close the plant if the employees supported the Union. Considering the remarks in the total context of the speech and the seriousness of the threat, it is clear that the conduct was coercive. *Nebraska Bulk Transportation v. NLRB*, 608 F.2d 311 (8th Cir. 1979); *Southwire Co.*, 277 NLRB 377 (1985), *enfd.* 820 F.2d 453 (D.C. Cir. 1987).

The complaint alleges that the Respondent solicited, encouraged, and condoned a petition seeking the rejection of the Union. In this regard the record shows that on September 21, 1990, Odimayo approached employee Garbulinski and spoke about the Union. He asked him why the Union was trying to hurt him and, after some further comments, stated: "that he needed someone to step forward on his behalf and speak up in rejection for the union" (Tr. 357-358).

⁹The testimony was denied (Tr. 655, 763). However, considering the demeanor of the witnesses, I have credited the consistent and plausible testimony of the two employees.

Garbulinski did not respond to Odimayo's suggestion, nevertheless, this was a clear attempt to have an employee take the lead in an attempt to decertify the Union. Moreover, a petition was subsequently circulated by three employees, Enterline, Schultz, and Loughery, on September 28, 1990. One of the foremen, Jagel or Pacilio, observed the employees as they solicited the signatures of the other employees. The activity of the employees was tolerated even though it was partially done during the employees' working time (Tr. 122-124, G.C. Exh. 16). The signed petition was handed to Odimayo, who expressed his gratitude to the employees (Tr. 714). In January, management posted a notice in the plant which explained to the employees the process of decertification of a union (G.C. Exh. 42). Under these circumstances, I find that the Respondent's solicitation, tacit approval, and condonation of the employees' activity in the context of other unfair labor practices violated Section 8(a)(1) of the Act. *Placke Toyota*, 215 NLRB 395 (1974). The petition signed by 75 employees is accordingly tainted and invalid as an objective reflection of the employees' sentiment.

Section 8(a)(1), (3), and (4). Timothy Maisner worked for Gartner-Harf for almost 16 years and was a cooler foreman. On September 11, 1990, Hank Garbulinski, Respondent's production manager, interviewed him for a job but did not hire him. According to the General Counsel, the Respondent's failure to hire Maisner was union related. The record shows that Maisner served as an active union steward at Gartner-Harf and frequently presented grievances (Tr. 407). At one point, Pacilio and Garbulinski, both supervisors at Gartner-Harf, removed him as a foreman because his foreman's position was deemed incompatible with his job as a steward. He was subsequently reinstated after he consulted with the Union about the possibility of filing a charge with the Board (Tr. 408-409). During the interview on September 11, 1990, Garbulinski, then a supervisor at GH-Pagewood, informed him that it was his understanding that the foreman's rate was \$9.25. This was a reference to the wage scale contained in the bargaining agreement. Garbulinski did not reply to Maisner's inquiry but he gave Maisner the impression that he did not get the job (Tr. 413). Maisner called several weeks later but Garbulinski gave an indefinite reply. The foregoing leads to a clear inference that Maisner was not hired because of his union activity as a steward and his reference to his union pay scale. I, accordingly, find that the General Counsel has made out a prima facie case that Maisner was not hired because of the Respondent's union animus. *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981). The Respondent has failed to rebut the presumption that Maisner would not have been hired even in the absence of his union activity. Garbulinski testified that the decision not to employ Maisner was made by someone else and that both Union Stewards Maisner and Nearhoof were not hired following the interview. (Tr. 620.) I find Respondent's argument not credible that "Maisner was not hired by Pagewood because of his reputation for being a poor worker" (R. Br. p. 43). Accordingly, I find that Respondent's failure to hire Maisner violated Section 8(a)(3) and (1) of the Act.

Edward Garbulinski's layoff on January 11, 1991, is alleged to have violated Section 8(a)(1), (3), and (4) of the Act. The record shows that Garbulinski was hired by GH-Pagewood following two interviews. The first one

Garbulinski inquired about pension plans and other benefits and expressed his union support. During the second interview, he toned down his union rhetoric and was hired as a truckdriver. Throughout his tenure as a truckdriver, he repeatedly urged management to increase his hours and, if necessary, lay off one or more of the drivers. The Respondent made an attempt to equalize the available hours among the drivers. However, Garbulinski continued to complain and, on one occasion, confronted his supervisor, Enterline, when he saw that a junior driver was given an assignment which Garbulinski coveted. Odimayo agreed with Garbulinski's complaint and instructed Enterline to change the assignment. Garbulinski continued to voice his criticism and, on one occasion, made a telephone call to Odimayo's home in London, England. He spoke with Odimayo at length about the entire operation, suggesting various changes and again urging that a driver be laid off. In January 1991, the Respondent finally abandoned the policy of dividing the available work among its drivers and, at a meeting on January 11, 1991, announced the layoff of two drivers, Paul Haines and Garbulinski (Tr. 371-372). The record shows that the decision was made by Dawodu, who explained to Garbulinski that his unhappiness with and his persistent criticism of management's policy in spite of all efforts to accommodate him were responsible for the decision. Dawodu also told him that he was not a team player (Tr. 372, 726-727). According to the General Counsel, Respondent's "team player" remark was a thinly veiled reference to Garbulinski's pronoun sentiments, which implied management's "dissatisfaction with Garbulinski's continued pressing of Respondent to honor the terms and conditions of its predecessor's collective-bargaining agreement" (G.C. Br. p. 30).

The record supports Garbulinski's union sympathy and his union activity. For example, in his first job interview he referred to the benefits contained in the collective-bargaining agreement. Odimayo was aware of Garbulinski's union sympathy when he questioned him about the antiunion petition. Several supervisors asked him in October 1990 whether he was organizing for the Union, in an apparent reference to his frequent conversations with coworkers (Tr. 265). For the same reasons, he was cautioned by his brother, Henry Garbulinski, a supervisor (Tr. 366).

Considering the Respondent's antiunion animus, Odimayo's interrogation of Garbulinski, and his protected activity on behalf of the Union, the General Counsel has established a prima facie case that this employee was laid off because of his support of the Union and his activities related to the union contract. *Wright Line*, supra.

I further find that the Respondent has shown that Garbulinski would have been singled out for layoff or discharge even in the absence of any union considerations. I make this finding because I believe that the Respondent's reference to "team player" did not relate to his union activities or his reliance on the union contract or any other concerted activity, but to Garbulinski's constant prodding of management to increase his working hours at the expense of other drivers. In this regard, Garbulinski advocated his own interest not on the seniority provisions of the union contract, but with requests for preferential treatment for the more qualified and capable driver, namely, himself. The record indicates that management tolerated Garbulinski's union support, but in a sudden shift of policy, possibly prompted by

Garbulinski, the Respondent abandoned its efforts to equalize the available working hours for all drivers and decided to lay off two employees. Concerned with morale of the truckdrivers who would have preferred the prior policy, Dawodu included Garbulinski for the reasons stated (Tr. 726-727). It is entirely plausible that the Respondent relied on the narrow justification that management regarded him as a chronic complainer, dissatisfied with his working hours, and, in view of his constant requests for preferential treatment, not a team player. I, therefore, find that the Respondent did not violate Section 8(a)(1) and (3) of the Act. Moreover, the record is totally without support for any finding of an 8(a)(1) and (4) violation of the Act. There was no evidence that the Employer discriminated against this employee because of his testimony before the Board.

CONCLUSIONS OF LAW

1. Gartner-Harf Co. was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. GH Processed Beef, Inc. and Pagewood Meat Packing Co. (GH-Pagewood) is a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. United Food and Commercial Workers District Union Local 1, AFL-CIO-CLC is a labor organization within the meaning of Section 2(5) of the Act.

4. GH-Pagewood, as single employer, is a successor to Gartner-Harf Co. with an obligation to recognize the Union as the collective-bargaining representative of the following unit found appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Waterford, Pennsylvania facility; excluding all guards, professional employees and supervisors as defined in the Act.

5. GH-Pagewood assumed the contractual obligation of the collective-bargaining obligation of the collective-bargaining agreement between Gartner-Harf Co. and the Union by the expressed commitment of A. O. Odimayo, the principal owner of GH-Pagewood, and by his and Adesina Dawodu's compliance with the union contract during their managerial tenure at Gartner-Harf Co.¹⁰

6. By failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of all production and maintenance employees of GH-Pagewood, the successor employer violated Section 8(a)(1) and (5) of the Act.

7. By bypassing the Union and dealing directly with the driver employees, Respondent GH-Pagewood violated Section 8(a)(1) and (5) of the Act.

8. By failing to abide by the collective-bargaining agreement between the Union and Gartner-Harf, and unilaterally changing the working conditions with respect to rates of pay;

¹⁰In the event that the conduct and commitment of the principals of GH-Pagewood to be bound by the collective-bargaining agreement are deemed insufficient or invalid for purposes of the successorship, I find that GH-Pagewood is an alter ego entity of Gartner-Harf.

payments to employee pension, health care, and legal funds; deduction for union dues; recall following layoff; and other terms and conditions of employment, Respondent GH-Pagewood violated Section 8(a)(1) and (5) of the Act.

9. Threatening the employees with plant closure because of the Union and by coercively interrogating an employee with respect to his union sympathy, the Respondent GH-Pagewood violated Section 8(a)(1) of the Act.

10. By soliciting, encouraging, and condoning an antiunion petition among the employees, the Respondent GH-Pagewood violated Section 8(a)(1) of the Act.

11. By failing to employ Timothy Maisner, because of his union activities, the Respondent violated Section 8(a)(1) and (3) of the Act.

12. Pagewood N.V. and Gartner-Harf Co. are no longer employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3), (5), and (1) of the Act, I shall recommend that it cease and desist therefrom and, on request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit found herein, and honor and abide by the collective-bargaining agreement executed by the Union and Respondent's predecessor.

Having unlawfully refused to hire Timothy Maisner the Respondent shall offer him reinstatement and make him whole for lost earnings and other benefits computed on a quarterly basis for the date of discharge to the date of a proper offer of reinstatement, less net interim earnings in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having further found that the Respondent unilaterally implemented their own conditions of employment without bargaining with the Union and not in accordance with the terms of the collective-bargaining agreement of the predecessor, the Respondent will be ordered to restore the terms and conditions of employment, including rates of pay, contributions to the employees' pension, health care, and legal funds, and by recalling employees in accordance with the recall provision of the agreement. The Respondent will also be ordered to make the employees whole for any losses in earnings and other benefits suffered as a result of the Respondent's failure to abide the contract in accordance with applicable precedents. The Respondent will also be ordered to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The Respondent, GH Processed Beef, Inc. and Pagewood Meat Packing Co., Waterford, Pennsylvania, single employer, its officers, agents, successors, and assigns, shall

¹¹ 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.

1. Cease and desist from

(a) Threatening its employees with plant closure because of the Union.

(b) Coercively interrogating employees about their union sympathy.

(c) Soliciting, encouraging, and condoning employees with antiunion petitions.

(d) Refusing to hire employees because of their union activities.

(e) Failing and refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Food and Commercial Workers District Union, Local 1, AFL-CIO-CLC as the exclusive representative of the employees in the following unit found to be appropriate for the purpose of collective bargaining.

All full-time and regular part-time production and maintenance employees employed by the Employer at its Waterford, Pennsylvania facility; excluding all guards, professional employees and supervisors as defined in the Act.

(f) Failing to adhere to the provisions of the collective-bargaining agreement executed between the Union and Gartner-Harf and by unilaterally modifying the provisions contained therein.

(g) By bypassing the Union and dealing directly with unit employees concerning their conditions of employment.

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

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

(a) Recognize and, on request, bargain with the above-named labor organization as the exclusive representative of its employees in the aforementioned appropriate unit, with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(b) Honor, maintain, and abide by the aforementioned collective-bargaining agreement.

(c) Offer Timothy Maisner immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(d) Reinstatement, apply retroactively, and restore the terms and provisions of the contract which it changed unilaterally, including rates of pay, contributions to the employees' health, pension, and legal funds, as well as reimburse the Union for all dues authorized under the checkoff provision, and make the employees whole for any loss of earnings and other benefits suffered as a result of the failure to abide by the agreement.

(e) Recall all former employees who were members of the Union in accordance with seniority, layoff, and recall provision of the contract to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, as set forth in the remedy section.

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

(g) Post at its Waterford, Pennsylvania facility copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

¹²If 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 I

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 threaten our employees with job loss or plant closure because of the United Food and Commercial Workers District Union, Local 1, AFL-CIO-CLC.

WE WILL NOT coercively interrogate our employees about their union sympathy.

WE WILL NOT solicit, encourage, or condone antiunion petitions.

WE WILL NOT refuse to hire employees because of their union activity.

WE WILL NOT fail or refuse to bargain with the union as the exclusive bargaining representative in the following unit:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Waterford, Pennsylvania facility; excluding all guards, professional employees and supervisors as defined in the Act.

WE WILL NOT fail to abide by the collective-bargaining agreement between the Union and Gartner-Harf or unilaterally and without bargaining with the Union modify the provisions contained therein.

WE WILL NOT bypass the Union and deal directly with our employees.

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

WE WILL recognize and bargain with the Union as the collective-bargaining representative of our employees.

WE WILL honor, maintain, and abide by the collective-bargaining agreement.

WE WILL offer Timothy Maisner immediate and full reinstatement to his former job or equivalent position and make him whole for any loss of earnings.

WE WILL reinstate, apply retroactively, and restore the terms of the contract which we changed, including rates of pay, contributions to the employees' health, pension, and legal funds, and reimburse the Union for all dues authorized under the checkoff provision.

WE WILL recall former employees of Gartner-Harf who were members of the Union in accordance with the seniority, layoff, and recall provisions of the contract and make them whole for any loss of earnings.

PAGEWOOD MEAT PACKING COMPANY AND
GH PROCESSED BEEF, INC.