

Farina Corporation and Sheet Metal Workers International Association, AFL-CIO, Local Union No. 17. Cases 1-CA-27051 and 1-CA-27207

January 29, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On February 25, 1991, Administrative Law Judge Walter H. Mahoney issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the judge's decision.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

¹ The Respondent also filed a motion to reopen the record to introduce evidence concerning the Union's bargaining position and proposals proffered at the parties' posthearing bargaining sessions. The General Counsel and the Union oppose the motion. Pursuant to Sec. 102.48(d)(1) of the Board's Rules and Regulations, the Respondent's motion is denied because the additional evidence, if adduced and credited, would not require a different result.

² In adopting the judge's conclusion that the Respondent unlawfully refused to bargain over its December 1989 layoffs, we find it unnecessary to pass on the judge's drawing an adverse inference from the Respondent's failure to comply with the subpoena item related to financial information. In this regard, we note that, even absent the subpoenaed books and records, it is clear from the record that the Respondent did not establish compelling economic circumstances justifying its failure to provide the Union with notice and an opportunity to bargain over the layoffs.

We further disavow the judge's statements, in connection with his ruling on this subpoena item, that the conduct of the Respondent and its attorney was, respectively, contumacious and unethical. However, as to the Respondent's assertion that the judge's conduct was biased, hostile, partisan, and evidenced prejudgment of the case, after careful examination of the record, we are satisfied that this allegation is without merit. Therefore, we reject the Respondent's request that the judge be disqualified and the case be remanded for a hearing *de novo*.

The judge inadvertently stated that the Regional Office's dismissal of the Respondent's objections and certification of the Union, the Board's Order affirming the Regional Director's decision, and the Union's initial request for information occurred in 1991 rather than in the correct year, 1990.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Farina Corporation, Boston, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Beth Ann Wolfson, Esq., for the General Counsel.
Harold N. Mack, Esq. and *Nathan L. Kaitz, Esq.*, of Boston, Massachusetts, for the Respondent.
Paul F. Kelly, Esq., of Boston, Massachusetts, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me¹ at Boston, Massachusetts, on a consolidated unfair labor practice complaint, amended at the hearing,² which alleges that Respondent Farina Corporation³ violated Section 8(a)(1) and (5) of the Act. More particularly, the consolidated complaint alleges that the Respondent unilaterally changed the terms and conditions of employment of five employees: Anthony Ciorlone, Mark Boyd, Joseph Dillon, James Carroll, and Mark Therein by laying them off, and that it did so without first notifying their collective-bargaining representative and extending to that representative an opportunity to bargain about both the decision to lay off and the effects following from such a lay-off. The complaint also alleges that the Respondent failed to

¹ On January 14, 1991, following the close of the hearing in this case, the Respondent filed with me a motion that he recuse himself. The motion is denied.

² The principal docket entries in this case are as follows: Charge in Case 1-CA-27051, filed by Sheet Metal Workers International Association, AFL-CIO, Local Union No. 17 (the Union) against the Respondent on February 14, 1990; complaint in Case 1-CA-27051 issued against the Respondent by the Regional Director for Region 1 on April 17, 1990; Respondent's answer filed on May 1, 1990; charge filed by the Union against the Respondent in Case 1-CA-27207 on April 4, 1990, and amended on April 12, 1990; complaint in Case 1-CA-27207, issued against the Respondent by the Regional Director for Region 1, on June 7, 1990, and consolidated for hearing with the first complaint in this case; Respondent's answer filed on June 18, 1990; hearing held in Boston, Massachusetts, on November 14 and 15, 1990; briefs filed with me on or before January 28, 1991.

³ Respondent admits, and I find, that it is a corporation which maintains an office and place of business in Charlestown, Massachusetts, where it is engaged in the fabrication, installation, and service of heating, air-conditioning, and plumbing systems. In the course and conduct of this business, the Respondent annually purchases and receives at its Charlestown, Massachusetts place of business directly from points and places located outside the Commonwealth of Massachusetts goods and materials valued in excess of \$50,000. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

produce certain information requested by the Union and that it unduly delayed the production of other information which was requested for bargaining purposes. The Respondent countered with a host of objections—that it had no obligation to bargain over the decision to lay off five sheet metal workers; that it had no obligation to bargain with the Union until the Board completed the processing of objections to the conduct of an election which the Respondent filed following a union victory at a representation election held on December 1, 1989; that the Union waived any right it had to bargain over the effects of the layoff; that the Respondent in fact offered the Union an opportunity to bargain concerning the layoff some time after the layoff had been effectuated; and that it did produce in a timely fashion all the information it was legally obligated to produce. On these contentions the issues herein were joined.⁴

FINDINGS OF FACT

A. *The Unfair Labor Practices Alleged*

The Respondent is a closely held corporation that is owned and controlled by its president, Paul J. Farina. Since 1966 it has been engaged in the heating and air-conditioning business in the Boston metropolitan area and elsewhere in New England. Most of the Respondent's business involves industrial and commercial projects. It has few residential customers. The Respondent fabricates heating and air-conditioning materials in its shop and installs them at construction sites. In its operation it employs sheet metal workers, plumbers, and pipefitters. The labor dispute which gave rise to this case is limited to its sheet metal workers.

In the fall of 1989, the Union conducted an organizing drive limited to the Respondent's sheet metal employees. On December 1, 1989, an election was conducted among these employees by the Board. The Union won by a vote of eight to three (Case 1-RC-19309). Shortly after the election, the Respondent filed objections to the conduct of the election which directed their principal attention to alleged improper statements made by certain supervisors in support of the Union. On January 10, 1991, the Regional Office dismissed the objections and certified the Union. The Respondent appealed the Regional Director's action to the Board. On July 11, 1991, the Board issued an order affirming the Regional Director's decision.

Shortly after the results of the December 1 election became known, the Respondent laid off five sheet metal workers. These individuals are:

<i>Name</i>	<i>Date of Layoff</i>
Mark Boyd	December 8, 1989
Anthony Ciorlone	December 11, 1989
James Carroll	December 13, 1989
Joseph Dillon	December 16, 1989
Mark Therein	December 21, 1989

There is no dispute that, prior to the above-recited dates, the Respondent gave the Union no formal advance notice of its intention to make these layoffs and that no bargaining occurred between the parties concerning these actions. Since

⁴ The General Counsel filed a motion, which was unopposed, seeking to correct the transcript in 23 particulars. The motion is granted.

that time, none of these employees has been offered reinstatement.

On January 22, 1991, a few days after receipt of the certification of the Union by the Regional Director, Thomas J. McKenna, the Union's organizer, wrote the following letter to Farina:

Local 17 hereby demands that Farina Corp. satisfy its statutory obligation to bargain with Sheet Metal Workers, Local 17, over wages, hours and conditions of employment for all sheet metal fabricators and installers.

In order to prepare for this meeting Local 17 demands the following information:

1. A list of all employees who have performed sheet metal work in the shop or in the field for Farina Corp. during the past twelve months.
2. The number of hours each such employee spent performing that work.
3. The hourly rate of each such employee.
4. The names and addresses of all employees currently performing sheet metal work with their current rates of pay.
5. The names and addresses of all laid off unit employees and all unit employees receiving workers compensation.
6. A list of all subcontractors who have performed sheet metal work under Farina Corp., together with the dollar value of the work subcontracted to each.
7. A summary description of all benefits currently received by unit employees.

We have recently learned that the company is claiming that the men who were laid off in December were let go on account of lack of work. Local 17 demands an opportunity to bargain over the decision to lay these employees off, the method of selecting the laid off employees and the impact of the layoff on the unit employees. Local 17 also demands that the laid off employees be recalled before any non-unit employee perform sheet metal work.

Please contact the undersigned regarding when the requested information will be available. I will need a day or two to look at the information before we meet.

McRenna's letter was answered by Harold N. Mack, Esq., the Respondent's attorney. In a letter, dated February 1, 1990, Mack told McKenna:

Your letter dated January 22, 1990, regarding the above company has been referred to me for response. The company is filing an appeal to the National Labor Relations Board from the Supplemental Decision and Certification of Representative dated January 10, 1990. Pending this appeal your request for information, to the extent it may be relevant, is premature.

After filing the Respondent's appeal to the Board from the Regional Director's certification, Mack apparently had second thoughts. He dispatched a second letter to McKenna, dated February 28, which stated:

In response to your letter of January 22, 1990, Farina Corporation is prepared to meet and discuss the implementation and/or effects of its decision resulting in the

layoff of certain employees in December 1989. The Company proposes either March 5, 7, 12 or 13 for such meeting.

The Company's willingness to meet is not to be construed as an acknowledgment that it was or is required by law to do so. The Company also reserves all its rights as to its challenge of the validity of the election including its objections which are now pending review by the National Labor Relations Board.

An exchange of correspondence between the parties continued unabated. The Union opted to place this responsibility in the hands of its attorney, Paul F. Kelly, Esq. In a reply to Mack, Kelly noted that Mack's February 28 letter said nothing about the Union's demand for information and characterized the offer of limited negotiations as a transparent attempt on the part of the Respondent to reduce its liability by recharacterizing the layoffs. He renewed the Union's request for information that McKenna had made in January and insisted that the information which had previously been requested was relevant to the layoff issue. Kelly renewed the Union's contention that the Respondent was presently obligated to bargain over all contract matters, questioned the legitimacy of partial bargaining, and asked rhetorically whether the Respondent would be willing to enter into a written agreement concerning layoff questions. Mack's response, dated March 21, was simply a renewal of the original offer for limited bargaining and a request to Kelly to call or write him to set up a meeting.

In the next salvo in this exchange of correspondence, Kelly sent a letter, dated April 2, renewing the original request for information that McKenna had already made, and added a few new items:

All documents, including invoices, payroll records, and work logs, that 1) identify projects on which or for which Farina Corp. has performed sheet metal work during the period November 1, 1989, to present; 2) describe the natures and extent of the sheet metal work performed on each project; 3) identify the employees that performed such work; and 4) identify the days and hours worked by each such employee.

They argued that the information was relevant to the initial decision to lay off five sheet metal workers in December. Mack refused the request. Mack wrote Kelly that the Company "has not and does not propose to bargain as to the decision itself."

Following the Board's decision of July 11, Mack wrote McKenna on July 30 to inform that the Respondent was "prepared to undertake collective bargaining negotiations." He asked McKenna to contact him to set up a date. On August 16, Mack sent Kelly a letter saying that he would forward to him, within the next 7 to 10 days, certain information that had been requested. On August 27, Mack sent certain promised documents. He provided the names of all employees who had performed sheet metal work in the preceding 12 months but listed the hours worked and rates of pay for only some of the persons listed. Among the list of current sheet metal employees the Respondent included the names of the discriminatees in this case but did not include the rates of pay or addresses of all the employees whose names appeared on this list. It provided names and addresses

of laid-off employees or those drawing workmen's compensation, as well as a list of the current benefits.

Mack told Kelly in his letter that the Company did not keep information concerning the number of hours worked by persons other than sheet metal employees who perform sheet metal work. Mack's letter provided nothing relating to subcontractors who had performed sheet metal work and it made no response to the information requested by Kelly on April 2. The parties had one collective-bargaining meeting on September 18, at which time the Union presented its proposals to the Respondent. A second meeting was scheduled but was later canceled by the Respondent. No bargaining has taken place since that time.

B. Analysis and Conclusions

It is settled law that, when employees become represented by a collective-bargaining agent, their employer may no longer make unilateral changes in wages, hours, and terms and conditions of employment as it was privileged to do before they opted for union representation. *NLRB v. Katz*, 369 U.S. 736 (1962). Accordingly, if the employer is contemplating any such changes affecting bargaining unit personnel, it has a duty to notify the bargaining agent of the proposed changes, afford that representative an opportunity to bargain over the proposal, and, if bargaining is requested, meet with the representative and bargain collectively in good faith concerning the proposal before putting them into effect. One of the many mandatory subjects of bargaining which falls under this rule is the layoff of employees. *Adair Standish Corp.*, 292 NLRB 890 (1989). In a more mature labor relations context than the one presented in this case, the matter of layoffs is generally addressed by the seniority, management rights, and grievance provisions of a collective-bargaining agreement, go an employer covered by such a contract is generally free to accomplish layoffs without additional bargaining so long as it adheres to the provisions of the contract it has agreed to. *NLRB v. Advertisers Mfg. Co.*, 823 NLRB 1086, 1090 (7th Cir. 1987). However, where, as were, such matters have not been incorporated into a contractual arrangement, the employer is obligated to bargain over any decision to make a layoff as well as the effects of any such decision. *Lapeer Foundry & Machine*, 289 NLRB 952 (1988), and cases cited therein. In the absence of a contract conferring the right to lay off employees, layoffs are not a management prerogative in a bargaining unit having union representation. The fact that the contemplated layoff may be prompted by bona fide economic reasons and is in no way discriminatorily motivated does not remove it from the umbrella of the bargaining obligation. *San Antonio Portland Cement Co.*, 277 NLRB 309 (1985).

In the case at hand, the Respondent did not notify the Union before it laid off five sheet metal workers in December 1988, nor did it give the Union an opportunity to bargain over this decision before it was implemented. When the Respondent asserts that it was under no such obligation, it is simply wrong. Giving a union notice of a fait accompli or giving no notice at all does not impose upon a union any obligation to demand bargaining under pain of having waived its rights. *Alpha Biochemical Corp.*, 293 NLRB 753 (1989). In this case, the violation of the Act occurred in December 1989 when the Respondent issued layoff notices to five sheet metal workers without observing the necessary preliminaries.

What the Union did or failed to do thereafter has no bearing on whether the Respondent violated the Act by its abrupt unilateral actions.

The Respondent attempts to avoid the thrust of this finding on two bases. First, it claims that it was under no duty to bargain at all with the Union following the union victory at the December 1 election until the Board upheld the results of the election nearly 8 months later. Both the Regional Director and the Board dismissed the objections filed by the Respondent but, in the nature of things, it took time before these decisions could be made and announced. It is well settled that an employer, faced with a union victory in a representation election, who plays the waiting game does so at its peril. *Mike O'Connor Chevrolet-Buick-GMC Co.*, 209 NLRB 701 (1975); *Clements Wire Co.*, 257 NLRB 1058 (1981); *Angelica Healthcare Services*, 284 NLRB 844 (1987). If its objections to the conduct of the election prove to be meritless, as were the Respondent's objections in this case, any unilateral action taken during the pendency of the objections and any refusal to bargain in response to a union demand made during this period of time is a violation of Section 8(a)(5).

The Respondent also seeks to excuse its conduct with the claim that, in December 1989, it laid off the five discriminatees named in the complaint because compelling economic considerations prevented normal bargaining procedures to come into play. This contention is also without merit. Most layoffs are taken as a result of economic considerations. However, business necessity is not the equivalent of compelling considerations which excuse bargaining. Were that the case, a respondent faced with a gloomy economic outlook could take any unilateral action it wished or violate any of the terms of a contract which it had signed simply because it was being squeezed financially. Loss of a customer account does not constitute a compelling economic consideration justifying a failure to bargain. *Angelica Healthcare Services*, supra. Nor does inconvenience to the employer fall into that category. *Clements Wire Co.*, supra. The Board recently stated that a legitimate excuse from bargaining about layoffs with a union could arise only in extraordinary situations. *Lapeer Foundry & Machine*, supra. There was nothing extraordinary about the Respondent's position in December 1989.

In December 1989, the Respondent was not in bankruptcy nor was it insolvent. Its assets had not been frozen and it was still actively engaged in pursuing its regular business activities. Despite the fact that its business volume was down, it had subcontracted out to another company a \$1.6 million sheet metal job at the Hanscomb Air Force Base rather than perform this work with its own sheet metal employees. It continued to pay rent to Farina personally and to his wife for the use of the Respondent's headquarters building. In its corporate fiscal year, which ended on June 30, 1990, the Respondent earned a profit, and this fact was reported on both its Federal and state income tax returns. In the face of its plea of poverty, the books and records of the Respondent were subpoenaed by the General Counsel to determine if they would provide some verification or substantiation for the proffered excuse which had been advanced for the refusal to bargain in December 1989. Despite a direct order from me to produce these records, the Respondent failed and refused to do so, an act which amounted to contumacy on its part

and unethical conduct on the part of its attorney. In light of these developments, I will draw an inference, requested by the General Counsel, that, had these books and records been produced in accordance with the Respondent's legal obligation, they would have disclosed that, in December 1989, the Respondent was faced with no compelling economic considerations which would have prevented it from notifying the Union and giving the Union an opportunity to bargain before it decided to lay off five sheet metal workers.⁵ At the time it committed the unfair labor practices here in question, the Respondent's stated position was not that it was prevented from bargaining over layoffs because of an emergency situation but that it did not choose to do so before completing a challenge to the results of the December 1 election. Accordingly, by failing to notify the Union in advance of its intention to lay off five sheet metal workers and by failing to afford the Union an opportunity to bargain respecting both the decision and the effects of the decision, the Respondent violated Section 8(a)(1) and (5) of the Act. I so find and conclude.

The duty of an employer to provide a union with sufficient relevant information to permit it to fulfill its duty as collective-bargaining representative is also well settled. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). In determining relevance, the Board uses a liberal discovery standard which is more expansive than the one it might employ if the issue to be resolved were the admission of a document into evidence at a litigated hearing. The range of relevance is not limited to the boundaries of the bargaining unit. See *Brooklyn Union Gas Co.*, 220 NLRB 189 (1975), and cases cited therein. In defending its refusal to produce the information requested by McNally on January 22 and by Kelly on April 2, the Respondent asserted that the requests were premature, that the information was irrelevant to bargaining, and that the Union did not sufficiently justify the relevance of the information it sought to obtain.

Like its obligation to bargain over layoffs, the general obligation of the Respondent to produce relevant requested information arose on December 1, 1989, the date the Union won the election. This obligation could not be deferred by the effort of the Respondent to challenge the results of the election. The Union had no obligation to justify or explain the relevance of most of the information it requested since it dealt specifically and directly with bargaining unit employees. Such information is presumptively relevant and needs no further demonstration from the Union on this point. *Ohio Power Co.*, 216 NLRB 987 (1975), enfd. 531 F.2d 1381 (6th Cir. 1979); *Calmat Co.*, 283 NLRB 1103 (1987). With respect to the names of sheet metal subcontractors and the dol-

⁵In lieu of such data, the Respondent offered an array of newspaper clippings and other articles, some of which were not published until nearly a year after the events in question, which say that the building and construction industry was in bad shape in eastern Massachusetts. Conceding that this was so, it is irrelevant to the question presented by the Respondent's situation. Whether or not other employers were having economic difficulties is of no consequence in passing on the Respondent's defense. What is of importance is whether the Respondent itself was in such dire circumstances that it literally had no time to get a message through to the Union that it was laying off five employees before taking the action it did. The Respondent chose to hide this information from the Board and must suffer the consequence of doing so.

lar volumes of their jobs, this question was brought into play by the Respondent when it claimed that an economic emergency prevented it from bargaining over the December 1989, layoffs. Such information bears upon the layoff decision, the effects of layoff, the question of recall, and other matters normally discussed during collective-bargaining sessions, such as no-subcontracting clauses. Having raised the question on which the desired information has an obvious bearing, the Respondent cannot then avoid the production of the information by asserting that it deals with matters outside the bargaining unit or that it is not relevant. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *Monarch Machine Tool Co.*, 227 NLRB 1880 (1977); *Stanley Bldg. Co.*, 166 NLRB 984 (1967); *Latimer Bros.*, 242 NLRB 50 (1979). The same applies to the information later requested by Kelly, which is merely a detailed specification of the data that McNally had demanded.

It is also well settled that an employer who unreasonably delays the production of relevant information requested by a union is guilty of a violation of the Act. *B. F. Diamond Construction Co.*, 163 NLRB 161, 176 (1967); *Bundy Corp.*, 292 NLRB 671 (1989), and cases cited; *Valley Inventory Service*, 295 NLRB 355 (1989). In this case, the Respondent, whose duty to furnish information arose when it was requested in January and April 1990, did not provide any information at all until late August. Even then, it was remiss in fulfilling the requests which had been made on it. This delay was not excused by the pendency of objections to the election any more than were the Respondent's other derelictions. Accordingly, I find that by refusing to furnish the Union with certain information requested which was relevant to the Union's bargaining responsibilities and by its unreasonable delay in furnishing the information it eventually produced, the Respondent herein violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Farina Corporation is now, and at all times material, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Sheet Metal Workers International Association, AFL-CIO, Local Union No. 17, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time sheet metal duct fabricators and installers employed by the employer at, or working out of, its Charlestown, Massachusetts location, but excluding office clerical employees, refrigeration employees, plumbers and pipefitters, salesmen, managerial employees, field foremen, guards, and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the Union has been the exclusive collective-bargaining representative of all employees of the Respondent employed in the unit found appropriate in Conclusion of Law 3, within the meaning of Section 9(a) of the Act.

5. By refusing to bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of its bargaining unit employees concerning its decision to lay off employees Mark Boyd, Anthony Ciorlone, James Carroll, Joseph Dillon, and Mark Therien, and concerning the effects of the layoffs; and by refusing to furnish the Union

in a timely fashion or to furnish it at all with information requested by the Union in letters dated January 22 and April 2, 1990, the Respondent herein violated Section 8(a)(1) and (5) of the Act.

6. The aforesaid unfair labor practices have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent herein has engaged in certain unfair labor practices, I will recommend to the Board that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. The recommended Order will require the Respondent to offer to Mark Boyd, Anthony Ciorlone, James Carroll, Joseph Dillon, and Mark Therien full and immediate reinstatement to their former or substantially equivalent employment and to make them whole for any loss of earnings which they may have sustained by reason of the discriminations practiced against them, in accordance with the *Woolworth* formula,⁶ with interest at the rate prescribed by the Tax Reform Act of 1986 for the overpayment and underpayment of income taxes. *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Board has frequently held that the standard reinstatement and backpay remedies used in discriminatory discharge cases be ordered in cases involving discharges which violate Section 8(a)(5) of the Act. *Flex Products*, 278 NLRB 417 (1986); *Adair Standish Corp.*, 292 NLRB 890 (1989); *Clements Wire Co.*, supra, and cases cited therein, 257 NLRB 1058, 1059 fn. 8. In no way should backpay be tolled in this case because of the Respondent's half-hearted offer to bargain over the effects of the layoffs during the pendency of the objections before the Board, while at the same time refusing to bargain with the Union concerning all the other terms and conditions which go to make up a conventional collective-bargaining agreement. Kelly correctly pointed out to Mack that Mack's February 28 offer to bargain was a sham and was made simply to prevent backpay from continuing to run. Good-faith bargaining requires much more than the observance of a few rubrics and the laying out of a paper trail, marked by certain stereotyped words and phrases. Good-faith bargaining requires an employer to meet and discuss with a union all the items outlined by Section 8(d) of the Act in a frame of mind which actively seeks the achievement of a complete collective-bargaining agreement. There is no such thing as partial good-faith bargaining. Having failed to address the totality of its obligation in this manner, the Respondent cannot be heard now to claim any financial or other benefit from desultory efforts designed only to save money while wasting time.

I will also recommend to the Board the posting of the usual notice advising employees of their rights and of the results in this case.

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

⁶*F. W. Woolworth Co.*, 90 NLRB 289 (1950).

⁷If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

ORDER

The Respondent, Farina Corporation, Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Sheet Metal Workers International Association, AFL-CIO, Local Union No. 17, as the exclusive collective-bargaining representative of the sheet metal employees employed by the Respondent at, or out of, its Charlestown, Massachusetts shop.

(b) Failing and refusing to provide the Union, in a timely fashion, with all the information which is relevant to the Union's responsibility to act as the exclusive collective-bargaining representative of the Respondent's sheet metal employees.

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

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

(a) Furnish the Union forthwith all the information it requested in letters directed to the Respondent on January 22 and April 2, 1990, and any other information requested by the Union which is relevant to the Union's statutory duty as bargaining representative of the Respondent's sheet metal employees.

(b) Bargain collectively in good faith with the Union concerning the decision to lay off five sheet metal employees in December 1989, and the effects of the layoff, and bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of all the sheet metal employees employed by the Respondent at, or out of, its Charlestown, Massachusetts shop, concerning wages, hours, and terms and conditions of employment.

(c) Offer to Mark Boyd, Anthony Ciorlone, James Carroll, Joseph Dillon, and Mark Therien full and immediate reinstatement to their former or substantially equivalent employment, without prejudice to their seniority or to other rights previously enjoyed, and make them whole for any loss of pay or benefits suffered by them by reason of the illegal actions found herein, in the manner described above in the remedy section of this decision.

(d) 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.

(e) Post at the Respondent's Charlestown, Massachusetts shop, copies of the attached notice marked "Appendix."⁸

adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

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 on 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.

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

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

WE WILL NOT refuse to bargain collectively in good faith with Sheet Metal Workers International Association, AFL-CIO, Local Union No. 17 as the exclusive collective-bargaining representative of our sheet metal employees.

WE WILL NOT fail or refuse to provide the Union, in a timely fashion, with all the information which is relevant to the Union's responsibility to act as the exclusive collective-bargaining representative of those employees.

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

WE WILL furnish the Union forthwith all of the information it requested in its letters to us dated January 22 and April 2, 1990.

WE WILL bargain collectively in good faith with the Union concerning the decision to lay off five sheet metal employees in December 1989, and the effects of the layoff, and WE WILL bargain collectively in good faith with the Union concerning wages, hours, and terms and conditions of employment of our sheet metal employees.

WE WILL offer to Mark Boyd, Anthony Ciorlone, James Carroll, Joseph Dillon, and Mark Therien full and immediate reinstatement to their former or substantially equivalent employment, without prejudice to their seniority or to other rights previously enjoyed, and WE WILL make them whole for any loss of pay or benefits which they have suffered by reason of the illegal actions found in this case, with interest.

FARINA CORPORATION