

Oklahoma Fixture Company and International Brotherhood of Electrical Workers, Local Union No. 584, AFL-CIO. Case 17-CA-16206

August 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

On April 12, 1993, Administrative Law Judge Bruce C. Nasdor issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.

1. The judge found that the Respondent did not violate Section 8(a)(1) by threatening employee Richard Gill with discharge. The General Counsel has excepted to this finding. For the reasons stated below, we conclude that the Respondent's conduct violated Section 8(a)(1) of the Act.

In February 1992, Gill asked Superintendent Jerry Wallace when the Respondent would begin making insurance contributions on his behalf because he had heard that contributions were being made for other employees. When Wallace failed to respond, Gill spoke to employee Ray Creel about the problem. Creel contacted Union Business Manager Tom Quigley, and Quigley in turn called Vice President Mark Cavins to ask about Gill's insurance.

Sometime after Quigley's inquiry, Supervisor Bob Fields told Gill that Cavins wanted Gill fired because of Gill's inquiry which resulted in the Union's phone call to Cavins. Fields told Gill that Cavins was "really pissed at you" because Cavins had gotten "chewed out" by Quigley over the late insurance payments and that Cavins was angry that the Union had gotten involved. Fields warned Gill, "They want me to fire you. But you're too good a worker and I'm not going to do it. Just stay out of his way."

The judge found that Gill's testimony "is so amorphous and nebulous," that it is not clear that the threat was intended to discourage union activity. We dis-

agree. We find that Gill's credited testimony, which was not controverted by Fields, was not amorphous or nebulous. To the contrary, we find that Gill's testimony clearly establishes that Fields warned Gill that a vice president of the Respondent wanted to discharge him because the Union inquired about his insurance payments. Such a warning would plainly tend to discourage Gill from seeking the assistance of the Union. Under these circumstances, we find that the Respondent unlawfully threatened Gill with discharge in violation of Section 8(a)(1).

2. The General Counsel has excepted to the judge's finding that the Respondent did not violate Section 8(a)(3) and (1) by laying off unit employees following its decision to subcontract their work. For the reasons set forth below, we agree with the judge that the Respondent did not violate Section 8(a)(3) and (1).

The facts are fully set out by the judge. In brief, the Respondent is engaged in the manufacture and sale of display cases for department stores. Dillard's is the Respondent's largest customer and accounts for more than 95 percent of its revenue. Of the 900 employees employed by the Respondent, approximately 600 are currently represented by a union.

From 1986 through March 1991, the Respondent subcontracted its electrical work to a company named Webco. In March 1991, the Respondent, seeking more control over the performance of the work and the direction of overtime, hired its own electricians to perform the work. Following an election on November 6, 1991, IBEW Local 584 (the Union) was certified as the collective-bargaining representative of the Respondent's electricians. The parties began contract negotiations in spring 1992.²

During a negotiation session on May 14, the Respondent announced that it was considering the possibility of subcontracting the electrical work. The Respondent explained that it was concerned about its legal liability in the event an electrical wiring problem caused damage to Dillard's property or customers, and that it wanted to use a subcontractor who would have insurance to cover such damage. In addition, the Respondent was concerned that in the event an electrical mishap did occur, it would lose the Dillard's account to one of its competitors and be forced into bankruptcy. Further, Cavins testified that he was not knowledgeable about electrical wiring and could not properly oversee the electrical work being performed by the unit employees. When the union representative asked if there was anything the Union could do to help the Respondent out, the Respondent replied that it did not believe so. The Respondent stressed that although it was considering subcontracting, no decision had yet been made. Nonetheless, the Respondent stated that until a

¹The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

²All dates are in 1992 unless otherwise indicated.

decision was made, there was no point in going forward with contract negotiations.

By letter dated May 15, the Union requested that the Respondent provide the Union with information related to its insurance covering electrical damage. The parties agreed that this information would be provided at their next bargaining session on June 8.

On June 8, the Respondent's attorney called the Union's attorney and announced that a final decision had been made to subcontract the electrical work, to terminate the bargaining unit the following day, and to pay the employees wages through the end of the week. The Respondent also informed the Union that since the decision had been made, there was no point in holding the meeting scheduled for later that day. After this conversation, the Respondent faxed to the Union the requested insurance information.

The judge found that the Respondent's decision to subcontract and lay off employees was based on legitimate business considerations, and was not motivated by union animus. The judge credited the testimony of Vice President Mark Cavins that he was genuinely concerned about legal liability and the risk of losing Dillard's business in the event of electrical damage caused by the Respondent's employees. The judge noted that any animus demonstrated by pre-10(b) conduct was in the context of the Union's organizational campaign prior to the November 6, 1991 election, and he reasoned that it did not transfer over to the June 9 layoff.

The General Counsel contends that the layoff was discriminatorily motivated. In support, the General Counsel contends that certain statements by Supervisors Cavins, Fields, and Wallace demonstrate union animus.³ The General Counsel further contends that

³In adopting the judge's dismissal of the allegation that Superintendent Jerry Wallace unlawfully informed employees that they would be laid off because of their union activities, we rely solely on our conclusion that the allegedly unlawful statements were not proven to have occurred within the 10(b) period. Employee Richard Gill testified that the threats occurred sometime between the November 6, 1991 election and the June 8 layoff. Employee Ray Creel testified that he had three or four discussions with Wallace between December and the layoff about "what would happen in the future," but did not specifically testify as to when the alleged threat of layoff occurred. The 10(b) period began December 9, 1991. Consequently there was a period of at least 9 days to 1 month outside the 10(b) period during which Gill and Creel testified that the statements could have been made. Accordingly, we adopt the judge's dismissal of this allegation. See *Howard Mfg. Co.*, 180 NLRB 220, 221 (1969), enf'd. 436 F.2d 581 (8th Cir. 1971).

The General Counsel contends that Wallace made other threatening statements, admittedly outside the 10(b) period, which demonstrate union animus. Employee W. C. Fields testified that Wallace told him that the employees should drop the organizing campaign because they would be fired if it passed. Employee Timothy Morris testified that on several occasions before the election, Wallace warned him that if the Respondent found out who was organizing the union campaign, those employees "wouldn't be there."

the unconvincing nature of the Respondent's asserted business justification, coupled with the timing of the decision, strongly support an inference of unlawful motive.

Applying the analysis set forth in *Wright Line*,⁴ we find that even assuming arguendo that the General Counsel made a showing sufficient to support the inference that the employees' union activity was a motivating factor in the Respondent's decision to lay them off, the Respondent has proven by a preponderance of the evidence that it would have laid off the unit employees even in the absence of their union activities. The judge credited Vice President Cavins' testimony that he decided to subcontract the electrical work because he was concerned about legal liability and the risk of losing Dillard's business. Cavins explained that he viewed Webco as a buffer that would insulate the Respondent from these risks. Cavins also testified that he was not familiar with electrical wiring and felt that he could not properly inspect the work of his employees. By delegating to Webco the responsibility for wiring the fixtures and inspecting the work, the Respondent believed it could lessen its liability risk and preserve its crucial business relationship with Dillard's. Under these circumstances, and particularly in light of the judge's crediting of Cavins' testimony, we find that the Respondent has satisfied its burden under *Wright Line*. Accordingly, we shall dismiss this allegation.

3. The judge also found that the Respondent did not violate Section 8(a)(5) and (1) of the Act by failing to notify and bargain with the Union over its decision to subcontract the electrical work. For the reasons set forth below, we agree with the judge.

As noted above, the Respondent, without notice to or bargaining with the Union, informed the Union on June 8 of its decision to subcontract and immediately lay off the unit employees. The General Counsel contends that under *Torrington Industries*, 307 NLRB 809 (1992), the decision to subcontract was a mandatory subject of bargaining because the decision did not constitute a significant change in the nature or direction of the business, and was simply the substitution of one group of workers for another group to perform the same work, at the same facility, under the ultimate control of the same employer. We disagree with the General Counsel and find that under the particular circumstances presented here, the decision to subcontract was a nonmandatory subject of bargaining.

Although Wallace's pre-10(b) statements do not provide a basis for an unfair labor practice finding, we agree with the General Counsel that they may be used as background evidence throwing light on the Respondent's motivation for conduct within the 10(b) period. *Douglas Aircraft Co.*, 307 NLRB 536 fn. 2 (1992).

⁴251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

In *Torrington Industries*, the employer laid off employees and replaced them with nonunit employees without providing adequate notice to the union or affording the union an opportunity to bargain about the decision and its effects. The Board found that the employer's reasons for its subcontracting "were not matters of core entrepreneurial concern and outside the scope of bargaining." 307 NLRB at 810. The Board noted, however, that "there may be cases in which the nonlabor-cost reason for subcontracting may provide a basis for concluding that the decision to subcontract is not a mandatory subject of bargaining." *Id.* The Board also stated that it was "not fashioning a per se rule that any subcontracting decision that does not involve a significant change in scope and direction of the enterprise is a mandatory subject of bargaining." 307 NLRB at 811.

This case presents the unusual situation to which the Board was referring in *Torrington Industries* because the credited testimony establishes that the decision to subcontract was based on core entrepreneurial concerns outside the scope of mandatory bargaining. As discussed above, the judge credited Cavins' testimony that he decided to subcontract the electrical work because he was concerned about legal liability and the risk of losing virtually all the Respondent's revenue in the event of electrical damage to Dillard's property or customers resulting from an improperly wired fixture. Cavins explained that the subcontractor would serve as a buffer insulating the Respondent from these risks. "Labor costs," even in the broad sense of the term employed by the Board, were not a factor in the decision. Accepting as we do the credited reasons for the Respondent's decision, we find that it involved considerations of corporate strategy fundamental to preservation of the enterprise. We further find that the Union had no authority or even potential control over the basis for the decision. Therefore, we conclude that the subcontracting decision was outside the scope of mandatory bargaining and that the Respondent's failure to bargain over it did not violate Section 8(a)(5) and (1) of the Act.

4. The judge further found that the Respondent did not unlawfully fail to provide notice to the Union and afford the Union an opportunity to bargain over the effects of its decision to subcontract on unit employees. The judge noted that the Union made no demands to bargain with the Respondent over the effects of its decision and therefore concluded that effects bargaining was not an issue in this case. We disagree.

Contrary to the judge's finding, we find that effects bargaining is at issue here. The complaint alleges that the Respondent unlawfully failed to bargain about the effects of its decision to terminate the bargaining unit, and the General Counsel repeated this allegation at the hearing. For the reasons stated below, we find that by

failing to give the Union adequate notice and an opportunity to bargain over the effects of its decision, the Respondent has violated Section 8(a)(5) and (1).

The Supreme Court noted in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681 (1981):

There is no dispute that the union must be given a significant opportunity to bargain about these matters of job security as part of the "effects" bargaining mandated by Section 8(a)(5). And under Section 8(a)(5), bargaining over the effects of a decision must be conducted in a meaningful manner and at a meaningful time, and the Board may impose sanctions to insure its adequacy. [Citations omitted.]

We conclude that the Respondent did not afford the Union a meaningful opportunity to bargain about the effects of its decision when, on June 8, it informed the Union of its final decision to subcontract work, to lay off the unit employees the following day, and to pay them wages through the end of the week. After announcing these decisions, the Respondent advised the Union that it did not see any point in further negotiations and canceled the bargaining session scheduled for that day. On June 9, the unit employees were terminated and paid through the end of the week. Under these circumstances, we find that the Respondent announced its decision to terminate the bargaining unit in a manner that precluded meaningful bargaining over the effects on unit employees.⁵

In so finding, we reject the Respondent's contention that the Union waived its right to effects bargaining when it did not request bargaining after the May 14 announcement that the Respondent was "considering" the possibility of subcontracting. The Respondent stressed at this meeting that no decision had yet been made and that it was merely considering the possibility.

When relying on a claim of waiver of a statutory right to bargain, an employer has the burden of proving a clear relinquishment of that right. *NLRB v. Challenge-Cook Bros.*, 843 F.2d 230, 233 (6th Cir. 1988). Under Section 8(d) of the Act, a union's right to bargain is limited to matters of "wages, hours, and other terms and conditions of employment." Thus, a union's obligation to request effects bargaining, if it wishes to exercise its statutory right and avoid waiver, may only be triggered by a clear announcement that a decision

⁵We need not decide how many days' notice would be required for a meaningful opportunity to bargain. We find the Respondent's 1-day notice clearly insufficient. See *Willamette Tug & Barge Co.*, 300 NLRB 282, 283 (1990).

Because the Union was not afforded adequate notice of the Respondent's decision, its failure to request effects bargaining on June 8 is irrelevant. See *Gulf States Mfgs. v. NLRB*, 704 F.2d 1390, 1397 (5th Cir. 1983) ("Simply put, a union cannot be found to have waived bargaining when it never had an opportunity to bargain.")

affecting the employees' terms and conditions of employment has been made and that the employer intends to implement this decision. This obligation is not triggered by an "inchoate and imprecise" announcement of future plans about which the timing and circumstances are unclear.⁶ The Respondent's announcement that it was "considering" the possibility of subcontracting, while at the same time stressing that no decision had yet been made, is too "inchoate and imprecise" to give rise to an obligation to request effects bargaining. Accordingly, we find that the Union did not waive its effects bargaining right based on the Respondent's May 14 announcement.⁷

REMEDY

Having determined that the Respondent has engaged in unfair labor practices within the meaning of the Act, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act, including the posting of an appropriate notice to employees. Inasmuch as the Respondent unlawfully failed to bargain over the effects of its decision to subcontract and lay off unit employees, we shall order a limited backpay remedy pursuant to *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). Thus, the Respondent shall pay all affected employees backpay from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on the effects on unit employees of the subcontracting and June 9, 1992 layoff; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the sub-

⁶ Compare *Swift Independent Corp.*, 289 NLRB 423, 429 fn. 11 (1988), enf. denied on other grounds sub nom. *Esmark v. NLRB*, 887 F.2d 739 (7th Cir. 1989) (10(b) period began to run at the closing of the plants and not when the uncertain plans for the closings were announced).

⁷ As a practical matter, the parties cannot realistically be expected to be able to bargain intelligently in May about the effects of a decision that was not reached until June. Effects bargaining includes such topics as severance pay, health insurance coverage and conversion rights, preferential hiring at other employer operations, and reference letters for jobs with other employers. See *Los Angeles Soap Co.*, 300 NLRB 289, 295 (1990). It is premature for a union to seek to bargain over such matters at a time when the employer is stressing that it has not yet made a decision to terminate the employees the union represents. See *Show Industries*, 312 NLRB 447, 453-454 (1993) ("Until Respondent notified the Union that effects of some kind would likely befall the employees, a specific request to meet could hardly be expected or, for that matter, agreed to.").

Once the Respondent made the decision to terminate the unit employees, the time was ripe for effects bargaining. Under established precedent, the Respondent then had a "duty to give pre-implementation notice to the union" to allow for meaningful bargaining. *Wilamette Tug & Barge*, supra, 300 NLRB at 282. As explained above, this the Respondent failed to do.

sequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount he would have earned as wages from the dates on which he was laid off or terminated to the time he was recalled or secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all such sums shall be paid in the manner provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Oklahoma Fixture Company, Tulsa, Oklahoma, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge because of suspected or actual participation in activity protected by Section 7 of the Act.

(b) Subcontracting bargaining unit work and laying off unit employees without providing the Union with notice and an opportunity to bargain about the effects of these decisions on unit employees.

(c) 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) On the Union's request, bargain with it over the effects on unit employees of its decisions to subcontract electrical work and lay off unit employees.

(b) Pay the laid-off employees their normal wages for the period set forth in the remedy portion of the Decision and Order.

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

(d) Post at its facility in Tulsa, Oklahoma, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including

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

all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

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

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten you with discharge because of suspected or actual participation in activity protected by Section 7 of the Act.

WE WILL NOT subcontract bargaining unit work and lay off unit employees without providing the Union with notice and an opportunity to bargain about the effects of these decisions on unit 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, on the Union's request, bargain with it over the effects on unit employees of our decisions to subcontract electrical work and lay off unit employees.

WE WILL pay the laid-off employees their normal wages for the period set forth in the remedy portion of the Board's Decision and Order.

OKLAHOMA FIXTURE COMPANY

Constance N. Traylor, Esq., for the General Counsel.
Stephen L. Andrew, Esq. and *D. Kevin Ikenberry, Esq.*, for the Respondent.
Tom Birmingham, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRUCE C. NASDOR, Administrative Law Judge. This case was tried at Tulsa, Oklahoma, on November 30 and December 1 and 2, 1992. The Union filed a charge and an amended

charge on June 9 and July 17, 1992, respectively. On July 17, 1992, a complaint and notice of hearing issued alleging that Respondent violated Section 8(a)(1), (3), and (5) of the Act. An amendment to the complaint issued on October 9, 1992. It is alleged that certain supervisors of Respondent made statements to employees which were violative of Section 8(a)(1) of the Act. It is further alleged that Respondent was motivated by antiunion animus in permanently terminating the entire bargaining unit comprised of employees who were engaged in performing electrical work, and thereafter subcontracted the electrical work.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs,¹ I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent, a corporation with an office and place of business in Tulsa, Oklahoma, has been engaged in the manufacture and nonretail sale of store fixtures and related products.

During the 12-month period ending July 30, 1992, Respondent purchased and received at its Tulsa, Oklahoma facility goods valued in excess of \$50,000 directly from points outside the State of Oklahoma.

During the 12-month period ending June 30, 1992, Respondent sold and shipped from its Tulsa, Oklahoma facility goods valued in excess of \$50,000 directly to points outside the State of Oklahoma.

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

II. THE LABOR ORGANIZATION

At all times material, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNIT

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All electricians and electrician's helpers who install electrical wiring in fixtures manufactured by the Respondent at its facility located at 6901 E. Pine Street and 924 S. Hudson, Tulsa, Oklahoma. Excluding all other employees, including warehousemen, drivers, carpenters, painters, office and plant clerical employees, guards and plant supervisors as defined in the Act.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent is engaged in the manufacture and nonretail sale of custom designed store fixtures, such as showcases and back islands, for installation in retail establishments throughout the United States. Respondent maintains a second plant in Bowling Green, Kentucky. Dillard's Department

¹ Counsel for the General Counsel's unopposed motion to correct the transcript is granted.

Stores account for at least 95 percent of Respondent's business.

Respondent opened its first plant in Tulsa, Oklahoma, in 1928. For many years Respondent's employees have been represented by three labor organizations, Painters, Carpenters, and the Teamsters unions. At the time of the hearing, Respondent employed approximately 900 individuals: 65 employees were painters, 500 carpenters, and 7 individuals were assigned to warehouse duties including driving forklifts.

Recently, Tulsa, Oklahoma, was selected by Respondent over four other cities for a new plant which will consolidate all of Respondent's operations currently performed at the S. Hudson Street address. The new plant is expected to be operational some time during the spring of 1993.

The current owners of Respondent are Ron Line, president and majority stockholder; Duane Walker, vice president responsible for sales; Larry Bishop, vice president responsible for the drafting department; and Mark Cavins, vice president responsible for production.

These individuals purchased Respondent in 1986. Since then it has grown from 350 employees to nearly 900 employees with a gross annual income of approximately \$52 million.

Statements made by Supervisors Killough and Steele were not alleged in the complaint as 8(a)(1) violations because their statements fell outside the applicable 10(b) period, or because their statements were not made to employees. Counsel for the General Counsel avers that their testimony should be considered as reflecting Respondent's motivation and antiunion animus.

James Killough worked for Respondent from January 2, 1990, to February 7, 1992, as its personnel director. Respondent fired Killough for engaging in sexual harassment and, as a result of such, he testified that he is contemplating legal action against Respondent.

Killough testified that in the summer or fall of 1990, he began hearing comments from Vice President Cavins about the construction of a new facility. Cavins allegedly stated to Killough that the new facility would not be union when it opened.

According to Killough, Cavins stated that Respondent hoped to save money by hiring their own electricians and that it would also give them some nonunion employees and in that way Respondent hoped to illustrate that unions were not needed.

Killough testified further that after the election, which was held on November 6, 1991, and shortly after the certification, on about six occasions, Cavins stated that the Union would not get a contract. This was in the context of discussing collective-bargaining negotiations with the Union. Killough testified with respect to an alleged conversation which occurred 2 weeks after the election or in late November 1991. Allegedly Cavins entered Killough's office and advised him that the official results (the certification) had been received and that "they" (the Union) was not going to get a contract even if the Company had to go back to subcontracting electrical work.

Killough testified that on about three occasions, around the time of the election, Cavins spoke to him about certain union adherents. He testified that he recalled Cavins said that he was going to get rid of them.

He further testified that Cavins said he intended to fire Tim Morris and W. C. Fields because of their activities on behalf of the Union. Killough, who participated in the hiring process with Steele, testified that he was never told to exclude union members during the hiring of electricians.

Charles Steele worked for Respondent from February 11, 1991 to July 22, 1991. Two weeks prior to February 11, he was interviewed by Cavins and Killough. This is well outside the 10(b) period.

Steele was hired as the electrical supervisor. He testified that during the initial interview Cavins stated that the electricians to be hired were to be nonunion. Cavins, in his testimony, stated that he thought he had said that the unit would be nonunion. He specifically denied telling any of his supervisors that the new facility, when finished, and the Respondent moved into it, would be without any unions.

Steele testified that he believed the Company controls whether or not its employees are represented by a union.

According to Steele, during the initial interview, Cavins discussed why he had decided to perform the electrical work in-house. The reason Cavins allegedly gave was that it would be a tremendous amount of savings. Steele testified that Respondent was concerned with mistakes in the electrical installations. It wanted people who would not make mistakes that had happened in the past, referencing a fixture in Texas that had caught on fire.

Thereafter, Steele interviewed approximately 50 applicants and hired 15. He assumed that those he ultimately hired were not active union adherents. The fact is that three of the electrical employees had been former members of the Union.

Steele testified that in approximately June 1991, he had a conversation with Cavins in Cavins' office, wherein Cavins allegedly told Steele that he heard rumors the employees wanted to go union. Cavins allegedly instructed Steele to find out who was involved and get rid of them. Steele testified that he accepted the instructions because when he was hired he was told to hire nonunion electricians. Steele heard that an electrician, Walter (W. C.) Fields, was handing out union authorization cards and he approached Fields to discuss this. According to Steele, Fields admitted that he was handing out cards and Steele told him that he had been instructed to terminate any employees distributing cards. Steele agreed to drop the matter if Fields ceased his distribution. According to Steele he believed that he himself was terminated because he hadn't fired Fields.

Record testimony reflects that there had been an early abortive union campaign during the summer of 1991.

Steele testified that he had been fired because of insubordination.

At the hearing, counsel for the General Counsel made a motion, which I granted, to amend the complaint by the following:

In or about the Spring of 1992, at exact times currently unknown to the General Counsel, Respondent, acting through Jerry Wallace² told employees that employees would be laid off because of their union activities or other concerted activities.

² Throughout the record Wallace is spelled "Wallis."

Wallace worked for Respondent from March 1, 1991 until June 7, 1992. He was terminated along with the other employee electricians when they were permanently laid off.

From March to August 1991, Wallace was Respondent's general foreman. After August 1991, he became superintendent of the electrical department until he left Respondent's employ.

Wallace testified that prior to the election, Cavins told him to circulate among the employees to ascertain how they would vote. He testified further that immediately after the election, Cavins instructed him to find out which employees had voted for the Union and Respondent would terminate them. According to Wallace he reported Cavins' comments to all the employees and told them that they would probably get fired over it. He testified he had already told the employees that if they signed a card they would be terminated and that he told them exactly what Cavins had told him. Wallace testified that he told employees that if they pursued this thing (the Union) they probably would be terminated according to what Cavins had told him (Wallace).

Wallace testified that Cavins told him that Respondent was building a new building and that when Respondent moved, it would be completely nonunion.

Wallace testified that shortly prior to the commencement of negotiations, Cavins asked him what he thought about forcing employees to furnish their own tools. Wallace allegedly responded that to be fair the employees should only be required to furnish their handtools. According to Wallace, Cavins allegedly responded, "The only thing we're going to do when we negotiate it is to piss them off."

Wallace, a former member of the Union, while he was superintendent, told at least one employee, Timothy Morris, that going union would be the best thing for Morris.

Walter C. Fields worked for Respondent from March through November 1991 as an electrician.

He testified that Steele had questioned him about union authorization cards during the period of June 1991. He also testified that during the fall of 1991 Wallace told him that the employees had to drop the organizational campaign because they were going to get fired if it passed. Fields testified that when he was ultimately laid off after the election, Wallace informed him it was because he was one of the instigators and they wanted to make sure they got rid of the instigators. Fields was the subject of an earlier charge which was resolved in an out-of-Board settlement.

Timothy Morris worked for Respondent from May to November 1991. Morris was also a subject of the previous unfair labor practice charge in Case 17-CA-15896 which resulted in an out-of-Board settlement.

According to Morris, approximately 3 weeks prior to the election Wallace told him that Cavins was "real mad" and upset with him. Morris testified that Wallace explained that Cavins had asked who the employee was who had asked so many questions during a campaign meeting conducted by Cavins. Morris testified further that on several occasions prior to the election, Wallace told him that he hated to have to retrain people to take over Morris' job because by doing "what we were doing, if they found out, we wouldn't be there." Shortly thereafter, Wallace allegedly told Morris to be especially observant of any work rules because they were looking for any reason to get rid of "us." When Morris was laid off November 7, 1991, he asked if he had been chosen

because of the union election, and Wallace allegedly responded affirmatively.

Morris acknowledged that he voluntarily informed Wallace that he was the one who was soliciting cards for the Union. Moreover, he testified that he did not have any fear of reprisals with respect to volunteering this information. Morris also acknowledged that Wallace told him that going union would be the best thing for him (Morris). A back-to-work notice to Morris was introduced into evidence.

Richard Gill was an electrician employed by Respondent from March 1991 until June 9, 1992, when the unit of electricians were laid off and the work was subcontracted. Counsel for the General Counsel adduced testimony from Gill to reflect Respondent's antiunion animus. Gill testified that on several occasions before the election, Wallace told him that if anybody voted for the Union they would be laid off. Wallace allegedly told Gill that Mark (Cavins) said that he would get rid of whoever voted for the Union. Gill also testified with respect to a conversation immediately after the election where Wallace is alleged to have told him that Cavins was one of the names who voted for the Union. Moreover, according to Gill, after the election, Wallace stated they were going to get rid "of all the Union so that the new plant would go non-union" because Cavins wanted it that way. Gill testified further that between the time of the election and the June 1992 layoff, Wallace informed him that Cavins didn't want the Union in the Company and that he (Cavins) "was going to lay us all off."

As the result of a question pertaining to Respondent's contribution to Gill's insurance, Quigley, the Union's business manager, contacted Cavins.

The following testimony is alleged in paragraph 5(b) of the complaint as a violation of the Act. Gill testified that Supervisor Bob Fields said that Cavins was "really pissed at you." According to Gill's testimony, Fields stated that Cavins had gotten chewed out by Quigley because of Gill's inquiry about insurance payments. Gill asked why Cavins was angry and Field explained that it was because Quigley had called. Gill told Fields he had initially asked Wallace and hadn't even contacted Quigley directly. Fields allegedly responded that it didn't matter but that next time Mark (Cavins) comes over, Gill should find some place to hide and stay out of the way and out of sight. Fields allegedly stated that "they want me to fire you." According to the testimony of Gill, Fields told him he was too good a worker, and Fields was not going to fire him but he should stay out of the way. Allegedly the time frame was March 1992.

Ray Creel was employed by Respondent from March 1991 until the layoff of June 1992. Creel testified to alleged conversations with Wallace that were both within and outside of the 10(b) period. He testified that before the election Wallace told employees on two or three occasions that Cavins would fire anybody that he caught with union cards trying to have signed and "organized." Furthermore Creel testified that two or three times after the election from December 1991 until June 1992, Wallace told employees that Cavins said he was going to "get rid of all of us for voting in a union." Furthermore, according to Creel, during the same period of time, after the election, Wallace told employees that Cavins would not fulfill a contract with them or "would not have a contract with us." Wallace allegedly also stated that Cavins said he wasn't going to have a union wire his fixtures for him.

Jess Pridgen worked as an electrician for Respondent from March 1991 until the layoff in June 1992. Pridgen devoted the bulk of his testimony to alleged conversations occurring outside of the 10(b) period. He testified that in mid-October 1991, he passed Cavins at the plant. He decided to ask Cavins how many electricians would be laid off. Cavins allegedly responded it depended on the outcome of the vote.

According to Pridgen, the week before Christmas 1991, while delivering fluorescent lights to the office for replacement, Cavins asked how things were and Pridgen responded that things were fine and how were things with Cavins. Cavins allegedly responded, "Well I got rid of two of the unionizers. Is there any thing I need to know about?" Pridgen allegedly responded that he only intended to ask Cavins how the day was going. Pridgen testified that Cavins continued to state that he didn't know what Pridgen was trying to gain by going union, that the Union didn't pay him and they can't protect him. Furthermore, according to Pridgen, Cavins stated that if management wanted employees out of here, you're out of here. Pridgen said he didn't care to discuss the subject further and Cavins made the additional comment, "If I have my way about it, there will not be a union here."

Cavins denied the December 1991 conversation with Pridgen. He testified that he recalled a specific conversation when Pridgen arrived to change bulbs but averred that Pridgen suddenly volunteered that he had not voted for the Union.

Pridgen also testified that around mid-November 1991, while discussing the subject of a possible contract with Wallace, Wallace told him that he shouldn't worry about the matter because there would not be a union when the move to the new building was made, they were going to be completely nonunion. Wallace allegedly also told Pridgen that the employees were wasting time because "All they're going to do is make us mad. They're not going to bargain with us." Until March 1991, Respondent had always utilized electrical subcontractors to perform the wiring of the fixtures. Initially, Respondent used subcontractor Circle L Electric, and then a company known as Circle Electric. Webco was Respondent's most recent subcontractor. In March 1991, Respondent wanted to make a change, and desiring more direct control of employees, it decided to perform the wiring in-house, that is, to hire its own employees to do the electrical wiring. Labor costs were not a factor in this decision. Respondent, perhaps mistakenly, believed that the wiring was a simple process that could be performed by almost anyone, and that if Respondent had its own electricians it would have better control if it needed an individual to work overtime and get a fixture out that night.

Respondent began its in-house wiring with the hiring of Superintendent Charles Steele. Cavins admits that he told Steele the electricians would be nonunion. Moreover, Cavins testified he did not direct Steele to hire either union or non-union people.

At the time of the hearing in this case, Respondent had collective-bargaining agreements with the three unions which were to expire on November 30, 1992. The parties, by agreement, extended all the contracts to December 6, 1992. Effective December 1, 1992, Respondent and each of the three Unions representing its employees executed new 2-year collective-bargaining agreements.

There is no history of unfair labor practices on the part of this Respondent.

Steele interviewed approximately 50 applicants and hired 15 electricians. They were given the same fringe benefits as all of Respondent's other nonunion employees with some minor differences, but basically the benefits were the same as those given to union employees.

Cavins testified that he was not aware of any organizational activity by the electricians until the petition for the election was filed on September 19, 1991. There is no evidence that Cavins had any knowledge of the organizational activity until he received the petition for the election.

Cavins testified that he did not put on a vigorous campaign to avoid the Union in the electrical unit. When asked why not, he responded, "Well, it doesn't make any difference to us. We got three unions. Basically, unions make it easy for me to manage the people out in the shop and it was, you know, it was just you know, it's not that big a deal to me."

The election results were 10 votes for the Union and 3 against.

Cavins testified that he did not discuss the identity of the organizers with any of his supervisors.

Prior to the election, Respondent suffered a reversal in business, typical at that time of year because department stores do not want remodeling work performed during the Christmas sales season. As a result, it was forced to lay off approximately half of its painters and carpenters. The layoff of electricians was delayed until the day after the election so that the individuals could be given an opportunity to vote. After the election, five electricians were selected by Supervisors Wallace and Killough for layoff.

As the result of this layoff, unfair labor practice charges were filed, which culminated in an out-of-Board settlement.

In early January 1992, the Union, by its attorney, Thomas F. Birmingham, commenced collective bargaining with Respondent and its attorney, Stephen L. Andrew. After some back and forth phone conversation between these two attorneys, the Union submitted a contract proposal in February 1992.

On March 9, 1992, the parties attended a collective-bargaining session, at which the Union proposed terms which were different from those already in existence in the contract between Respondent and the Carpenters, Painters, and Teamsters Unions. Respondent found the Union's proposal unacceptable because Respondent negotiated contracts with all its Unions simultaneously with each having virtually identical terms. The Carpenters, Painters, and Teamsters Unions share the same holidays, vacation benefits, pension benefits, and all terms and conditions of employment. The union employees are also all under the same pension plan. Respondent arbitrates with the Unions.

The next meeting between the parties took place in April 1992. Respondent continued to adhere to its position that noneconomic items must be identical to those in its other collective-bargaining agreements with the other Unions, including the expiration date. At the next meeting on May 8, 1992, the Union announced that it would agree to Respondent's position regarding the noneconomic items. According to Birmingham, the Respondent, on hearing this, was pleased and expressed its appreciation. The only items left were job descriptions and the pay rates. A new date was set to nego-

tiate the final items. Before the contract was finalized, Respondent decided to return to subcontracting its electrical work because of risks it deemed unacceptable in doing the wiring itself. This, the Company asserts as its defense. Although Respondent assumed direct control of the electrical work, Cavins testified that it continued to experience the same type of problems with the electrical wiring of its fixtures that it had experienced when the work was subcontracted. Some of these problems were that wires melted because of improper wiring and there were small fires inside some of the fixtures, according to Cavins. Cavins testified that he also began to realize that the wiring was not as simple and uncomplicated as he previously considered it, particularly in view of the numerous state and local codes which had to be complied with. Cavins testified that the management of Respondent, including himself, lacked personal experience and knowledge of electrical wiring, although Cavins was knowledgeable with respect to the other processes that went into manufacturing the fixtures.

As the result of these questions, Cavins became concerned about products liability of Respondent if an improperly wired fixture should occasion harm to property or persons, a question, according to Cavins, that had not occurred to him at the time the decision was made to do the electrical wiring in-house. Moreover, Cavins testified that he was particularly concerned about jeopardizing the Dillard's account because an electrical fire could cause the loss of employment for perhaps 1000 people. As stated earlier, Dillard's is basically Respondent's only customer and the sole source of its \$52 million gross income. Therefore, Respondent has competitors that Dillard's has turned to in the past and could turn to in the future, bankrupting Respondent overnight. Cavins reasoned that if the wiring was again performed by Webco, it would serve as a buffer which could absorb enough of the blame for the unsafe fixture to make Dillard's less inclined to take its business elsewhere.

Cavins testified that he and the other owners discussed these problems and, in a meeting held in late May or early June, called their general counsel for advice. He advised them that if they had an opportunity to lessen Respondent's liability through subcontracting, it should go for it.

Accordingly, on May 15, 1992, Respondent informed the Union that it was seriously considering a return to subcontracting. This would not be the first time that Respondent decided to subcontract part of its operation. Approximately 6 years earlier it decided to cease trucking its fixtures with company-owned equipment and company drivers, and turned to subcontracting.

After Respondent expressed its reasons for considering subcontracting, the Union asked if there was anything it could do to help them out. Counsel for Respondent responded that unfortunately he didn't know of anything. He asked if the Union was in the business of writing insurance to which the Union replied negatively.

Another contract negotiation session was scheduled for June 8, 1992. Respondent, however, made the final decision to go ahead and subcontract the electrical work, not only at the Tulsa plant but also at its nonunion Bowling Green plant. Because this decision made further negotiations pointless, the meeting was canceled. On June 9, 1992, the eight employees in the electricians unit were terminated and paid through the

end of the week. The Union asked for certain information from Respondent which was forthcoming.

The Union made no demands to bargain with Respondent over the effects of its decision to subcontract. Furthermore, counsel for the Union testified that the Union made no request to bargain over the effects and that this was a case that did not involve bargaining over the effects, this is a case concerned with the decision to subcontract.

It is also noted that Cavins testified that it was Respondent's intent to have a subcontracting clause in the contract with the electricians just as the other crafts' contracts contained a subcontracting clause.

Conclusions and Analysis

I am convinced by the preponderance of the evidence that Respondent's reason for subcontracting was grounded on legitimate business judiciousness. In my opinion, Cavins couldn't have cared less whether a unit of eight individuals was represented by a union, and in effect, he honestly testified accordingly. He also testified that three unions were already in the plant and that another union didn't make a difference to him, "its not that big a deal to me." These comments were in response to a question put to him as to why he did not conduct a vigorous campaign. Cavins' demeanor during his testimony and the testimony itself reflected fait accompli attitude with respect to the Union's gaining majority representation.

Even in spite of threats to close the plant in violation of Section 8(a)(1), an employer's justification for subcontracting was found to be legitimate and not an unfair labor practice *Armored Transport of California*, 282 NLRB 850 (1987). Neither I nor the Union or the Board should presume to substitute our judgment for Respondent's legitimate business judgment.

It is clear that Respondent experienced faulty wiring problems both when Webco performed the work and when Respondent performed the work with its own employees. I am convinced the Respondent became genuinely concerned about product liability and customer relations. Labor costs were not involved in the decision to subcontract.

After Respondent commenced to utilize the newly hired electricians to perform the wiring, they continued to have problems with faulty wiring. Although Cavins may be an astute business person, it is clear, and by his own admission, he was a novice in the area of electrical wiring.

Thus I believe he became apprehensive about the products liability of Respondent if a faulty fixture should harm life or property. I credit Cavins' testimony that this potential danger did not occur to him when the decision was made to do the wiring in-house.

Of even greater concern to Cavins was Dillard's response if one of Respondent's fixtures was to damage Dillard's property or customers. Realistically Dillard's is Respondent's sole customer and source of its \$52 million gross income. The loss of Dillard's business would close Respondent, putting possibly 1000 people out of work. Thus Respondent viewed Webco as a buffer which to a certain extent would insulate Respondent from the entire blame in the event of a mishap. In Respondent's view, thereby Dillard's would be less apt to take its business elsewhere.

Most of the testimony from counsel for the General Counsel's witnesses related to alleged (8)(a)(1) statements by su-

supervisors to employees. Most of the evidence relied on by counsel for the General Counsel to prove a violation was outside of the 10(b) period and fails to prove antiunion animus as the motivation for subcontracting. The Board has found conduct outside of Section 10(b) to infer union animus only after the reason given for discharge had shown by evidence within the 10(b) period not to be the true reason. *Rikal West, Inc.*, 266 NLRB 551 (1982). The evidence in the instant case reflects a legitimate business justification for subcontracting. There is no evidence that any pre-10(b) animus was transplanted or transferred over to the decision to subcontract. Any such animus, which will be discussed, was in the context of the union organizational campaign and a Board-conducted election.

I resolve any conflicts in the testimony between Cavins and the other witnesses, in favor of Cavins. I credit his denials and find him to be a scrupulous witness with an exacting memory. Cavins was attentive to details and his recollection was clearcut.

I discredit the testimony of Steel which was barred by Section 10(b). In his testimony to show animus Steel displayed a rancor and hostility toward management, and Cavins in particular. I note that Steel had been fired by Respondent for insubordination. Cavins denied that he directed Steel to hire only nonunion electricians. I credit Cavins denial and discredit Steel's testimony in this regard.

Cavins did recollect that he thought he told Steel that the electricians *to be hired* were to be nonunion. A prehire agreement in this context would be illegal, so Cavins was only articulating what a new business is allowed to do under the law. I can understand Steel's confusion, in that he testified that an employer decides and controls whether his business will be union.

Killough, Respondent's personnel director, testified to certain incidents outside the 10(b) period, and thus not alleged in the complaint.

Cavins denied any knowledge of union activity until he received the petition on September 19, 1991. Furthermore, he denied discussing who was organizing, giving out cards, or signing cards. He denied generally talking with any supervisor about the Union's organizational campaign.

I discredit Killough, who I believe is carried away by his antagonism toward Respondent. He impressed me as a fabricator disposed to concoct a false scenario. Killough, who had been fired by Respondent for sexually harassing employees, testified that he was contemplating legal action against Respondent. By his demeanor, he demonstrated a vindictive attitude toward Respondent as if he was settling accounts.

The complaint was amended to include an allegation that during the spring of 1992, Jerry Wallace, Respondent's general foreman, who became superintendent of the electricians in August 1991, told employees that they would be laid off because of their union and/or concerted activities.

Wallace was terminated with a group of electricians as the result of the subcontracting. There are some evidence that he has acted in supporting the Union's campaign. For example, he told employee Timothy Morris that the Union would be the best thing for him. I discredit Wallace's testimony where it conflicts with that of Cavins. Wallace impressed me as an individual who perverted and distorted the facts.

In some cases the Board has found that supervisors make statements of personal opinion as a result of their own frustra-

tion and in an effort to protect their own jobs. In as much as these statements were not authorized or condoned by Cavins,³ I recommend that this allegation be dismissed.

Walter C. Fields, one of the subjects of the out-of-Board settlement, testified to certain incidents attributed to Wallace and Steel, all of which are outside the 10(b) period. Assuming his testimony to be true, it is insufficient to mirror Respondent's motivation for the much later subcontracting period if true, the statements were made in a context of the organizational campaign and the impending election.

Timothy Morris was a subject of the out-of-Board settlement his testimony relates to incidents outside the 10(b) period, in any event, they are far removed from the decision to subcontract and do not support a theory of illegal motivation. Morris admitted he voluntarily informed Wallace he was soliciting cards and had no fear of reprisals. He was offered reinstatement in a non-Board settlement.

Richard Gill is a witness who compulsively offered gratuitous testimony all of it outside of the 10(b) period, with the exception of the allegation in paragraph 5(b) of the complaint. Bob Fields did not testify. I will assume that the allegation that Field stated to Gill that "they want me to fire you," is true. The testimony given rise to, and surrounding this comment, is so amorphous and nebulous, it isn't clear at all what the threat was as a result of, or to discourage, union activity. There was a question about Gill's receiving insurance payments. Apparently a union representative interceded on Gill's behalf. Fields allegedly told Gill that Cavins was angry ("really pissed at you"). I am unable to infer from Gill's convoluted testimony that Section 8(a)(1) has been violated. Accordingly, I recommend dismissal of paragraph 5(b) of the complaint.

Ray Creel's testimony relates to what Wallace told him, as relayed by Cavins to Wallace to Creel. The comment allegedly made within the 10(b) period and not denied by Wallace was neither authorized nor condoned by Cavins. I recommend dismissal of the allegation which is within the 10(b) period. The statement to Creel, a witness who sounded as if he was reciting the Declaration of Independence, he was so rehearsed, was isolated. In my opinion it would not effectuate the policies of the act to remedy the comment and I recommend dismissal of the allegation which appears at paragraph 5(b) of the complaint.

Jess Pridgen and his testimony are inherently unbelievable, I therefore discredit Pridgen. Cavins, whose credibility has been discussed, denied Pridgen's version of the conversation which was outside of the 10(b) period. I credit Cavins. I recommended that paragraph 5(a) of the complaint be dismissed.

Respondent and the Union commenced negotiations in early January 1992. The parties met on March 9, and Respondent wanted a contract with noneconomic terms which would track collective-bargaining agreements with the other unions.

In April 1992, Respondent adhered to his position that noneconomic items be identical to his other contracts. Also Respondent desired that the expiration date should be the same as in its contracts with the other unions.

³ There is no evidence that he had knowledge of Wallace's remarks to employees.

At the next meeting, May 8, the Union agreed to the non-economic terms. Job description and pay raise were all that were left to negotiate.

On May 14, the Respondent announced it was contemplating turning to subcontracting. After giving its reasons, Respondent invited help or suggestions from the Union. The union representative conceded that they were not in the insurance business and offered no suggestions as to how the Union could eliminate Respondent's anxiety.

A contract with the Union would not have impeded Respondent's flexibility or narrowed its options with respect to subcontracting, because that prerogative was among the non-economic items agreed to by the Union. I do not believe that Respondent was illegally motivated to avoid the contract. It enjoys harmonious labor relations with identical contracts with 3 different unions covering some 600 employees.

Effects bargaining is not at issue in this case. In my opinion the record amply supports the fact that Respondent discharged its duty to bargain in good faith with the Union.

A letter dated May 15, 1992, from Union Counsel Birmingham to Respondent Counsel Andrew (G.C. Exh. 5) states, inter alia, "we left the negotiating session with a clear understanding that there would be no further use in bargaining over wages or terms of working conditions if the company in fact decides to contract out installation of electrical components to store fixtures." This letter also requested information which Respondent provided to the Union.

After Respondent's final decision to subcontract at Tulsa and the nonunion plant at Bowling Green, further negotiations held no solution to Respondent's quandary so the June 8 meeting was canceled.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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

3. The appropriate unit is that which is alleged in the complaint and as it appears in section III of this decision.

4. The allegations of the complaint that Respondent has engaged in conduct violative of Section 8(a)(1), (3), and (5) of the Act have not been supported by substantial evidence.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

It is recommended that the complaint is dismissed in its entirety.

⁴If 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.