

**Hoffman Air & Filtration Systems, Division of
Clarkson Industries, Inc. and Local Union
4496, United Steelworkers of America, AFL-
CIO, CLC. Case 3-CA-17365**

February 16, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

On June 2, 1994, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief.¹ The General Counsel filed a brief in response to the Respondent's exceptions.

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.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Hoffman Air & Filtration Systems, Division of Clarkson Industries, Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² The Respondent 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'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In sec. II.D.2, of his decision, the judge found that the Respondent did not allow its representatives to discuss its written answers with the Union at step-2 grievance meetings. The record indicates, however, that the Union could request a second step-2 meeting at which the Respondent's representatives would elaborate on its answers in response to specific questions. We correct this inadvertent error, and note that this does not affect our decision.

Michael Cooperman, Esq., for the General Counsel.
Norman A. Quandt, Esq. and *Pamela M. Jones, Esq.* (Clark, Paul, Hoover & Mallard), of Atlanta, Georgia, for Hoffman Air & Filtration Systems, Division of Clarkson Industries, Inc.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint alleges that Hoffman Air & Filtration Systems, Divi-

sion of Clarkson Industries, Inc. (the Respondent) has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent is alleged to have threatened its employees to discourage them from engaging in an activity protected by the Act and to have failed to bargain collectively with Local Union 4496, United Steelworkers of America, AFL-CIO, CLC (the Union), the representative of the Respondent's production and maintenance employees at its facility in Syracuse, New York. The Respondent, in its answer, denies those allegations.¹ It also asserts that litigation as to certain of those allegations should be deferred to arbitration. The General Counsel opposes deferral.

I held a 7-day hearing in this case beginning on July 26 and ending on September 23, 1993. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. COMMERCE AND LABOR ORGANIZATION

On September 23, 1993, the Board issued a Decision and Order at 312 NLRB 349 finding, inter alia, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization as defined in Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent and the Union have a collective-bargaining relationship which goes back over 30 years and which pertains to a unit of production and maintenance employees at the Respondent's plants in Syracuse, New York. In 1992, the year in which the alleged violations referred to above took place, there were about 35 employees in that unit.

B. *The Deferral Issue*

The Respondent asserts that the allegations in paragraph XI of the complaint, that it unilaterally changed terms and conditions of employment of unit employees in four respects, should be deferred for resolution via arbitration in accordance with the provisions of the collective-bargaining agreement it has with this Union. The General Counsel contends that deferral is unwarranted in view of the alleged repeated failures of the Respondent to have bargained in good faith with the Union as to many grievances filed by the Union, which failures are alleged as separate violations of the Act.

A similar deferral issue had been considered by Administrative Law Judge Karl Buschmann and by the Board in the decision noted above involving this same Respondent and this same Union. There, Judge Buschmann addressed the deferral issue at the outset of his decision. In doing so, he considered the complaint allegations and declined to defer. The

¹ The Respondent's answer states that Sec. 10(b) of the Act bars a finding of a violation of the Act as to any incident occurring prior to the limitations period set out in that section. There is no such issue before me as all the dates of the alleged violations are within the 6-month period antedating the filing and service of the unfair labor practice charge in this case.

Board, on exceptions and after reviewing the merits thereof which required it to make findings as to the merits of various of the allegations of the complaint, granted deferral as to other allegations, as to which Judge Buschmann had found merit. I shall, of course, follow the Board's approach and defer ruling on the motion to defer to arbitration the matters alleged in paragraph XI of the complaint until the other issues are considered.

With due respect, it is recommended that the Board consider adopting a procedure whereby deferral issues can be resolved prior to a hearing thereon. The approach used in the prior case calls for the presentation of considerable testimony and briefing as to the merits which, if deferral is later granted, would prove to be costly surplusage in time and money for the Board and the parties. That approach does not seem to comport with some of the reasons for the deferral doctrine itself, i.e., that the Board's deferral procedures will ensure "a quick and fair means for the resolution of the dispute" (*Collyer Insulated Wire*, 192 NLRB 837, 839 (1971)) and will conserve "the limited resources" of the Board (*United Technologies Corp.*, 268 NLRB 557, 559 (1984)).

C. The Alleged Unlawful Threat

Anthony Egnoto, a staff organizer for the United Steelworkers of America, AFL-CIO, was helping the Union service the collective-bargaining agreement. He had become increasingly annoyed by what he viewed as the cavalier way in which the Respondent rejected the Union's grievances. On November 13, 1992, he informed the Respondent's production manager, Richard Gozigian, that the Union was considering setting up an informational picket line outside the plant during the period in which the Respondent would be meeting with its customers, who are apparently independent sales representatives. Egnoto also told Gozigian that the Respondent and the Union should start working together to resolve the grievances, that maybe Gozigian would listen to his customers, and that picketing was one of the options the Union was considering.

On that same day, the Respondent's president, George Bagnall, wrote the following letter to Egnoto, and he sent copies to all the unit employees:

It has been brought to my attention that you telephoned the Company today and made statements indicating that you, and possibly certain employees of Hoffman, intend to engage in various activities designed to harass, embarrass, and attempt to hurt our Company's business relationship with numerous customer representative who will be meeting with the Company during our national sales conference in the next few days.

The Company views such threats, if put into action, as very serious and an attempt to undermine our business. Furthermore, any action designed to denigrate this Company in the eyes of our customers would be a clear violation of Article XXVIII of our collective bargaining agreement with your Union. We are currently consulting with our legal counsel and will take whatever legal action is appropriate, including a labor board charge, a defamation suit against your union, and possible dis-

ciplinary action up to and including discharge against any employee involved in such activity, in the event you proceed with your threatened actions.

I urge you and our employees to reconsider your threats and cease and desist from taking any action designed to disparage our Company in the eyes of our customers.

In *Eastex, Inc. v. NLRB*, 437 U.S. 556 (1978), the Court held that employees do not lose their protection under the "mutual aid or protection" clause of Section 7 of the Act when they seek to improve terms and conditions of their employment or otherwise improve their lot as employees through channels outside the immediate employee-employer relationship. The Respondent's employees, under this holding, would be protected by Section 7 when informing the Respondent's customers of their complaint that the Respondent has not dealt with the Union in good faith respecting their grievances. The Respondent's attempt to characterize such conduct as analogous to that found unprotected in *NLRB v. Electrical Workers IBEW Local 1229*, 346 U.S. 464 (1953), fails as that case is factually inapposite to the instant case. Here, Egnoto informed the Respondent that the Union intended to convey the employees' concerns as to a matter integral to the Union's collective-bargaining relationship with the Respondent, a factor critically missing in the *Electrical Workers IBEW Local 1229* case.

Bagnall's letter indicated that any employee who would follow Egnoto's lead would thereby violate the provisions of article XXVIII of the collective-bargaining agreement. That article reads:

All members of the Union shall individually and collectively perform faithful and efficient work to the best of their ability and shall cooperate with the Company and with the employees of their own and other departments in promoting and advancing the welfare of the Company at all times.

I see no basis to find a conflict between the activities proposed by Egnoto and the language of that article. At best, the Respondent might have contended that article XXVII implies a waiver by the Union of its right to engage in informational picketing but such a contention would fail as it is well settled that a waiver of employee Section 7 rights must be clear and unequivocal. *Food & Commercial Workers Local 1439 (Rosauer's Supermarkets)*, 293 NLRB 26 (1989). Bagnall's letter, rather, is an unlawful restriction of those employee rights. Cf. *Southern Maryland Hospital Center*, 293 NLRB 1209, 1222 (1989), in which the Board held that the employer there violated the Act by prohibiting "derogatory attacks" by its employees upon hospital representatives.

I therefore find that the Respondent, by Bagnall's letter of November 13, unlawfully threatened its employees with discharge, and with other reprisals, if they attempted to exercise their rights under Section 7 of the Act to publicize to the Respondent's customers their view that the Respondent is not fulfilling its bargaining obligation towards the Union as to the grievances it has filed on behalf of unit employees.

D. *The Alleged Bad-Faith Bargaining*

1. The contentions and background data

The complaint alleges that, since April 1992, the Respondent has failed to bargain collectively with the Union concerning grievances. The General Counsel contends that the Respondent has long pursued a strategy of evading settlement of every grievance in order to undermine support for the Union. As discussed further below, the General Counsel offered extensive background testimony in connection with that contention.

The Respondent denies that it has been bargaining in bad faith. It asserts that it has met with the Union, discussed the grievances, given consideration to the concerns raised by the Union, and determined that all those grievances lacked merit.

A good part of the background evidence offered by the General Counsel overlaps evidence presented at the hearing in 1990 in the prior case involving these same parties, reported as noted above at 312 NLRB 349.

In the interval 1983–1988, the Union had filed an average of nine grievances a year. A new 3-year collective-bargaining agreement became effective on January 1, 1989. There were 19 grievances filed in the first 7 months of 1989, most of which related to overtime pay.

On July 31, 1989, George Bagnall became the Respondent's president. In the remaining 5 months of 1989, 53 grievances were filed. In 1990, 106 were filed; in 1991, 86; and in the last period for which figures were given, i.e., the first 10 months of 1992, 47 grievances were filed. The Respondent has stated that the Union had undertaken a campaign of filing frivolous, harassing grievances. In effect, the Respondent argues that it has responded to such tactics by the Union by applying the grievance provisions precisely as set forth in the collective-bargaining agreement. The General Counsel disputes the assertion that the Union has engaged in such tactics and argues that there is no persuasive evidence thereof in the record. The issue arising from these contentions is tangential to the critical issues in this case, which is whether the Respondent, vis-a-vis the grievances, was engaged in hard, lawful bargaining or whether it discussed them with the Union with a fixed mind, to reject all regardless of potential merit.

The prior case involving those same parties arose with the filing of an unfair labor practice charge by the Union on December 28, 1989. The complaint therein alleged that the Respondent, in late 1989, had engaged in various unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. One of those allegations was that the Respondent has refused to abide by the settlement of a grievance. Judge Buschmann recommended dismissal thereof. The Board, in the absence of exceptions to that recommendation, adopted it pro forma. There was no issue in that case as to the matter now before me—the alleged summary rejection of the grievance procedure by the Respondent. Indeed, the General Counsel asserts that the evidence thereon did not surface until 1992.

Another collective-bargaining agreement was reached, effective for 3 years beginning January 1, 1992. That agreement, and its predecessors, contained the following grievance-arbitration provisions. It consisted of a union steward discussing a potential grievance with a foreman. Step two involved the presentation by the Union of a written grievance

to the Respondent's production manager who must, within 10 days, hold a meeting thereon with the Union at which he will present to the Union a written reply. Step three provided for a meeting between the Respondent's manufacturing manager and other of its officials and a staff representative from the Union's International along with other members of its grievance committee. The contract is silent as to any time limit in which the Respondent is to provide a written step-3 answer; it does provide for arbitration, if no solution is reached within 15 days of the Union's receipt of the Respondent's step-3 answer.

The Respondent pays the Union's stewards, its officers, and grievance committee members, all of whom are employed by the Respondent, their wages for the time they spend in processing grievances through the steps described above.

2. The evidence pertaining to the alleged bad-faith bargaining

In April 1989, Richard Schutz was hired by the Respondent as its manager of manufacturing. He left the Respondent's employ involuntarily in June 1991 after having been demoted earlier that year. He testified under subpoena as a witness called by the General Counsel as did the Respondent's former personnel manager, Linda Becker. I credit their accounts. They impressed me as candid and forthright. For example, Becker acknowledged that the Respondent's president had reason to be upset over what she felt was Schutz' tendency to discuss at length some grievances. Further, Schutz admitted his disappointment with the Respondent's rejection of him as its manufacturing manager but his demeanor indicated that he viewed his rejection in a mature, nonhostile way. Their accounts disclose that, prior to Bagnall's arrival as president on July 31, 1989, they could and did resolve some grievances in favor of the Union and that there was free exchange of views at the grievance meetings, some of which were too extended. Soon after Bagnall arrived, he directed them to clear with him the answers they were to submit to the Union at the various steps. Also, foreman no longer were allowed to adjust grievances at step 1. Rather, they were required to submit written reports to the manufacturing manager. Bagnall, dissatisfied with the number of grievances and the time spent discussing them, directed Schutz and Becker to limit discussions with the Union to an average of 5 minutes per grievance. It reached the point where Bagnall instructed them that, in handling step-2 grievances, they were not even to sit down but that they were simply to hand the Union the Respondent's written answer and to leave immediately. By 1991, the written answers the Respondent provided to the union at step 3 were identical to those given at step 2. The Respondent's representatives at step 3 essentially listened to the Union's presentations and left without making any commitments, but at some point later on, the Respondent gave the Union its written answer which, as noted above, invariably denied the grievances with language verbatim to that in the answers to step 2. There was but one exception. Schutz testified that, as to one grievance, he recommended to Bagnall that the Respondent make a concession, to which Bagnall authorized a partial adjustment. In doing so, Bagnall told Schutz that, if the Union rejected that offer, he was to bury that grievance with all the other grievances. Schutz' testimony was that Bagnall was "very ada-

mant . . . that time was on (the Respondent's) side, that (the Union will) drop more (of the grievances) than they'll take to arbitration . . . (that the Respondent) will beat them on time and money." Schutz' account was to the effect that Bagnall felt that the Union would run out of money and that it would not get much support from its International.

Michael Berger, the staff representative of the Union's International, who was handling the grievances at step-3 meetings, testified credibly that, at the next to the last such meeting he attended, he asked Schutz if he was able to settle there and then a grievance if he, Berger, could prove that the Union was 100-percent right. Schutz replied that they should just continue with the grievances and that he would get back to Berger with the answers.

Berger was replaced in July by International Staff Representative Anthony Egnato.

On July 16, September 15, and twice in December, Egnato and union officials met with Richard Gozigian, the Respondent's production manager. Egnato and Gozigian testified as to those meetings. At the July 16 meeting, Egnato withdrew the first grievance that the Union brought up. Egnato testified that he did this in the expectation that the Respondent would modify its approach, as it was reported to him by his predecessor, Berger. Egnato then read the second grievance and presented the Union's contentions thereon, relying on language in the collective-bargaining agreement. He proceeded to read and present the Union's position as to about 15 to 18 grievances. As to some of those grievances, Gozigian responded by stating Respondent's contentions, which were based on information it had obtained from its own investigations, including reports of its foreman. As to the other grievances read them by Egnato. Gozigian then informed Egnato that the Respondent would submit its step-3 answers in writing. Egnato, at one point, told Gozigian that he had authority on behalf of the Union to settle grievances there and then. He asked Gozigian if he had authority on behalf of the Respondent to do the same. Gozigian replied that the question was not pertinent to the discussions they were having as to the grievances. Egnato lost his temper and later in the meeting apologized for having used intemperate language in expressing his sense of frustration. The same basic format took place at the other three step-3 meetings held in 1992. None have been held since. Gozigian testified that the Respondent found no merit to any of the grievances brought up at those four meetings and had no reason to change any of its step-2 answers thereto when it presented the Union with its step-3 answers. With respect to the grievances discussed on July 16, Egnato wrote Gozigian on July 28 to state that he had not received answers to those grievances; on August 16, Gozigian wrote Egnato that they had not, on July 16, discussed the other open grievances and he advised Egnato to call to schedule another step-3 meeting.

None of the 133 grievances filed by the Union in 1991 and 1992 was resolved in its favor and, at most, only one of the 106 that had been filed in 1990.

As to the grievances processed in 1992, the Respondent's respective answers at step 2 were identical to its step-3 answers to the corresponding grievance. For example, grievance 449 was filed by the Union on May 1 which asserted that the Respondent disallowed a union steward from investigating a grievance, in violation of the collective-bargaining agreement. On May 8, Gozigian handed the Union its step-

2 answer which read, "Company is following the statutes of the grievant procedure. Grievant has not been denied any of his rights as steward. Grievance denied." On June 2, the Union requested a step-3 meeting thereon. On September 30, sometime after the meeting had been held, the Respondent gave the Union its step-3 answer to that grievance. That answer was identical in wording to the step-2 answer.

In 1990, after the hearing closed in the prior case discussed above, Bagnall met with the staff representative from the Union's International, and with the Union's grievance committee. They reviewed a number of the grievances then outstanding and reached accord thereon. The next day, however, the Union's president disagreed with the staff representative of the International as to the terms of the settlement reached. Since this retraction, Bagnall has not offered to meet again with the Union.

Mickey Berger, the International staff representative, has resumed his duties respecting the unit of employees involved in this case. As of the date he testified at the hearing before me, he has not participated in any further step-3 meeting with the Respondent.

There are secondary factors to the issue of the Respondent's conduct concerning the Union's grievances. On the one hand, the Respondent and the Union have peacefully reached agreement on renewal contracts in 1988 and 1991 and, in that context, the Respondent has not sought modification of its obligation to continue paying union officials and other unit employees for time spent in processing grievances. On the other hand, the Board has found, in the prior case, that the Respondent unlawfully issued a warning to a union steward and refused to honor the Union's request for timecards needed for a grievance. And, as found herein, the Respondent unlawfully threatened employees to bar them from protesting the Respondent's conduct as to grievance processing. The evidence in the record as to Bagnall's having adjusted grievances with the Union in 1990 and the Union's renegeing thereon can be viewed in differing ways. The Respondent's experience with the Union then could reasonably tend to give the Respondent pause in adjusting the Union's grievances. The meeting that Bagnall conducted with the Union, however, also suggests that not all the Union's grievances lacked merit, as the Respondent asserts.

It is well settled that an employer is obligated under Section 8(d) of the Act to meet with the employees' bargaining representative to discuss its grievances and to do so in a sincere effort to resolve them. See *Beverly California Corp.*, 310 NLRB 222, 224 (1993). See also *Storall Mfg. Co.*, 275 NLRB 220, 225 (1985), and *Arkansas Rice Growers Assn.*, 171 NLRB 75, 76 (1968).

The credited evidence is that the Respondent has barred its foreman from making any effort to adjust a potential grievance, thereby virtually having forced the Union to file a written grievance and to go to a step-2 meeting. At that meeting, the Respondent longer allowed for any possible give-and-take discussion, did not even permit its representative to sit down but required him to deliver to the Union its written response to the grievance, again forcing the Union to proceed to the next level. At the step-3 meeting, the Respondent's representative has on occasion elaborated as to the basis for its step-2 answer but, for the most part, he listened to the Union's assertions and advised that an answer will be forthcoming. At some time subsequent, the Respondent has fur-

nished the Union with a denial of the grievance couched in the verbatim language with which the grievance had been denied at step 2.

The credited evidence also discloses that the Respondent has used this format in furtherance of its effort, in view of its own resources, to bury the whole grievance procedure bankrupting the Union's meager treasury in arbitral expenses. I find that such an approach by the Respondent is diametrically opposed to and thus violative, of its statutory obligation to make a sincere effort to adjust the Union's grievances.

E. The Alleged Unlawful Refusal to Furnish Information

1. As to the Sgroi grievance

The complaint originally alleged that the Union made a written request of the Respondent for production records as to the work to which Joseph Sgroi was assigned to perform when he was directed to shave his face. The Union had filed a grievance that the Respondent's order to Sgroi was unwarranted as he was then doing a job which did not require him to wear a mask, the wearing of which required a clean-shaven face. The Respondent's answer to the complaint denied that the Union requested those production records. The General Counsel amended the complaint at the hearing to allege that the Union's request was made orally and offered the testimony of the Union's president, James Gray, in support thereof. He testified that he asked the Respondent's production manager, Richard Gozigian, at a step-2 meeting for a copy of the Respondent's respiratory program to determine if a clean-shaven face was required for a mask to fit properly and that he also asked for Sgroi's timecards. He acknowledged that the Respondent provided the requested copy of the respirator program but has not responded to the request for the timecards. The Respondent demonstrated that another member of the Union's grievance committee, not Gray, had submitted a request for the respirator program and that that request, which was honored, was in writing. Gray also had testified that the Union's practice was to make such requests in writing. Gozigian denied that Gray had requested Sgroi's timecards. I find unpersuasive Gray's account that he orally requested Sgroi's timecards and that there is, therefore, no merit to this allegation of the complaint.

2. As to Johnson's grievance

The Union asked for copies of certain forms, designated as "C-2's" which the Respondent filled out and sent to its workers' compensation insurance carrier in anticipation of the claim later filed by Johnson. The Respondent contested that claim. The Union's grievance asserted, in substance, that it needed the C-2's as to Johnson to resolve the grievance that the Respondent's rejection of Johnson's claim was violative of certain articles of the collective-bargaining agreement. The Respondent refused to furnish to the Union the requested C-2's on the ground that Johnson can get them from its insurance company and also on the ground that, as to the Union, the C-2's are confidential information furnished to the insurance company and to which the Union is thereby not entitled to receive. I find no merit in these contentions of the Respondent as it is obligated to furnish relevant grievance data, see *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967);

and as the Respondent's claim does not outweigh the Union's need for it. See *Pennsylvania Power & Light Co.*, 301 NLRB 1104 (1991). I thus find that the General Counsel has shown that the Respondent has failed to meet its obligation to furnish relevant grievance data, requested by the Union.

3. As to Casson's grievance

The Union had asked Gozigian for copies of bids by employees for a first aid position. Gozigian testified that he told the Union there were none. The Union then wanted to know how Bryant, the employee in that position, had gotten that job. Later, Gozigian located Bryant's bid but did not give it to the Union as the Union did not make another request therefor. I find that the General Counsel has sustained the burden of proving that the Respondent has failed to meet its obligation to honor the Union's request for copies of job bids for that position.

4. As to head sundry clerk grievance

The Union filed a grievance seeking compensation for employees who did the work of a head sundry clerk. Gozigian replied that, for an employee to be paid at that rate, the contract required that employees must take a test to qualify. Gray, apparently to challenge that assertion, asked for a copy of the test. Gozigian said that he did not know if such a test existed. Later, Gozigian was unable to find such a test but he never told this to the Union. I find that the Respondent, by Gozigian's failure to respond to the Union's request as to whether such a test existed, failed its duty to bargain collectively thereon.

F. The Alleged Unilateral Changes

1. The deferral issue

As noted earlier, the Respondent had sought to defer these allegations to the arbitral procedures of its contract with the Union. In view of my finding above that the Respondent has failed in its duty to bargain collectively with the Union respecting the many grievances filed, deferral is unwarranted. See *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063 (1973).

2. As to the Union's interviewing witnesses concerning grievances

The initial step in the grievance procedure involved a grievant meeting with a union steward. The Respondent has paid these employees during their meeting. On occasion, the steward had discussed the matter with another employee or with a union officer and again, all these employees were paid by the Respondent for their time. In April 1992, the Respondent's manufacturing manager, Gozigian, became upset when union officials were spending what he viewed as an inordinate amount of time discussing the presence of a contractor doing repair warranty work in the building. He told them that if they insisted on continuing, the Respondent would not pay them for any additional time. The Union later filed a grievance contending that the work should have been done by a unit employee. It filed a second grievance protecting Gozigian's order. In later discussions on these matters, Gozigian stated that the Union has no right under the contract to interview witnesses prior to step-3 grievance meet-

ings. The Respondent asserts that it has never instituted a rule barring a steward from talking with an employee, other than the grievant, while investigating a grievance. The credible testimony establishes, in any event, that it was unusual for a steward to talk with employees other than a grievant at step 1.

I find that the evidence is insufficient to establish that the Respondent has made a unilateral change in the grievance procedure. This finding obviously does not pass upon the merits of the Respondent's contention that its allowing the Union a reasonable time to talk with employees at other than the grievant is not a contractual right of the Union. It is simply a finding that the Respondent has had a practice of allowing the Union at step 1, a reasonable time at the Respondent's expense to investigate a grievant's claim and that the General Counsel has not proved a unilateral change thereof.

3. As to the head sundry clerk wage rate

The General Counsel contends that the Respondent unilaterally changed the contract, which provided for a wage rate of \$12.58 an hour for a head sundry clerk, when it paid employee David Cree the sundry clerk rate of \$12.47 when he filled in for the head sundry clerk who was then on vacation. The Respondent asserts that it has not changed the contract rate. It appears that the individual who is classified as the head sundry clerk receives the \$12.58 rate and the sundry clerk receives \$12.47. Cree was temporarily assigned to perform sundry clerk duties during a plant shutdown. He was the only such clerk then. The Respondent has had an inconsistent practice with respect to the wage rate paid to employees performing sundry clerk duties in such circumstances—paying one at the head sundry clerk rate and another at the lower rate.

I find that the evidence is insufficient to establish that the Respondent has effected a unilateral change in the contract wage rate.

4. As to the attendance policy

In August, an employee, Cree, was notified by the Respondent that he was being charged with two violations of its attendance policy. Apparently Cree had not called the Respondent one day to notify it that he would not be at work that day and he did not report for work that same day. The Respondent issued him one attendance violation for not calling in and another for an unexcused absence. The Respondent in 1990 has issued a written attendance policy and held a meeting with its employees then at which various questions were raised, seeking clarification. There is conflicting testimony before me as to how that policy was to be construed. A reading of that policy sustains, in good part, the Respondent's position that an unexcused absence is to be counted as a separate violation from failing to call in. The policy also provides that "an occurrence" is a single violation, whether one day or more.

I am unable to find from the evidence proffered by the General Counsel that the Respondent had an established policy since 1990 whereby it charged an employee with only one violation when that employee failed to call in on a day to state he would not be at work and also failed to come to work that day. Thus, the evidence is insufficient to find that

the Respondent had unilaterally changed its attendance policy by its discipline of Cree in August.

5. As to work assignments

The General Counsel contends that the Respondent unilaterally modified its collective-bargaining agreement with the Union by having used a supervisor to do unit work on overtime instead of offering the job to employee Milton Johnson who had been trained for that work. The work involved was inspection work. Johnson, an assembler, had completed an inspection training program in the 1970s and last performed that type of work in about 1991. His name appeared on a list of trainees for inspection work. The Respondent offered Gozigian's testimony that it first offered that overtime job to its inspectors and then to those on its list of qualified inspectors, all of whom declined to work overtime. Gozigian testified that, because there was an emergency, a supervisor then did the inspecting work. In denying a union grievance as to this job, the Respondent asserted that had fulfilled its contractual obligation as all "qualified" employees had refused to work overtime. It did not assert then that there had been any emergency.

The fact that the Respondent did not offer the overtime work to a trainee may be a contractual violation but does not serve as a basis for finding that the Respondent unilaterally altered any contractual provision. I, therefore, find that the evidence is insufficient to establish that the Respondent in September had unilaterally changed terms and conditions of employment of the unit employees.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization as defined in Section 2(5) of the Act.

3. The Respondent has engaged in unfair labor practices as defined in Section 8(a)(1) of the Act by:

(a) Threatening employees with discharge and other reprisals if they engaged informational picketing to publicize the Union's contention that the Respondent is not processing their grievances fairly.

(b) The conduct described in the next paragraph.

4. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act by having failed to bargain collectively with the Union in the processing of its grievances and in having failed to furnish information requested and needed by the Union to process grievances.

5. The Respondent has not made unilateral changes as alleged in the complaint or refused to honor any union request for an employee's timecard.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

²If 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.

ORDER

The Respondent, Hoffman Air & Filtration Systems, a Division of Clarkson Industries, Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with discharge or other reprisals if they engage in informational picketing to publicize the contention of their collective-bargaining representative that the Respondent is not processing their grievances fairly.

(b) Failing to bargain collectively with Local Union 4496, United Steelworkers of America, AFL-CIO in the processing of grievances of its employees represented by the Union.

(c) Failing to honor the Union's requests for information necessary to processing grievances.

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

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

(a) Furnish the Union written responses to its requests for "C-2's," bid data, and information as to the existence of a head sundry clerk test.

(b) Bargain in good faith with the Union in processing grievances.

(c) Post at its plant in Syracuse, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

³If 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."

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

IT IS FURTHER RECOMMENDED that the allegations of the complaint that the Respondent made unilateral changes in contract terms and the allegations that the Respondent failed to honor the Union's request for our employee's timecards are dismissed.

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 threaten our employees with discharge or other reprisals for participating in informational picketing to publicize their collective-bargaining representative's contention that we have been refusing to process their grievances fairly.

WE WILL NOT refuse to honor requests by their collective-bargaining representative for data needed to process grievances.

WE WILL NOT fail and refuse to bargain in good faith with their collective-bargaining representative in processing their grievances.

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

WE WILL, in writing, furnish Local Union 4496, United Steelworkers of America, AFL-CIO with "C-2's," job bid data and with information as to the existence of a head sundry clerk test that it requested.

WE WILL bargain in good faith with Local 4496 in processing your grievances.

HOFFMAN AIR & FILTRATION SYSTEMS, DIVISION OF CLARKSON INDUSTRIES, INC.