

**Skyline Distributors, a Division of Acme Markets
and District Lodge No. 98, International Association
of Machinists & Aerospace Workers,
AFL-CIO. Case 4-CA-20826**

October 16, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND TRUESDALE

On August 15, 1994, Administrative Law Judge Arline Pacht issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

Contrary to the Respondent's exceptions, we agree with the judge that a bargaining order is necessary to effectuate the purposes of the Act under the circumstances present in this case. As the Supreme Court held in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), "[i]f the Board finds that the possibility of erasing the effects of past [unfair labor] practices and ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue."³ For the rea-

¹The 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.

²In adopting the judge's conclusion that a separate maintenance group is an appropriate unit, we emphasize that, in this case, there is no evidence of interchange between the maintenance and sanitation employees, there have been no recent permanent transfers between the groups, sanitation employees do not naturally progress into the maintenance group, and the maintenance group and the sanitation group each has its own working foreman. We also considered that the maintenance employees: are more highly skilled; receive higher salaries; are provided with uniforms, tool kits, and work benches; and do not regularly work with the sanitation employees.

³A bargaining order issued under these circumstances is, accordingly, to be distinguished from a bargaining order based on unfair labor practices that are so outrageous and pervasive that their effects cannot be eliminated by the application of traditional remedies, with the result that a fair and reliable election cannot be held. *NLRB v.*

sons stated by the judge, we agree that the effects of the Respondent's unfair labor practices continue to have an enduring impact on the unit that is unlikely to be dissipated by application of the Board's traditional remedies.⁴

In this regard, we find no merit to the Respondent's contention that a bargaining order is unwarranted in light of: the absence of prior unfair labor practices committed by the Respondent, the passage of time since the Respondent's unlawful conduct, and turnover in management. Thus, neither the absence of any evidence of prior unfair labor practices nor its assertedly harmonious relations with unions at its other facilities detracts from the fact that the unfair labor practices committed in this case unlawfully undermined the Union's majority support in the unit. Similarly, a bargaining order does not become inappropriate merely because of the passage of time since, as here, the time elapsed is no more than the normal course of litigation. *America's Best Quality Coatings Corp. v. NLRB*, 44 F.3d 516, 522 (7th Cir.), cert. denied 115 S.Ct. 2609 (1995). Finally, we reject the Respondent's contention that the departure of one of the management officials involved in the unfair labor practices—Vice President of Labor Relations Bailey—obviates the need for a bargaining order. It is well settled that the propriety of a bargaining order depends on the circumstances existing at the time the unfair labor practices were committed and is not affected by subsequent events. See *Massachusetts Coastal Seafoods*, 293 NLRB 496, 500 fn. 10 (1989). Even if we were to consider the impact of Bailey's departure, we find that a bargaining order would nevertheless remain necessary in light of the small number of employees in the unit and the continuing presence of Vice President DiBernardino, who was principally involved in the unfair labor practices.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Skyline Distributors, a Division of Acme Markets, Lancaster, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Gissel Packing Co., supra at 613-614. Accordingly, it is of no moment that, as the Respondent contends, it may not have committed "hallmark" violations such as mass terminations of unit employees.

⁴In support of this finding, we additionally rely on *Skaggs Drug Centers*, 197 NLRB 1240 (1972), enf'd. 84 LRRM 2384 (9th Cir. 1973).

Timothy J. Brown, Esq., Lisa Y. Henderson, Esq., for the General Counsel.
Robert J. Bray, Christopher J. Murphy, and Amy B. Smith, Esqs., for the Respondent.
William Rudis, Esq., for the Charging Party.

DECISION

PROCEDURAL STATEMENT

ARLINE PACHT, Administrative Law Judge. Pursuant to a charge filed on June 22, 1992,¹ by District Lodge No. 98, International Association of Machinists & Aerospace Workers, AFL-CIO (the Charging Party or the Union), a complaint issued on March 29, 1993, alleging that the Respondent, Skyline Distributors, a Division of Acme Markets (the Respondent, the Company, or Skyline), violated Section 8(a)(1) of the National Labor Relations Act, by soliciting employee grievances and implicitly promising and then granting them benefits to undermine their support for the Union. The complaint further alleges that a bargaining order is required to remedy the effects of Respondent's serious and substantial unfair labor practices. The Respondent filed a timely answer denying that it had violated the Act and contesting the appropriateness of a unit limited to maintenance employees.

This matter was tried on December 6 and 7, 1993, in Philadelphia, Pennsylvania, at which time the parties had the opportunity to present, examine, and cross-examine witnesses, to introduce real evidence and argue orally.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the briefs filed by counsel for the General Counsel and the Respondent, I make the following³

FINDINGS OF FACT

I. JURISDICTION

Skyline Distributors, a Division of Acme Markets, Inc., is a corporation with an office and place of business in Lancaster, Pennsylvania (the facility), has been engaged in the warehousing of supermarket goods. During the past year, in conducting its business operations, Respondent purchased and received materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

¹ All events took place in 1992 unless otherwise indicated.

² In his posttrial brief, counsel for the General Counsel listed corrections to the transcript of the instant hearing. In the absence of objections, thereto, the transcript shall be amended as proposed in G.C. Br. 3, fn. 2.

³ Documents offered into evidence by General Counsel are referred to as G.C. Exh. followed by the appropriate exhibit number; documents offered by the Respondent are cited as R. Exh., and references to the transcript are designated as Tr., followed by the relevant page number.

II. THE ISSUES

As defined by the pleadings in this case, the principal issues to be resolved are:

1. Whether Respondent violated Section 8(a)(1) of the Act by soliciting and promising to remedy employee complaints, and by granting them benefits.

2. Whether a unit that includes only full-time and regular part-time maintenance employees, but excludes sanitation workers, is appropriate.

3. Whether a majority of the employees in that unit, if found appropriate, designated the Union as their exclusive bargaining agent.

4. Whether Respondent's acts are so serious and substantial as to warrant imposition of a bargaining Order.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *The Employees Seek Union Representation*

Local 98 Business Representative Clark Ruppert testified that on or about May 1 he received a telephone call from Norm Ruby, a maintenance employee at Skyline, who told him that his coworkers were dissatisfied with some of their working conditions and wanted a union. Subsequently, Ruby arranged a meeting between Ruppert and six of the seven maintenance employees on May 9.

At the meeting, Ruppert asked the men about their job concerns and why they wanted a union. In response, they complained about a wage freeze, an inequitable pay scale under which employees performing much the same work and having the same seniority received different wages, increased copayments for health insurance, changed vacation scheduling, rules, having to drive their own vehicles on the job without compensation, and a reassignments of shift schedules for two employees.

Ruppert further informed the six employees that the Local could only negotiate on their behalf if the employer recognized the Union as their collective-bargaining representative. He then distributed authorization cards and urged the men to read along, while he read the text aloud, explaining that signed cards would provide proof that they wanted union representation. At the same time, he made it clear that they did not automatically become members of the Union by signing the cards. He then outlined the three methods by which a union may gain recognition: that is, through voluntary recognition, independent verification of a card-based majority, or a secret-ballot election under the auspices of the National Labor Relations Board. All six men signed and dated the cards before returning them to the union organizer.⁴ Ruppert testified without controversion that the employees indicated their interest in expediting the process. Accordingly, he obtained their consent to present the signed cards to the Respondent in seeking voluntary recognition. Two of the employees present, Norman Ruby and Scott Ruhl, volunteered to accompany him.

⁴ A bold red stripe heading each authorization card bore this legend, "YES, I WANT THE IAM." The text read: "I, the undersigned . . . hereby authorize the International Association of Machinists and Aerospace Workers . . . to act as my collective bargaining agent with the company for wages, hours and working conditions." (G.C. Exh. 3(a)-(f).)

Mike Sullivan, one of six maintenance employees present at the union organizing meeting, confirmed much of Ruppert's testimony. Based on union membership at a previous job, and on Ruppert's comments at the May 9 meeting, he understood that signing the authorization card did not commit him to union membership, but would demonstrate "that we were interested in the Union and that we asked the company for recognition was the whole purpose." (Tr. 175.) Scott Ruhl was equivocal in testifying about his understanding of the card's purpose, alleging that he thought it was only to express interest in the Union, but did not necessarily entitle Ruppert to negotiate a contract on the employees' behalf. Ruhl apparently forgot that he encouraged Ruppert to hasten the recognition and bargaining process by disclosing the signed authorization cards to the Respondent.

On May 12, Ruppert, Ruby, and Ruhl met with Skyline Plant Manager Ralph Arnold. Ruppert testified that he handed an envelope containing the authorization cards and a recognition agreement to Arnold, advising him that the maintenance employees had authorized the IAM to represent them. After Arnold examined each card, Ruppert asked him to sign the recognition agreement. Arnold declined to do so, advising Ruppert to see Bill Bailey, Respondent's vice president of labor relations, instead. As soon as the meeting ended, Ruppert drafted a brief statement summarizing what had just occurred, including the fact that Arnold had inspected the cards. Ruby and Ruhl both signed the statement, but Ruhl testified he did so without noting what Ruppert had written.

Arnold denied that he examined each card, maintaining that he merely glanced at one or two before returning them to Ruppert. In a May 13 memo to Vice President for Labor Relations Bailey, however, Arnold wrote that while requesting recognition, Ruppert showed him six signed cards.⁵

As Arnold suggested, Ruppert telephoned Bailey and requested recognition. Bailey replied that Skyline did not grant voluntary recognition, whereupon Ruppert asked him for a letter to that effect.

B. Respondent's May 13 Meeting with Maintenance Men

One day after the Union sought recognition, Bill DiBernardino, Respondent's vice president of distribution services, summoned all seven of the maintenance employees to the first of two unprecedented meetings. DiBernardino testified that the meeting was not a reaction to the Union's appearance on the scene; rather, he alleged that the precipitating events actually began months before Respondent was aware of the Union's presence when the supervisor of the maintenance and sanitation department (MSD) at Skyline, Ron Krystyniak, began to register complaints on behalf of his employees.

⁵ Ruppert's memo, which was verified by Ruhl and Ruby, together with Arnold's admission in his May 13 memo, establishes that he did examine each card, but by the time of the instant trial, apparently concluded that he should not have done so. Whether his scrutiny of the cards was tantamount to de facto recognition of the Union was not an issue in this case. Rather, it is relevant only to the extent that it reveals Arnold's readiness to mold his testimony to the Respondent's interests. Similarly, Ruhl's reluctance to admit at the hearing that he endorsed Ruppert's memo reflects his desire to prove his allegiance to Skyline.

Thus, DiBernardino stated that during one of his regular visits to the facility in late December 1991, or early January, Krystyniak advised him that the MSD employees' pay scale created inequitable disparities in their rates of pay and needed to be restructured. DiBernardino agreed that the matter should be rectified and promised to look into it.

In the latter part of February, Krystyniak raised another problem with DiBernardino; that is, whether a wage freeze announced earlier in the month applied to the workers under his supervision. DiBernardino responded that he did not believe the freeze was intended to cover hourly paid employees and promised to investigate this matter as well.

In fact, at a regular monthly meeting in December 1991, Respondent's executive committee, composed of the Company's most senior executives, including DiBernardino, decided that in order to remain competitive, they would propose a wage freeze during forthcoming collective-bargaining negotiations with several unions representing certain retail employees. At the same time, the executive committee reasoned that management level employees also should accept a wage freeze to counteract any union arguments of disparate treatment. On February 17, a memo issued over the signature of Henry Hoffman, Respondent's vice president for human resources and a member of the executive committee, which announced that a wage freeze would be in effect throughout 1992 covering not only management officials but "All Acme Weekly Employees."

DiBernardino testified that he later advised Krystyniak that he consulted an administrator in Respondent's salary administration division to determine whether the wage freeze was properly imposed on the MSD employees. However, he received no response. Then, in early May, Krystyniak queried him again about the application of the wage freeze to the MSD employees. DiBernardino said that this time, he telephoned Hoffman himself to urge that he clarify the matter, and on May 11, Hoffman responded to his request with news that nonsalaried employees would be exempted from the freeze. DiBernardino claimed that he recalled the exact date and time of Hoffman's call because he felt especially proud that "a lot of hard work paid off here. We were rather tenacious. We wouldn't let this thing die. We finally got this . . . resolved." (Tr. 324-325.)

Labor Relations Vice President Bailey offered a different account of how and when the wage freeze problem was resolved. He testified that soon after the freeze was announced in February, complaints from hourly paid workers about it quickly came to management's attention. Facing increasing discontent, Respondent's president met with the executive committee, including DiBernardino, sometime in April, and decided that the wage freeze policy should apply to management, but not to unrepresented, hourly paid workers. By memo dated April 30, the salary administration division was advised that "Non-union Clerical and Maintenance Wage employees . . . will not be subject to the 1992 management wage freeze." (R. Exh. 2.)

DiBernardino did not refer to the April executive committee meeting in his testimony. Instead, he stated that after speaking with Hoffman late in the day, he telephoned Arnold the next day, May 12, to apprise him of the good news. At the same time, he informed him that the Company was developing a new pay scale system for the MSD and

that he would visit the Skyline facility at some future time to explain these developments to the affected employees.

Later that same day, Arnold telephoned DiBernardino to report that Union Business Agent Ruppert and two maintenance workers had come to his office to demand recognition. Uncertain what effect this unexpected event might have on his intent to inform the maintenance employees about their exemption from the wage freeze and prospect of a new pay scale, DiBernardino consulted Labor Relations Vice President Bailey who advised him that he could speak with the employees as long as he limited his remarks to matters that predated the Union's appearance.

Accordingly, the next day, May 13, DiBernardino and Bailey drove from their offices at Malvern, Pennsylvania, to the Skyline facility, some 45 miles away, to meet with the maintenance employees. Arnold and Maintenance and Sanitation Supervisor Ron Krystyniak also were present. It was the first and only occasion that DiBernardino met with the maintenance crew to discuss work-related problems.

DiBernardino testified that pursuant to Bailey's advice, he confined himself to those matters that management had addressed prior to the Union's advent; that is, increased health insurance premiums, the misapplication of the wage freeze to hourly paid employees, and the development of a new wage scale. With respect to payments for their health plan coverage, DiBernardino, who knew since February of the employees' dismay over the rising cost of health plan contributions, told the men that nothing could be done and that increased premiums were affecting everyone in the Company. He offered, however, to bring Respondent's benefits administrator to the warehouse to explain the various health plan options to them.

DiBernardino said he next turned to the wage freeze, explaining that it was supposed apply to upper levels of management, and had been imposed inadvertently on the MSD and other unrepresented, hourly paid employees. He then informed the employees that the salary administration division was preparing a progressive wage scale and assured them it would be implemented whether or not the employees supported the Union. He also promised to return and explain the new plan as soon as it was ready.

DiBernardino further testified that in keeping with his normal practice, he followed his comments on the health insurance, wage freeze, and pay scale issues, by asking the employees if they had any questions. He recalled that one employee complained about a recently changed vacation-scheduling policy; DiBernardino responded by telling the employees his only concern was to make sure that the work was performed and to referred the matter to Arnold. Before the day ended, management announced that the decision to revise the vacation policy would be rescinded and the status quo restored. Another maintenance worker asked of he could claim reimbursement for mileage when he used his own vehicle to transfer supplies between two of Respondent's warehouses. DiBernardino promptly assured him that established company policy permitted employees to claim reimbursement for such expenditures. Sullivan also complained about his work schedule; telling DiBernardino that after he and Ruby obtained Krystyniak's consent to switch their shifts, Arnold vetoed the exchange. DiBernardino said he again referred this matter to Skyline management to handle in the normal

course. Within the next few days, Arnold reversed himself and permitted the men to exchange shift schedules.

Ruhl and Sullivan corroborated one another in describing the structure of the May 12 meeting and the representations made, but differed with DiBernardino on significant point[s]. Both men recalled that DiBernardino opened the meeting by stating that he understood they had a number of job-related problems, and then invited them to share those problems with him. Ruhl also recalled that DiBernardino assured the men he had no intent to interfere with their union activity, pointing out that he had been a union member himself.

Ruhl testified that in response to DiBernardino's invitation, he complained about the increase in employee contributions to the Company's health plan and the wage freeze that had prevented him from receiving a pay increase on his employment anniversary date. He identified another employee who raised the problem of inequitable wage rate disparities among the members of the maintenance crew. Ruhl and Sullivan also stated that complaints were presented about a change in vacation-scheduling policy, a refusal to permit employees to exchange shifts, and reimbursement for money spent in driving one's own vehicle on company business. In other words, the employees aired the same complaints that they had described to Ruppert. Ruhl noted that he and other maintenance employees had complained to Krystyniak about the pay scale for a number of months and received a stock answer that DiBernardino was working on the problem.

After meeting with the maintenance crew, DeBernardino held a similar session with Skyline's sanitation workers. Other groups of employees in the four facilities under his authority, however, learned from their supervisors that the wage freeze had been revoked.

C. The Second May Meeting

Management held a second meeting with the seven maintenance employees a week after the first. At this time, DiBernardino introduced the new wage scale, producing a chart that showed that hourly rates would range from \$8.50 to \$12.50 for the maintenance staff. In accordance with this scale, which was implemented in early July, Sullivan realized an increase of \$1.40 an hour, his largest single raise since he began working for Respondent.⁶

DiBernardino testified that in the interval between the first and second May meetings, salary administration personnel telephoned him at least three or four times to test ideas as they developed a new wage progression plan. True to his word, when the project was completed, DiBernardino, accompanied by Bailey, returned to Skyline to introduce the new plan to the maintenance employees. Since that time, DiBernardino has visited Skyline on numerous occasions, but has not met again with the maintenance employees. In fact, the May meetings were the only occasions when anyone could recall having two or more senior members of management meet separately with the maintenance employees. Even

⁶Except for a \$1 raise received after completing his probationary period, Sullivan's next largest wage increase was 60 cents an hour. With the exception of maintenance employee Auker who received a 35-cent-per-hour pay raise when the new scale was implemented, the other five men received increases ranging from \$1.60 to \$2.10 per hour. Respondent's total yearly cost for these wage hikes was \$18,824.

Krystyniak had not attended a meeting like this during his 5-year tenure at Skyline.

D. *The Maintenance Workers Reject the Union*

On the evening of May 13, Union Agent Ruppert telephoned Ruby and learned of the special meeting that Respondent's officials held with the maintenance staff earlier that day. At the end of their phone call, Ruppert suggested another meeting with the employees. Eventually, one was scheduled for May 30. Shortly before that date, however, Ruhl telephoned Ruppert to cancel the meeting, informing him that the employees no longer wanted union representation because Respondent's senior executives had met with them a second time and promised to resolve most of their problems. Following this call, Ruppert telephoned employees Ruby and Michael Sullivan, both of whom had responses similar to Ruhl's. In the following months, Ruppert tried to contact various employees on several occasions without success.

After management promised the maintenance workers a new pay scale, which conferred substantial raises, exempted them from the wage freeze, and reversed several decisions affecting vacation and shift scheduling in response to employees' requests, the maintenance workers rapidly lost interest in the Union. Sullivan acknowledged that after the second meeting with management, he was convinced that DiBernardino was a "straight shooter," and decided he no longer needed union representation. Ruhl claimed that he never wholly embraced the Union; that he had signed the authorization card simply to register interest in the Union; when Ruppert began to pester him with incessant phone calls, he became completely disenchanted. Apparently, Ruhl had a low tolerance for pests, for by his own account, he spoke with Ruppert only once on the phone. After that, Ruhl conceded that Ruppert tried to contact him only one or two more times. Ruhl ended these even these few overtures by leaving a curt message with Ruppert's secretary: "Nobody wants to be bothered with you." (Tr. 298.)⁷ This was the last communication Ruppert received from any of the maintenance men.

E. *The Appropriate Unit Question*

Six of seven maintenance men signed authorization cards, thereby providing the basis for the Union's demand for recognition. The Respondent challenges a separate unit for maintenance workers, contending that they are wholly integrated into a single department with sanitation employees. The description set forth below of the duties and working conditions of the employees in the MSD synthesizes the testimony of three witnesses—maintenance employees Ruhl and Sullivan, and their supervisor, Krystyniak.

At Skyline, maintenance and sanitation employees were administratively assigned to the same department under one supervisor. At Skyline, however, each group had its own foreman, who after receiving assignments from Krystyniak, distributed them to the members of his crew.

In some respects, maintenance and sanitation workers shared similar working conditions. Thus, workers from each both groups were assigned to each of three shifts; although

on the early morning shift, the sanitation employees arrived one-half hour earlier than the maintenance men. Both sets of employees log in on the same timeclock; one of three in the facility eat in the lunchroom and use the locker room available to all warehouse employees. Both maintenance and sanitation employees are eligible for the same benefits offered to other unrepresented workers and are paid in accordance with wage scales that are similar in concept, but not in actual earnings. Under the progressive rates implemented in July, the maintenance men started at \$8.50 with a ceiling of \$12.50 an hour, whereas the sanitation pay scale began, as it previously did, at \$6 an hour, with a maximum of \$8.40. The maintenance and sanitation foremen earned \$13 and \$11 per hour respectively.

Occasionally, maintenance and sanitation workers worked together on special projects. For example, a maintenance and sanitation employee might complete a painting job, clean up a major spill if a pipe burst, or biannually clean hydraulic equipment below the shipping and receiving docks. All MSD employees changed lightbulbs now and then. Maintenance employees also did some cleaning, but it usually was limited to their own work areas. Ruhl and Sullivan, the only MSD employees called as witnesses, testified that they rarely worked with sanitation employees. For Sullivan, it was no more than one percent of the time. I credit the testimony of these two employees about the nature of their assignments. Both men, Ruhl more so than Sullivan, tempered their testimony whenever possible in an effort to align themselves with their employer. Yet, in spite of themselves, they could not refrain from describing significant differences between their own work and that of the sanitation employees.

Not only did they perform different tasks and rarely work with sanitation personnel, the maintenance employees were skilled mechanics and electricians who performed fairly complicated and technical work, while the sanitation workers were unskilled laborers engaged primarily in cleaning chores.⁸ Maintenance workers rebuilt equipment, repaired truck motors, conveyers, and gear boxes. One of the six who had particular expertise in electrical work was assigned to such tasks as laying conduit and changing ballast. Some maintenance men were adroit plumbers, while Ruhl received out-of-state training twice and special on-the-job training to maintain nine turret trucks, large, sophisticated, and costly machines that plucked merchandise from the warehouse shelves. Servicing these vehicles involved knowing how to program a computer that guided the vehicle electronically. These skilled workers also shared responsibility for preventative maintenance on trucks and machinery.

From time to time, a sanitation worker was assigned to work with a maintenance employee who was engaged in preventative maintenance, but typically, his role was that of a helper. For example, a sanitation employee might assist a maintenance worker move a piece of heavy equipment. Significantly, Ruhl testified that no sanitation employee has ever assisted him with electrical or plumbing work. He trained fellow maintenance employee Ruby to work on the turret trucks, but never trained a sanitation employee for any purpose. In fact, other than being certain that none of the sanita-

⁷ Ruhl previously testified that his message to Ruppert was "Nobody wants to be bothered with it." (Tr. 292.) Apparently, the "it" was a reference to the Union.

⁸ Sanitation employees were not assigned janitorial work that Respondent subcontracted out.

tion employees could perform his job, he was unable to describe what they did do.

The fact that maintenance employees were responsible for tasks requiring skill and experience explains why they earned more than the sanitation workers. It also explains why no sanitation worker substituted for a maintenance employee during his absence, and why the Respondent furnished the maintenance but not the sanitation employees with tool kits. In fact, some of those in maintenance supplemented the Company's tools with their own. Ruhl for one, testified that he invested more than \$4000 in his own equipment. Each maintenance employee had an assigned place at a workbench in the maintenance shop where he spent approximately 50 percent of his time on a typical day. The balance of the shift was devoted to assignments throughout the warehouse. The Respondent supplied and laundered uniforms for the maintenance staff because they often worked with greasy or oily machines.

In contrast, the sanitation employees, who were in the maintenance shop perhaps 10 percent of the day; were not assigned to workbenches, did not supply their own tools, and were not furnished uniforms. They were known to borrow tools from the maintenance workers, but did not use the more sophisticated equipment such as the lathe, auger, drill press, grinder, and band saws.⁹ The bulk of their day was spent in general cleaning assignments throughout the warehouse. One of the nine sanitation men operated a baler—a machine that bales scrap cardboard from the warehouse production lines; another used a scrubber. Both pieces were serviced and repaired by their operators in the event of a breakdown and stored just outside the maintenance shop. The rest of the sanitation crew were responsible for maintaining the brooms, shovels, and mops that they used, but this entailed little more than changing sponges in squeegee mops. This lighter equipment, together with cleaning supplies, was stored in a small cubicle in the maintenance room. Because the work of the sanitation employees required far less skill than that needed to perform most maintenance work, they had a lower pay rate.

Krystyniak maintained that when he became the MSD supervisor, he revised assignments in order to integrate the two groups of employees. Yet, while claiming that several sanitation employees were competent enough to transfer to the maintenance crew, he conceded that only one man ever made that leap, and that was in 1987 before he arrived at Skyline. Sullivan added that no one in maintenance has transferred to sanitation, since such a move would be considered a demotion. Indeed, to assign employees who earned from \$8.40 to \$12.50 an hour to the same tasks as those who received from \$6 and \$8.50, would have been a senseless misuse of the Respondent's funds.

IV. DISCUSSION AND CONCLUDING FINDINGS

A. Respondent Unlawfully Solicited and Promised to Remedy Employee Complaints

This is not a case in which an employer is accused of taking adverse action against employees to vitiate their adherence to a union. The complaint alleges no unlawful dis-

⁹ At one point, Krystyniak suggested that a sanitation employee might use the lathe, but later retracted this statement.

charges, no threat of plant closure, no intrusive interrogations or surveillance. To the contrary, the Respondent's agents are accused of acting benevolently; high-ranking management officials are charged with meeting with the employees, sympathetically eliciting their complaints, and promptly resolving most of them. The Board has not hesitated to declare such conduct unlawful when benign conduct and the bestowal of benefits has the same intended purpose as a blatant display of power; that is, to subvert the employees' support for a union. See, e.g., *Columbus Mills*, 303 NLRB 223 (1991).

The Act does not proscribe employer-sponsored meetings, however, nor does it prohibit an employer from soliciting and remedying grievances during a union drive if there is a past practice of engaging in such conduct, and where in doing so again, the employer does not intend to subvert the employees' interest in union representation. See, *Mariposa Press*, 273 NLRB 528, 529 (1984); *Wm. T. Burnett & Co.*, 273 NLRB 1084, 1086 (1984); *Uarco*, 216 NLRB 1, 2 (1974). Further, an employer may grant an existing benefit or announce a new policy, as long as a commitment to do so was made prior to the Union's organizational effort. See, *House of Raeford Farms*, 308 NLRB 568, 569 (1992). Conversely, an employer may not invoke past practice to justify soliciting employee grievances when the method of solicitation alters significantly during the union campaign. Id.

In light of these precedents, the critical question to be resolved here is whether Respondent solicited and promised to remedy the maintenance workers' complaints in a manner that significantly deviated from former practice, with the intent to undermine the Union, as the General Counsel contends, or solicited the employees' complaints, as was DiBernardino's custom, and provided remedies consistent with management decisions made before the Union demanded recognition, as the Respondent claims. For the reasons set forth below, I conclude that company officials conducted unprecedented meetings with the maintenance employees, sympathetically solicited their complaints, bestowed benefits, and promised remedies as an antiunion stratagem.

This conclusion rests in part on the curious timing between various events. One day after the Union's business agent requested recognition on the basis of authorization cards signed by six maintenance employees, Respondent's chief executives, joined by the MSD supervisor and the highest ranking official at the warehouse, held a hastily called and unprecedented meeting with all seven maintenance men. This was done, allegedly, so that they could personally deliver good news. Although the employees had complained for months about the issues, Respondent never before had held a similar meeting with them, nor had it addressed the employees' long-standing complaints, until jolted into action by the Union's demand for recognition.

Contrary to Respondent's claim, the May meetings had no parallel in DiBernardino's prior conduct with employees. He never met with the maintenance staff before May 13 and after May 21, did not meet with them again. In fact, Sullivan was employed by Respondent for more than 3 years and yet, did not know who he was prior to the first meeting. Even Krystyniak had not attended a meeting with DiBernardino or Bailey prior to this time. Thus, while DiBernardino may have invited employees to talk to him freely as he toured the shop floor, or invited questions at union meetings, those situations are unlike a meeting at which high-ranking officers of the

Company elicit work-related problems from a specific category of employees who just a few days earlier had authorized a union agent to represent them.

DiBernardino went to great lengths to establish that the May 13 meeting was scheduled fortuitously, just after he learned from Hoffman that the employees would be exempted from the wage freeze; and thus, had nothing to do with the employees' union activity. This attempt to justify meeting with the employees shortly after they designated the Union as their collective-bargaining representative was wholly unconvincing. The truth, as Bailey's testimony and Respondent's own exhibit show, is that the decision to correct the wage freeze error came about sometime before April 30, at an executive committee meeting in which DiBernardino and Hoffman participated. Having attended that meeting, he had to know that a problem he allegedly tried to resolve for months was, at long last, cured. Bailey's credited explanation of how the wage freeze decision was revoked at the executive committee meeting shattered DiBernardino's boastful claim that he spent months trying to unknot the wage freeze dilemma out of concern for the affected employees, and that his efforts were rewarded on May 11 when he finally was assured that the problem was happily resolved.

It is true that Respondent decided to exempt hourly paid employees from the wage freeze before the Union entered the scene. The problem is not with the substance of that decision, but with the timing and circumstances attending its announcement. See, *Columbus Mills*, supra at 228. If Acme's officials had the employees' interests uppermost in mind, and were eager to let them know that the freeze was over, a memo distributed to those affected soon after the executive committee met in April would have sufficed. After all, Respondent saw nothing wrong in introducing the wage freeze to employees by way of a memo. Alternatively, the information could have been communicated by phone to the affected employees' supervisors, the very method Respondent used to relay the news to groups of employees who had not recently indicated a serious interest in a union.

Respondent's claim that it decided prior to May 12 to introduce a new wage scale for the MSD employees is equally difficult to credit. The executive committee decided in December 1991 that it would have to propose a wage freeze in forthcoming negotiations with another union. At the same time, management resolved to impose a wage freeze on all salaried employees to demonstrate its serious commitment to austerity.¹⁰ It defies reason to believe that DiBernardino would seek, or that Respondent would endorse, a new pay scale for unrepresented, hourly paid workers that granted them larger raises than any previously bestowed, while everyone else was told to tighten their belts.

Further, DiBernardino knew for months that the employees were dissatisfied with their pay scale. If a new system was under development before May 12, why would DiBernardino, a regular visitor to the Skyline facility, wait until the day after the Union requested recognition to announce this fact?

¹⁰ Respondent's assertion that the wage freeze was inadvertently applied to hourly paid workers is somewhat suspect in light of its failure to correct that mistake by compensating the employees whose annual raises were withheld during the freeze.

DiBernardino may have thought privately that the MSD pay scale should be revised. Respondent failed to introduce, however, any documentary evidence showing that a corporate decision was made prior to May 12 to restructure the employees' wage plan. If Acme's President had to intervene before the executive committee exempted some categories of employees from the wage freeze, surely, DiBernardino had to obtain executive committee approval to introduce a new pay scale system, especially when substantial raises for employees in four facilities were involved, and a paper trail would have remained.

Moreover, DiBernardino inadvertently revealed that efforts to develop the new scale did not begin until after the Union requested recognition. He testified that in the week following the May 13 meeting with the maintenance employees, salary administration personnel consulted him some three or four times to seek his ideas about a progressive pay scale. If Respondent had directed the development of a new wage structure before the Union was on the scene, the salary administration division's questions to DiBernardino would have been asked and answered before the Union sought recognition.

Thus, Respondent's reliance on *Camvac International*, 288 NLRB 816 (1988), and *Uarco, Inc.*, supra, is misplaced. Those cases that provide that an employer may announce and grant a new benefit to which it has committed itself prior to the onset of a union campaign have no relevance here. The evidence in this case leads to the inference that Respondent ignored the maintenance employees' complaints about their pay rates until they turned to the Union to represent them. Only then did the Respondent respond unlawfully by promising and delivering an enticing new wage progression plan.

B. Other Complaints Unlawfully Remedied

The Company handled the employees' complaints about changes in the vacation scheduling policy and shift transfers just as benevolently as it did the wage freeze and pay scale matters, and just as unlawfully. Respondent submits that because DiBernardino did not participate in resolving these complaints, deferring them instead to Arnold and Krystyniac, with instructions to address them in accordance with normal practice, no liability attaches for improperly soliciting and resolving employee grievances.

Respondent seems to forget that it is as culpable for the wrongful acts of lesser management employees like Arnold, as it is for those committed by senior officials like DiBernardino. DiBernardino's suggestion that Arnold resolve these complaints to the employees' satisfaction, if at all possible, sent the plant manager a clear signal that he was supposed to oblige the maintenance men. Why would Arnold reverse a vacation scheduling policy he had implemented several months before and restore the status quo, or reverse himself and approve a schedule change that he had disapproved just a week earlier, if DiBernardino had not clearly indicated that he was supposed to accommodate the employees' interests. The maintenance team was in contact with these supervisors every day, and yet had not succeeded in obtaining relief until after the Union requested recognition. In these circumstances, I conclude that when DiBernardino solicited and Arnold resolved complaints about changed vacation scheduling policies and inconvenient shift reassignments in order to placate the maintenance men, Respondent violated Section 8(a)(1).

DiBernardino's response to an employee's inquiry about compensation for expenses incurred when he used his own car for business purposes stands on a somewhat different footing. In that situation, DiBernardino brought to the employee's attention an applicable company policy that clearly was approved well in advance of Ruppert's request for recognition. It is noteworthy, however, that the employee was not advised of this policy until the Union was in the picture.

Why did DiBernardino testify that he first learned that the wage freeze was revoked on May 11 when the evidence establishes that he participated in a meeting sometime in April at which the decision to revoke was made? Why would he wait for weeks before announcing this revocation to employees who had complained about the freeze for months? Why would company executives hastily call a meeting and drive 45 miles to conduct it, when most of the information they wished to convey could have been transmitted by phone or in writing, and the rest of it concerned a new pay scale that was so incomplete, it could not be described? Why would DiBernardino tell the maintenance employees that work was underway on a revised wage scale when that work probably did not begin until after May 12? Why were the MSD supervisors so willing to reverse recently made decisions regarding vacation and shift schedules? Why did Respondent's executives meet separately with MSD employees when they never had done so before, and would not do so again prior to the hearing in this matter?

The answers to these questions are not hard to find and require rejection of DiBernardino's claim that these extraordinary meetings with the employees had nothing to do with the Union's demand for recognition when, in fact, they were inspired by the Union's unanticipated emergence. The meetings were held so that the Respondent's agents could resolve the employees' complaints and impress them with their employer's largesse. By engaging in this conduct, which succeeded in wooing the employees away from supporting the Union, Respondent violated Section 8(a)(1) of the Act.

C. *The Maintenance Employees Constitute an Appropriate Unit*

The complaint alleges that the maintenance employees constitute an appropriate unit whereas the Respondent contends that the maintenance and sanitation employees comprise an integrated work force so that a unit that failed to include both categories would be inappropriate.

It is axiomatic that a unit may be appropriate even if it is not the most appropriate one. *Omni International Hotel*, 283 NLRB 475 (1987). Whether a unit composed solely of the maintenance employees at Skyline is appropriate turns on an assessment of whether the maintenance employees share a sufficient community of interest to be grouped together for purposes of collective bargaining. Although not amenable to precise definition or easy application, the Board has identified a number of factors to be considered when this issue arises:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs. . . . the infrequency or lack of

contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.¹¹

On applying these factors to the record developed in this case, it is abundantly clear that the maintenance employees are sufficiently united by work-related interests to justify including them in a separate unit.

The most singular characteristic identifying the maintenance employees is the skilled nature of their work. Employees Sullivan and Ruhl, summoned by subpoena to testify in this case, were hardly eager to appear as government witnesses. Yet, try as they might, neither was capable of concealing the fact that they and their fellow maintenance employees performed skilled and technical work repairing and maintaining complicated machinery that required specialized knowledge and experience. Sullivan and Ruhl must be credited when, in spite of themselves, they testified adversely to their employer's interests about facts within their knowledge. Thus, Ruhl, who strained to distance himself from the Union whenever possible, could not retain that pose when he spoke with pride about the skilled nature of his work. He had considerable experience repairing equipment before coming to Skyline.¹² Respondent sent him for out-of-state training twice, and for 2 years, he received specialized in-house training to enable him to work on the sophisticated Baker trucks. He, in turn, trained another maintenance worker to work with him, but never trained a sanitation employee. In fact, he admitted that he could not even describe the work that such employees performed. No sanitation worker testified that he had special training or expertise before he was hired, or that he received on-the-job training similar to Ruhl's.

By his earnest efforts to respond to questions more fully than was necessary, Sullivan appeared to be a particularly credible witness. Therefore, I attach great weight to his statement that he rarely worked with sanitation employees; when they did join him, it was almost invariably as a helper. Thus, it is fair to conclude that there was no real integration of job functions between the two crews; the maintenance men clearly were distinguished from the sanitation workers by virtue of their qualifications for and skill needed to perform the more complex tasks required of them.

Trying to oblige his Employer, MSD Supervisor Krystyniak testified that he had created a unified and integrated work force by assigning employees from each crew to the same sort of work. He fell far short of his goal. On comparing his testimony with Sullivan's and Ruhl's, the conclusion is inescapable that while maintenance employees occasionally performed some tasks that typically were handled by the sanitation crew, the reverse was not true; that is, sanitation workers did not, indeed, were not capable of performing the skilled repair work performed by the maintenance staff.

Krystyniak further maintained that he did not necessarily seek new employees who had prior maintenance experience; instead, he recruited individuals who were generally capable. Ruhl's and Sullivan's testimony regarding their work experience before coming to Skyline revealed how willing Krystyniak was to distort the truth. The fact that no sanitation worker was promoted to a maintenance position during

¹¹ *Kalamazoo Paper Box Corp.*, 136 NLRB 1715 (1962).

¹² Ruhl maintained bathing pool equipment, which differed from the machinery for which he was responsible at Skyline.

Krystyniak's tenure also undermined the credibility of his testimony. If all new employees were equally capable, no one would accept a sanitation position, since the pay was much lower.

Krystyniak further alleged that sanitation workers used and repaired equipment, implying that their work was similar to that performed by the maintenance employees. The simplicity of the few pieces of equipment, however, which the sanitation workers used and repaired—items like mops or balers—bear no comparison to the more complex machinery for which the maintenance employees were responsible. Krystyniak's efforts to bolster the Respondent's case in this manner were so tortured as to cast doubt on all of his testimony.

Other distinctions between the two groups of employees follow from the difference in their level of skill. For example, in possessing greater skill and experience, the maintenance employees received higher wages. They are supervised by a working foreman who earns several dollars more an hour than his sanitation counterpart. Unlike the sanitation workers, the maintenance men are assigned workbench stations in the shop, are provided tools; and use certain equipment, such as lathes, which the sanitation men do not.

Although the two staffs are assigned to the same shifts, punch in on the same timeclock, and share the same locker room and cafeteria, so too do other groups of employees at Skyline who share no community of interest with either sanitation or maintenance employees. The lack of meaningful interchange among them was signaled by the fact that no sanitation employee substituted for a maintenance worker during an absence or vacation period. The maintenance employees' decision to seek union representation for themselves reflects their understanding that they had separate and identifiable interests that were not shared with the sanitation staff.

The Board found that a group of engineering department employees shared a community of interests where, as here, they employed skills unique to their classification, had prior job-related experience, and earned higher wages than the next highest group. Moreover, there were no instances of employees transferring into or out of that department. The Board concluded that these employees formed an appropriate unit even though they worked sporadically with nonunit employees, received the same fringe benefits, punched the same timeclock and were subject to the same general supervision. *Omni International Hotel*, supra. Accordingly, in light of the credited evidence set forth above, I conclude that a unit composed of the maintenance employees at Skyline is appropriate for collective-bargaining purposes.

D. A Bargaining Order Is Warranted

As found above, Ruppert requested recognition for the IAM on May 11, having obtained valid authorization cards from six of the seven maintenance employees in an appropriate unit.¹³ In rapid-fire order, the Respondent denied rec-

¹³ Ruhl suggested that he misunderstood the purpose of the authorization card, claiming at trial that he thought by signing it, he was simply registering interest in the Union. The authorization card is unambiguous on its face, succinctly stating that the signor designates the Union as its collective-bargaining representative. Moreover, Ruhl volunteered to accompany Rutter to Arnold's office to demand recognition and request bargaining. Having voted during the union meeting to expedite the process leading to collective bargain-

ognition and immediately engaged in conduct that caused the employees to withdraw the support so recently given to the Union. Consequently, the question is whether the Respondent's conduct, coming immediately after the Union's demand for recognition, was sufficiently "egregious and outrageous as to tend to undermine majority strength and impede the election processes" and whether the possibility of erasing the effects of that conduct by the use of traditional remedies is so slight as to warrant a bargaining order. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 613, 614-615 (1969). For the reasons presented below, I conclude that the Respondent's unfair labor practices have made it difficult, if not impossible, to hold a fair election, thereby justifying a *Gissel* bargaining order. Id.

For months, Respondent failed to take any action on the maintenance employees' oft-expressed complaints about the inequity of the pay rate system and the imposition of a wage freeze. Then, 2 days after the Union requested recognition, a senior member of management summoned these employees to an unprecedented meeting, solicited their complaints, and promised remedial action, most of which was forthcoming within a week or two.

Of course, DiBernardino knew precisely what the men's major complaints would be, having heard about them on more than one occasion from their supervisor, and having discussed them with Bailey prior to the meeting. Respondent delivered on its promises. To be sure, the decision to lift the wage freeze was a *fait accompli*; however, the gravamen of the harm was announcing that it would no longer apply to the employees as if that decision just issued, when, in fact, DiBernardino knew about it for weeks. Further, within 2 weeks of the date in which he promised that the wage scale would be restructured, DiBernardino held a second meeting with the maintenance men to introduce a progressive wage scale that significantly increased all but one unit employee's pay rate. DiBernardino also knew for months of the employees' displeasure with increased health insurance premiums. Although he was unable to satisfy the employees' desires for lower payments, he promised to schedule a meeting at which the benefits administrator could advise them about alternative health plans, an action he could have taken many months earlier. These swift responses to solicited concerns that he had ignored for months "suggests an effort by Respondent to ingratiate itself with its employees" in order to impair their relationship with the Union. *Chef's Pantry*, 247 NLRB 77, 81 (1980).

Respondent solicited and promptly rectified other grievances including a reversal of a vacation scheduling policy and a shift transfer between two of the workers. Although less remarkable than conferring generous raises, developing a new wage structure and ending a wage freeze, Respondent began to bestow these less costly benefits at a critical moment—2 days after the Union demanded recognition. The vacation and shift transfer decisions were rescinded by the very supervisor who made them in the first place, at the prompting of senior management officials. Although only a few individuals benefitted, Respondent's sympathetic reaction to their grievances conveyed a message to the entire unit. In short, by responding quickly and generously to the employ-

ing, he cannot disavow the actions he took before he was influenced by the Respondent's unlawful conduct.

ees' complaints, the Respondent successfully signaled the maintenance employees that they had no need to resort to union representation

At first blush, it may be difficult to regard the award to employees of long-sought benefits as egregious and outrageous conduct. Precisely because of their benign character, however, such actions may be more invidious than threats of plant closure, discharges, or other displays of strength. Neither the courts nor the Board are misled by the devious nature of such tactics. See, e.g., *Color Tech Corp.*, 286 NLRB 476, 477 (1987). In *Tower Records*, 182 NLRB 382, 387 (1970), the Board aptly observed:

A unilateral award of a wage increase by an employer following a union's demand for recognition results in giving the employees a significant element of what they were seeking through union representation. It is difficult to conceive of conduct more likely to convince employees that with an important part of what they were seeking in hand union representation might no longer be needed.¹⁴

The employees' defection from the Union was almost as swift as Respondent's reaction to the Union's demand for recognition. The cause-and-effect relationship between these occurrences is crystal clear, notwithstanding Respondent's attempt to blame Ruppert for alienating the workers by misleading them about the purpose of the authorization card, or harassing them when they withdrew their support. Sullivan denied that Ruppert harassed him, explaining that he lost interest in the Union when he was convinced that DiBernardino and Arnold were "square shooters" who kept their word. (Tr. 183, 186-187)

Ruhl evidently was peeved with Ruppert, but for reasons that had no grounds in reality. His refusal to speak with Ruppert, when just a few days before, he voluntarily accompanied him to request recognition from Arnold, demonstrates the success of Respondent's tactics. Ruhl's other statements intended to undermine the validity of his authorization card—that he signed merely to express interest in the Union, and that Ruppert orally contradicted explanations in the Union's printed materials—also must be rejected as distorted reflections of Respondent's unlawful conduct. Even if Ruhl's authorization card is discounted, however, five valid cards, more than a majority of the unit, remain unchallenged.

The final question—whether Respondent's unfair labor practices can be corrected through resort to the Board's traditional remedies—must be answered negatively. The unfair labor practices were committed by senior management officials, with the participation of supervisors immediately responsible for controlling the employees' assignments and future raises. Their acts reached each man in an admittedly small unit when no evidence of turnover was presented.¹⁵ The pay raises bestowed on the employees as a result of the restructured pay scale and wage freeze exemption had to have an enduring impact, not only because of their value to the employees, but also because the Board does not compel

¹⁴ Enfd. 79 LRRM 2736 (9th Cir. 1972). See also *Pembrook Management*, 296 NLRB 1226, 1228 (1989).

¹⁵ This is not to imply that turnover in the unit would justify withholding a bargaining order. See *Astro Printing Services*, 300 NLRB 1028, 1029 (1990).

a respondent to withdraw such benefits. See *Color Tech Corp.*, supra at 477.

A traditional remedy in this case would entail the issuance of an order and posting of a Board Notice to Employees requiring that Respondent promise not to engage in the same or related unfair labor practices committed in the instant matter, and not to interfere with the exercise of the employees' Section 7 rights to organize and join a union. I am not confident that such promises would be observed or effective in light of past experience. DiBernardino's unlawful conduct was purposeful; he knew from the outset that his proposed course of action was improper, and yet acted anyway, after obtaining legal advice. Moreover, at the first meeting, DiBernardino assured the employees he had no interest in interfering with their decisions about union representation, and then proceeded to do exactly that with dispatch.

In these circumstances, the prospect of erasing the effects of Respondent's unfair labor practices and of ensuring a fair election in the unit by the use of traditional remedies is slight. This is a case in which the purposes of the Act, as well as employee sentiment, once expressed through authorization cards, could be served in no other way than by means of a *Gissel Packing Co.*, 395 U.S. 575 (1969), bargaining order; *Astro Printing Services*, supra at 1028.

CONCLUSIONS OF LAW

1. Skyline Distributors, a Division of Acme Markets, Lancaster, Pennsylvania, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. District Lodge No. 98, International Association of Machinists & Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. 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 full-time and regular part-time maintenance employees employed at Respondent's warehouse in Lancaster, Pennsylvania, excluding all other employees including warehouse, sanitation, and clerical employees, and guards and supervisors as defined in the Act.

4. At all times since May 9, 1992, the Union has been and is now the exclusive representative of the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By soliciting and implicitly promising to remedy employee grievances, by unilaterally granting wage increases, instituting a new wage scale, revising employee work schedules, and changing vacation policies in order to discourage its employees from union activities, membership, and support, Respondent has violated Section 8(a)(1) of the Act.

6. Since May 13, 1992, Respondent has failed and refused to recognize and bargain with the Union as the exclusive bargaining representative of its employees in the unit described above in paragraph 3, thereby violating Section 8(a)(1) and (5) of the Act.

7. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, an Order shall be proposed that it cease and desist therefrom and take affirmative actions necessary to effectuate the policies of the Act. Specifically, on request, the Respondent shall be ordered to recognize and bargain in good faith with the Union as the exclusive representative of its maintenance employees, and if consensus is reached, to execute an agreement.

I also shall recommend that the Respondent post a notice to employees in which it promises not to engage in like or related conduct that interferes with, restrains, or coerces employees in the exercise of rights guaranteed by Section 7 of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁶

ORDER

The Respondent, Skyline Distributors, a Division of Acme Markets, Lancaster, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting and implicitly promising to remedy employee grievances, unilaterally granting wage increases, instituting a new wage scale, adjusting employee shift schedules, and revising vacation policies in order to discourage its employees from joining, supporting, or taking part in union activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of 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 request, bargain with District Lodge No. 98, International Association of Machinists & Aerospace Workers, AFL-CIO as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time maintenance employees employed at Respondent's warehouse in Lancaster, Pennsylvania, excluding all other employees including warehouse, sanitation, and clerical employees, and guards and supervisors as defined in the Act.

(b) Post at its Lancaster, Pennsylvania facility, copies of the attached notice marked "Appendix."¹⁷ Copies of the no-

¹⁶If 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.

¹⁷If 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

tice, on forms provided by the Regional Director for Region 4, 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.

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

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

APPENDIX

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

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

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 solicit and impliedly promise to correct employee grievances, unilaterally grant wage increases, institute a new wage scale, adjust employee shift schedules, or revise vacation policies in order to discourage our employees from joining, supporting, or participating in union activities.

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 request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All full-time and regular part-time maintenance employees employed at Respondent's warehouse in Lancaster, Pennsylvania, excluding all other employees including warehouse, sanitation, and clerical employees, and guards and supervisors as defined in the Act.

SKYLINE DISTRIBUTORS, A DIVISION OF ACME
MARKETS