

Airway Maintenance, Inc. d/b/a AMI, Inc. and Window Cleaners Union, Local No. 2, Service Employees International Union, AFL-CIO and Air Transport Local 504, Transport Workers Union of America, AFL-CIO. Cases 29-CA-18211, 29-CA-18232, 29-CA-18525

October 31, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND
TRUESDALE

On February 14, 1995, Administrative Law Judge James F. Morton issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions as modified and to adopt the recommended Order as modified and set forth in full below.²

We agree with the judge that the General Counsel has established a prima facie case under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), that the Respondent refused to hire its predecessor's employees in order to avoid an obligation to recognize and bargain with both Charging Parties, Local 2 and Local 504.

The credited evidence establishes that the Respondent predetermined not to hire any of the predecessor's employees and, in fact, carried out its plan to near perfection. The one discriminatee who somehow "slipped through" despite this policy, Ricardo Barros, was discharged almost immediately on being recognized as an employee of the predecessor. Further, we rely on the following to find a prima facie case: statements by the Respondent's representatives that employees of the predecessor were being denied job applications because they had worked for the predecessor employer; and the consistent refusal by the Respondent's officials

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

²We find merit in the General Counsel's request that the notice be printed and posted in English, Spanish, Polish, and Creole and we shall modify the judge's recommended Order accordingly. In addition, we shall correct the judge's failure to use the proper reinstatement language in his recommended Order, his failure to include the unit descriptions in the recommended Order and notice, and his failure to provide a make-whole remedy for the Respondent's unlawful unilateral changes.

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to speak with union officials despite the Union's repeated attempts.

We also agree with the judge that the Respondent has failed to demonstrate that it would have taken the same action in the absence of the predecessor employees' union affiliation. First, we rely on the fact that no evidence was presented by the Respondent to show that any of the predecessor's employees were not hired for lawful reasons. In fact, the Respondent failed to offer any credible reason why none of the predecessor's employees was hired.³ Furthermore, we agree with the judge, based on the reasons stated by him, that the Respondent's asserted business defense—that it had a policy of hiring employees who had been referred by supervisors or other employees—is false. When the Board finds that the reasons given for an action are false, it may infer that there is another, unlawful reason for the action.⁴ We, thus, infer that the Respondent's refusal to hire the predecessor employer's employees was part of its plan to avoid an obligation to recognize and bargain with the Unions and that it thereby violated Section 8(a)(3) and (1) of the Act by refusing to hire them.⁵

AMENDED REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully refused to hire employees formerly employed by Trans-World Maintenance Services, Inc., we shall order that the Respondent offer those individuals immediate and full employment, without prejudice to their seniority and other rights previously enjoyed, discharging, if necessary, any employees hired in their place. These individuals shall be made whole by the Respondent for any loss of earnings and benefits they may have suf-

³As noted, the one predecessor unit employee who was hired was promptly fired.

⁴*Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466 (9th Cir. 1968).

⁵See *Laro Maintenance Corp.*, 312 NLRB 155 (1993), enfd. 56 F.3d 224 (D.C. Cir. 1995).

We also agree with the judge that the Respondent violated Sec. 8(a)(5) by refusing to recognize and bargain with the Unions and by unilaterally setting the initial terms and conditions of employment.

With respect to the unilateral setting of initial terms and conditions, Member Cohen agrees with the judge's finding that the Respondent had an unlawful policy of avoiding the hire of any of the predecessor's unit employees. In these circumstances, Member Cohen would place the burden of proof on the wrongdoer and would presume that, but for the discriminatory policy, the Respondent would have hired its entire complement from the predecessor's employees. Similarly, the Respondent has not shown that, if it had hired the predecessor's employees, they would have been told that their initial terms and conditions would differ from those prevailing under the predecessor.

ferred because of the Respondent's unlawful refusal to hire them. The backpay period for all discriminatees shall commence on April 15, 1994. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent unlawfully refused to recognize and bargain collectively with both the Window Cleaners Union, Local No. 2, and with Air Transport Local 504, we shall order that the Respondent recognize and, on request, bargain collectively with both Unions with respect to the employees in the appropriate units, and, if agreement is reached, reduce the agreement to a written contract. Additionally, as to both units, the Respondent shall be ordered, on request by the Unions, to rescind any changes made in the terms and conditions of employment that existed immediately before the Respondent's takeover from TransWorld Maintenance, Inc., and to retroactively restore preexisting terms and conditions of employment, including wage rates and benefits that would have been paid absent such unilateral changes from April 15, 1994, until the Respondent negotiates in good faith with Local 2 and Local 504 to agreement or to impasse or the Unions fail to bargain in good faith. The remission of wages shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir 1971), plus interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also remit any payments it owes to any employee benefit funds and reimburse its employees for any expenses resulting from the failure to make these payments in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981).⁶ Any amounts that the Respondent must pay into the benefit funds shall be determined in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Airway Maintenance, Inc. d/b/a AMI, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain collectively with Window Cleaners Union, Local 2, Service Employees International Union, AFL-CIO as the exclu-

⁶To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

sive collective-bargaining representative of its employees in the following appropriate unit:

All window cleaners employed by Respondent at the Delta Airlines facilities at JFK Airport, excluding all other employees, guards and supervisors within the meaning of the Act.

(b) Refusing to recognize and bargain collectively with Air Transport Local 504, Transport Workers Union of America, AFL-CIO as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

All cleaners employed by Respondent at the Delta Airlines facilities at JFK Airport excluding all window cleaners, guards and supervisors within the meaning of the Act.

(c) Unilaterally changing wages, hours, pension and welfare contributions, or any other terms and conditions of employment of its employees in either of the above units, without notifying and bargaining with Local 2 and Local 504 in their respective units.

(d) Refusing to hire, discharging, or otherwise discriminating against employees because of their membership in either Local 2 or Local 504 or to avoid recognizing and bargaining with either Local 2 or Local 504.

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

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

(a) Recognize and, on request, bargain collectively with Local 2 and Local 504 as the exclusive representatives of its respective employees in the above-described units, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed contract.

(b) Rescind, on request by the Unions, any departures from terms and conditions of employment that existed immediately before its takeover from TransWorld Maintenance Services, Inc., and retroactively restore preexisting terms and conditions of employment, including wage rates and benefit plans, and make these employees whole by remitting all wages and benefits that would have been paid absent such unilateral changes from April 15, 1994, until it negotiates with Local 2 and Local 504 respectively to agreement or to impasse, in the manner set forth in the amended remedy section of this decision.

(c) Offer to unit employees formerly employed by TransWorld Maintenance Services, Inc. immediate and full employment, without prejudice to their seniority and other rights or privileges previously enjoyed, discharging if necessary any employees hired in their place.

(d) Make whole all the unit employees formerly employed by TransWorld Maintenance Services, Inc. for any loss of earnings and benefits they may have suffered by reason of the Respondent's discrimination against them, as described in the amended remedy section of this decision.

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

(f) Post at its JFK facility, New York, New York, copies of the attached notice in English, Spanish, Polish, and Creole marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 29, 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.

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

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT refuse to recognize and bargain collectively with Window Cleaners Union, Local No. 2, Service Employees International Union, AFL-CIO as

⁷If 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."

the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All window cleaners employed by us at the Delta Airlines facilities at JFK Airport, excluding all other employees, guards and supervisors within the meaning of the Act.

WE WILL NOT refuse to recognize and bargain collectively with Air Transport Local 504, Transport Workers Union of America, AFL-CIO as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All cleaners employed by us at the Delta Airlines facilities at JFK Airport, excluding all window cleaners, guards and supervisors within the meaning of the Act.

WE WILL NOT unilaterally change wages, hours, pension and welfare contributions, or any other terms and conditions of employment of our employees in either of the above units, without notifying and bargaining with Local 2 and Local 504.

WE WILL NOT refuse to hire, discharge, or otherwise discriminate against any employees because of their membership in either Local 2 or Local 504 or to avoid recognizing and bargaining with either Local 2 or Local 504.

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

WE WILL recognize and, on request, bargain collectively with Local 2 and Local 504 as the exclusive representatives of employees in the above-described units, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed contract.

WE WILL on request by the Unions, rescind any departures from terms and conditions of employment that existed immediately before our takeover from TransWorld Maintenance Services, Inc., retroactively restore preexisting terms and conditions of employment, including wage rates and benefit plans, and make the employees whole by remitting all wages and benefits that would have been paid absent such unilateral changes from April 15, 1994, until we negotiate in good faith with the Unions to agreement or to impasse, plus interest.

WE WILL offer all former TransWorld Maintenance Services, Inc. employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary any employees hired in their place.

WE WILL make whole all former TransWorld Maintenance Services, Inc. employees, including employee Ricardo Barros, for any loss of earnings and benefits

they may have suffered by reason of our discrimination against them, less any interim earnings, plus interest.

AIRWAY MAINTENANCE, INC. D/B/A
AMI

Sharon Chau, Esq., for the General Counsel.

Robert S. Nayberg, Esq. (Martin H. Scher), of Carle Place, New York, for the Respondent.

Ira Sturm, Esq. (Manning, Raab, Dealy & Sturm), of New York City, New York, for Window Cleaners Union, Local No. 2, Service Employees International Union, AFL-CIO.

Richard Boehm, president of Air Transport Local 504, Transport Workers Union of America, AFL-CIO.

DECISION

JAMES F. MORTON, Administrative Law Judge. The complaint alleges that Airway Maintenance, Inc. d/b/a AMI (Respondent) has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondent is alleged to be the successor to TransWorld Maintenance Services, Inc., as the cleaning contractor in Delta Airlines terminals at JFK Airport in New York City and that it refused to hire, or to consider for hire, about 150 TransWorld maintenance workers because of their membership in Air Transport Local 504 (Local 504) and 2 TransWorld window cleaners because of their membership in Window Cleaners Union, Local No. 2 (Local 2) and to have discharged 1 individual because of his membership in Local 504. The complaint further alleges that, but for those unlawful acts, Local 504 and Local 2 would have been the representatives of those employees in their respective collective-bargaining units; that the Respondent has failed to recognize or bargain collectively with Local 2 or Local 504; and that the Respondent, on the day that it took over the cleaning contract from TransWorld, unilaterally changed hours of work and other terms and conditions of employment as they existed under the collective-bargaining agreements TransWorld had with Local 2 and Local 504 covering the individuals alleged to have been discriminated against by the Respondent. The answer filed by the Respondent places those allegations in issue.

I heard this case in Brooklyn, New York, on November 28-30 and on December 1, 1994. On the entire record,¹ 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. JURISDICTION—LABOR ORGANIZATIONS

The Respondent provides cleaning and maintenance services on a nonretail basis. In its operations annually, it meets the Board's standard for asserting jurisdiction. The answer admits that Local 2 and Local 504 are labor organizations as defined in the Act.

¹ The General Counsel's motion to correct the transcript is granted. It is added to G.C. Exh. 1 as 1(t).

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Delta Airlines has two terminals at a cargo area at JFK Airport in New York. Since about 1989 to April 15, 1994, when its contract with Delta Airlines expired, TransWorld cleaned those facilities, employing about 150 employees represented by Local 504 and 2 window cleaners represented by Local 2. TransWorld also has about 12 employees at Tower Air and Lufthansa facilities at JFK Airport who are represented by Local 504 under the same collective-bargaining agreement which covered the employees at the Delta facilities.

The Respondent replaced TransWorld as Delta's cleaning contractor at 10 p.m. on April 15, 1994, as discussed further below. Except for one TransWorld employee who was hired and discharged almost immediately and whose status as an alleged discriminatee is discussed below, the Respondent hired none of the TransWorld employees who worked at the Delta facilities. The General Counsel contends that it failed to hire those employees because of their union membership. The Respondent asserts that it hired a new crew for the Delta facilities based solely on its policy of employing applicants who are referred to it by its supervisors or its employees and that, as none of the TransWorld (employees) were so referred, none were hired.

All dates here are for the year 1994, unless stated differently.

B. *The Respondent's Staffing at the Terminals of Delta Airlines and Applications by TransWorld Employees*

In January, approximately 15 cleaning contractors, including TransWorld, submitted bids to Delta to clean its facilities at JFK on the termination of TransWorld's contract which was scheduled to expire on April 15. On about April 1, the Respondent was awarded the contract by Delta. Thereupon, the president of Local 504 placed calls repeatedly to the Respondent's office, asking to speak to its official "to negotiate . . . to keep the people employed and have some job security." He received no response. Local 2's business agent, also in early April, called the Respondent's office, leaving a message that Local 2 was ready to negotiate a contract for the two window cleaners of TransWorld. He made about six such calls in that week; no one from the Respondent called back. On April 7, he visited the Respondent's office and spoke with an individual whom he understood to be its manager doing the hiring. He was asked to wait. He waited but was then informed that the Respondent was too busy see him. No one from the Respondent's office spoke with him after that.

The Respondent offered the following testimony in support of its assertion that it followed a nondiscriminatory referral policy in staffing its employee complement at the Delta facilities. One of its office employees testified that the Respondent's management, at a meeting in mid-March, decided to recruit applicants for the cleaning jobs at Delta's facilities in anticipation of the Respondent being awarded the contract there and that, at this meeting, its management "started asking some of [its] supervisors if they know of anybody looking for particular work that they could recommend." No management official testified as to such a meeting. Many of

the applications submitted by individuals who were hired by the Respondent for work at the Delta facilities have nothing on them to indicate that the applicants were referred by supervisors or employees of the Respondent and there is no evidence otherwise from which I could find that they were hired after being referred in accordance with a referral policy, as the Respondent asserts.

The Respondent did hire Donald Matera who was TransWorld's director of aviation services in charge of TransWorld's crew at the Delta Airlines facilities at JFK Airport on a daily basis, right up until 10 p.m. on April 15. At that point, Matera took over as the Respondent's general manager in charge of its cleaning crew at those same facilities. Matera hired none of the TransWorld's employees, other than one office employee who was not in either the Local 2 or Local 504 bargaining units and two supervisors who had worked for TransWorld at a facility operated by an airline other than Delta Airlines. Matera sought to recruit, for employment by the Respondent at the Delta terminals, several employees working for TransWorld at other airline terminals; he never recruited among the TransWorld cleaning employees who worked at the Delta terminals notwithstanding his testimony that the Respondent sought to have a cohesive group of employees with a "common bond."

One of the Respondent's supervisors, Carmelo Rodriguez, was asked several clearly leading questions during his direct examination by the Respondent in an effort to show that it had an established hiring policy via referrals by supervisors. Rodriguez, however, related that he did not recall being told by anyone to recruit people for work at the Delta terminals.

The evidence is obviously insufficient to establish that the Respondent had a policy whereby it hired job applicants based on supervisory recommendations or on recommendations of its employees.

The General Counsel called 11 employees who worked for TransWorld at the Delta Airlines facilities to testify as to their efforts, and those of others who had worked with them at TransWorld, to work for the Respondent there. Seven (Sylvia Saucedo, Chester Apanel, Doris Rengifo, Maria Munoz, Joseph Clemont, Inez Louisfilis, and Nicola Rusovan) testified that they applied before they were laid off on April 15. Some of these seven were told by the person who gave them the application forms or by others in the Respondent's employ that they would be called to work but they were not. Rengifo and Munoz had also filled out ID forms, had their pictures taken by the Respondent, and were told that they would be called to start work on April 16, but they were not called. Clemont and Louisfilis were told by Matera on April 15 to report to work for the Respondent a week later and that they would be paid \$6 an hour, an increase over the rate they were earning at TransWorld. Several days later, Matera informed them that there was no work for them. Another of the 11 who testified for the General Counsel, namely Carmen Pena, related that he applied to the Respondent before April 15 after he had earlier testified that he made that application after his layoff on April 15. His testimony appears confused and I discount it. I credit the accounts given by the seven named above.

Two of the seven named in the preceding paragraph, Munoz and Rusovan, testified that they applied again, after their layoff from TransWorld. Two others, Luz Maria Henriguez and Jose Santos, also testified that they applied to

the Respondent on their layoff by TransWorld. Another former TransWorld employee, Carmen Peria, testified as to his applying to Respondent after his layoff but I do not accept his account for the reason stated in the paragraph above. I do credit the accounts given by Rusovan, Henriguez, Santos, and Munoz. The first three of these four were told by a female working as a clerical employee for the Respondent that they could not be given application forms because they had worked for TransWorld. The Respondent, having placed that individual in that capacity, effectively made her its agent. See *Diehl Equipment Co.*, 297 NLRB 504 fn. 2 (1989). The person who communicated this same information to Munoz was Matera, the Respondent's general manager.

Ricardo Barros is the remaining former TransWorld employee who testified for the General Counsel. He is alleged in the complaint as having been discharged by the Respondent because of his membership in Local 504. He testified in substance as follows. On April 4, he applied at the Respondent's office and was told by an individual named Carmello, who identified himself as a supervisor, that he would be called to work when TransWorld's contract expired. Carmello did call and told him to report for work at 9 p.m. Shortly after he reported, Matera saw him and asked what he was doing there. Carmello translated the conversation. He, Barros, told Matera that he was there to work. Matera told him that he had to leave as the Respondent did not want any TransWorld employees working for it.

Carmello Rodriguez testified for the Respondent that he is a supervisor and that he heard Matera asking an employee what he was doing there and that he was not supposed to be there. Matera's account is that, when he saw Barros at about 9:30 p.m., he told Barros that he could not work for the Respondent. Matera testified that he could not recall who translated the conversation. Matera denied that he mentioned anything about a union to Barros and denied telling anyone that the Respondent would not employ individuals who had worked for TransWorld.

Matera testified that the reason he told Barros to leave was that he had suspected Barros of having made unauthorized telephone calls to Colombia from an office in the Delta Airlines terminal when both were in TransWorld's employ. Matera had conducted an investigation of a complaint that unauthorized calls to Colombia had been made. He reported to the chairman of TransWorld on November 24, 1993, in essence, that there was no evidence of telephone misuse by any employee of TransWorld and that he strongly believes that the calls were made by another party.

Matera testified that he really believed otherwise but made that report to support TransWorld in responding to the complaint. Matera testified that he gave Barros an oral warning in November 1993 for telephone misuse. Barros testified that he had never received any type of disciplinary warning while in TransWorld's employ. Barros worked steadily for TransWorld until April, when TransWorld's contract expired.

I credit Barros' account. The reason given by Matera for discharging Barros is controverted by the substance of the report prepared by Matera himself; his attempt to discount that report does little to engender confidence in his account. Moreover, Rodriguez impressed me as one who was not at all anxious to remember the events surrounding Barros' hiring and discharge. The credited testimony discloses, and I so

find, that Barros was discharged because he was represented by Local 504 while in TransWorld's employ.

The credited evidence also shows that the Respondent had adopted and pursued a plan barring TransWorld employees represented by Local 2 or Local 504 from its employ, a plan which thereby would relieve it of having to bargain collectively with those unions. To that end, the Respondent engaged in the conduct recounted above towards TransWorld employees who applied to it for jobs, willfully ignored repeated efforts of officials of those unions to speak with it about hiring the employees of TransWorld at the Delta Airlines facilities, unlawfully discharged the one TransWorld employee who somehow slipped through its net, hired instead a crew which was to no small extent inexperienced, concocted an explanation therefor which had no factual basis to sustain it, and offered no explanation as to why Matera never sought to hire any of the TransWorld employees who worked at the Delta terminals, notwithstanding that he had supervised these very employees.

In *Love's Barbeque Restaurant No. 62*, 245 NLRB 78 (1979), the Board reviewed a factual situation closely analogous to the one before me now and found that the respondent there, by having failed to hire the employees employed in the restaurant that respondent took over because of their union representation, unlawfully discriminated against those employees. I thus find that the Respondent has failed and refused to employ the former TransWorld employees to the Delta Airlines facilities at JFK Airport because they are members of Local 2 and Local 504.

The complaint alleges that the Respondent has unlawfully refused to recognize and bargain collectively with Local 2 and Local 504. The Respondent asserts, respecting that allegation, that the units represented by Local 2 and Local 504 are not appropriate for bargaining inasmuch as it employs cleaning employees at other locations. The employees working for the Respondent at the Delta Airlines facilities at JFK Airport are functionally distinct inasmuch as they are there by reason of Delta's contract with the Respondent. There is no evidence of any significant employee interchange between those employees and other employees of the Respondent. The employees of the Respondent at the Delta Airlines facilities at JFK Airport clearly have a close community of interests and function as a cohesive unit, analogous to employees in a single plant unit, a presumptively appropriate unit. See *Esco Corp.*, 298 NLRB 837, 839 (1990). The Respondent has proffered no evidence to rebut that presumption. I thus find that the Respondent's employees at the Delta Airlines facilities are, for purpose of collective bargaining, not part of a larger group, as the Respondent contends.

The evidence is clear that, but for the Respondent's unlawful refusal to hire the TransWorld employees who worked at the Delta Airlines facilities, they would have constituted an overwhelming majority, if not all of the Respondent's employees there and that thus, Local 2 and Local 504 would have continued to be their collective-bargaining representatives, in their respective units. The evidence is undisputed that the representatives of Local 2 and Local 504 had sought unsuccessfully to negotiate with the Respondent for those employees. In *Love's Barbeque Restaurant*, supra, the Board further had found that the respondent there, in essentially the same circumstances as in this case, was obliged, as a successor employer to recognize the union which represented its

predecessor's employees. To the same effect, see *Weco Cleaning Specialists*, 310 NLRB 319-320 (1992); cf. *Lamay Caring Center*, 280 NLRB 60, 72-73 (1986). The Board also found, in *Love's*, that that respondent had, by departing from the rates of pay and benefits and other conditions of employment, as they existed when those employees were employed by its predecessor, further violated its duty to bargain collectively. The holding in that case is now well-settled law. See *Harvard Industries*, 294 NLRB 1102, 1111 (1989). I thus find that the Respondent, in derogation of its obligations under Section 8(d) of the Act, failed and refused to recognize and bargain collectively with Local 2 and Local 504 as the representatives, respectively, of the units of window cleaners and the unit of porter and other cleaning and maintenance employees at the Delta Airlines facilities involved in this case.

CONCLUSIONS OF LAW

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

2. Local 2 and Local 504 are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by having failed and refused to hire the employees employed by its predecessor, TransWorld, because they were represented by Local 2 and Local 504 in separate units for collective bargaining, respectively, one composed of two window cleaners and the other of porters and other cleaning and maintenance employees, and by having discharged its employee, Ricardo Barros, because he was a member of Local 504.

4. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by having refused and failed to recognize Local 2 and Local 504 as the bargaining agents respectively of the units referred to above in paragraph 3 and by having unilaterally changed the wages, hours of work, and other terms and conditions of employment of those employees.

5. These unfair labor practices in affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, I recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent should be ordered to offer full and immediate employment at the Delta Airlines facilities at JFK Airport to the employees employed there as window cleaners and as maintenance and general cleaning employees of TransWorld Maintenance Services, Inc., as of April 15, 1994, dismissing, if necessary, any individuals employed in those jobs and, if any of those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings that they may have suffered due to the discrimination against them, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]