

**Millwrights, Conveyors and Machinery Erectors Local Union No. 1031, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Service Employees International Union Local 557, AFL-CIO and Michelle Bonta and Ruth E. Walts.** Cases 9-CA-31068, 9-CA-31347, 9-CA-31355, 9-CA-31072, and 9-CA-31209

April 25, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS  
BROWNING, COHEN, AND FOX

On August 15, 1994, Administrative Law Judge Robert C. Batson issued the attached decision. The Respondent and the General Counsel each filed exceptions and supporting briefs.

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, and conclusions only to the extent consistent with this Decision and Order.

The General Counsel excepts, *inter alia*, to the judge's failure to find that the Respondent violated Section 8(a)(5) and (1) of the Act by its unilateral change in employee Ruth Walts' working conditions and its unilateral layoff of Walts and employee Michelle Bonta. For the reasons set forth below, we find merit in the General Counsel's exceptions.

The undisputed facts and relevant sequence of events are as follows. The Respondent is a labor organization with offices in Louisville, Kentucky. In May 1993,<sup>1</sup> clerical employee Debra Rice gave the Respondent a 2-week resignation notice. On or about May 24, the Respondent's then financial secretary, Fred Stallings, hired Michelle Bonta as a probationary employee to replace Rice. Following Rice's departure, Bonta worked with clerical Ruth Walts, who had been employed by the Respondent since July 1989, and who was also Bonta's sister.

An intraunion election was held in June, resulting in George Blackburn replacing Stallings as the financial secretary. On July 15, when Blackburn formally took office, he called an executive board meeting where, in his position as the financial secretary, he was given "complete supervision and control of all personnel and properties of Local 1031."

On July 22, Walts and Bonta, the Respondent's only clerical employees, signed authorization cards for Service Employees International Union, AFL-CIO, CLC, Local 557 (SEIU or the Union) to be their exclusive collective-bargaining representative. By letter dated August 4 to the Respondent's president, Ed Bleemel, SEIU's business agent, Paul Hounshell, requested vol-

untary recognition of the Union. On August 5, the Union filed a representation petition seeking to be certified as the bargaining representative for the Respondent's clerical employees. About 1 week later, Bleemel informed Hounshell that he had received the August 4 letter and saw no problem with voluntarily recognizing the Union. Bleemel advised Hounshell that he would submit the request for recognition to the membership at the next meeting.

On or about August 15, Walts mailed copies of the representation petition to Blackburn and the Respondent's board of trustees. Also, on or about August 15 or 16, Rice talked to Blackburn about returning to work for Local 1031.

On August 19, the Respondent held its regular monthly executive board and membership meeting. At that meeting the membership voted to rehire Rice, lay off Bonta, and voluntarily recognize the Union.

On August 20, between 8:15 and 8:30 a.m., Blackburn called Bonta into his office and told her that Rice had been rehired and that Bonta's services were no longer needed. At the same time, Blackburn informed Walts that Rice would be "in charge of all office personnel," and that she would assume the responsibility for the accounts payable work and handle all of Blackburn's correspondence. Walts testified that, in addition to these duties, Rice also assumed responsibility for the accounts receivable work and for opening the mail.

On or about August 25 or 26, Hounshell advised Bleemel that Bonta had been laid off. On receipt of this information, Bleemel sent a letter to the Respondent's executive board members stating that the actions taken by the executive board at its August 19 meeting were unauthorized, had "exposed [the] Local to unlimited legal action and costs," and was embarrassing since the Respondent could be labeled as a "union buster." Bleemel's letter further advised the executive board members that, in his capacity as president and executive officer of Local 1031, he was reinstating Bonta with backpay and benefits, and that he was reassigning Walts to her previous duties.

On August 26, Walts telephoned Bonta and told her Bleemel was reinstating her to work. When Bonta arrived for work, she was given a copy of Bleemel's letter and received her regular paycheck that included an amount for the time she was off work. However, on August 27, when Blackburn returned to the office, he laid off Bonta again. Blackburn memorialized his action in a letter signed by himself and three of the Respondent's trustees, advising Bonta that her layoff had been an official action by the executive board on August 19. He apologized for her having been "subjected to the unauthorized acts of Edward Bleemel," and he informed Bonta that she was no longer an employee of the Respondent as of August 20 and that any pay she

<sup>1</sup> All dates are in 1993 unless otherwise indicated.

had received for employment beyond that date was “unauthorized and illegal.”

On receipt of this letter, Bonta immediately telephoned Hounshell to inform him that Blackburn had again laid her off. Hounshell telephoned Blackburn to discuss the situation and during the course of their conversation pointed out that Bonta’s tenure of service was a mandatory subject of bargaining, that the Respondent’s actions may have violated the Act, and that the Respondent needed to bargain with the Union before taking any further action.

The Respondent’s office hours were from 7:30 a.m. to 4:30 p.m. Prior to August 19, Walts worked from 7:30 a.m. to 4 p.m. and Bonta worked from 8 a.m. to 4:30 p.m. After Bonta was laid off, Rice instructed Walts to continue to begin work at 7:30 a.m., and Blackburn instructed Walts to stay until 4:30 p.m. This additional one-half hour in Walts’ work hours was necessitated by Rice’s inability to start working immediately after she was rehired.

In early October the Respondent moved from its Bardstown Road location to a much smaller facility on Dixie Highway, resulting in a much longer commute for Walts.

On October 12, Walts filed an unfair labor practice charge with the Board against the Respondent over the Respondent’s changing her working conditions and work assignments. When Blackburn received a copy of the charge, he called Walts into his office and asked her how her working conditions had changed. Walts told him she was not obligated to discuss the charge with him and that he should speak with Hounshell. Walts immediately reported the interrogation to Hounshell, who telephoned Blackburn and reminded him of the limitations imposed by the Act on an employer’s “right to make changes in job assignments, work assignments, and [take] disciplinary actions.”

Sometime after November 19, while Walts was on vacation, she was sent a certified letter stating that she was “no longer an employee of Local Union #1031.” The letter stated that she had been laid off “due to lack of work.”

The complaint alleged that the layoff of Bonta and Walts and the change in Walts’ work assignments and hours of work, without notice to the Union and affording the Union an opportunity to bargain with respect to these changes and their effects, violated Section 8(a)(5) and (1) of the Act. The judge failed to make a finding with regard to the Respondent’s obligation to bargain with the Union over its decisions to lay off Bonta and Walts. He did, however, dismiss the complaint allegation regarding the Respondent’s failure to bargain over the changes in Walts’ hours and work assignments, finding that those changes had an insignificant impact on Walts’ employment and that the changes were not discriminatorily motivated. We find,

contrary to the judge, that the Respondent’s decision to lay off Bonta and Walts and to change Walts’ hours, without prior notice to or bargaining with the Union, violated Section 8(a)(5) and (1) of the Act.<sup>2</sup>

It is well settled that unilateral decisions made by an employer during the course of a collective-bargaining relationship concerning matters that are mandatory subjects of bargaining are regarded as a per se refusal to bargain. *NLRB v. Katz*, 369 U.S. 736 (1962). It is also well established, with limited exceptions, that the decision to lay off employees is a mandatory subject of bargaining. *Holmes & Narver*, 309 NLRB 146 (1992); *NLRB v. Advertising Mfg. Co.*, 823 F.2d 1086, 1090 (7th Cir. 1987). Similarly, the “particular hours of the day and the particular days of the week during which employees shall be required to work are subjects well within the realm of ‘wages, hours, and other terms and conditions of employment’ about which employers and unions must bargain.” *Meat Cutters Local 189 v. Jewel Tea Co.*, 381 U.S. 676, 691 (1965).

Here, after voluntarily recognizing the Union as its employees’ bargaining representative, the Respondent decided to lay off Bonta, change Walts’ working hours, and then lay off Walts. All these decisions were made without prior notice to or bargaining with the Union.<sup>3</sup>

Contrary to the judge, we find that the Respondent’s change in Walts’ hours of work had a significant adverse impact on her. The Respondent’s requirement that Walts work an extra one-half hour daily represented a substantial change in Walts’ working conditions, which the Respondent was not privileged to impose without first notifying and bargaining with the Union.<sup>4</sup>

<sup>2</sup>We agree with the judge, for the reasons stated by him, that the Respondent’s interrogation of Walts regarding the unfair labor practice charge she filed violated Sec. 8(a)(1) and that its subsequent lay-off of her violated Sec. 8(a)(3), (4), and (1).

<sup>3</sup>We disavow the judge’s statement in his decision that the “unconscionable delay in commencing bargaining [for a collective-bargaining agreement] was not the fault of the employer, but much more attributable to the dereliction of the Union.” Such a conclusion is unsupported from the record evidence, and, in any event, any delay in scheduling the first negotiating session between the parties was not an issue in this case.

<sup>4</sup>Contrary to the General Counsel’s contention, we do not find that the Respondent’s relocation of its office, which resulted in a significant increase in Walts’ commuting time, violated Sec. 8(a)(5). The complaint did not allege that the Respondent’s decision to move was unlawful or that the Respondent refused to bargain with the Union over the effects of its decision to move its office. Under these circumstances, we do not find that the increase in Walts’ commuting time constituted unlawful unilateral action by the Respondent.

Further, we do not find that the General Counsel established that the changes in Walts’ work assignments had a significant impact on Walts’ work. The record does not contain a clear, complete description of Walts’ job duties either before or after the changes, nor the percentage of Walts’ work time that was spent on performing the duties that were taken away from her and given to Rice. Under these

*Continued*

Although not raised by the parties in this case, we note that the Board has held in some prior cases, without any analysis or rationale, that a change in terms or conditions of employment affecting only one employee does not constitute a violation of Section 8(a)(5). See *Mike O'Connor Chevrolet*, 209 NLRB 701 (1974); *Mark J. Leach Electrical Contractors*, 251 NLRB 1100 (1980); and *Santa Rosa Blueprint Service*, 288 NLRB 762 (1988). We find that this holding, which would require the dismissal of the complaint in this case, is erroneous as a matter of law, and we overrule those cases to the extent inconsistent with our decision in this case.

Nothing in the Act nor in the legislative history limits 8(a)(5) violations to conduct affecting more than one employee. Nor would such a limit comport with the statutory scheme. It cannot be seriously questioned that an employer's unilateral decision to lay off one employee in a unit of two employees, such as happened in this case, seriously undermines the union's status as the employees' bargaining representative and is as destructive to the bargaining process as is an employer's unilateral decision to lay off two or more employees in a larger unit. Similarly, it would be illogical to allow an employer to escape its bargaining obligation with its employees' bargaining representative simply by instituting a series of unilateral changes, each of which affected only one employee.

We further note that the Board has on occasion found an 8(a)(5) violation where the employer's unilateral decision affected only one employee, without reference to the *Mike O'Connor* line of cases. See, e.g., *Sheraton Hotel Waterbury*, 312 NLRB 304, 307 (1993), and *Central Broadcast Co.*, 280 NLRB 501, 517-518, 535 (1986). Given the Board's inconsistency in this area, we find it advisable to announce in this case our view that the Board is not precluded from finding an 8(a)(5) violation where the employer's unilateral decision affected only one employee.<sup>5</sup>

We find further that the judge's reliance on an absence of discriminatory motivation in dismissing the 8(a)(5) allegation is clearly erroneous since discriminatory motivation is not a prerequisite for finding a violation of Section 8(a)(5). *Production Plated Plastics*, 247 NLRB 595, 596 fn. 3 (1980).

Accordingly, we find that the Respondent's decision to lay off unit employees Bonta and Walts and to

circumstances, we adopt the judge's finding that the changes in Walts' work assignments had no significant adverse impact on her employment, and we accordingly dismiss this complaint allegation.

<sup>5</sup>We emphasize that we are not holding that every unilateral decision that only affects one individual employee constitutes a per se violation of Sec. 8(a)(5). Rather, in each case the Board must consider the employer's conduct in light of all of the circumstances, including, as has been illustrated in this case, whether the General Counsel has established that the conduct had a significant impact on the work of one or more employees.

change Walts' hours of work without notice to and bargaining with the Union violated Section 8(a)(5) and (1) of the Act.<sup>6</sup>

#### AMENDED CONCLUSIONS OF LAW

Substitute the following for paragraph 7.

"7. The Respondent has committed unfair labor practices in violation of Section 8(a)(5) of the Act by failing and refusing to notify and bargain with the Union over the terms and conditions of employment of its employees, by making unilateral decisions to lay off employees Michelle Bonta and Ruth Walts and to change Ruth Walts' hours of work."

#### AMENDED REMEDY

As the Respondent has violated Section 8(a)(5) of the Act by failing to notify and bargain with the Union over its unilateral decisions to lay off employees Michelle Bonta and Ruth Walts and to change Ruth Walts' hours of work, we shall order the Respondent to bargain with the Union over these decisions, as well as the effects of these decisions. We shall also order the Respondent to offer reinstatement to employees Michelle Bonta and Ruth Walts and to pay them backpay to compensate for any loss of earnings and other benefits they may have suffered as a result of the unlawful actions taken against them. Backpay shall be based on the earnings that the employees would have received during the applicable period, less any net interim earnings, and shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also modify the judge's recommended order to reflect these changes.

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as set forth in full below and orders that the Respondent, Millwrights, Conveyors and Machinery Erectors Local Union No. 1031, affiliated with the United Brother-

<sup>6</sup>In light of this finding, we find it unnecessary to pass on the General Counsel's exception to the judge's dismissal of the complaint allegation that the Respondent's decision to lay off Bonta also violated Sec. 8(a)(3) of the Act.

Although Member Cohen agrees with the 8(a)(5) result, he finds it unnecessary and unwise to overturn extant precedent. In this regard, he notes that, in the first 2 months of the bargaining relationship, Respondent laid off two employees and changed the working hours of one of them. These two employees comprised the entire unit. In these circumstances, Member Cohen concludes that Respondent's entire course of conduct violated Sec. 8(a)(5). He does not pass on whether each act, viewed separately, would establish a violation. That result requires the reversal of extant precedent. No party has sought such a reversal, and no one has briefed the issue. Based on the above, Member Cohen would not gratuitously reach out and overturn 20 years of precedent.

hood of Carpenters and Joiners of America, AFL–CIO, Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees concerning unfair labor practice charges they have filed against the Respondent with the National Labor Relations Board.

(b) Laying off and thereafter failing and refusing to reinstate its employees because they engage in union and protected concerted activities or for filing unfair labor practice charges against it with the National Labor Relations Board.

(c) Unilaterally laying off employees and changing their hours of work without providing Service Employees International Union Local No. 557, AFL–CIO with notice and an opportunity to bargain about the decisions and the effects of those decisions.

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

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

(a) On request, bargain with the Union concerning the decision to lay off employees Michelle Bonta and Ruth Walts and to change Walts' hours of work, and the effects of those decisions.

(b) Make Michelle Bonta and Ruth Walts whole for any loss of pay and other benefits they may have suffered by reason of the unlawful actions taken against them.

(c) Offer immediate and full reinstatement to Michelle Bonta and Ruth Walts to their former positions of employment or, if such positions are no longer available, to substantially equivalent positions without prejudice to the seniority or other rights and privileges previously enjoyed, and remove from its personnel files any reference to the unlawful layoffs of Ruth Walts and Michelle Bonta and notify them in writing that this has been done and that the layoffs will not be used against them in any way.

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

(e) Post at its facility in Louisville, Kentucky, copies of the attached notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Re-

spondent 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.

(f) 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.

In recognition of these rights we hereby notify our employees:

WE WILL NOT interrogate our employees concerning any unfair labor practice charge they may have filed with the National Labor Relations Board.

WE WILL NOT lay off our employees because they engage in union or protected concerted activities or because they file unfair labor practice charges with the National Labor Relations Board.

WE WILL NOT unilaterally lay off employees and change their hours of work without providing Service Employees International Union Local No. 557, AFL–CIO with notice and an opportunity to bargain about the decisions and the effects of those decisions.

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 concerning the decision to lay off employees Michelle Bonta and Ruth Walts and to change Walts' hours of work and the effects of those decisions.

WE WILL offer Michelle Bonta and Ruth Walts immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent ones without any loss of seniority or other benefits and WE WILL make them whole with interest for any loss of pay or benefits they may have suffered

<sup>7</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

by reason of our unlawful layoff of them and WE WILL remove from their personnel files any references to their layoffs.

MILLWRIGHTS, CONVEYORS AND MACHINERY ERECTORS LOCAL UNION NO. 1031, AFFILIATED WITH THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

*Donald A. Becher, Esq.*, for the General Counsel.  
*Robert K. Salyers, Esq.*, of Louisville, Kentucky, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

ROBERT C. BATSON, Administrative Law Judge. I heard this consolidated case in trial at Louisville, Kentucky, on April 28, 1994, on an order consolidating cases third consolidated complaint and notice of hearing issued by the Regional Director for Region 9 of the National Labor Relations Board (the Board) on January 4, 1994, the operative complaint herein. The complaint alleges that Millwrights, Conveyors and Machinery Erectors Local Union No. 1031, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Respondent, Employer, or Local 1031) committed acts in violation of Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act (the Act). Charges were filed by Service Employees International Union, Local 557, AFL-CIO (SEIU) in Case 9-CA-31068 on August 31, 1993,<sup>1</sup> in Case 9-CA-31347 on November 23, and in Case 9-CA-31355 on November 24. The charge in Case 9-CA-31027 was filed by Michelle Bonta, an individual, on September 1, and the charge in Case 9-CA-31209 was filed by Ruth E. Walts, an individual, on October 12 and amended on November 3. All charges were served upon Respondent in a proper and timely manner.

The complaint alleges that Respondent engaged in conduct in violation of Section 8(a)(3) and (1) of the Act by, on or about August 20, discharging its employee Michelle Bonta; about August 20, changing the starting and quitting time of its employee, Ruth E. Walts; on or about August 20, changing the working assignment of Walts, and after reinstating Bonta about August 26, Respondent again discharged her about August 27; and about November 19, Respondent laid off its employee, Ruth E. Walts. The complaint further alleges that Respondent committed acts in violation of Section 8(a)(4) and (1) of the Act by laying off its employee Walts about November 19, because she filed an unfair labor practice charge against Respondent in Case 9-CA-31209 or gave testimony under the Act. The complaint further alleges that Respondent committed acts in violation of Section 8(a)(5) and (1) of the Act by failing and refusing to bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of its employees.

In its answer to the complaint the Respondent admits all procedural allegations including the Board's jurisdiction in

this matter but denies that it has violated the Act in all matters alleged.

On the entire record, in this case, including my opportunity to directly observe the witnesses while testifying under oath, and their demeanor, while so doing, and after considering posttrial briefs filed by counsel for the General Counsel and the Respondent I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent, Millwrights, Conveyors and Machinery Erectors Local Union No. 1031, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO has been and is a labor organization, and is an unincorporated association with a place of business located in Louisville, Kentucky, and exists for the purpose of dealing with employers concerning grievances, labor disputes, and terms and conditions of employment for its employees. During the 12 months preceding the issuance of the complaint herein, Respondent in the course and conduct of its business collected and received dues and initiation fees in excess of \$100,000 and remitted them from its Louisville, Kentucky facility directly to the office of United Brotherhood of Carpenters and Joiners of America, AFL-CIO in Washington, D.C. The complaint alleges, Respondent admits, the evidence establishes, and I find that Respondent is now and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. LABOR ORGANIZATION

The complaint alleges, the parties admit, the evidence establishes, and I find that Service Employees International Union, Local 557, AFL-CIO is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

#### III. ALLEGED UNFAIR LABOR PRACTICES

The relevant facts and sequence of events giving rise to the complaint allegations herein are not even arguably in dispute. The inferences to be drawn from the timing of the events giving rise to the complaint allegations is the issue raised in this case. Since at least July 1989, Respondent Local 1031 had offices located at 2525 Bardstown Road, Louisville, Kentucky, where it shared space with representatives of the Kentucky State District Council of Carpenters (District Council). (Tr. 145.) The District Council's business agent assigned to the Louisville area occupies this space. Local 1031 maintains the out-of-work list for the District Council and was paid \$200 a week for this and other secretarial services. The record is replete with evidence that by June 1993 Respondent Local 1031 was in the mist of an internal political dispute with the International Brotherhood on the one hand and its intermediate body, the Kentucky District State Council of Carpenters, on the other. Financial Secretary George Blackburn described this situation as "very adversarial."

In May, 15-year veteran clerical employee, Deborah Rice, who had been a coworker of Walts since Walts began working in July 1989, gave her 2-week notice that she would be leaving. Walts advised her sister Michelle Bonta that there

<sup>1</sup> All dates hereinafter are 1993 unless otherwise indicated.

would be an opening at Local 1031 and on May 24 Bonta went to Local 1031's office and talked with then Financial Secretary Fred Stallings and was employed as a probationary employee to replace Rice.<sup>2</sup> Stallings drafted a memo stating that Bonta had agreed to be hired as a secretary for Local 1031 with the first 60 days being a probationary period upon the completion of which benefits would be discussed and agreed on. (G.C. Exh. 24.) Both Stallings and Bonta signed the memo. As a result of the intraunion power struggle at the monthly membership meeting in June, George Blackburn was elected financial secretary along with "his slate of officers." Blackburn had evidently campaigned on a program to return Local 1031 back to the membership and make it more democratic. However, it seems that Stallings remained as business agent for the District Council. The new regime assumed office on July 15.

At the conclusion of the regular meeting on July 15, where Blackburn was installed as financial secretary he called an executive board meeting during which the vice president presided. President Ed Bleemel had refused to attend this meeting. At this unannounced special meeting the financial secretary was given "complete supervision and control of all personnel and properties of Local 1031." Eight members of the 10-member executive board approved this action. (R. Exh. 4.) The General Counsel suggests that this was an unauthorized seizure of power by Blackburn. However, two former financial secretaries, Michael Wilson (Tr. 202-206) and Bobby Hammond (Tr. 207-210), testified that the financial secretary, other than the president, had always been "in charge of the office" including the authority to hire and terminate employees.

Walts and Bonta were the only two clerical employees employed by Local 1031, and on July 22 each of them signed an authorization card for Service Employees International Union, Local 557, AFL-CIO (SEIU) to be their exclusive collective-bargaining representative. (G.C. Exhs. 2, 3.) The record does not reflect any event happening that might have caused the employees to decide they wanted a union to represent them. They turned the cards in to Local 557's business agent, Paul Hounshell, who on August 4 wrote the president of Local 1031, Edward Bleemel, requesting voluntary recognition of SEIU Local 557 to represent the employees in the clerical unit. (G.C. Exh. 5.) On August 5, Hounshell also filed a petition for representation with Region 9 in Case 9-RC-16269 requesting an election in a unit consisting of:

Office clerical including; secretaries, bookkeepers, computer operators, receptionists, general clerical and all other hourly paid classified employees. Excluded supervisors, managers and elected officers. [G.C. Exh. 4.]

The week following the letter of August 4, Local 1031 President Bleemel telephoned Hounshell advising that he had received the letter and felt that there would be a favorable response to the request for voluntary recognition and that he highly endorsed the efforts of the people to get union representation. (Tr. 19.) Bleemel advised Hounshell that a regular executive board and membership meeting would be held later that month and that his plan was to submit the request for recognition to the membership at that time.

<sup>2</sup>It appears that Stallings was also the business agent for the District Council.

On about August 15, Walts sent copies of this petition for representation by certified mail to Blackburn and the board of trustees for Local 1031. Blackburn testified he did not recall when he received it, but admits it was before the August 19 meeting.

On August 19, Respondent had its regular executive board and membership monthly meeting wherein either the executive board or the membership voted to recognize Service Employees International Union as the bargaining representative for its clerical employees. On August 20 at 8:10 a.m. George Blackburn called Hounshell's office and wanted to confirm a meeting, presumably for negotiations and advised him that he had another employee who wanted to join. (G.C. Exh. 6.)

Deborah Rice talked with George Blackburn, about August 15 or 16, about returning to work for Local 1031. At the same meeting where the membership voted to recognize the Union, Blackburn also caused a vote to be taken to rehire Deborah Rice and layoff Bonta. (Tr. 161.)

On August 20, Bonta estimates somewhere between 8:15 and 8:30 a.m. she was called into Blackburn's office and there waiting for her, aside from Blackburn, was Deborah Rice and Executive Board Member Hewitt and four or five others. (Tr. 83.) Bonta testified that Blackburn simply said that he had rehired Rice as secretary and that Bonta's services were no longer needed, assuring her that it was not because of the job she had done and gave her the rest of the day off. (Tr. 84.)

Rice was called by Respondent as a witness and testified that at that same meeting Blackburn told her that the clericals were represented by a union and asked her if she would like to sign a card. Rice replied in the affirmative. (Tr. 220.) Demonstrating the animosity and adversarial atmosphere in Local 1031 is the fact that after August 25 or 26, when Hounshell advised Bleemel that Bonta had been discharged, Bleemel sent a letter to Local 1031 executive board members stating in relevant part:<sup>3</sup>

These members have taken it upon themselves to layoff Michelle Bonta and demote Ruth Walts after the Local Union took action at the Regular meeting August 19, 1993 to voluntarily recognize SEIU 557 as their bargaining agent. This unauthorized action has exposed this Local to unlimited legal action and costs, not to mention the embarrassment of this Local Union being labeled as a "union buster."

As the president and executive officer of this Local Union and with the approval of several executive board members, effective August 26, 1993 I am exercising my authority under the Constitution and By Laws to preserve order and therefore am reinstating Michelle Bonta with backpay and benefits.

I am also reassigning Ruth Walts to her previous duties. [G.C. Exh. 9.]

On August 26 Walts telephoned Bonta and told her that Bleemel was reinstating her to work. (Tr. 84, 107.) Bonta reported to work that day and was given a copy of Bleemel's letter noted above, she also received her regular paycheck which included an amount for the period she was off work.

<sup>3</sup>Upon the termination of Bonta, Blackburn gave Walts and Rice notice that Rice would be in charge of the office and Walts was to do as she was told by Rice.

Neither Blackburn nor Rice were in the office on August 26 when Bonta returned to work. On August 27 Blackburn came into the office<sup>4</sup> and discharged Bonta again by giving her the following letter signed by himself and three trustees of Local 1031 (G.C. Exh. 10):

August 27, 1993  
Michelle Bonta  
3011 Lexham Rd.  
Louisville, KY 40220  
Dear Michelle:

Please be advised to disregard any notice that you have been given by Edward Bleemel regarding your being rehired at Local Union #1031.

Attached are copies of the Executive Board minutes outlining the official actions of this local in regards to you being laid off and also showing the person in charge of personnel.

We deeply regret that you have been subjected to the unauthorized acts of Edward Bleemel and offer our apologies for any personal hurt that you have suffered.

Be further advised that you are no longer an employee of Local Union #1031 as of 08/20/93. Any pay that you have received for employment beyond that date from this local is unauthorized and illegal.

If you have any questions regarding this information please contact me.

Yours truly

/s/ George Blackburn  
George Blackburn  
Financial Secretary

/s/ Gary L. Hewitt /s/ Terry L. Shoemake /s/ M.L. Monarch  
Trustee Local#1031 Trustee Local#1031 Trustee  
Local#1031

Upon Bonta's second termination by Blackburn, she telephoned Hounshell and advised him of that fact. Hounshell telephoned Blackburn and during the course of their conversation pointed out to Blackburn that Bonta's tenure of service was a mandatory subject of bargaining and that his actions might well have constituted a violation of the Act and that he needed to sit down and bargain before he took any action like that. (Tr. 36.)

The Union's office hours were 7:30 a.m. to 4:30 p.m. and prior to August 19, Walts had worked 7:30 a.m. to 4 p.m. while Bonta worked from 8 a.m. until 4:30 p.m. Upon the termination of Bonta, Rice instructed Walts to begin work at 7:30 a.m. and Blackburn told her to stay until 4:30 p.m. thus amounting to a change in her working conditions by adding one-half hour to her day. This was necessitated by the fact that Rice could not start work full time because she was working a 1-week notice for her then employer.

In early October Local 1031 moved from its Bardstown Road location to a much smaller facility on Dixie Highway. The decision Blackburn explained was being made for legiti-

mate financial reasons. Blackburn testified that the Local would save \$650 a month by moving to the new location, however, in doing so the Local lost the \$200 a week it had been receiving from the District Counsel to handle its secretarial functions. The Dixie Highway location which it had occupied at some point in the past would place it within a few blocks of the Union Health and Welfare Office and a sister local.

On October 12, Walts filed a charge with the Board's Region 9, Cincinnati, Ohio office over Respondent's changing her working conditions and assignments, in the body of which she named Blackburn personally.<sup>5</sup> (G.C. Exh. 1E.) On receipt of the charge Walts had filed against Local 1031 and Blackburn, Blackburn called Walts into his office, where Rice was present, and told her he had received the charge that had been filed "against him." (Tr. 113.) He asked Walts what working conditions had changed. Walts told him that she was not obligated to discuss the charge with him and advised him to call Hounshell. Blackburn admits that he was surprised at receiving the charge and did ask Walts what working conditions had changed and admits that he was disappointed, however, he denies that he was upset. Walts reported this interrogation by Blackburn concerning the unfair labor practice charge she had filed to Hounshell who telephoned Blackburn and reminded him of the limitations under the Act on an employer's right to make changes in job assignments, work assignments, and disciplinary actions. (Tr. 51.)

Sometime after November 19, while Walts was on vacation she received a certified letter saying that she was no longer an employee of Local 1031. (Tr. 115; G.C. Exh. 2.) The letter stated that she had been laid off "due to lack of work." Blackburn notified Hounshell after he had laid Walts off and the fact that she had been terminated. It might be noted that when Local 1031 moved from its Bardstown street address to the Dixie Highway address, it increased Walts' time in getting to and from work from 10-15 minutes to approximately 1-1/2 hours on public transportation.

Although Local 1031 voluntarily and formally recognized SEIU Local 557 as the exclusive collective-bargaining representative for the employees in the clerical unit described above on August 19, there were no negotiations between the Employer and the Union until a few days before the trial here in April 1994. This unconscionable delay in commencing bargaining was not the fault of the Employer, but much more attributable to the dereliction of the Union. In addition to the correspondence pertaining to attempts to set a bargaining date as shown in General Counsel's Exhibits 11-21, there is testimony of several telephone calls between the parties pertaining to this matter. SEIU Local 557 Business Agent Paul Hounshell admits that he canceled a number scheduled sessions because conflicts arose in his schedule. It is my impression that representing this unit was not among the Union's top priorities.

These are the undisputed facts on which the charges are based and complaint allegations issued. The allegations shall be discussed, considered, and analyzed herein seriatim.

<sup>4</sup>Blackburn, as financial secretary, was not a full-time employee and the testimony is that he was in the office only about 1 day a week usually a Monday or a Thursday.

<sup>5</sup>The change in working conditions underlying the charge appears to be that Walts worked an extra one-half hour a day to accommodate Rice during her transition (Tr. 108) and the work assignments appear to be that Walts no longer opened the mail (Tr. 111).

*A. The Termination of Michelle Bonta*

As to knowledge of Bonta's union activity, which Respondent has not denied, the General Counsel argues correctly that Blackburn had admittedly received a copy of the petition for certification and could presume that the clericals had signed union authorization cards. He argues that considering the fact that the Employer here is a union Blackburn showed no hostility toward the Union "per se." However, he argues that Blackburn likes no constraints on his authority which he admitted the Union would be. He construes General Counsel's Exhibit 25 as a loyalty pledge from the clerical employees:

August 23, 1993

TO: Debbie Rice  
Ruth Walts /s/Ruth E. Walts

FROM: George Blackburn, Fin. Sec.

Be advised that you are to cooperate fully with any representative of the UBC, and failure to cooperate or reply truthfully to any inquires can and will be reasons for termination of employment.

This memo is to be signed and placed in your employment record.

Yours truly,

/s/ George V. Blackburn  
George Blackburn  
Financial Security  
Local Union #1031

cc: Sigurd Lucassen  
Doug Banes

Bonta also testified that on the morning of August 19 Blackburn did not speak to her or even acknowledge her greeting which the General Counsel characterizes as animus.

It is further argued that the timing of Bonta's termination immediately on acquiring knowledge of her union activity and the precipitous manner in which it was executed is particularly persuasive of unlawful motivation. Citing *NLRB v. Montgomery Ward & Co.*, 242 F.2d 497, 502 (2d Cir. 1952), and *Limestone Apparel Corp.*, 255 NLRB 723, 736 (1981). In support of this contention the General Counsel emphasizes the order in which Blackburn, who presided over the August 19 membership meeting, brought the motions to the floor for a vote. Blackburn made all the motions which were properly seconded and all motions carried. The first motion was to rehire Debbie Rice to her old position with the same wages and benefits and with no break in service. The second motion was to lay off Michelle Bonta effective August 20, 1993. The third motion was to recognize SEIU Local 557 as the bargaining agent for the clericals and the entire executive board would constitute the negotiating committee. (G.C. Exh. 10.)

The order of these motions the General Counsel contends was deliberate so that Bonta would be terminated before the Union was voluntarily recognized and thus avoid the duty to notify the Union and bargain over her termination. It is also argued in this regard that inasmuch as Rice could not work full time while she worked her notice to her then employer, Respondent should have permitted Bonta to work that week

instead of firing her immediately. Finally, he points to Local 1031 President Bleemel's letter attempting to reinstate Bonta to avoid the label of "union buster."<sup>6</sup>

The General Counsel urges that under *Wright Line*, 251 NLRB 1083 (1980), he has made a prima facie showing that Bonta's known union activity was a motivating factor in Respondent's action toward her and Respondent has not carried its burden of demonstrating that its actions toward her would have been the same in the absence of her protected activity.

Assuming arguendo that the General Counsel has made a prima facie showing sufficient under the *Wright Line* standard, I find on the evidence here that Respondent has demonstrated that its action would have been the same absent any protected activity. As the General Counsel notes there is no "per se" evidence of animus by Respondent toward union or concerted activities. The single theory is that the timing of this action against Bonta immediately upon acquiring knowledge of her union activity is alone insufficient to carry the General Counsel's burden. Even in conjunction with the precipitous manner Respondent carried it out, without any notice whatever to Bonta and the fact that it left the office with only one clerical until Rice could work full time the burden has still not been met.

In my opinion the sole motivating factor for the termination of Bonta, an employee for 3 months, was to make room for Debbie Rice, who had been employed by Local 1031 for 15 years when she let it be known that she was willing to come back to work for them. Blackburn testified that he made the decision at that time, August 15 or 16, to terminate Bonta and rehire Rice. Of course its impossible for the General Counsel to rebut that subjective state of mind. However there is nothing in the record to suggest such was not the case. Rice was a veteran, and evidently competent employee who knew the operation of the Local well. The General Counsel suggest that Rice was made a supervisor upon her return to work. The only basis for this contention is a memo drafted by Blackburn (G.C. Exh. 26) which states in relevant part: "You are hereby placed in charge of all office personnel who are employees of Local 1031." The record is replete with evidence that the duties of the clericals were repetitive and routine. Rice and Blackburn testified that the clericals decided between themselves who would do what jobs and Walts, who worked with Rice, from August 20 to November 19, did not testify that Rice ever exercised any indicia of supervisory authority over her. The general scope of the language of General Counsel's Exhibit 26 is insufficient to constitute a grant of Section 2(11) supervisory authority to Rice.

Accordingly I find Respondent did not violate Section 8(a)(3) and (1) by its termination of Michelle Bonta on August 19. The attempted rehire of Bonta on August 25 by Local 1031 President Ed Bleemel was evidently not authorized and she was never reemployed. Michelle Bonta may have been, in part, a victim of an intraunion power struggle

<sup>6</sup>Inasmuch as Bleemel's attempt to reinstate Bonta was not successful, I must conclude, as testified by Blackburn and representative of the General President of Carpenters and Joiners, George Martin, and former financial secretaries of Local 1031, Michael Wilson and Bobby Hammonds, that the financial secretary is the chief operating officer of the local and manages all office affairs including hiring and firing of employees, particularly when ratified by the executive board and/or the membership.

in Local 1031, but whatever the case the General Counsel has failed to demonstrate by a preponderance of the evidence that Respondent's actions toward Bonta was motivated by any union or protected concerted activity.

*B. Ruth Walts' Termination and Changed Working Conditions and Assignments*

Considering first the 8(a)(1) and (3) allegations contained in the charge in Case 9-CA-31209 General Counsel's Exhibit 1(e) filed October 12 and amended November 3, as General Counsel's Exhibit 1(j) alleging violations of Section 8(a)(1), (3), and (5) filed by Ruth E. Walts. These allegations pertain to the change in working conditions and work assignments of Ruth E. Walts on August 20. The alleged change in working conditions is apparently based on the fact that on August 20, when Debbie Rice was hired, Walts was asked to work for a period of 1 week from 7:30 a.m. to 4:30 p.m., thus adding one-half hour a day to her work schedule. The change in work assignments apparently is predicated on the fact that Rice assumed some of Walts' former duties. (Tr. 110-111.)

These allegations of a violation of the Act must be considered in light of all the circumstances existing at the time of their occurrences. As noted above on the evening of August 19, the membership of Local 1031 voted to voluntarily recognized SEIU as the exclusive representative of its clerical employees. They also took two other actions here pertinent; the termination of Michelle Bonta's employment, and the rehiring of Debbie Rice to replace Bonta.

The General Counsel appears to argue that from the instant of recognition the Employer could take no personnel action, regardless of how insignificant, without first notifying and bargaining with the Union about such action.<sup>7</sup> In view of the sequence of events here, i.e., the recognition of the Union and the implementation of the alleged change in Walts working conditions and work assignments which the Employer contends it had already planned and the insignificant impact that it had on Walts, I find that Respondent's conduct here did not rise to a violation of Section 8(a)(5) and (3) of the Act. It is not contended that the change in her terms of employment created more onerous working conditions or had any significantly adverse impact on her employment.

To the extent that the General Counsel is contending that Respondent move from its Bardstown Road, Louisville location to the Dixie Highway, Louisville location which necessitated a significant increase in travel time for Walts was discriminatorily motivated, I find such contention ludicrous. The move was motivated primarily by the internal political conflict among the International Brotherhood, the District Council, and Respondent, all of which shared tenancy at the Bardstown location.

Accordingly, I find Respondent did not violate Section 8(a)(1), (3), and (5) of the Act as alleged here.

There is no conflict in the testimony that when George Blackburn received a copy of the charge in Case 9-CA-31209 filed by Ruth Walts naming him personally as well as Local 1031 that he summoned her to his office. There, in the

<sup>7</sup>For instance he argues that Blackburn structured his motions at the August 19 meeting; first to terminate Bonta, then rehire Debbie Rice, and then to recognize the Union in order to avoid bargaining with the Union over the termination of Bonta.

presence of Debbie Rice, he told her he had some things they needed to discuss. He asked her to sit down and not to get upset. He told her he had received the charges she had filed against him and asked her how she felt her working conditions had changed. She told him she was not obligated to discuss the charges with him and that he needed to contact Paul Hounshell. According to Walts, Blackburn "was kind of upset" and told her she was the one who had filed the charges. "You are the one that (sic) working conditions have changed." "You know, how can I respond if you don't tell me how your conditions have changed?" "So, I told him again to call Paul Hounshell." Nothing else was discussed at this meeting. (Tr. 113.) The above is Walts' version which does not materially differ from Blackburn. After this conversation Blackburn called his attorney.

This interrogation constitutes a "per se" violation of Section 8(a)(1) of the Act. The Board and courts have long held that where an employer has a legitimate cause to inquire, despite the inherent danger of coercion therein, he may not exercise the privilege of interrogation of employees on matters involving their section of rights without advising them of certain safeguards designed to minimize the coercive impact. These rights were enunciated in *Johnnie's Poultry Co.*, 146 NLRB 770 (1964):

Thus, the employer must communicate to the employee the purpose of the questioning, assure him that no reprisal will take place, and obtain his participation on a voluntary basis; the questioning must occur in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees. When an employer transgresses the boundaries of these safeguards, he loses the benefits of the privilege.

It is clear Blackburn did not communicate these safeguards to Walts when inquiring with respect to the subject matter of her charge. Thus, Respondent committed a violation of Section 8(a)(1) of the Act.

On consideration of all the facts relevant to the termination of Walts' employment with Respondent, it is evident that the General Counsel has established by a preponderance of the evidence that Walts' union and protected concerted activities and her filing of an unfair labor practice charge with the Board was the primary motivating factor in Respondent's decision to take this action. The *Wright Line* standard has been met and Respondent has failed to demonstrate that it would have taken this action against her even in the absence of her protected activity. While it is true that upon Respondent's move from the Bardstown location to the Dixie Highway location it lost the \$200 weekly that it had been receiving from the District Council for secretarial services, it also reduced its overhead expenses in rent by an almost equal amount.

Both Walts and Rice testified that after this move they no longer had the use of the computer, which belonged to the District Council and in which they kept records of their membership and out-of-work list. These activities then had to be done manually which took longer. When Walts went on

vacation November 18, she had been given no indication that there was not enough work for two clericals and that either she or Rice would have to be terminated. Nor, is there any testimony by Walts, Rice, or Blackburn that there was not enough work for two, except Blackburn's conclusional testimony to that effect.

Notwithstanding lack of any prior notice, on the first day of Walts' vacation, November 19, Respondent posted the following certified letter to her (G.C. Exh. 22):

November 19, 1993

*Certified Mail*  
P311 670 618

Ruth E. Walts  
20 Hallsdale Drive  
Louisville, Kentucky 40220

Dear Ms. Walts:

Please be advised that as of November 19, 1993 you are no longer an employee of Local Union #1031.

You have been laid off due to a lack of work. You will be paid through November 29, 1993 to cover your vacation and the Thanksgiving holidays.

Respectfully yours,

/s/ George V. Blackburn

George V. Blackburn  
Financial Secretary  
Local Union #1031

This action, taken as it was without any advance notice and in view of Blackburn's obvious animosity toward Walts for having filed a charge against Respondent and seeking representation by the Union is demonstrative of Respondent's motivation. Blackburn testified that at an executive board and membership meeting on November 18 he proposed to lay off Ruth Walts for financial reasons and that there was discussion and a motion to lay off Debbie Rice since Rice made substantially more than Walts, almost \$4 an hour more. Blackburn then stated the layoff was due to lack of work. It is apparent that Blackburn prevailed and Walts was terminated. (Tr. 174-177.)

Based on the foregoing and Respondent's shifting reasons for the termination of Walts, I find that it violated Section 8(a)(3), (4), and (1).

#### CONCLUSIONS OF LAW

1. Millwrights, Conveyors and Machinery Erectors Local Union No. 1031, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Service Employees International Union, Local 557, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following conduct Respondent has violated Section 8(a)(1) of the Act.

4. By interrogating its employee concerning an unfair labor practice charge filed with the Board against Respondent by the employee.

5. By engaging in the following conduct, Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

6. By discharging and thereafter failing and refusing to reinstate its employee Ruth E. Walts because she had engaged in union and protected concerted activities and because she had filed an unfair labor practice charge against Respondent with the Board.

7. Respondent has not otherwise violated the Act. All allegations not specifically found are hereby dismissed.

8. The aforesaid unfair labor practices set forth in items 4 and 6 above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(1), (3), and (4) of the Act, as set forth above, it shall be ordered to cease and desist therefrom and from any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Moreover, Respondent shall be required to post an appropriate notice attached hereto as "Appendix." Having found that Respondent has unlawfully discharged its employee Ruth E. Walts and failed and refused to reinstate her, it shall be ordered to offer her immediate and full reinstatement to her former position of employment or, if that position is no longer available, to a substantially equivalent one, without prejudice to her seniority or any other rights or privileges she may have previously enjoyed and make her whole for any loss of earnings and benefits she may have suffered by reason of Respondent's discrimination against her. Backpay will be computed in accordance with the Board's decision in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>8</sup> Further, Respondent shall be ordered to remove from its files any references to the unlawful discharges of the above-named employee and notify her that it had done so and that it will not use her discharge against her in any way.

[Recommended Order omitted from publication.]

<sup>8</sup>Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment), shall be computed as in *Florida Steel Corp.*, 281 NLRB 651 (1977).