

Ball Corporation and Aluminum, Brick and Glass Workers International Union, AFL-CIO, CLC, and Local 93, Aluminum, Brick and Glass Workers International Union, AFL-CIO, CLC.
Case 25-CA-24096

January 28, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

On October 17, 1996, Administrative Law Judge Marvin Roth issued the attached decision. The General Counsel filed limited exceptions and a supporting brief, and the Respondent filed an answering brief.

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

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

The judge recommended that the Respondent be ordered to recognize and bargain on request with "the Union's designated Industrial Relations Committee, provided that such committee consists of unit employees as agreed in the contract." The General Counsel contends that this language is too narrow and that the order should require the Respondent to bargain with the Union's designated bargaining representatives, including the Union's designated Industrial Relations Committee. The General Counsel argues that the Union may select whomever it wants as its bargaining representative, and there is no evidence that the Union is contractually bound to have the Industrial Relations Committee serve as its bargaining representative. The General Counsel further maintains that the contract in which the Union agreed to limit its representatives to the Industrial Relations Committee to members of the bargaining unit expired on October 18, 1996. The General Counsel contends that because the waiver of a statutory right does not survive the expiration of a contract, the Board should not place any limitations on the Union's choice of its representatives to the Industrial Relations Committee beyond the life of the agreement. In response, the Respondent contends that the parties have negotiated a new agreement expiring on October 18, 1999, which carries over the relevant portions of the expired agreement. Accordingly, the Respondent argues that the Union's waiver of its choice of bargaining representative is still in effect.

We agree with the General Counsel that the judge's recommended Order is too narrow and that the lan-

guage suggested by the General Counsel would better remedy the violation found in this case. We note that the Respondent's obligation to bargain with the Union's designated representative is not limited to the Industrial Relations Committee. The Union may designate any agent as its bargaining representative, consistent with any lawful limitations imposed by any applicable collective-bargaining agreement.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Ball Corporation, Muncie, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Recognize and, on request, bargain collectively in good faith with the Union's designated bargaining representative, including the Union's designated Industrial Relations Committee."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

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

WE WILL NOT fail or refuse to bargain collectively in good faith with Aluminum, Brick and Glass Workers International Union, AFL-CIO, CLC, and Local 93, Aluminum, Brick and Glass Workers International Union, AFL-CIO, CLC as the exclusive collective-bargaining representative of our employees in the appropriate unit. The appropriate unit consists of our employees at our Muncie, Indiana facility, as set forth in article 2 of our contract with the Union which was effective by its terms from October 18, 1993, to October 18, 1996.

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 in good faith with the Union's designated bargaining representative, including the Union's designated Industrial Relations Committee.

BALL CORPORATION

Michael T. Beck, Esq. and *Alonzo Weems, Esq.*, for the General Counsel.

Robert W. McClelland, Esq., of Muncie, Indiana, for the Respondent.

Thomas J. Powers, Esq., of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. This case was heard at Muncie, Indiana, on July 25, 1996. The charge was filed on July 24, 1995, by Aluminum, Brick and Glass Workers International Union, AFL-CIO, CLC (International and Local 93 and, collectively, the Union). The complaint, which issued on March 29, 1996, and was amended at the hearing, alleges that Ball Corporation (the Company or Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The gravamen of the complaint is that the Company allegedly failed and refused to recognize and bargain with the union representatives designated by the Union, the bargaining representative of the unit employees. The Company by its answer denies the commission of the alleged unfair labor practices, and raises certain affirmative defenses which will be discussed.

All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally, and to file briefs. The General Counsel, the Union, and the Company each filed a brief. On the entire record,¹ and from my observation of the demeanor of the witnesses, and having considered the arguments of counsel and the briefs submitted by the parties, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, a corporation, with an office and place of business in Muncie, Indiana, is engaged in the production of glass and metal container products. In the operation of its business, the Company annually purchases and receives at its Muncie facility goods valued in excess of \$50,000 directly from points outside the State of Indiana. I find, as the Company admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The International and Local 93 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Since prior to 1950, the Union has been the collective-bargaining representative of the Company's employees at its Muncie facility. Until March 1993, the bargaining unit consisted of the Company's production and maintenance employees in five divisions: consumer products, consumer services (production), plant services, and general services and ga-

rage (maintenance). Local 93's membership consisted of unit employees.²

The last contract covering the production and maintenance unit was effective by its terms from October 15, 1990, to October 18, 1993. Among other provisions, the contract provided for a maximum of one steward for each shift in each seniority division, who would be selected by the employees in their respective divisions. The contract also provided for an Industrial Relations Committee (IRC), composed of four employees: The local president, first vice president, vice president for consumer production (production employees), and vice president for plant services (maintenance employees). The last two could act only in their respective divisions (production or maintenance). Local 93's financial/recording secretary-steward could act in the absence of an IRC member. The contract provided that only company employees could serve as stewards or Local 93 officers.

The contract did not specify how the union officers who comprised the IRC would be elected. Historically, Local 93's membership annually approved a slate of officers, with the positions of vice president for consumer production and vice president for plant services (maintenance) reserved for employees in their respective divisions. So far as indicated by the present record, there had never been a contested election prior to 1993.

The collective-bargaining contract assigned responsibilities to the IRC. The IRC could file grievances on behalf of Local 93. The IRC was involved in the processing and resolution of grievances. The Company was required to notify and explain to the IRC, proposed changes in operations which substantially affected the jobs or working conditions of unit employees, and changes in attendance rules and regulations. IRC members were entitled to superseniority in layoffs. IRC members also usually participated in contract negotiations.

Sometime prior to March 1993, the Company decided to focus principally on packaging. The Company concluded that the Muncie production operation did not fit into its plans. Therefore, the Company spun off its production operation to Alltrista Corporation (Alltrista) a newly formed corporation. As a result, the production employees would be employed by Alltrista. The maintenance employees remained as employees of the Company.

In March 1993, the Company, the International, and Local 93 met for the purpose of amending their contract so as to provide for separate bargaining units, with separate contracts covering each unit. The Union remained as bargaining representative for both units. In four sessions, the parties reached agreement. The provisions of the amended contract covering the Company, i.e., maintenance employees were subsequently incorporated into the next contract, effective by its terms from October 18, 1993, to October 18, 1996, with one minor change. The former plant services, general services, and garage division were combined into a single facility services division.

The 1993-1996 contract between the Company and the Union contained the following pertinent provisions:

²The parties historically and in their contracts, referred to these divisions as units. In order to avoid confusion with the bargaining unit, I have referred to them as divisions.

¹Certain errors in the transcript have been noted and corrected.

ARTICLE 2

Recognition

The Union is hereby recognized as the sole and exclusive bargaining agency for all employees within the Facility Services Unit, which previously consisted of Plant Services, General Service, and Garage Units within the Company, at its Muncie, Indiana location, excluding salaried employees and confidential clerical employees, regardless of method of compensation, and any other supervisory employees who have authority to hire, promote, discipline, discharge, or otherwise effect changes in the status of employees or effectively recommend such action for the purpose of collective bargaining with respect to rates of pay, wages, hours of work and conditions of employment.

Only members of the Facility Services Unit shall be eligible to bargain about or vote upon matters relating to wages, hours of work and working conditions or any other matters with respect to Ball Corporation and this agreement.

Also excluded from the bargaining unit are those employees at the Muncie, Indiana located who, were not included in the unit named herein, were represented by other Unions, those employed by other companies and those not represented by any union.

ARTICLE 9

Grievances

Section 2. For the purpose of adjusting grievances, there shall be selected not more than one (1) member of the Local Union for each job classification.

In addition, Ball Corporation shall recognize an Industrial Relations Committee consisting of three bargaining unit employees from the Company.

The financial/recording secretary-steward may fill in on the Industrial Relations Committee in the event any of the three above employees are absent. All stewards, members of the Industrial Relations Committee must be employees of Ball Corporation.

The principal issue in this case concerns the meaning and application, if any, of the second paragraph of article 2 to the selection of IRC members.

The above provisions, with the minor change previously noted, were negotiated at the March 1993 sessions. International Representative Wayne Murray and Company Employee Relations Manager Edward Stoner were the principal negotiators. Stoner proposed two separate local unions, and alternatively, that there be two local presidents. The Union rejected both proposals. Stoner next proposed two separate bargaining units. The Union responded favorably, and his proposal was the catalyst for their eventual agreement. There was no discussion in the negotiations as to how the IRC member would be selected.

International Representative Murray did not testify in this proceeding. Counsel for the General Counsel stated that Murray was hospitalized and therefore unable to testify. Stoner's notes of the March 16 session, at which the parties reached

substantial agreement, contain a marginal notation "who votes on this." Stoner testified that this question prompted him to engage in a hallway conversation with Murray. According to Stoner, they "talked that Ball people were going to pick their people. Alltrista would vote to pick their people," and "it would be resolved within the Local."

Since the spinoff, Local 93 has had a membership of some 88 or 89 employees. Of these, about 12 were company employees. The others were Alltrista employees.

At the time of the spinoff, Harvey Schneider was Local 93's president. Schneider, First Vice President Juanita Garrett, and Second Vice President Charles Vance were Alltrista employees. Third Vice President Leonard Petro was a company employee. Pending the next election, Petro served as IRC chairman for the company unit. The balance of the IRC consisted of unit employees Rod Snodgrass and Ed Crump, with Matt Arthur as alternate.

In 1994, in an uncontested election, Local 93's membership elected Garrett as president, and Petro as third vice president. Petro conducted an election among the company employees for the other IRC members. They elected Snodgrass and Antoinette White.

Following the spinoff, the company employees began a practice of conducting their own meetings for the purpose of dealing with matters pertaining to their unit. Eventually they stopped attending general union meetings. As president, Garrett initially attended the company unit meetings, but eventually stopped doing so. Local 93 did not sanction the practice of separate meetings for the Alltrista and company employees.

In September 1994, Local 93 President Garrett announced that pursuant to the Union's bylaws, she was removing Petro, Snodgrass, and White as IRC members, and Petro as third vice president, because they failed to attend two consecutive union meetings. By letter dated September 17, 1994, Garrett informed the Company of this action, and that pending an election, she was designating Ernest Garrett as third vice president and IRC member, and James Crump as an additional member, with a third member to be appointed. Ernest Garrett and Crump were both company employees.

By petition to the International dated September 21, 1994, signed by 10 company unit employees, the employees protested Garrett's action, and asserted that "we feel that the regular IRC Committee should continue as representatives for Ball Corporation until this issue can be resolved." The employees informed the Company of their protest. The Company continued to deal with Petro, Snodgrass, and White as the IRC.

On October 18, 1994, Local 93 filed an unfair labor practice charge (Case 25-CA-23522) alleging that the Company was violating Section 8(a)(1), (2), and (5) of the Act by refusing to recognize and deal with Local 93's designated representatives. On May 26, 1995, the Board's Regional Office declined to proceed on the charge.

In June 1995, the International, with Local 93's agreement, sought to resolve the problem by conducting a mail ballot among the company unit employees for IRC members. One unit employee (Mathew Arthur) did not receive a ballot. Following the balloting, the International informed the Company that unit employees Gordon Anderson, Ernest Garrett, and Bill Sewell were elected and now comprised the IRC,

and that Anderson was appointed to Local 93's executive board. No tally of ballots was presented in evidence.

Employee Petro presented Company Labor Relations Manager Thomas McKnight with a petition signed by nine unit employees. The petition, in sum, protested the mail-ballot election, and asserted the signers' desire "to uphold our original committeemen, Ron Snodgrass, Ed Petro, Toni White and also the contract with the Company." McKnight forwarded the petition to the International.

Matt Arthur, who prepared the petition, testified that he regarded the mail-ballot election as improper and disruptive. Leonard Petro, who signed the petition, testified that he regarded the election as illegal because it was conducted by mail. Author did not receive a ballot, and ballots were rejected if they contained any extraneous writing. Local 93 President Garrett testified that the election was proper.

By letter dated June 16, 1995, International executive administrative assistant, John Murphy, formally notified the Company of the election of Anderson, Garrett, and Sewell, and requested that with the Company recognize and cooperate with them. By letter dated June 22, 1995, McKnight responded that in view of the employees' petition, the Company would continue to work with Petro, Snodgrass, and White until the matter was resolved. In subsequent correspondence in July 1995, the parties adhered to their respective positions. McKnight also invoked article 2 of their contract, and the Regional Office refusal to proceed on Local 93's 1994 unfair labor practice charge.

On June 1, 1996, Local 93 conducted an election for all its top officers, including third vice president. All members were permitted to vote on all offices. Leonard Petro and Mathew Arthur ran for the office of third vice president. Arthur won. Petro contended that the election was invalid because only company employees could vote for that office.

About a week after the Local 93 election, company employees conducted their own election for third vice president, on plant premises during working hours. At employees' request, Supervisor Robert Longfellow provide a box which could be used as a ballot box. The Company was not otherwise involved in the election. Petro won this election by a vote of 8 to 1. The employees also voted for Antoinette White and Leslie Jester as IRC members.

Mathew Arthur testified that as third vice president and head of the unit IRC, it was his responsibility to conduct an election among the unit employees to fill the remaining IRC positions. He did not do so, because the Company did not recognize him as IRC chairman. Supervisor Longfellow told him that the Company recognized Petro as third vice president.

B. Analysis and Concluding Findings

The Company contends by way of affirmative defense in its answer that (1) the Regional Director's refusal to proceed on Local 93's 1994 charge constitutes a final adjudication and is res judicata on the merits of this case; and (2) the present charge is time barred under Section 10(b) of the Act. The Company has not pursued either contention in its brief.

Both contentions are without merit. It is settled law that a Regional Director's administrative dismissal or refusal to proceed on a charge is not a adjudication on the merits, and does not preclude future litigation of the subject matter of that charge. *Kelly's Private Car Service*, 289 NLRB 30, 39

(1988), enfd. 919 F.2d 839 (2d Cir. 1990); *B.A.F., Inc.*, 302 NLRB 188, 193 (1991), enfd. 953 F.2d 1384 (6th Cir. 1992).

Moreover, the present complaint does not involve the same allegation as the 1994 charge. The General Counsel is not alleging that the Company unlawfully refused to recognize or deal with the IRC appointed by Local 93 President Garrett in September 1994. Rather, the complaint alleges, in sum, that the Company has been and is violating Section 8(a)(1) and (5) by refusing to recognize and deal with the IRC as elected in June 1995 and June 1996. Therefore, the present charge was timely filed, and Section 10(b) does not preclude litigation of the present complaint.

The Company and the Union do not dispute that the Company IRC should consist of company unit employees. By practice, the Union at least impliedly agreed with the Company that two of the three IRC members should be elected by the unit employees. The immediate problem presented, on which the parties disagree, is whether the Company and the Union, by virtue of the second paragraph of contract article 2, entered into a binding and lawful agreement that Local 93's third vice president, by reason of his automatic status as a member and chairman of the IRC, must be elected only by the unit employees.

Employee union members have a statutory right to select bargaining committee members or other individuals to negotiate on their behalf, free from employer interference. That right is encompassed by the right, specified in Section 7 of the Act, to assist labor organizations. *NLRB v. Methodist Hospital of Gary*, 733 F.2d 43, 46-47 (7th Cir. 1984). Correlative to this right, "each party of the collective bargaining process has the right to choose whomever it wants to represent it in formal labor negotiations, and the other party has a correlative duty to negotiate with the appointed agents. . . . 'Exceptions to the general rule that either side can choose its bargaining agents freely . . . have been rare and confined to its situations so infected with ill will, usually personal, or conflict of interest, as to make good faith bargaining impracticable.'" *Harley Davidson Motor Co.*, 214 NLRB 433, 437 (1974). See also *Indianapolis Newspapers*, 224 NLRB 1490, 1499-1500 (1976).

Nevertheless, although the selection or designation of persons to act on behalf of a union in collective bargaining is not a mandatory subject of bargaining, a union may through negotiation waive or restrict its rights in this regard. *Shell Oil Co.*, 93 NLRB 161, 164-165 (1951); see also *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). However, the waiver of a statutory right cannot simply be inferred from a general contractual provision. Rather, the waiver must be: "explicitly stated." More succinctly, the waiver must be clear and unmistakable." *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). Moreover, a contractual restriction on a union's right to select persons to deal with the employer on its behalf will not be given effect, if application of that provision would tend to undermine the Union's effectiveness as bargaining representative. *Capitol Trucking*, 246 NLRB 135, 139-141 (1979).

The foregoing cases did not involve the present immediate issue; i.e., the eligibility of voters, or more specifically, whether union members at large, or only unit employees, may vote on the selection of an individual to represent the recognized union in collective bargaining. However, I find the principles of those cases to be applicable to the present

situation. The present case, in essence, involves restrictions or alleged restrictions on a union's right to select individuals to deal with the employer on its behalf.

The Company and the Union each argue in sum, that statutory provisions compel a result in their favor. The Company argues (Br. 10-12), that the language of Section 9(a) of the Act requires that persons acting on behalf of the recognized union be chosen only by bargaining unit employees. The Union argues (Br. 9-10), that provisions of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. § 481(b) and (e) and § 411(a)(1)) require that all persons holding union office be elected by the entire union membership, with each member entitled to one vote.

Neither argument is persuasive. Section 9(a) provides that: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . ." In the present case, the International and Local 93 are the bargaining representatives. Their officers are simply their agents. I question whether the Company would argue that the International's officers could not bargain with the Company, because their electorate was not limited to the Company's unit employees.

The Union has not cited, nor have I found, any cases holding that the Labor-Management Reporting and Disclosure Act requires that every person holding union office be elected by the entire union membership. Such a result is highly questionable where as here, the particular office involves functions limited to a particular bargaining unit. I question whether the Union would argue that every shop steward must be elected by the entire membership of his union, whether that union be a local or an International. Indeed, the Supreme Court impliedly rejected a contention similar to that of the Union, i.e., that a union "may not waive individual rights, such as the right to hold union office." *Metropolitan Edison Co. v. NLRB*, supra, 460 U.S. at 706-707.

In sum, there are no statutory provisions which compel a result in favor of either the Company or the Union. Rather, as indicated, the present issue must be resolved in accordance with the principles discussed above.

Applying those principles to the facts of the present case, I find that the Company was obligated to recognize and bargaining with the persons designated by the Union as comprising the company unit IRC. The second paragraph of contract article 2 does not purport to govern the manner in which IRC members are selected. Rather, the clause simply provides that only unit employees shall be eligible to vote on matters relating to wages, hours of work and working conditions, and any other matters with respect to the Company and the contract. In sum, the clause refers to subject matters, e.g., grievances and terms and conditions of employment, rather than the election of individuals who will deal with the Company on behalf of the Union. Article 9 requires that IRC members be unit employees. The article does not require that only unit employees be eligible to vote for IRC members. Neither provision requires that IRC members be chosen by election, rather than by appointment or other manner of selection.

The evidence further indicates that the parties never reached agreement or understanding that IRC members must be chosen by vote of unit employees. The parties, in their

1993 negotiations, did not discuss how IRC members would be selected. Chief Company Negotiator Stoner acknowledged this fact by indicating a question in his notes as to "who votes on this." In a private conversation, he posed the question to International Representative Murray, who responded that "it would be resolved within the Local." Stoner thereby conceded that the Union had discretion to determine the manner in which IRC members would be selected. In sum, both the contract language, and other evidence concerning the intent of the parties, indicates that they never agreed that IRC members must be selected by vote of the bargaining unit employees.

Other factors also weigh strongly in favor of the Union's interpretation of the contract. In this regard, the origins of the dispute are significant. Local 93 removed Petro, Snodgrass, and White as IRC members after they stopped attending union meetings, and sought to conduct union business in their own separate meetings, contrary to union policy. In effect, the IRC members sought to function through a separate union. If Local 93 or the International were powerless to prevent such practices, then the consequence would be in effect be two separate Local unions, notwithstanding union rejection of the Company's initial proposal in this regard. The Company would thereby achieve what it could not get at the bargaining table.

The Union, as the exclusive collective-bargaining representative of the Company's employees in the unit, has a statutory duty fairly to represent all of the unit employees, both in its collective bargaining with the Company, and its enforcement of the resulting collective-bargaining agreement. *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). The Union correctly points out (Br. 12), that if the Company's interpretation of the contract were accepted, the Union would be in the position of being accountable for the decisions of the IRC at the Company, without having any authority over the persons making those decisions. In this regard, *Capitol Trucking*, supra, is particularly significant.

In *Capitol Trucking*, supra, a union executed a collective-bargaining contract with an employer which provided that all new shop stewards would be appointed from the top 25 percent of the work force, in terms of seniority. The provision had historically been in the union's contracts with employers in Maryland and the District of Columbia. However, *Capitol Trucking* was located in Virginia, a State with a right-to-work law. As matters turned out, the only available unit employee in the top 25 percent was not a union member. The union designated a union member who was not in the top 25 percent, as steward. The employer refused to recognize and deal with that employee as steward, alleging breach of contract.

The Board held that notwithstanding the contract provision, the employer violated the Act by refusing to recognize and deal with the Union's designated steward. As explained by Administrative Law Judge Schnieder (246 NLRB at 140-141):

The bargaining representative is an agent of employees. It has obligations and responsibilities—some of which may resemble those of a fiduciary—both to employees who are its members and to the nonmembers it represents. If the representative is an entity, such as a union, it can discharge those obligations only through

individuals whom it designates, including stewards. The union may be answerable for the actions of those designees acting within the scope of their authority, both because the union is the agent of the bargaining unit, and because it is the principal of the designees.

Where the union's designee is a member of the union, the organization possesses a measure of control over his actions through its intra-organizational disciplinary authority. It has no such control over a nonmember. If there is no responsible principal behind the steward, to whom the employees and the employer can look for redress or discipline in the event of improper action by the steward, there may be a loss of remedy. Absent capacity to discipline or remove the steward, the union may be free of responsibility for his conduct—a result incompatible with the notion that the bargaining representative is the responsible principal. It would also remove the union's incentive to police the steward's actions, except to assure that they are not contrary to the union's proprietary interests. And, if the steward is not answerable to union discipline or removal, and he performs improperly, what can be done about it? . . . perhaps nothing. Such a result scarcely seems to me to be one consonant with either the objectives of the statute, or one which the parties envisioned and accepted in enacting (the contract provision).

In the present case, the individuals recognized by the Company as constituting the IRC were union members. However, they retained or obtained their alleged such positions by virtue of a process not authorized the Union, and over which the Union would have no control. The rationale of Judge Schneider is equally applicable to the present case.

From the foregoing reasons, I find that the Company has been and is violating Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain with the IRC designated by the Union.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International and Local 93 are labor organizations within the meaning of Section 2(5) of the Act.

3. The employees of the Company at its Muncie, Indiana facility, as set forth in article 2 of its collective-bargaining agreement which was effective by its terms from October 18, 1993, to October 18, 1996, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. Since October 18, 1993, the Union has been and is the exclusive collective-bargaining representative of the Company's employees in the unit described above.

5. By failing and refusing to recognize and bargain with the Union's designated Industrial Relation's Committee, the Company has failed and refused to bargain collectively with the Union as the exclusive bargaining representative of the employees in the appropriate unit, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Company has committed violations of Section 8(a)(1) and (5) of the Act, I shall recommend that it be required to cease and desist therefrom and from any like or related unlawful conduct, to post appropriate notices, and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Company be ordered to recognize and, on request, bargain in good faith with the Union's designated Industrial Relations Committee, provided that such Committee consists of unit employees as agreed in their contract.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Ball Corporation, Muncie, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of all its employees in the above-described unit.

(b) 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 in good faith with the Union's designated Industrial Relations Committee, provided that such committee consists of unit employees as agreed in the contract.

(b) Within 14 days after service by the Region, post at its Muncie, Indiana facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 24, 1995.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

³If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴If 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."