

Sioux City Foundry Company and District No. 7, International Association of Machinists and Aerospace Workers, AFL-CIO and Sioux City Foundry Shop Committee and Continental Rebar Coatings Shop Committee, Party in Interest. Cases 18-CA-13403 and 18-CA-13834

June 24, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

On May 31, 1996, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

The Respondent excepts, inter alia, to the judge's finding that the Sioux City Foundry Shop Committee and Local Lodge 1426 (the Union) made a sufficient effort to notify the Respondent's employees of the affiliation vote scheduled for October 30, 1994. In finding that the Union gave adequate notice of the October 30 affiliation vote to the Sioux City, Iowa (plant 1) employees, the judge found, in effect, that the Respondent had two shifts working at plant 1 in October 1994 and that the Union's handbilling at plant 1 was sufficient to put the plant 1 employees on notice regarding the October 30 affiliation vote. In this regard, the judge implicitly credited District Lodge President and Local Lodge 1426 Secretary-Treasurer and Organizer Milton Jenkins' testimony that the Union chose to handbill at plant 1 between the hours of 3 and 4:30 p.m. on October 24, 1994, "to catch night shift workers reporting for work by 3:30 p.m. and to also distribute flyers to day shift employees getting off work at 4 p.m." The Respondent contends, however, that in October 1994 there were employees at plant 1 on shifts other than the day and night shifts and that the Union

made no effort to notify them of the October 30 affiliation vote. For the following reasons, we find this exception without merit.

The Respondent bases its assertion that there were shifts other than the day and night shifts working at plant 1 in October 1994 on the testimony of Andrew Galinsky, the Respondent's president, to the effect that in that month there were shifts leaving plant 1 at approximately 12:30 p.m. and at 2 p.m. The Respondent, however, introduced no documentary evidence to support its contention that there were shifts leaving plant 1 at these hours in October 1994. In view of the judge's finding of Galinsky's "general seeming lack of candor when testifying," we find that the judge implicitly discredited Galinsky's testimony that there were shifts leaving plant 1 at 12:30 and 2 p.m. in October 1994. As the judge noted in regard to Galinsky's testimony on another issue, "the Board may decline to credit the testimony of interested witnesses, even though such testimony is not contradicted[.]" Accordingly, we find that the record evidence does not support the Respondent's contentions.

The Respondent also contends that the Union did not provide sufficient notice of the October 30 affiliation vote to all the bargaining unit employees, because it did not notify them of the upcoming affiliation vote by mail. In this regard, the Respondent asserts, in effect, that the Union had a mailing list of the Respondent's employees prior to the October 30 affiliation meeting and was therefore obligated to notify the employees by mail of the upcoming meeting. In support of this assertion, the Respondent contends, in effect, that since the Union sent congratulatory letters to all bargaining unit employees after the October 30 affiliation vote, it must have had the names and addresses of the bargaining unit employees and could therefore have mailed them notices of the affiliation vote before the October 30 meeting. Contrary to the Respondent's assertion, however, the record reveals that only one employee, Ron Clingenpeel, the Sioux City Foundry Shop Committee president, received a congratulatory letter from the Union after the October 30 affiliation vote. Thus, there is no evidence to support the Respondent's assertion that the Union had a mailing list of the Respondent's employees prior to, or immediately after, the affiliation vote. To the contrary, the record shows that the Union did not have such a mailing list because the Respondent itself had refused the Union's request for the names and addresses of the bargaining unit employees. Accordingly, we find this exception without merit also.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Sioux

¹The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We agree with the judge's analysis of the affiliation issues presented here and note that his analysis is in accord with the Board's decision in *Sullivan Bros. Printers*, 317 NLRB 561 (1995).

²In accord with the Board's decision in *Indian Hills Care Center*, 321 NLRB 144 (1996), if the Respondent closes its facility prior to the Board's decision in this case, the Respondent is obligated to mail notices, at its own expense, to all current bargaining unit employees and to all employees employed by it on December 13, 1994, the date the first charge was filed in this case.

City Foundry Company, Sioux City, Iowa, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(c).

"Within 14 days after service by the Region, post at its Sioux City, Iowa, and South Sioux City, Nebraska plants copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 18, 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 December 13, 1994."

³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Pamela W. Scott, Esq., for the General Counsel.
Kelvin C. Berens and Nancy Wood, Esqs. (Berens & Tate, P.C.), of Omaha, Nebraska, and *Donald J. Smith, Esq. (Deloitte & Touche)*, of Omaha, Nebraska, for the Respondent.

Joe Cooper, Esq. of Des Plaines, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Sioux City, Iowa, on March 7 and 8, 1996. On January 31, 1996, the Regional Director for Region 18 of the National Labor Relations Board (the Board) issued an order consolidating cases, consolidated complaint and notice of hearing, based on unfair labor practice charges filed in Case 18-CA-13403 on December 13, 1994, and amended on January 31, 1995, and in Case 18-CA-13834 on November 8, 1995, and amended on January 17, 1996, alleging violations of Section 8(a)(1), (2), and (5) of the National Labor Relations Act (the Act).

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record, on the briefs which were filed, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. Issues

The issues arising from Case 18-CA-13403 are whether Sioux City Foundry Company (Respondent)¹ violated Section 8(a)(5) and (1) of the Act since November 14, 1994, by refusing to recognize and bargain with District No. 7, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union),² as the exclusive collective-bargaining representative of certain employees in a bargaining unit, described below, which is appropriate within the meaning of Section 9(b) of the Act. That allegation is based on the underlying one that, on October 30, 1994, as a result of an election among those unit employees, Sioux City Foundry Shop Committee (Shop Committee),³ properly affiliated with the International Association of Machinists and Aerospace Workers, AFL-CIO (International), which thereafter became the statutory bargaining agent of those employees through its Local Lodge No. 1426. In addition, it is alleged that, on about October 28, 1994, Respondent's president and chief executive officer, Andrew Michael Galinsky—an admitted statutory supervisor and agent of Respondent—unlawfully offered to pay Shop Committee's costs of arbitration in an effort to discourage employees from voting to affiliate with the Union, in violation of Section 8(a)(1) of the Act.

As will be discussed further in subsection B, *infra*, the Regional Director for Region 18 dismissed the charge in Case 18-CA-13403. That dismissal was appealed to the General Counsel. Appeal was still pending when, by letter dated January 22, 1996, the Regional Director partially revoked his dismissal of that charge and included the above-enumerated allegations in the consolidated complaint. Respondent moves to dismiss those allegations, urging that under the proviso to Section 10(b) of the Act, as interpreted by the Board, Regional Directors lack authority to revoke dismissals after the passage of more than 6 months since alleged commission of unfair labor practices. Further, while Respondent admits that, since November 1994, it has refused to recognize and bargain with the Union, in response to its demand for recognition, Respondent argues that the affiliation was not a proper one and, consequently, that the Union has not been the statutory bargaining agent of its employees. That is, urges Respondent, Shop Committee has remained the collective-bargaining agent of unit employees after October 30, 1994.

¹The parties stipulated that, at all material times, Respondent has been an Iowa corporation, with an office and place of business in Sioux City, Iowa, engaged in operation of a gray iron foundry, steel service center, contract manufacturing, and steel fabrication. Respondent admits that, at all material times, it has been an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act, based on the admitted allegations that, during calendar year 1995, it purchased goods valued in excess of \$50,000 which it received directly from points located outside of the State of Iowa and, moreover, sold goods valued in excess of \$50,000 which it shipped directly to points located outside of Iowa.

²Respondent admits that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

³The parties stipulated that, at all material times, Shop Committee, had been a labor organization within the meaning of Sec. 2(5) of the Act.

Based on the charge in Case 18-CA-13834, the consolidated complaint alleges that, about October 31, 1995, Galinsky "initiated, promoted, demanded and required that [Shop Committee] merge with Continental Rebar Coatings Shop Committee [Continental Committee], thereby creating the" Sioux City Foundry Company Shop Committee, in the process selecting an employee to represent the Continental Committee, as its shop chairman.⁴ Based also on the charge in Case 18-CA-13834, the consolidated complaint alleges that Respondent has unlawfully recognized Sioux City Foundry Company Shop Committee as the exclusive representative of an overall unit of employees, which includes employees in the bargaining unit by then allegedly represented by the Union, and, further, has entered into negotiations and a collective-bargaining contract with Sioux City Foundry Company Shop Committee, as the representative of those employees.

Respondent argues that it has lawfully recognized Sioux City Foundry Company Shop Committee as the exclusive representative of employees in the overall unit of employees of Respondent and of Continental Rebar Coatings (Continental Rebar). It further admits that it has entered into a collective-bargaining contract with Sioux City Foundry Company Shop Committee. However, it denies that it has violated the Act in any manner by those actions.

For the reasons set forth post, I conclude that a preponderance of the credible evidence supports the conclusions that the affiliation of Shop Committee with International was a proper one; that Respondent unlawfully refused to recognize International, and its designated Local Lodge No. 1426, as the bargaining agent of employees formerly represented by Shop Committee; that Respondent unlawfully initiated and promoted merger of employees by then represented by International and Local Lodge No. 1426 with a unit then represented by Continental Committee; and, that Respondent unlawfully recognized Sioux City Foundry Company Shop Committee as the exclusive bargaining agent of employees in that merged unit and unlawfully negotiated with Sioux City Foundry Company Shop Committee and entered into a collective-bargaining contract with it. Furthermore, I conclude that Galinsky made certain unlawful promises to employees which violated Section 8(a)(1) of the Act.

B. Motion to Dismiss

The proviso to Section 10(b) of the Act provides, *inter alia*, "That no complaint shall issue based on any unfair labor practice charge occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof on the person against whom such charge is made[.]" Respondent does not contend that the charge in Case 18-CA-13403 had not been filed and served timely.

In *Ducane Heating Corp.*, 273 NLRB 1389 (1985), *enfd. mem.*, 785 F.2d 304 (4th Cir. 1986), the Board "held that a dismissed charge may not be reinstated outside the 6-month limitations period of Section 10(b) absent special circumstances where a respondent fraudulently conceals operative facts underlying the violation alleged." *Duff-Norton Co.*,

275 NLRB 646 (1985). There is no contention that Respondent engaged in any fraudulent concealment in connection with the processing of Case 18-CA-13403. So, argues Respondent, the Regional Director is not at liberty to revoke his dismissal of it, or of any portion of that charge, and issue a complaint on the basis of allegations arising from that charge which, by the time of that partial revocation, occurred more than 6 months prior to that partial revocation.

The Regional Director dismissed the charge in Case 18-CA-13403 on March 16, 1995. The Union appealed that dismissal to the General Counsel, pursuant to Section 102.19 of the Board's Rules and Regulations, Series 8. While the General Counsel initially denied the appeal, as having not been filed by the extended date allowed by him for appealing dismissal of Case 18-CA-13403, the appeal was reinstated on motion by the Union. As to that action, Section 102.19(a) provides, "Consideration of an appeal untimely filed is within the discretion of the General Counsel on good cause shown."

In its brief in support of Respondent's motion to dismiss, Respondent points out in footnote 2 that "it is not clear to Respondent that the [appeal's reinstatement] was justified on the facts presented by the" Union to the General Counsel. Still, Respondent makes no argument that reinstatement of an appeal by the General Counsel, of itself, bars consideration of that charge's allegations under *Ducane Heating's* interpretation of Section 10(b)'s proviso. Nor has any other case been cited for the proposition that the Board regards that proviso as a bar to reinstatement by the General Counsel of an untimely appeal.

Case 18-CA-13403 remained pending on appeal to the General Counsel when the charge in Case 18-CA-13834 was filed on November 18, 1995. As set forth in subsection A, by letter dated January 22, 1996, the Regional Director gave notice that he was revoking his dismissal letter with regard to some allegations from Case 18-CA-13403. Nine days later the consolidated complaint issued. Included in it were allegations arising from the once-dismissed charge. It is to those allegations which Respondent directs its motion to dismiss, arguing that having dismissed the entirety of Case 18-CA-13403, the Regional Director lacked authority to reinstate any allegations arising from that charge, when more than 6 months have passed since the commission of those assertedly unlawful acts, under the doctrine of *Ducane Heating*. I reject that argument and deny the motion to dismiss those allegations.

In *Ducane Heating* no appeal to the General Counsel had been taken by the charging party. Accordingly, at the time when the Regional Director in that case revoked the earlier dismissal, the case truly had been finally closed. Here, in contrast, Case 18-CA-13403 had not been closed at the time of the partial revocation of its dismissal. It remained pending disposition on appeal to the General Counsel. Respondent does not argue that the doctrine of *Ducane Heating* would have barred litigation, and resolution, of the allegations encompassed by that partial revocation had the General Counsel, rather than the Regional Director, partially sustained the Union's appeal and reversed the Regional Director's dismissal of those same allegations, even had the General Counsel's action involved allegations occurring more than 6 months prior to that reversal.

⁴There is no evidence to support the allegation that Respondent selected an employee to serve as Continental Committee's shop chairman. Therefore, I shall dismiss that allegation of the consolidated complaint.

The issue, then, is whether Regional Directors have independent authority to do what the General Counsel indisputably could do: reverse dismissal of charges still pending appeal and issue complaints containing previously dismissed allegations arising from those charges. In her brief, counsel for the General Counsel points out, in that respect, that Section 10122.7 of the Casehandling Manual for Unfair Labor Practice Proceedings provides that a regional director may give notification of intent to revoke dismissal of a charge while appeal of that dismissal is pending consideration before the General Counsel's Office of Appeals.

To be sure, Casehandling Manual provisions are "not . . . rule[s] or regulation[s] promulgated by the Board, and binding on . . . Administrative Law Judge[s], but" they do constitute "a set of procedural guidelines designed to aid the Regional Counsel in preparing and conducting . . . case[s]." *NLRB v. Birdsall Construction Co.*, 487 F.2d 288, 291-292 (5th Cir. 1973). See also *Modern Plastics Corp. v. McCulloch*, 400 F.2d 14, 16 (6th Cir. 1968), and *Terminal Freight Handling Co. v. Solien*, 444 F.2d 699, 709 (8th Cir. 1971), cert. denied 405 U.S. 996 (1972). Nonetheless, if the General Counsel possesses authority to, in effect, revoke on appeal Regional Directors' dismissals of charges—by reversing them and reinstating those charges—then nothing in the Act, nor in the general principles of law arising from it, would seem to prevent the General Counsel from, in effect, delegating a portion of that authority to Regional Directors. After all, under Section 3(d) of the Act, it is the General Counsel who "exercise[s] general supervision . . . over the officers and employees in the regional offices" and who has "final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10[.]"

In sum, the Regional Director for Region 18 dismissed the charge in Case 18-CA-13403. The General Counsel accepted appeal of that dismissal, pursuant to Section 102.19 of the Board's Rules and Regulations. That appeal was still pending the General Counsel's final disposition when the Regional Director partially revoked his dismissal under authority delegated to Regional Directors by the Casehandling Manual which, in part, governs operations of the General Counsel's office. In view of that pending appeal, there is no basis for concluding that "dead" allegations were being revived as a result of that revocation. Therefore, this is a different situation than is covered by *Ducane Heating* and I deny Respondent's motion to dismiss the consolidated complaint's allegations arising from Case 18-CA-13403.

C. Events Leading to the Affiliation Election on October 30, 1994

Respondent operates two plants, located approximately 5 to 7 miles apart. Plant 1 is located in Sioux City, Iowa. There, Respondent conducts green bar or epoxy covered rebar, black rebar or uncoated rebar, structural steel fabrication, and contract manufacturing steel operations. A steel warehouse also is located there.

Of significance to the allegations in Case 18-CA-13834 are coated rebar operations also conducted on the premises at plant 1. Prior to the 1990s those operations had been conducted by employees of Respondent, presumably by plant 1 employees. There was testimony that "in the early 90's [sic]" those operations were taken over by another firm,

Continental Rebar.⁵ Continental Rebar then was owned by Angela Galinsky, the spouse of Andrew Michael Galinsky, Respondent's president and chief executive officer.

There is no evidence of subsequent integration between operations of Continental Rebar, once it began operating, and those of Respondent. Nor is there evidence of any common immediate, intermediate, or ultimate supervision of employees of those two firms. So far as the evidence discloses, there were no temporary or permanent transfers of personnel between the two firms after Continental Rebar commenced operations. Nor is there evidence of any daily contact between employees of Continental Rebar and those who worked for Respondent at plant 1, save perhaps for when they arrived for and left work. In that regard, however, Andrew Galinsky testified that all Continental Rebar employees use an entrance—a 7th Street entrance—to the Sioux City location which, so far as the record shows, is not ordinarily utilized for entrance and exit by Respondent's employees who work at plant 1.

During approximately October 1995, Andrew Galinsky took over ownership of Continental Rebar. But, there is no evidence of any change in Continental Rebar's operations as a result of that ownership change. As a result, between Continental Rebar and Respondent, there is no evidence of product integration, common immediate and intermediate supervision, temporary or permanent transfers of employees, or daily contact between employees of the two formerly separate firms in the course of the ordinary workday. Moreover, as will be seen in subsection E, *infra*, employees of Continental Rebar and those of Respondent were covered by separately negotiated collective-bargaining contracts with separate bargaining agents.

Plant 2 is located in South Sioux City, Nebraska. It is essentially a cast iron products facility. According to Andrew Galinsky, during October 1994—approximately a year before he took over Continental Rebar—Respondent employed a total of approximately 136 employees, with approximately 60 working at plant 2. The only contacts or interchange between employees of Respondent's two plants involves a truckdriver from plant 1 who delivers scrap from there to plant 2.

Prior to 1986, employees of Respondent at both plants were represented by what has been referred to as the Moulders Union. It disclaimed further interest in representing those employees. Thereafter, believing that they needed representation, Respondent's employees formed Shop Committee. Though employees at both plants were included in a single bargaining unit for dealing with Respondent, it is not contested that Shop Committee's day-to-day activities at each plant were pretty much conducted separately. That is, employees at each plant chose their own Shop Committee em-

⁵Twice in its brief, Respondent represents that the transfer occurred during "1993." But, there is no evidence to support that specific year as being the one during "the early 90's" when coated rebar operations were transferred from Respondent's ownership to that of Continental Rebar. In consequence, by utilizing at specific year, Respondent is attempting to add to the record. I reject that attempt. No reason is advanced, nor disclosed by the evidence, for failure to adduce evidence of such a specific year during the hearing. Other parties have not had an opportunity to address specification of 1993 as the year of ownership change. Nothing in the record would justify a conclusion that "the early 90's" necessarily would mean 1993, as opposed to some earlier year during that decade.

ployee-officers or agents who dealt separately with Respondent concerning matters pertaining to individual plant affairs.

Representatives of both plants did come together for conducting periodic meetings with Galinsky and for negotiating single collective-bargaining contracts encompassing employees at both plants, in a single overall unit. For example, it is not disputed that during 1992 negotiations were conducted with Respondent on behalf of employees at both plants. A single collective-bargaining contract, covering employees at both plants, was negotiated and executed.

Article I of that contract provided for recognition of Shop Committee "as the sole and exclusive collective bargaining agent" of Sioux City and South Sioux City molders and coremakers, electric furnace operator, contract manufacturing, cleaning room operators, helpers foundry, steel fabricators, reinforcing bar-fabricators, maintenance men, and warehousemen-steel, but excluding pattern makers, laboratory, and spectrograph people, and hourly employees who were regularly scheduled for less than 30 hours per week. Article XXIII had a stated contract term of January 1, 1993, to "until 11:50 p.m., December 31, 1995," with provision for yearly renewals absent written reopening notice by one or the other party.

During 1994, some of Respondent's employees began seeking more effective representation. On October 6, three union officials—Grand Lodge Representative Joe Cooper, District Lodge President and Local Lodge 1426 Secretary-Treasurer and Organizer Milton Jenkins, and Freddie Clay from the Union—met with six of Respondent's employees: Phil Krogman and Ed McGinnis from plant 1, and Ronald R. Clingenpeel, James Chrisman, John Hudson, and Dennis Riessen from plant 2. In addition to their employment at plant 2, Clingenpeel was president, Chrisman was vice president, Hudson was secretary, and Riessen was treasurer of the Shop Committee.

Cooper testified that, having reviewed the above-mentioned then-current 1993–1995 collective-bargaining contract, he explained to the six employees that even if Respondent's employees were to vote for affiliation of Shop Committee with the Union, the latter could not change contractual terms while that contract was in effect: "there was nothing we could really do except assist them in the administration of the collective bargaining agreement." Clingenpeel agreed that the Union's agents had said "that all they could do for us was to enforce the contract that we have. They could not change our contract at all until the new bargaining time came up," but they "could help us to enforce the contract, to teach us, you know, steward classes and stuff like that."

Cooper testified that, during the October 6 meeting, he explained that affiliation would require notice to Respondent's employees, preparation of an affiliation agreement, and a "vote on the situation." He further testified that

I explained to them that the way they operate would not be affected at all. They would contact us if they needed something and we would assist them in that way. I told them one thing we could do is assist them in the arbitration, that the [International] had the money to pay for arbitration.

Assistance if they had any questions and so forth they could call us and we'd help them out through that avenue.

. . . .
The collective bargaining agreement we would be there but they would continue to have their elected officers there just as they had in the past and that they would have full control of the negotiations and we would not have no [sic] veto power.

Cooper and Clingenpeel, the only two witnesses questioned concerning what had been said during the October 6 meeting, both testified that the three union agents left the room to allow the six employees to discuss affiliation among themselves. The employees, testified Clingenpeel, "voted between ourselves to go on and move forward with the affiliation." That decision was conveyed to the union agents, on their return.

Cooper testified that, after checking calendars for mutually available dates, an affiliation election was scheduled for Sunday, October 30, 1994. He further testified that, "I explained to Mr. Clingenpeel as a collective bargaining agent of the employees he had a right to the names and addresses of all the employees" in the existing unit. Cooper suggested that a letter be drafted, requesting that information from Respondent. He also explained, testified Cooper, that dues would be \$20 and that employees could become members, or could pay a service fee, or could choose not to become a union member.

Clingenpeel described a series of actions taken to notify Respondent's plant 1 and plant 2 employees about the October 30 affiliation election. First, he testified that, pursuing Cooper's suggestion described above, he "wrote a letter requesting the names and addresses of everyone in the Sioux City Foundry Company for the bargaining employee[s]. That would be at both plants. I requested that from the company." In addition, he testified, "I also asked that Phil [Krogman] and Ed [McGinnis] . . . get the names of the people from plant one themselves." It is undisputed, however, that Respondent refused to provide those names and addresses to Shop Committee. That is, while Galinsky appeared as a witness for Respondent, he never contradicted or contested Clingenpeel's testimony that, "Mr. Galinsky said that it was not the policy of [Respondent] to provide us with people's names or addresses. That if we wanted them we would have to get them ourselves."

Second, Clingenpeel testified that, as to plant 2, "I physically myself told people about the affiliation vote and [to] try to attend the meeting. If they had any questions that the union representatives would be there to answer any questions that they might have." Leadman and Castings Inspector James Chrisman, who also was Shop Committee vice president, agreed that Clingenpeel "and I told a lot of the people" about the affiliation election to be conducted at the October 30 meeting. Clingenpeel further testified that he spoke on the phone with plant 1 employees McGinnis and Krogman about orally notifying employees at that plant that the meeting was scheduled. But, there is no testimony by anyone possessing firsthand knowledge concerning what, if anything, had been actually said to plant 1 employees with regard to the affiliation election.

Third, Clingenpeel testified that plant 2 employee Chris Twinn had prepared signs or posters, one of which was received as General Counsel's Exhibit 3. That poster advocates that employees "Vote YES" for the Union, recites that on

October 30 a meeting will be conducted from 2 to 4 p.m. and a vote from 4 to 5 p.m. at the "Union Hall, 1720 West 1st," and encourages "everybody who are [sic] able to vote be there!"

Clingenpeel testified that he saw copies of that notice posted, "by 8 o'clock in the morning" on the day after the October 6 meeting "in the lab window . . . in the locker room and on the lunchroom window upstairs. The window of the door." After 2 to 2-1/2 hours had passed, however, the notices were removed and, testified Clingenpeel, "We were instructed not to put them up in the plant." According to Clingenpeel, he protested that instruction to Plant Manager Mike Day who agreed to "let us put our notices on the bulletin board but only there." There the notice remained for the remainder of October, testified Clingenpeel. None of his foregoing testimony was contested by Respondent.

Fourth, Clingenpeel also testified that he had put another notice "on the bulletin board in the lunchroom" on approximately October 21 or 22. It was a notice bearing the heading, "AFFILIATION MEETING & VOTE," addressed "To: All Bargaining Unit Employees—Sioux City Foundry," from "Shop Committee." The text of that notice, which was reproduced as handbills or flyers for distribution to employees, as discussed below, states:

AFFILIATION MEETING

There will be a meeting conducted at the International Association of Machinists and Aerospace Workers (IAM) Hall located at 1720 West 1st Street on October 30, 1994. The meeting will start promptly at 2:00 P.M. through 4:00 P.M. There will be IAM representatives present to answer any and all questions that may arise.

AFFILIATION VOTE

Starting at 4 p.m. through 5 p.m., at that same location, voting will be held to decide if we want to affiliate with the IAM. Voting Tellers/observers will be selected to conduct the election. We encourage all bargaining unit employees to vote in this election.

Meeting & Vote date: Sunday, October 30, 1994

Meeting time: 2 p.m. - 4 p.m.

Voting times: 4 p.m. - 5 p.m.

Place: 1720 West 1st Street
Sioux City, Iowa

The question concerning affiliation with the IAM is an internal affair. We, the shop committee, are recognized as the collective bargaining agent. The National Labor Relations Act prohibits the employer from voicing their opinion for or against affiliation with the IAM. Please take note of any member of management that interferes with, or talks against, or gets involved in any way with our choice of affiliation. They have already interfered once, any further interference will result in formal charges being filed against the Company with the National Labor Relations Board.

The distribution of, or handbilling with, copies of that notice is a subject of relatively extensive testimony. Before turning to it, however, note must be taken of the notice's above-

quoted final sentence. Apparently, it refers to a meeting conducted by Galinsky on approximately October 17.

When he appeared as a witness, Andrew Galinsky denied having known that there would be an affiliation election prior to having received one of the flyers or handbills during the workweek of October 24 to 28, 1994. Yet, Galinsky generally did not appear to be testifying candidly. His denial concerning acquisition of knowledge of the affiliation election provides one illustration of the unreliability of his testimony. For, he never disputed the testimony that on approximately October 17, 1994, he had met with all of Respondent's employees and had voiced his opposition to affiliation of Shop Committee with the Union.

As to that meeting with all of Respondent's employees, Clingenpeel testified:

Mr. Galinsky said—just pretty much gave some history of the Sioux City Foundry with the union, some history of the Shop Committee, what we have done with the Shop Committee as opposed to having a union. Also went back and stated about how the union where they were on strike for a checkoff when his father was in charge of the company and how he could not himself see having a—him permitting a checkoff if we had an affiliation with a new union. Could not understand why—his word was perplexed and why we wanted a union. At that time I mentioned that the concern with the employees was that they had no power to force the employer in any way—his hand in any way to have their rights as far as like arbitration, and Mr. Galinsky said that there is no reason to prepare for war that you might never have.

Not only did Galinsky never deny having conducted that all-employee meeting, and having addressed those remarks to the assembled employees, but testimony by employees called as witnesses by Respondent tends to corroborate Clingenpeel's above-quoted description of what Galinsky had said during that meeting.

Plant 1 employee Joe Robertson acknowledged, during cross-examination, that he remembered Galinsky "calling a meeting with all employees regarding affiliation," that there had been discussion "about the union," and that there had been "discussions about an affiliation with a union[.]" Similarly, plant 1 employee Bill Havlicek testified that he remembered "being in a meeting" conducted by Galinsky and that it "[c]ould have been" that what was discussed during that meeting had pertained to the Union. It should also be noted that, those two employees, as well as a third one called by Respondent, appeared when testifying to be attempting to answer questions in a manner that would satisfy Galinsky, who was sitting at counsel table and toward whom those employees occasionally glanced before answering questions. It seemed that they were making an effort to answer in a manner that would likely satisfy Galinsky, rather than attempting to recreate events as they had actually occurred and statements as they truly had been made.

In view of the foregoing undisputed and partially corroborated account of Galinsky's remarks during his meeting with them, it is unlikely that any of Respondent's employees had been unaware that affiliation was being contemplated. And the ensuing handbilling constituted an added means for Shop

Committee and the Union to give notice to all employees about the October 30 meeting and election. On October 24 and, again, on October 27, efforts were made to distribute to employees copies of the "AFFILIATION MEETING & VOTE" notice.

District Lodge President and Local Lodge 1426 Secretary-Treasurer and Organizer Jenkins testified that on October 24 he had gone to plant 1 at approximately 3 p.m. and had handbilled, with copies of the reproduced notice, until approximately 4:30 p.m. Handbilling with him, testified Jenkins, were Gene Geary, Dale Shore, Jim Gustin, and Jim McDonald, all members of Local Lodge 1426. According to Jenkins, that particular hour-and-a-half had been selected to catch night-shift workers reporting for work by 3:30 p.m. and to also distribute flyers to day shift employees getting off work at 4 p.m.

Jenkins further testified that most of the handbilling that day occurred at plant 1's turnstile entrance, but that one of the handbillers had gone to the truck entrance—which Galinsky estimated is "probably 150 feet" from the turnstile entrance—"to handbill the people coming out. Some of the people getting off the shift use that as an exit to get to their car[s]." According to Jenkins, he observed that individual distribute handbills to "[m]aybe half a dozen" employees who "walked out the gate." As to plant 2 on October 24, Jenkins testified that he gave flyers to Chris Twinn for distribution at that South Sioux City plant, although there is no testimonial evidence about handbilling there that day.

According to Jenkins, on October 27 he returned to plant 1 at approximately 3 p.m. and handbilled there until approximately 3:30. Then, he testified, he went to plant 2 where he handbilled with Steve Boudier and Rod Blain. Replacing him at plant 1 that day, testified Jenkins, were George Taylor and Dave Koson. Taylor was not called as a witness. Koson did appear as a witness for the General Counsel, but testified only that he and Taylor had handbilled for probably "20, 25 minutes" on October 24. Since that date, October 24, was one suggested to Koson by counsel, it may not have been the accurate one. To the contrary, it is more likely that he and Taylor had actually handbilled at plant 1 on October 27, instead.

Such a conclusion is supported by another aspect of the testimony by Jenkins and by Koson, as well as by certain testimony by Respondent's employee-witnesses and by Galinsky, himself. As described above, Jenkins testified that handbilling had been conducted at plant 1's turnstile and truck entrances on October 24. In contrast, testified Jenkins, on October 27, "I was on the sidewalk in the parking lot. By the parking lot that goes into the plant," across the street from the turnstile entrance.

That also was the location at which Koson testified that he and Taylor had handbilled: "We were standing across the street on the sidewalk right where the parking lot is. George Taylor was to my right and . . . covered the people on the right half of the parking lot. I covered the people on the left half of the parking lot as they filtered out of the plant." Of course, as described above, the evidence shows that it had been only on October 27 that handbilling had occurred at plant 1's parking lot; the October 24 handbilling had taken place at that plant's turnstile and truck entrances.

As will be seen, one argument made by Respondent in connection with the affiliation election is that the Union and

Shop Committee largely ignored plant 1 employees, choosing to allow plant 2 employees to make the affiliation decision. Indeed, the parties stipulated that, if called as witnesses by Respondent, 10 other employees—presumably from plant 1—would testify substantially the same as three plant 1 employees who did testify on behalf of Respondent: Joe and Michael L. Robertson and Havlicek.

On direct examination, Joe Robertson denied having ever received any information about a union affiliation meeting, having ever been given a flyer about attending an affiliation meeting, and that anyone had spoken to him, as he left or came to work, about going to an affiliation meeting. Similarly, Michael L. Robertson denied having received any notice about an affiliation meeting with the Union, having ever been given any flyers about an affiliation meeting with the Union, and having ever been spoken to about going to an affiliation meeting. And, Havlicek denied that he had ever been given flyers and had ever seen anyone handing out flyers at plant 1. Still, as concluded above, those three employee-witnesses did not appear to be testifying with complete candor. Furthermore, to the extent that their denials during direct examination tended to support the ultimate position that handbilling had not occurred at plant 1, some of their other answers tend to negate such a conclusion.

For example, during cross-examination Havlicek conceded that it was "possible. I just don't remember" that information had been given out about the affiliation election and, moreover, admitted that it was possible that he had received information about it. More significantly, Michael L. Robertson acknowledged having seen flyers being distributed "down at the turnstile"—which Jenkins testified had occurred on October 24—as he "walked out the truck gate." Robertson agreed that he could have gotten one of those flyers "if I would have stopped."

Beyond that, Michael L. Robertson testified that on the day after having observed handbilling at plant 1's turnstile entrance, he had spoken to the handbiller whom he had observed, although he claimed inability to recall who that person was. According to Robertson, that individual said "he was handing out flyers for a meeting," and Robertson also admitted that, "I did ask him what the meeting was about and he said about a union."

In contrast, Michael L. Robertson's son, Joe, testified initially that at no time had he seen anyone standing out in front of plant 1 handing out flyers. He then allowed, however, that "[m]aybe" someone might have been handing out flyers in front of the building, but he had not seen them.

To the extent that Respondent's employee-witnesses created doubt that there had been handbilling at plant 1, that doubt is dispelled completely by the admission of Galinsky that he had observed handbilling there. For, he admitted that, on October 27, 1994, he had confronted Jenkins as the latter was handbilling at the employees' parking lot, across the street from plant 1—exactly where Jenkins testified that he had handbilled on that date.

According to Galinsky, "an office employee [came] to me and [said] that they [sic] saw someone across the street." "I went to my window," he testified, but "did not see anyone." So, Galinsky left his office, went out the front door and, as he kept walking, "noticed in the direction of our

truck entrance that there was a gentleman with a stack of papers in his hand." That individual turned out to be Jenkins.⁶

Aside from a relatively minor conflict as to whether Galinsky had been willing to identify himself to Jenkins, there is no significant dispute as to the words exchanged during the ensuing conversation between them. Galinsky asked what Jenkins was doing. Jenkins replied that he was engaging in union business, handbilling Respondent's employees. Galinsky mentioned that the property belonged to Respondent. Jenkins said that he was on the sidewalk, not on Respondent's property. Galinsky acknowledged that fact. After an exchange regarding where Jenkins had chosen to park his car, Galinsky requested one of the handbills. Jenkins gave him one.

The added significant aspect of the encounter between Jenkins and Galinsky is that the latter testified that, during the time that he had been observing Jenkins on October 27, handbills had been given to "probably half" of the employees who passed Jenkins. In other words, it is clear that Jenkins, in fact, had been distributing to employees handbills concerning the affiliation meeting and election scheduled for October 30. If other employees did not receive handbills, that was not for lack of effort by Jenkins to give flyers to them. For, while Galinsky claimed that some people leaving the plant "were not even approached" by Jenkins with handbills, "before, during and after" their conversation that day, Galinsky also acknowledged that, "After we ended our discussion I watched him chase after some people that were leaving the plant to try and hand [them] handbills. One took one. One [sic] held out their hand. They weren't interested. Others didn't approach."

Obviously, Jenkins was unable to distribute handbills while engaged in conversation with Galinsky. And while "chas[ing] after" one departing employee with a handbill, it would be somewhat difficult for Jenkins to give handbills to other departing employees. Yet, Galinsky's description shows that Jenkins had been trying to afford employees the opportunity to become informed about the affiliation meeting and election. There is no evidence that Jenkins, nor any other handbillers, refused to give a handbill to anyone. Nor is there evidence that the handbillers were distributing flyers to only selected plant 1 employees.

Before moving on to the October 30 affiliation meeting and election, one other aspect of this case should be mentioned. As set forth in subsection A, the General Counsel alleges that, through Galinsky, Respondent unlawfully offered to pay Shop Committee's arbitration costs, as a means of discouraging employee support for affiliation.

As described above, it is uncontroverted that "power to force" Respondent's hand through, for example, arbitration had been one subject raised during Galinsky's all-employee

⁶It should not escape notice that Galinsky testified that he had not seen leafletting at any other time during that week. Still, of itself, that testimony does not suffice to establish that handbilling had not occurred at plant 1 on October 24. After all, so far as the record discloses, Galinsky would not have become aware of handbilling by Jenkins on October 27 but for the fact that an office employee had reported the presence of Jenkins on that day. There is no evidence that, in the ordinary course of working in his office at plant 1, Galinsky would have become personally aware of handbilling outside that plant—at least, not without being told by someone that it was occurring outside plant 1.

meeting on October 17. Clingenpeel testified that while he had been at his work station on Friday, October 28, 1994, "Mr. Galinsky came up to me and told me that if arbitration was the main concern with the employee[s] that he would put that into the contract, our contract that we had that [Respondent] would take care of all arbitration cost if it came to that." According to Clingenpeel, Galinsky "also mentioned that if we did affiliate with the [U]nion that he would no longer sit down and go—with the contract, negotiate the contract with us, that he would have a third party do it."

Clingenpeel was not the only employee who testified to remarks by Galinsky pertaining to payment of arbitration costs. Shop Committee Vice President Chrisman testified that, on a date a few days before the October 30 affiliation meeting and election, he had been counting castings when

Andy come [sic] up and asked me if I had a moment and I said "sure," and he told me that one reason that he—one of the reasons that he didn't like the committee or wanted a union was that if [sic] case in a grievance they couldn't afford to pay for it. I said, "Well, one thing that hurt" and he said well, if that's the case he would agree to pay for arbitration.

Chrisman responded that he would convey Galinsky's message "to people and tell them that."

Galinsky never denied having spoken the above-described words to Clingenpeel and to Chrisman. To the contrary, he testified that he told "[s]ix to eight" of the "Shop Committee members" that Respondent would "if necessary since it was not stipulated in our Shop Committee union contract . . . pay for arbitration costs should they be incurred." However, Galinsky claimed that his promise had not represented anything novel. For, he testified during direct examination that the first time there had been discussion of Respondent paying arbitration costs had been "during the 1992 negotiations for the '93-4-5 contract," as a consequence of concern being expressed by Shop Committee about funds "[f]or arbitration should arbitration cases arise." Galinsky testified that, at that time, he had promised that Respondent "would stand behind those costs should they arise." However, testified Galinsky, he had been unwilling to embody that promise in Respondent's contract with Shop Committee.

Galinsky's testimony about a prior promise to pay Shop Committee arbitration costs never was contradicted. On the other hand, neither was it corroborated by any other witness. Given his general seeming lack of candor when testifying, as discussed above, there is a sound basis for questioning the reliability of Galinsky's assertion about a purported pre-1995 promise to pay the cost of arbitration for Shop Committee. After all, "the Board may decline to credit the testimony of interested witnesses, even though such testimony is not contradicted[.]" *Operative Plasterers, Local 394*, 207 NLRB 147 fn. 2 (1973). See also *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970).

In fact, with specific regard to his testimony about prior promises to pay arbitration costs, during cross-examination Galinsky was asked whether his asserted prior promise had not been made "many years before" 1992. "Not in regards to arbitration that I recall," he retorted. Then, however, he was shown his own written statement, sent to the General Counsel on February 8, 1995. In it, he stated that the sup-

posed conversation with Shop Committee, about Respondent paying arbitration costs, had occurred 6 years, not 3 years, prior to his 1995 promises to "[s]ix to eight" of the "Shop Committee members." At no point in that statement did Galinsky make mention of a 1992 conversation concerning Respondent's payment of arbitration costs. "I did not indicate each time it came up," Galinsky attempted to explain—somewhat lamely, it appeared. Moreover, his written statement makes no mention whatsoever of his assertedly having made the purported promise in the context of collective bargaining.

*D. Affiliation Meeting and Election on
October 30, 1994*

As recited in Twinn's notice and in the handbills, the affiliation meeting was conducted for Respondent's employees from 2 to 4 p.m. on Sunday, October 30, 1994, followed by an election period from 4 to 5 p.m. A total of 24 employees attended the meeting and voted. Only two of those employees were from plant 1.

Attending for the Union were Cooper, Jenkins, and Clay. Of the three, Cooper was the primary spokesperson during the meeting. He testified that, in anticipation of it, he had prepared an "AFFILIATION AGREEMENT." To the extent pertinent, its text states:

This affiliation agreement is hereby entered into on this 30th day of October 1994, by and between the Sioux City Foundry Shop Committee, hereinafter referred to as the "Shop Committee" and the International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter referred to as the "IAM."

Both organizations have concluded that the best interest of their members will be served by this affiliation.

The parties hereby agree as follows:

1. Effective the 30th day of October, 1994, whereas all the Shop Committee bargaining unit employees have had the opportunity to vote on the question of affiliation with the IAM, the majority of those employees have voted to agree to affiliate with the IAM.
2. Shop Committee employees may, on a voluntary basis, pay a service fee of \$20.00 per month to IAM Local 1426, Sioux City, Iowa. The service fee will remain in effect through the duration of the existing collective bargaining agreement. At that time, Shop Committee employees will then pay union dues equivalent to that of IAM Local 1426 minimum dues for said Local.
3. Effective with the affiliation date, all Shop Committee employees who begin paying a service fee of \$20.00 per month will be entitled to all rights and privileges of the IAM, as set forth in the IAM Constitution.
4. Both the Shop Committee and the IAM agree that immediately on the execution of this affiliation agreement, the officers and representatives of the Shop Committee will fully cooperate with the officers and representatives of the IAM so that the contract will be amended, by whatever means necessary, to transfer recognition rights to the IAM.

5. The Shop Committee, per the IAM Constitution, shall be granted opportunities to attend the IAM Placid Harbor Education and Technology Center in Maryland. Classes include officers training, steward training, collective bargaining, grievance, arbitration, health & safety, technological changes, etc.

Cooper and Clingenpeel testified to what had been said to the assembled employees during the 2 to 4 p.m. meeting. Both testified that Cooper had explained that there was nothing that the Union could do to change the then-existing collective-bargaining contract between Respondent and Shop Committee until it expired. "All [the Union] could do is enforce the contract that we have until the contract comes up to renegotiate," testified Clingenpeel.

According to Clingenpeel, Cooper explained that, once the contract did expire, negotiations would be conducted "by ourselves the same as it always had been done except that we would have representation by a [U]nion official there," if such help was requested: "They would help us with it if we needed it." Cooper confirmed that, as to negotiations, he had told the employees that "they would continue to elect their own Shop Committee and so forth or who [would be] their negotiating committee. Nothing would change," and, "We would be there to assist only but . . . they had full control of that [sic] negotiations just as they had in the past and we had no veto power." Clingenpeel acknowledged that the assembled employees had not been told, during the October 30 meeting, to what degree the Union would be involved in contract negotiations, nor were they told anything about the subject of contract ratification.

Both Clingenpeel and Cooper further testified that the latter had told the employees that grievances would have to continue being handled as they had been, under the then-existing contract's terms, but that the Union could provide employee assistance in grievance processing through steward training and grievance writing and processing. No specific mention was made of any particular level of grievance-processing at which an official of the Union would become involved. Moreover, nothing had been said regarding who would decide if an unresolved grievance would be taken to arbitration. Of course, prior to October 30 that had been an academic consideration.

Cooper testified that he told the employees that if they voted in favor of affiliation, they would become part of Local Lodge 1426, "the closest local lodge" to Respondent's plants. Clingenpeel testified that the employees were informed of the number of people in Local Lodge 1426, the Union and International, though he was not able when testifying to recall the exact numbers for each that had been recited on October 30, 1994.

At no point during the meeting were the International's Constitution, nor the bylaws of the Union and of Local Lodge 1426, read to the assembled employees. And none of those documents were produced for inspection by those employees. Still, Clingenpeel testified that employees were informed that there was an International constitution to which Respondent's employees would be bound if they voted for affiliation and, further, they were informed that bylaws existed for the Union and for Local Lodge No. 1426.

Clingenpeel testified that he and several other Shop Committee members had read the above-quoted "AFFILIATION

AGREEMENT" on October 30, before the 4 to 5 p.m. election. He was unable when testifying to recall if its terms had been read to all the assembled employees before they voted that day. However, Cooper testified that, during the 2 to 4 p.m. meeting, he had read it to those employees, "word for word[.]" There is no reason to disbelieve that testimony by Cooper. To the contrary, given the fact that the agreement had been prepared before the meeting, and Clingenpeel's testimony that it had been read by several Shop Committee members, there is some basis for concluding, from those objective facts, that Cooper had read the "AFFILIATION AGREEMENT" to the employees that day. I credit his testimony to that effect, which appeared to be advanced with candor.

Regarding Item 2 of that agreement, the "service fee of \$20.00 per month," Cooper testified that,

I explained to them that their dues would be \$20.00, that they could become a member and have all privileges like the educational center and so forth. They could pay a service fee or they didn't have to become a member at all. We would still represent them and we had to do that by law anyway.

Opportunity for questions was afforded the employees, testified Cooper and Clingenpeel, and questions were asked by some. For example, Clingenpeel testified that "employees brought up insurance, wanting to know if . . . anybody they represented in town had insurance" and about the "kind of [retirement] benefits they would receive if they were paying dues to the [U]nion." There is no evidence that any employee's question went unanswered. Nor is there any evidence that any employee had been dissatisfied with the answers given to questions.

As 4 p.m. neared, the three union representatives withdrew from the meeting, leaving the employees to discuss among themselves whether or not they wanted to proceed to the affiliation election. When they decided among themselves to do so, the election was then conducted. Again, there is no evidence that any employee voiced dissatisfaction with putting the affiliation question to a vote.

Two tellers—Roger Harris and Twinn—were appointed. Curtained voting booths were set up, so that each voter would have privacy when marking his/her ballot. Ballots—offering a "Yes" or "No" choice to the question, "Do you wish to affiliate and be represented for the purpose of collective bargaining by . . . International Association of Machinists and Aerospace Workers, AFL-CIO"—had been printed for use in the election. A ballot box was assembled and made available for deposit of ballots which were cast. Each voter was given a single ballot by a teller. Once that ballot had been marked in the booth, it was brought to, and deposited in, the ballot box. The three union representatives left before the balloting commenced; they did not return until the polls had closed.

Voting by the 24 employees who had attended the 2 to 4 p.m. meeting was completed before 5 p.m. Nevertheless, the polls remained open, as Clingenpeel testified, "just in case some employees didn't have any questions, just wanted to pop in. It was on a Sunday so in case they just wanted to pop in and vote and leave[.]" Once the polls closed, the tellers tabulated the ballots which had been cast. The tally was

22 to 2. When that had been ascertained, the "AFFILIATION AGREEMENT" was signed by Cooper and Clay, for International, and by Board Members Clingenpeel, Chrisman, and Pedersen for Shop Committee. No Shop Committee board member from plant 1 signed that agreement, because none had chosen to attend the October 30 meeting.

So far as the record discloses, nevertheless, no board member—nor employee, for that matter—from plant 1 protested when the results of the affiliation election were publicized after October 30. Indeed, Respondent has produced no evidence, nor is there any in the record, showing that any plant 1 employee ever has objected to affiliation of Shop Committee with International.

E. Events Occurring After October 30, 1994

As mentioned in subsection A, Respondent has been unwilling to recognize International and Local Lodge No. 1426 as the representative of the employees whom Shop Committee had been representing prior to October 30, 1994. In consequence, as described in subsections A and B, the charge in Case 18-CA-13403 was filed, dismissed by the Regional Director and appealed to the General Counsel. While disposition by the latter awaited, the expiration date stated in the 1993-1995 collective-bargaining contract approached.

As pointed out in subsection C, during October 1995, Andrew Galinsky took over from his wife ownership of Continental Rebar. Clingenpeel testified that on October 31, 1995—a year to almost the day after the affiliation election—he had been summoned to a meeting with Galinsky. When he arrived in the office, testified Clingenpeel, he was introduced by Galinsky to Rick Bottjen, whom Galinsky said "was a member of the Shop Committee from Continental Rebar Coating[.]" No witness, including Galinsky, contradicted Clingenpeel's testimony as to what then had been said during that meeting.

Galinsky said that "you have to write a letter to the company to open negotiations up for your contract, and [Continental Committee] did not notify the company that they wanted to open up negotiations," but that Galinsky "wanted to merge" the two shop committees "so he had to just deal with one contract instead of having to do two." Galinsky presented Clingenpeel with a letter, already signed by Galinsky, the text of which recites that Shop Committee of Respondent agrees to "an extension [of] the first [negotiating] meeting per the language in the contract, to a meeting at a later date than specified."

Galinsky also handed Bottjen a similar letter, already signed by Galinsky and addressed "To the Shop Committee of Continental Rebar Coatings." In addition to the above-quoted language appearing in the letter to Shop Committee, the letter handed to Bottjen also contains language stating, consistent with Clingenpeel's testimony about what Galinsky had said that day, "We request a mutual late opening to the current Labor Contract per the language in the contract."

Each man signed, on behalf of his respective shop committee, the letter handed to him by Galinsky. They also were presented by Galinsky with a separate document:

SHOP COMMITTEE MERGER DOCUMENT

10/31/95

We as Shop Committee chairman of Sioux City Foundry Shop Committee and Continental Rebar Shop Committee agree to the following merger to protect the rights of all Sioux City Foundry Companys [sic] employees:

(1) Merge the shop committees of both Sioux City Foundry Shop Committee and Continental Rebar Shop Committee.

(2) We further agree to show this single Shop Committee Union as an alternative on any ballot used for voting concerning any union representation.

Agreed:

SCF Shop Committee
_____Date

CRC Shop Committee
_____Date

Both Clingenpeel and Bottjen signed and dated "10/31/95" that document.

Asked why he had signed that merger document, Clingenpeel testified, "It was Mr. Galinsky brought this over there and it was obvious that he wanted us to work with him and sign this, and I have to admit I was—I did feel a little intimidated by it and I did sign it." No evidence was presented that any employee, including Bottjen, had been consulted about the merger, much less voted in favor of it.

During December 1995 negotiations were conducted for a collective-bargaining contract between Respondent and what was being called the Sioux City Foundry Company Shop Committee. After three negotiating sessions, agreement was reached on terms for a contract. That was executed on December 21, 1995, for a stated term of January 1, 1996, to December 31, 1998, with provision for annual renewal absent reopening notice by either party. Signing for Sioux City Foundry Company Shop Committee were employee-representatives of Respondent's plant 1 and plant 2, as well as employee-representatives of Continental Rebar. It is uncontested that neither Local Lodge No. 1426, nor the Union, nor International were contacted by Respondent concerning the merger of shop committees, nor regarding negotiation and execution of the 1995-1998 contract.

II. DISCUSSION

Obviously, the cornerstone issue presented in the instant case is whether there had been an effective affiliation of Shop Committee with International on October 30, 1994. In *NLRB v. Financial Institution Employees Local 1182*, 475 U.S. 192 (1986), the Supreme Court stated that "where affiliation does not raise a question of representation, the statute gives the Board no authority to act." (Id. at 203.) That is, "the Board cannot discontinue . . . recognition without determining that the affiliation raises a question of representation[.]" (Id. at 202.)

Existence of a question concerning representation depends, in turn, on whether or not there has been satisfaction of what have come to be known as the "due process" and "continuity" tests. *Min-Dak Farmers Co-Op v. NLRB*, 32 F.3d 390, 393 (8th Cir. 1994). As the Court pointed out in that case, it is the respondent who "has the burden of proving discontinuity." 32 F.3d at 395.

In the circumstances presented by the record in the instant case, Respondent has failed to satisfy that burden. That is, a preponderance of the credible evidence fails to establish

that either the "due process" or "continuity" test had not been met in the circumstances of Shop Committee's affiliation with International. It follows, therefore, that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the International, and its designated Local Lodge No. 1426, as the representative of employees in the contractual unit of plant 1 and plant 2 employees, following the October 30, 1994 affiliation election. To be sure, Respondent was willing to continue bargaining with Shop Committee and it was a shop committee which would have been bargaining with Respondent, had it been willing to acknowledge the affiliation. However, since November 1994, Respondent insisted on continuing to bargain with Shop Committee as an independent union, and refused to bargain with an employee shop committee affiliated with International and Local Lodge No. 1426. That is the vice which gives rise to Respondent's violation of the Act.

Regarding the "due process" requirement, an election must "be conducted with adequate 'due process' safeguards, including notice of the election to all members, an adequate opportunity for members to discuss the election, and reasonable precautions to maintain ballot secrecy." *NLRB v. Financial Institution Employees*, supra, 475 U.S. at 199. Respondent does not challenge the balloting procedure followed on October 30, 1994. Nor does it contest the voting secrecy provided by that procedure. But, it does challenge the adequacy of notice to plant 1 employees and, as well, the adequacy of opportunity afforded to all Shop Committee members to discuss the affiliation election.

As discussed in section I.C, supra, Shop Committee was permitted to post notice of the affiliation meeting and election on plant 2's bulletin board, following the meeting of Shop Committee officers with union officials on October 6, 1994. However, there is no firsthand evidence of a similar notice being posted anywhere in plant 1. Moreover, only 2 of the approximately 70-80 plant 1 employees appeared and participated in the affiliation election on October 30, 1994. Still, the evidence will not support a conclusion that there had been some sort of plan to exclude plant 1 employees from participating in that election. Nor is there evidence that efforts were not made to give notice to plant 1 employees about the affiliation meeting and election. Of course, they may not have been willing to accept that notice or, if they accepted a handbill, may not have been willing to read what had been given to them. But, all that is required is that an effort be made to give them notice. Neither the Supreme Court, nor any circuit court of appeals, nor the Board had required that employees must somehow be compelled to actually read or listen to whatever notice is given, before the "due process" test is satisfied.

In fact, the evidence reviewed in section I.C, supra, shows that handbilling did occur at plant 1 on both October 24 and 27, 1994. The handbill which was distributed provided notice that affiliation was being contemplated and, further, recited a date and time when there would be a meeting about that subject and when a vote would be taken as to whether to affiliate with International. Respondent has presented no evidence to show that the handbill failed in some respect to satisfy the standard of adequacy for notice of an affiliation election. Surely, such a showing cannot be based on the unwillingness of some employees to accept a handbill offered to

them. Nor can it be bottomed on unwillingness to read such a handbill.

Furthermore, October 24 was not the first date on which plant 1 employees had been given notice that affiliation was being contemplated. Approximately a week before October 24, Galinsky convened a meeting of employees from that plant, as well as from plant 2, and voiced his opposition to affiliation of Shop Committee with any union. If nothing else, Galinsky's remarks during that meeting served to put all unit employees on notice that affiliation was under consideration. The following week's handbilling then served to provide those employees with a specific date for discussion of the subject and for voting on whether or not to affiliate.

Even Galinsky's meeting had not been the initial date on which at least some plant 1 employees were informed that affiliation was being considered. For, as set forth in section I,C, supra, two plant 1 unit employees—Krogman and McGinnis—had attended the October 6 meeting with Cooper, Jenkins, and Clay. Of course, it had been during that meeting when October 30 had been selected as the date for the all-employee affiliation meeting and election. As a result, some plant 1 employees had been on notice of that meeting and election from the very beginning. It should not be overlooked, furthermore, that if plant 2 personnel truly had been attempting to preclude plant 1 personnel from participating in the affiliation decision, as Respondent hypothesizes, it hardly seems plausible that Krogman and McGinnis would have been invited to the October 6 meeting. After all, their very presence on October 6 would have undermined any effort by plant 2 employees to conceal from plant 1 employees the fact that affiliation was being contemplated.

A facially more significant "due process" objection by Respondent is presented by the duration of time between handbilling on October 24 and 27, 1994, and the affiliation election on October 30, 1994, as well perhaps by the fact that the election followed immediately after the meeting during which affiliation was discussed. Still, the Supreme Court, no circuit court of appeals, nor the Board has ever specified a precise minimum period which must elapse between notice of contemplated affiliation and an election for or against it. To the contrary, the Supreme Court has pointed out "that the [Act] does not require unions to follow specified procedures in deciding matters such as affiliations[.]" *NLRB v. Financial Institution Employees*, supra, 475 U.S. at 199 fn. 6. Whatever notice is given need only be "adequate," *News/Sun Sentinel Co. v. NLRB*, 890 F.2d 430, 433 (D.C. Cir. 1989), cert. denied 497 U.S. 1003 (1990), so that, in the circumstances, it can be found that notice was "proper," *Minn-Dak Farmers Co-Op v. NLRB*, supra, 32 F.3d at 393, or "fair." *May Department Stores Co. v. NLRB*, 897 F.2d 221, 226 (7th Cir. 1990), cert. denied 498 U.S. 895 (1990).

Obviously, plant 2 employees had notice of the affiliation meeting and election from October 7, 1994, by virtue of Twinn's sign or poster which Plant Manager Day eventually allowed to be posted on that plant's bulletin board. Moreover, as described in section I,C, supra, there is credible first-hand evidence of discussions about affiliation between plant 2 employees, on the one hand, and Clingenpeel and Chrisman, on the other. Respondent has presented no evidence that any plant 2 employee had not been aware of the October 30 meeting and election in time to attend.

As to plant 1 employees, there is nothing so inherently short between the dates of October 24 and 27, 1994, on the one hand, and October 30, 1994, on the other, that it must be concluded that too short a period elapsed between those dates to allow plant 1 employees to attend that meeting. Certainly, Respondent has presented no evidence to that effect. Moreover, as discussed above, Galinsky's meeting on October 17, 1994, put plant 1 employees on notice that affiliation was being considered. Galinsky's meeting allowed adequate time for plant 1 employees to discuss and consider affiliation, even if that had been the first date on which they actually learned about it. Again, as the party which bears the burden of doing so, Respondent has presented no particularized evidence to support a conclusion that plant 1 employees lacked such an opportunity for discussion and consideration after October 17.

To be sure, the affiliation election on October 30, 1994, followed immediately the meeting during which affiliation was discussed with and among Respondent's employees. In some circumstance, it might well be that a longer interval might be required for the "due process" test to be satisfied. Yet, Respondent has not shown that to be the fact here. And nothing in the record supports a conclusion that too short a period lapsed, between all-employee meeting to discuss affiliation and election on whether to affiliate, for the "due process" test to be satisfied.

As set forth in section I,D, supra, the "AFFILIATION AGREEMENT" was read to employees during the meeting. The consequences of affiliation on future representation were explained to the employees. Questions were entertained. There is no evidence of a refusal to answer any of those questions. The employees were allowed a period to discuss affiliation among themselves, outside of the presence of union agents, before the election was conducted. Respondent has not shown that even a single employee felt that he/she was not afforded an opportunity, as a result of the meeting, to adequately reflect on the subject and to reach a decision regarding affiliation.

It might be argued that a Sunday had not been the best day of the week to conduct the election, because employees would likely be enjoying a day off to engage in personal pursuits. Yet, there is no evidence of a better alternative. Certainly, Respondent did not appear disposed to allow an affiliation election to be conducted during worktime, given its refusal to even provide employee names and addresses, so that Shop Committee could inform employees that an affiliation meeting and election was to be conducted, and given the further fact that Galinsky had expressed his opposition on October 17 to affiliation. Choice of a week night would meet the objection that, having worked all day, day-shift employees would likely be too tired to attend the affiliation meeting and participate in the affiliation election. And, of course, night-shift employees would be precluded from voting for or against affiliation. Choice of a Saturday would meet with similar objections to having chosen a Sunday. Accordingly, there is no basis for concluding that the "due process" test was not satisfied merely because the affiliation meeting and election had been conducted on a Sunday.

In sum, a preponderance of the credible evidence establishes that efforts were made to give notice to all employees that affiliation was being contemplated. In the circumstances, an adequate opportunity was afforded for them to consider

and discuss the subject among themselves. The affiliation election was conducted with proper safeguards for employee voting privacy and for handling of the ballots. Therefore, Respondent has failed to satisfy its burden of showing that the "due process" test had not been met and, moreover, there is no basis in the record for concluding that it had not been satisfied.

A more involved discussion is necessitated to address the "continuity" test in the context of the instant case. On March 25, 1988, the Board issued two decisions—both involving district lodges of International—in which it concluded that the continuity test had not been satisfied: *Western Commercial Transport*, 288 NLRB 214 (1988), and *Garlock Equipment Co.*, 288 NLRB 247 (1988). Respondent relies primarily on the latter one to support its position that continuity would be destroyed were Shop Committee allowed to affiliate with International and its Local Lodge No. 1426 without raising a question concerning representation.

Much of the rationale in that case, and in *Western Commercial Transport*, however, has been subjected to further refinement, sometimes to the point of modification, in subsequent decisions of the Board and of the circuit courts of appeals. In consequence, it is no longer possible to adhere blindly to the complete rationale of either, though obviously it still is necessary to discuss the reasoning advanced in both.

In *Western Commercial Transport*, the Board pointed out "that the existing bargaining representative will, as a result of affiliation, undergo substantial changes in size, organizational structure, and administration" which "will be reflected in its relationships with its members and the unit it represents," based on a "hierarchical structure" that would deprive unit employees of their officers, and replace them with full-time union staff members; on the restrictions imposed on collective bargaining, contract ratification and ability to call strikes; and, on control of dues' amounts and disposition of finances. (288 NLRB at 216-217.) In addition, pointed out the Board, affiliation would result in an independent 136-employee unit being absorbed into an 8500-member district lodge, with the result that "the unit employees' power to direct and control the activities of Co-Petitioner Union will be all but extinguished." Id.

In summarizing its ultimate conclusion that "the scope of the changes that will be effected as a result of affiliation will be pervasive" and that "the fundamental character of the representing organization will be altered as a result of affiliation," the Board stated in *Western*:

STLEU's autonomy will disappear, to be replaced entirely by District Lodge 776's control. The individuals who previously had led their fellow members and represented the unit to the Employer will be unable to have any major role in the direction of their organization and will be replaced by District Lodge 776 employees who have no previous connection with the unit. The rights of membership will be substantially diminished, and their numbers will represent but a small fraction of the new union's body. [288 NLRB at 218.]

In *Garlock Equipment*, the Board again pointed to the factor "that the affiliation vote effectively 'transformed an amoeba-simple independent labor organization into a dependent affiliate of a large organization, subject to new controls

and restrictions and stripped of a substantial amount of pre-affiliating autonomy,'" in particular light of the fact that,

[T]he basic unit of the IAM is the local lodge. The International constitution determines the governance structure of such lodges including the numbers of officers and trustees and the manner of their selection, the setting of initiation fees and dues, payment of per capita taxes and assessments, and restrictions on member conduct enforceable by fines and expulsion. [288 NLRB at 248.]

Furthermore, the Board found a "meaningful diminution" in bargaining authority based on "the requirement that a District Lodge representative must sign any final agreement," since that requirement "essentially constitutes a veto power by the District Lodge over the GEC's former exclusive authority to contract with the Respondent." Id.

The Board summarized its conclusion in *Garlock*, that there had been a "sufficiently dramatic" change to raise a question concerning representation, by stating:

[T]he record evidence drawn from District Lodge No. 77's bylaws on control over GEC's collective-bargaining negotiations, financial obligations, and formal governing structure reveals not a continuation of the GEC but the substitution of a new labor organization as the representative of the unit employees. These changes in the GEC wrought by the affiliation have shifted the effective locus of control from a small independent organization to a large division of an international union many times its size and substantially more structurally complex. [Id.]

One could deduce from those two cases a general principle that a question concerning representation always arises whenever an independent union, especially a relatively small one, affiliates with a much larger established union. However, the Supreme Court has pointed out that "a local union may seek to affiliate with a larger organization for a variety of reasons." *NLRB v. Financial Institution Employees*, supra, 475 U.S. at 199 fn. 5. Inasmuch as the Court recognized the validity and reality of such affiliations, decisions have rejected the conclusion that those affiliations create, of necessity, questions concerning representation. For example, "a question concerning representation is not automatically generated whenever a relatively small group merges into a larger one." *News/Sun Sentinel Co. v. NLRB*, supra, 890 F.2d at 433. For, were that to be the fact, "every merger or affiliation of a small independent union with an international would, per se, raise a question concerning representation." *May Dept. Stores Co. v. NLRB*, supra, 897 F.2d at 229 fn. 9. See also *Seattle-First National Bank v. NLRB*, 892 F.2d 792, 799 (9th Cir. 1989), cert. denied 496 U.S. 925 (1990).

To be sure, "union membership both before and after the affiliation" remains a factor which must be considered. *Minn-Dak Farmers Co-Op v. NLRB*, supra, 32 F.3d at 395. Nevertheless, the continuity test involves more than a mere comparative head count. "Continuity is evidenced by the maintenance of traces of a preexisting identity and the retention of autonomy over the day-to-day administration of bargaining agreements." *News/Sun Sentinel Co. v. NLRB*, supra, 890 F.2d at 432. "Relevant factors include comparison of the

membership and leadership before and after the affiliation; the effect on membership rights and duties; and the effect of affiliation on the procedures for contract negotiations, administration and grievance processing." Id.

In evaluating those factors, two guiding principles have emerged to become well established. "The party seeking to avoid an otherwise binding bargaining obligation by asserting a change in the bargaining representative following a merger bears the burden of demonstrating that change." *H.B. Design & Mfg.*, 299 NLRB 73, 73-74 (1990). Thus, it is Respondent which "has the burden of proving discontinuity." *Minn-Dak Farmers Co-Op v. NLRB*, supra, and authority cited therein.

The second one pertains to the weight accorded documents such as union constitutions and bylaws. In *Garlock* the Board looked only to the district lodge's and International's "governing documents" to determine the extent of autonomy and control over negotiations, finances and governing structure left to the formerly independent entity. In doing so, however, the Board pointed to "the absence of any evidence that the District Lodge No. 77 governing documents and those of IAM itself were not controlling following the affiliation. Specifically, there is no evidence of any assurance that the employees would retain local bargaining autonomy or its [sic] selection of elected officials." (288 NLRB at 248.) Subsequently, the Board made plain what was perhaps left implicit in that case: in evaluating postaffiliation situations, "It is the actual practice, rather than the formal authority, that is controlling." *Central Washington Hospital*, 303 NLRB 404, 405 (1991).

Prior to affiliation, Shop Committee represented only 120-130 employees. All were employed by Respondent. Shop Committee did not represent employees of any other employer. It once attempted to impose \$5 a month for dues. But, no one had been willing to continue paying dues. So, all dues collection efforts were abandoned. Not surprisingly, as a result, Shop Committee had no assets, finances, bank account, nor offices.

In contrast, Local Lodge No. 1426 has approximately 600 to 800 members, including retirees, and represents employees of approximately seven employers. There are approximately 1300 employees in the Union and approximately 500,000 members of International. Each entity has assets, finances, bank account, and offices. Moreover, there are requirements for becoming and remaining a member. According to International's constitution, minimum dues are the greater of two times the weighted average hourly earnings or \$12 per month. Local Lodge No. 1426's bylaws impose an added 80 cents per month to the weighted average dues amount.

Of course, difference in total employees between those entities and Shop Committee is meaningful but, as discussed above, not determinative. The greater financial resources—assets, finances, and bank accounts—would appear to be a source of the very "financial support" which the Supreme Court emphasized as a reason why a "local union may seek to affiliate with a larger organization[.]" *NLRB v. Financial Institution Employees*, supra, 475 U.S. at 199 fn. 5. In fact, a source of financial support for grievance-process and arbitration had been a predominant reason leading to the affiliation effort in the instant case.

Clearly, affiliation would not be a free lunch. Monthly dues were contemplated following it. Still, it is unlikely that the average employee would fail to understand that there

would be some price in return for the benefits of affiliation. Indeed, as described in section I,D, supra, Cooper had explained as much to the employees during the meeting on October 30, 1994.

Beyond that, dues would have to be paid only when an employee chose to become a member. Even if all of Respondent's employees decided to avoid paying dues, by declining to become members, International would have to represent them, and to do so fairly, through Local Lodge No. 1426. Absent a disclaimer, such as Moulders Union entered during the mid-1980s, affiliation would leave the International and Local Lodge No. 1426 as the statutory bargaining agent of those employees. In consequence, the postaffiliation situation is no different than had been the pre-affiliation one with respect to dues payments. If Respondent's employees declined union membership, and its incident dues payment obligation, they remained represented. It also should not pass without notice that even before affiliating, some or all of Respondent's employees likely could have become members of International and/or of Local Lodge No. 1426, even though not represented by either entity in negotiations with Respondent. In that regard, there is a meaningful distinction between membership in a union and representation by a union. An employee can be a member of a union which is not then serving as the bargaining agent of that employee. Conversely, an employee can be represented by a union of which that employee is not a member.

To be sure, a collective-bargaining contract could be negotiated which contained some form of union security clause. Nevertheless, that possibility always had existed. That is, Shop Committee and Respondent could have negotiated and agreed on some form of union-security clause, during past negotiations between those parties. Even had affiliation been rejected on October 30, 1994, such a clause could have subsequently been negotiated between Shop Committee and Respondent.

Finally, in this area, even were a union-security clause to be negotiated—whether pre or postaffiliation—Respondent's employees could not be compelled to become full members of Shop Committee, Local Lodge No. 1426, nor International. For, so long as an employees satisfy "financial core" obligations under a union-security clause, they cannot be compelled to become actual members of a union serving as their bargaining agent. *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963). Moreover, that "financial core" obligation cannot be expanded so that dues are exacted for other than representative activities. *Communications Workers v. Beck*, 487 U.S. 735 (1988). Of course, as discussed in section I,C, supra, and above, assistance in representative aspects had been a predominant reason which led to the affiliation effort.

The distinction drawn above is meaningful. Before affiliation, Respondent's employees were free to become members of International and/or Local Lodge No. 1426, if the latter were willing to accept them. Such membership would not have affected, at least immediately, their representation by Shop Committee. All it would have meant is that employees were represented by a bargaining agent and, also, were members of a union which did not serve as their bargaining agent. After affiliation, Respondent's employees still were free to become members of International and/or Local Lodge No. 1426. But, even were a union-security clause to someday be

negotiated, those employees could not be compelled to become full members of either entity. The concepts of representation and membership are different and distinct. Accordingly, it is to the subject of postaffiliation representation that discussion now turns.

From its formation in 1986, Respondent's employees had selected Shop Committee's officers to deal with Respondent, most particularly in negotiating collective-bargaining contracts. Those officers were selected on a not necessarily regular basis solely by unit employees working at plant 1 and plant 2. Each plant had its own officers.

Contracts were ratified or rejected by majority vote of plant 1 and plant 2 employees who chose to participate in ratification elections. Historically, so far as the record discloses, no one not employed by Respondent ever had participated in that process. Furthermore, it had been Shop Committee officers and members who, by themselves, would decide whether to strike in support of Shop Committee's contract demands.

Similarly, Shop Committee made its own decisions as to whether to file and process grievances. As it had no funds, however, apparently no grievance ever was processed to arbitration. Nonetheless, decisions whether to try doing so had reposed solely with Shop Committee officers and members, without input and, more particularly, control by any outside entity or person.

Provisions regarding those three subjects—collective-bargaining negotiations, strikes, and disputes resolution procedures—appear in International's constitution and in bylaws of Local Lodge No. 1426 and of the Union. For example, article XVI of International's Constitution sets forth somewhat detailed provisions concerning strike authorization and benefits. Bylaws of the Union provide for an election procedure for business representatives whose duties, under article VII, section 2, "shall be to investigate all grievances that may arise and endeavor to adjust same to the best advantage of the organization and members involved." Article I, section 5 of those bylaws provide that, "All agreements for affiliated Local Lodges shall be negotiated and signed in the name of [the Union] by an authorized Representative and the Shop Committee." And, section 6 of the bylaw's article I provides:

[The Union] shall be responsible for the processing of all grievances which go to arbitration and shall make assistance available to a Local Lodge or Shop Committee in the event that such request is made. In the event that a complaint is made or request is made to the [Union] for assistance, it shall be the duty of the [Union] to call such members and officers of the Local Lodge before the District Executive Board to clarify the situation.

Bylaws of Local Lodge No. 1426 contain several provisions regarding those three subjects. Article VII, section 6 specifies for a Shop Committee "in the various shops" is to be elected annually and, in turn, that each shop committee will elect its own chairman. But, shop committee officers can be replaced "for neglect of duty" by Local Lodge No. 1426's executive board. Article VII, section 7 provides:

The Shop Committees shall take immediate action relative to all grievances presented to them and report

final action taken. They shall have authority to demand evidence from the members as to the member's rate of pay if the Committee so desires. They shall enforce all the rules and regulations of this Lodge, and of the IAM Constitution, and all Shop Committees shall be protected in the performance of their duties as set forth in these Bylaws.

As to grievances, article VIII of Local Lodge No. 1426's bylaws states:

All grievances shall be made in writing and signed by three (3) or more members when the grievance is general, and by the member involved when the grievance is personal, if so requested by the Shop Committee. All grievances shall be processed in accordance with these Bylaws and the various shop contracts by the Shop Committee Chairman and one (1) or more members of the Shop Committee. The member or members involved shall have the privilege of attending meetings scheduled for the purpose of settling any such grievance if they so desire.

Respondent points to the foregoing, and similar, constitution and bylaws provisions as evidence of loss of local autonomy and control as a result of Shop Committee's affiliation with International. To be sure, that was a conclusion reached to some extent in *Garlock Equipment*, as well as in *Western Commercial Transport*, both cases involving International and its affiliates. Yet, subsequent decisions have modified the approach followed facially in those two cases.

For example, in *May Department Stores Co. v. NLRB*, supra, the court agreed with the Board that an international's requirement that bargaining proposals and final agreements be submitted for its approval did not necessarily serve to establish discontinuity. The Board said, "These reserved rights of approval, allowing the International only to react to initiatives of the local, do not serve to supplant the local as the entity primarily responsible for the conduct of its affairs. *May Department Stores Co.*, 289 NLRB 661, 666 (1988). And the court adopted that rationale: "The proposals and ultimate agreements are developed, negotiated and ultimately approved or rejected entirely on the local level." 897 F.2d at 229. See also *Seattle-First National Bank v. NLRB*, supra, 892 F.2d at 800.

As to strikes, and ability to conduct or not conduct them, the same approach has been followed in evaluating constitution and bylaws provisions. "Although the UFCW constitution requires that the UFCW president must also approve a local strike, the principal consideration of the merits of a strike determination remains in the hands of the affected members." *May Department Stores*, supra, 897 F.2d at 229. There seems no reason to adopt a different approach in evaluating requirements of formal documents when considering grievance-processing and decisions to proceed to arbitration. See, e.g., *NLRB v. Insulfab Plastics*, 789 F.2d 961, 966-967 (1st Cir. 1986).

Furthermore, in *Garlock*, as quoted above, the Board pointed to the absence of reliable evidence that union practice varied from the governing documents' requirements. When such evidence exists, the Board's analysis will be governed by actual practice, rather than formal authority. *Central Washington Hospital*, supra.

The only evidence of practice in *Garlock* was provided by an international representative who, the Board stated, "probably could not state authoritatively what the postaffiliation procedure would be for contract acceptance," and who did not state the extent of local authority over acceptance and rejection of contract proposals. (288 NLRB at 248.) Here, testimony concerning practice was given by Grand Lodge Representative Cooper. True, he conceded that his knowledge about the Union's contracts was limited. Still, there was no showing that it necessarily would be the Union, rather than Local Lodge No. 1426 or International, that would be the contracting entity in any negotiations with Respondent, were the latter willing to participate in them.

Cooper has been with International, he testified, "Since about 1978, and has served as 'an organizer, been a business rep and then a grand lodge representative.'" That latter position should not simply be passed over, without a second look. Article XX of Local Lodge No. 1426's bylaws, and the concluding paragraph of the Union's bylaws, state that, "Nothing in these bylaws shall be construed or applied in a manner that will conflict with the provisions of the IAM Constitution." Under article VI of that constitution, the International president possesses authority to decide "constitutional questions," subject to approval of decisions pertaining to improper conduct by officers.

As to that presidential authority, Cooper testified, "since I am a grand lodge representative and this is a grand lodge constitution I have the authority invested in me through the international president as his employee to interpret the constitution." In consequence, both as a result of almost 20 years' experience in various union capacities, and as a result of the authority which he possesses in his current position, there is no basis for concluding that Cooper "probably could not state authoritatively what the post affiliation procedure would be for contract acceptance," *Garlock Equipment*, supra, nor for postaffiliation procedures concerning negotiations, strikes, grievance processing, and arbitration.

Consistent with what he had told Respondent's employees on October 30, 1994, Cooper testified that, with regard to negotiations, Respondent's employees "would continue to elect their own negotiating team," and if Respondent's employees "requested[,] we would help them with the formulation of contract proposals. Otherwise they would make the contract proposals[.]" Moreover, testified Cooper, "the decision whether to accept that contract would be entirely up to them. We are there as a facilitator. We have no veto power and they still have control."

A relatively extensive amount of testimony was devoted to grievance-processing and to proceeding to arbitration. Of course, inability to be able to pay for the latter had been a primary reason for the effort by Shop Committee officers to seek affiliation, as discussed in section I,C, supra. So, as a practical matter, if Respondent's employees were able to take any grievance to arbitration following affiliation, they had made progress, from their perspective, over the situation prevailing before October 30, 1994.

Beyond that, Local Lodge No. 1426 Secretary-Treasurer Jenkins testified that a decision to take a particular grievance to arbitration "is made by the Shop Committee in whatever shop the grievance came out of." That is the fact, testified Jenkins, even though the Local's bylaws provide that its executive board makes those decisions and even though Local

Lodge No. 1426's membership, as a whole, has a right to overrule an executive board decision, subject to the Union's right to, in turn, overrule such a local membership's decision. "If the Shop Committee wants to take a case to arbitration the case is going to go to arbitration," Jenkins testified firmly.

Cooper supported that testimony by Jenkins. "Only when requested or if it was negotiated in the contract," testified Cooper, would union paid personnel become involved in grievance processing. Cooper further testified, "the Shop Committee theirselves [sic] decide whether that grievance will go to arbitration," with the money to pay for arbitration being appropriated through Local Lodge No. 1426 after the membership voted to provide it, in the same manner that the membership would vote to appropriate money to pay such items as the light bill. In other words, Cooper described such an election for arbitration funds as a relatively pro forma one. There is no evidence contradicting that description.

When that subject was pursued, Cooper testified that a frivolous grievance or a series of frivolous grievances might lead somebody "to step in" on proceeding to arbitration. However, there is no evidence that such a situation ever has occurred. Like Jenkins, Cooper testified, "by and large when that [shop] committee recommends, you know, when they say we want to go to arbitration[,] that is going to arbitration." Respondent—which, after all, "has the burden of proving discontinuity," *Minn-Dak Farmers Co-Op v. NLRB*, supra—presented no evidence whatsoever to contradict that testimony by Jenkins and Cooper. And when so testifying, both men appeared to be doing so candidly.

Obviously, when analyzing whether a particular affiliation raises a question concerning representation, a crucial factor is selection of leadership. Indeed, when leadership remains the same, it has been characterized as one factor which "weighs heavily in favor of a finding of continuity[.]" Id. In the instant case, as set forth in section I,D, supra, Cooper had told Respondent's employees on October 30, 1994, before the affiliation election, that they would be able to continue electing their own shop committee, and that, "Nothing would change." He further testified, without contradiction, that as the three union agents were leaving that day, employees "asked if they could elect new officers, and I said you remember what I said during the meeting. We can't change any single thing or any way you operate You—I'm not going to tell you you can. I'm not going to tell you you can't. You got to do it exactly the way you did in the past." In fact, plant 2 employees did later conduct an election for shop committee representatives.

It is important in that regard to refocus on the distinction between union membership and shop committee membership, as described in the instant case. The former is an internal affair under Section 8(b)(1)(A) of the Act, which means that it is beyond the scope of review under the Act. Further, in the circumstances of the instant case, at least, there is no necessary nexus between union membership—ability to participate in the internal affairs of Local Lodge No. 1426, the Union, or International—and ability of Respondent's employees to choose leaders who will negotiate contracts with Respondent, strike in pursuit of bargaining objectives, and select which complaints will be processed as grievances to arbitration. Even if they choose not to become full union members, so far as the evidence shows, Respondent's employees

will continue to have ability to pursue their own collective-bargaining destiny: no outsider will dictate or interfere with their collective-bargaining choices, they gain no authority to dictate or interfere with the collective-bargaining choices made by employees of other employers and, as before affiliation, individual employees of Respondent are free to seek or not to seek full union membership. Since they continue to control their own collective-bargaining destiny, it is Respondent's employees who will decide what form, if any, of union-security requirement will be negotiated with Respondent. In sum, before affiliation, Respondent's employees were an island with respect to the statutory bargaining process; they remain so following affiliation. Affiliation strengthens their hand in that process, but there is no evidence that affiliation impairs it.

At first blush, there might be some appeal to an argument that Respondent could hardly be expected to disprove Jenkins and Cooper's testimony pertaining to union practice, inasmuch as there had been no opportunity for negotiating, and perhaps grievance-processing, in the wake of the affiliation, even had Respondent been willing to recognize International and its Local Lodge No. 1426 as the representative of plant 1 and plant 2 employees. But, such an argument is only accurate as far as it goes. As pointed out above, Local Lodge No. 1426 represents employees of other employers. Obviously, International has a history of interrelating with its district and local lodges, as well as with the various shop committees at each employer. By looking to those relationships Respondent—which bears the burden of proving discontinuity—could have ascertained whether or not actual practice truly corresponded to the descriptions of it by Jenkins and Cooper. Yet, Respondent adduced no such evidence.

In sum, Respondent has failed to prove discontinuity. In practice, both before and after affiliation, Respondent's employees were a self-contained group and subgroup, respectively, with respect to conducting statutory relations with Respondent. They selected their own leaders from among their number. No one from outside Respondent voted for those leaders. Absent a request by those leaders for assistance, such as during negotiations or to process grievances, no union officials became involved to any significant degree in negotiating and grievance processing. Only Respondent's employees decided what proposals to present and accept. Only Respondent's employees decided what grievances to file and process to arbitration. Whatever help they receive from Local Lodge No. 1426, the Union, and International is no greater than that envisioned by the Supreme Court whenever an independent union affiliates with a larger, established one.

Therefore, I conclude that a preponderance of the credible evidence does not establish discontinuity and, inasmuch as the due-process test for affiliation was satisfied, that Shop Committee's affiliation did not raise a question concerning representation. Consequently, by its admitted refusal to recognize International and its Local Lodge No. 1426 as the collective-bargaining agent of the bargaining unit described in section I,C, supra, Respondent violated Section 8(a)(5) and (1) of the Act.

In the face of its ongoing unlawful and unremedied refusal to bargain with a shop committee affiliated with International and its designated Local Lodge No. 1426, it follows that Respondent violated Section 8(a)(2) and (1) of the Act by initiating and insisting that the unit then represented by Con-

tinental Committee be grafted onto the unit then confined to Respondent's employees. By October 1995, each had been units with separate viability. There is no evidence that their separate viability had been diminished, much less destroyed, by Andrew Galinsky's takeover of Continental Rebar ownership. That is, there is no evidence that the ownership change had destroyed the separate appropriateness which had most recently been accorded to each of those two units. Nor is there evidence that the ownership change had created an overall community of interest between employees of Respondent and employees of Continental Rebar. The practical effect of the merger of units was to obliterate the previously separate unit which Respondent should have been recognizing as represented by a shop committee affiliated with International and its Local Lodge No. 1426. That obliteration was accomplished by means of Respondent's ongoing treatment of its employees shop committee as an independent and unaffiliated union.

To be sure, the Act does permit merger of separate units through the bargaining process. "The term 'merger,' as a representational concept, it usually used to describe the process by which an employer and union agree, either expressly or through practice, to combine separate appropriate bargaining units represented by that union into a single overall unit." *Northland Hub*, 304 NLRB 665 fn. 1 (1991). But, as of October 1995, Continental Rebar employees were not being represented by the same bargaining agent as Respondent's employees. Thus, the situation was not one where two separate units were being represented by a single bargaining agent which could agree to their merger.

Worse, one of those formerly separate bargaining agents—Shop Committee—had not been the bargaining agent of Respondent's employees for a year. Only Respondent's ongoing unlawful refusal to recognize the bargaining agent resulting from affiliation made it possible for Respondent to utilize the no-longer independent Shop Committee as a vehicle for initiating, promoting, demanding, and requiring the merger of units and bargaining agents. Therefore, by engaging in that conduct and, further, by then negotiating and entering into a collective-bargaining contract with Sioux City Foundry Company Shop Committee, as the purported representative of employees in an overall unit of Continental Rebar's and Respondent's employees, Respondent violated Section 8(a)(2) and (1) of the Act.

Those conclusions are not altered by the fact that the Continental Rebar employees had at one time been a part of the same unit as Respondent's employees. During the most recent bargaining history those employees had been in separate bargaining units. There is no evidence showing that either of those separate units had lacked viability. There is no evidence showing that the change in Continental Rebar ownership had destroyed the viability of the unit confined to its employees. Moreover, there is no evidence that the change in ownership, of itself, had created a community of interest between the employees of Continental Rebar and those of Respondent. "A group of employees is properly accreted to an existing bargaining unit when they have such a close community of interests with the existing unit that they have no true identity distinct from it." *NLRB v. St. Regis Paper Co.*, 674 F.2d 104, 107-108 (1st Cir. 1976). Accord: *NLRB v. Security Columbian Banknote Co.*, 541 F.2d 135, 140 (3d Cir. 1976). Neither close postownership change community

of interest between Respondent's and Continental Rebar's employees, nor lack of true identity by employees of the one in relation to employees of the other, has been shown in the instant case.

Respondent points out that there has been turnover in its employee complement since October 30, 1994. However, the situation here does not present an initial bargaining obligation allegedly arising where none had existed beforehand. Prior to affiliation, there had been almost a decade of representation. The affiliation occurred during the term of an existing collective-bargaining contract. Respondent has made neither contention, nor showing, that a majority of its employees no longer wished representation after October 30, 1994, nor, for that matter, after expiration of the collective-bargaining contract then in effect. Furthermore, Respondent has made neither contention nor showing that it had a good-faith doubt that its employees no longer desired representation. "The Act assumes that stable bargaining relationships are best maintained by allowing an affiliated union to continue representing a bargaining unit unless the Board finds that the affiliation raises a question of representation." *NLRB v. Financial Institution Employees*, 475 U.S. 192, 209 (1986).

This leaves for consideration the allegation that Respondent violated Section 8(a)(1) of the Act by Galinsky's October 1994 promises to pay Shop Committee's arbitration costs. Galinsky admitted that he had made that promise to several employees during that month. It is undisputed that no such requirement ever had appeared in any collective-bargaining contract between Respondent and Shop Committee. Galinsky claimed that he had promised in the past to pay Shop Committee's arbitration costs. But, that testimony was not corroborated. Further, his testimony describing when he supposedly had made that promise was at odds with his own prehearing letter's specification of the year in which the purported promise assertedly had been made.

In any event, the uncontradicted description of Galinsky's promise to Clingenpeel, as described in section I,C, supra, demonstrates that, whatever he may have said on earlier occasions, Galinsky was promising to pay Shop Committee's arbitration costs as a means of influencing Respondent's employees to vote against affiliation. Thus, he had ascertained, during his all-employee meeting of October 17, 1994, that one reason for employees' consideration of affiliation had been lack of Shop Committee "power to force" Respondent's hand by being able to pursue grievances to arbitration. Following that meeting, he approached Shop Committee members with his promise to pay those costs.

In making that promise to Clingenpeel, Galinsky said that, "if arbitration was the main concern," Respondent would be willing to include the substance of his payment promise in the collective-bargaining contract. That was a course which Galinsky concededly had been unwilling to follow in the past. Furthermore, it is undisputed that, in the course of making that promise to Clingenpeel, Galinsky warned that if the employees "did affiliate with the [U]nion that he would no longer sit down and . . . negotiate the contract with [them], that he would have a third-party do it." Clearly, that remark conveys a natural meaning that negotiations will become more difficult for Respondent's employees, because they will be conducted by someone other than Galinsky.

As set forth above, affiliation maintains "stable bargaining relationships," *Financial Institution Employees*, supra, and, accordingly, decisions concerning it are ones which employees have a statutory right to make without employer interference. By promising to pay Shop Committee arbitration costs and, for the first time, embody the substance of that promise in a contract, Galinsky made promises which inherently interfered with the statutory freedom of choice by employees who had been concerned with achieving "power to force" Respondent into arbitration. That interference was heightened by the accompanying warning to Clingenpeel about a third-party negotiator, instead of Galinsky. Therefore, I conclude that Respondent interfered with employees' statutory rights and violated Section 8(a)(1) of the Act by offering to pay arbitration costs for Shop Committee if employees would forgo affiliation.

CONCLUSION OF LAW

Sioux City Foundry Company has committed unfair labor practices affecting commerce by refusing to recognize and bargain with International Association of Machinists and Aerospace Workers, AFL-CIO, and its designated Local Lodge No. 1426—as the exclusive bargaining representative, within the meaning of Section 9(a) of the Act, of all employees in an appropriate bargaining unit of all molders and coremakers, electric furnace operators, contract manufacturing, cleaning room operators, helpers foundry, steel fabricators, reinforcing bar-fabricators, maintenance men, and warehousemen-steel employed at its Sioux City, Iowa, and South Sioux City, Nebraska plants; excluding pattern makers, laboratory, and spectrograph people, hourly part-time employees who are regularly scheduled for less than 30 hours per week, office clerical employees, guards and supervisors as defined in the Act—since November 1994, in violation of Section 8(a)(5) and (1) of the Act; by initiating, promoting, demanding, and requiring that its employees be merged into a single bargaining unit with employees of Continental Rebar Coatings, as a result of continued bargaining with Sioux City Foundry Shop Committee, as an independent union, following its affiliation with International Association of Machinists and Aerospace Workers, AFL-CIO, and by negotiating and entering into a collective-bargaining agreement for that merged unit, in violation of Section 8(a)(2) and (1) of the Act; and, by promising to pay arbitration costs, and to embody that promise in a collective-bargaining contract, to interfere with employee freedom of choice concerning affiliation, in violation of Section 8(a)(1) of the Act. However, Sioux City Foundry Company has not violated the Act in any other manner alleged in the consolidated complaint.

REMEDY

Having concluded that Sioux City Foundry Company has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and, further, that it be ordered to take certain affirmative action to effectuate the policies of the Act. With respect to the latter, it shall be ordered to recognize and bargain collectively with International Association of Machinists and Aerospace Workers, AFL-CIO, and its designated Local Lodge No. 1426, as the exclusive bargaining representative of employees in an appropriate bargaining unit of: All molders and coremakers, electric fur-

nace operators, contract manufacturing, cleaning room operators, helpers foundry, steel fabricators, reinforcing bar-fabricators, maintenance men, and warehousemen-steel employed at its Sioux City, Iowa, and South Sioux City, Nebraska, plants; excluding pattern makers, laboratory, and spectrograph people, hourly part-time employees who are regularly scheduled for less than 30 hours per week, office clerical employees, and guards and supervisors as defined by the Act. It shall be further ordered to withdraw recognition from Sioux City Foundry Company Shop Committee as the collective-bargaining representative of employees in the above-described appropriate bargaining unit and, further, to cease applying to those employees the collective-bargaining contract with Sioux City Foundry Company Shop Committee signed on December 21, 1995, for the term January 1, 1996 through December 31, 1998. However, Sioux City Foundry Company is not authorized or required to eliminate wage or benefits increases conferred by that contract on employees in the above-described appropriate bargaining unit, without prior notice, and affording an adequate bargaining opportunity, to International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 1426.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

The Respondent, Sioux City Foundry Company, Sioux City, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain collectively with International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 1426, as the exclusive bargaining representative of all employees in an appropriate bargaining unit of:

All molders and coremakers, electric furnace operators, contract manufacturing, cleaning room operators, helpers foundry, steel fabricators, reinforcing bar-fabricators, maintenance men, and warehousemen-steel employed at the Sioux City, Iowa, and South Sioux City, Nebraska plants of Sioux City Foundry Company; excluding pattern makers, laboratory, and spectrograph people, hourly part-time employees who are regularly scheduled for less than 30 hours per week, office clerical employees, guards and supervisors as defined by the Act.

(b) Recognizing Sioux City Foundry Company Shop Committee as the bargaining representative of employees in the unit described above and, further, imposing the collective-bargaining contract with Sioux City Foundry Company Shop Committee signed on December 21, 1995, for the term January 1, 1996, through December 31, 1998, to employees in that unit, as described in the remedy section of this decision.

(c) Continuing to recognize and attempt to bargain collectively with Sioux City Foundry Shop Committee, or any other bargaining representative, after that representative has

become properly affiliated with, and replaced by, another bargaining representative.

(d) Initiating, promoting, demanding, or requiring that Sioux City Foundry Shop Committee continue to serve as the bargaining representative of employees in the above-described appropriate unit and, further, agree to merge that unit with a separate bargaining unit represented by a different bargaining representative, at a time when Sioux City Foundry Shop Committee is no longer the bargaining representative of employees in the above-described unit because it has properly affiliated with another bargaining representative.

(e) Promising to pay costs of arbitration for the bargaining representative of employees, and promising to embody that promise of payment in a collective-bargaining contract, in order to discourage those employees from voting in favor of affiliation of their existing bargaining representative with another bargaining representative.

(f) 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 National Labor Relations Act.

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

(a) Recognize and, on request, bargain with International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 1426 as the exclusive collective-bargaining representative of all employees in the appropriate bargaining unit described in paragraph 1(a), above, and embody in a written contract any understandings reached as a result of that bargaining.

(b) Withdraw recognition of Sioux City Foundry Company Shop Committee as the bargaining representative of employees in the unit described in paragraph 1(a), above and, further, refrain from applying to those employees any collective-bargaining contract negotiated on their behalf with Sioux City Foundry Company Shop Committee, including the contract with it signed on December 21, 1995, for the term January 1, 1996, through December 31, 1998.

(c) Within 14 days after service by the Region, post at its Sioux City, Iowa, and South Sioux City, Nebraska plants copies of the attached notice marked "Appendix."⁸ Copies of that notice, on forms provided by the Regional Director for Region 18, after being signed by its authorized representative, shall be posted by Sioux City Foundry Company 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 it 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, Sioux City Foundry Company has gone out of business or closed either plant involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees which it employed at any time since November 14, 1994.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 18 a sworn certification of

⁷If 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.

⁸If 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."

a responsible official on a form provided by the Region attesting to the steps that Sioux City Foundry Company has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint is dismissed insofar as it alleges violations of the Act not found here.

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT refuse to recognize and bargain collectively with International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 1426 as the exclusive bargaining representative of employees in the following appropriate bargaining unit:

All molders and coremakers, electric furnace operators, contract manufacturing, cleaning room operators, helpers foundry, steel fabricators, reinforcing bar-fabricators, maintenance men, and warehousemen-steel employed at the Sioux City, Iowa, and South Sioux City, Nebraska plants of Sioux City Foundry Company; excluding pattern makers, laboratory, and spectograph people, hourly part-time employees who are regularly scheduled for less than 30 hours per week, office clerical employees, guards and supervisors as defined by the Act.

WE WILL NOT recognize Sioux City Foundry Company Shop Committee as the bargaining representative of employees in the unit described above.

WE WILL NOT impose on employees in the above-described bargaining unit the collective-bargaining contract with Sioux City Foundry Company Shop Committee signed on December 21, 1995, for the term January 1, 1996, through December 31, 1998. HOWEVER, that does not authorize or require us to eliminate wage or benefits increases conferred by that contract on employees in the above-described bargaining unit without prior notice, and affording an adequate bargain-

ing opportunity, to International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 1426 as the exclusive bargaining representative of those employees.

WE WILL NOT continue to recognize and attempt to bargain with Sioux City Foundry Shop Committee, or any other bargaining representative, after that representative has become properly affiliated with, and replaced by, another bargaining representative.

WE WILL NOT initiate, promote, demand, or require that Sioux City Foundry Shop Committee continue to serve as the bargaining representative of employees in the above-described appropriate bargaining unit.

WE WILL NOT initiate, promote, demand, or require that Sioux City Foundry Shop Committee agree to merge the above-described bargaining unit with a separate bargaining unit represented by a different bargaining representative, at a time when Sioux City Foundry Shop Committee is no longer the bargaining representative of employees in the above-described bargaining unit, because it has become properly affiliated with another bargaining representative.

WE WILL NOT promise to pay costs of arbitration for the bargaining representative of our employees.

WE WILL NOT promise to embody that promise of payment in a collective-bargaining contract, in order to discourage those employees from voting in favor of affiliation of their existing bargaining representative with another bargaining representative.

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 with International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 1426 as the exclusive collective-bargaining representative of all employees in the above-described appropriate bargaining unit, and WE WILL embody in a written contract any understandings reached as a result of that bargaining.

WE WILL withdraw recognition from Sioux City Foundry Company Shop Committee as the bargaining representative of employees in the above-described bargaining unit.

WE WILL refrain from applying to employees in the above-described bargaining unit any collective-bargaining contract negotiated on their behalf with Sioux City Foundry Company Shop Committee, including the contract which it signed on December 21, 1995, for the term January 1, 1996, through December 31, 1998, but we will not eliminate wage or benefits increases conferred by that contract without first notifying and affording International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 1426 and adequate opportunity to bargain about such proposed changes in employment terms.

SIoux CITY FOUNDRY COMPANY