

Incisa, U.S.A., Inc. and United Steelworkers of America, AFL-CIO-CLC and Laborers' Local 265, affiliated with the Laborers' International Union of North America, AFL-CIO

Laborers' Local 265, affiliated with the Laborers' International Union of North America, AFL-CIO (Incisa, U.S.A., Inc.) and Granville Tackett and J. C. Barker. Cases 9-CA-30158-1, 9-CA-30158-2, 9-CB-8406, and 9-CB-8411

February 10, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On October 5, 1994, Administrative Law Judge Donald R. Holley issued the attached decision. The General Counsel, Respondent Incisa, and Respondent Laborers' Local 265 (Laborers) filed exceptions and supporting briefs. Charging Party United Steelworkers of America, AFL-CIO-CLC (Steelworkers) filed exceptions and an answering brief to Respondent Incisa's exceptions. The General Counsel and Respondent Incisa filed answering briefs.

On October 23, 1998, the General Counsel, Respondent Employer, and Charging Party Steelworkers filed an unopposed Motion to Sever Cases and to Remand Cases 9-CA-30158-1 and 9-CA-30158-2. Thereafter, the General Counsel, Charging Party Steelworkers, and the Respondent Employer filed motions to withdraw their exceptions in Cases 9-CA-30158-1 and 9-CA-30158-2. On November 20, 1998, the Board granted the motions.

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

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,¹ and conclusions as modified² and to adopt the recommended Order as modified.

In view of our order remanding Cases 9-CA-30158-1 and 9-CA-30158-2 to the Regional Director for Region 9 for further appropriate action, we pass only on those findings by the judge remaining before us in Cases 9-CB-8406 and 9-CB-8411. Specifically, in Case 9-CB-8406, we adopt the judge's finding that Respondent Union violated Section 8(b)(1)(A) by seeking and accepting 9(a) recognition at a time when a valid petition by Charging

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

² We have modified the judge's recommended Order and notice to comport with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

Party Steelworkers was pending before the Board.³ In Case 9-CB-8411, we adopt the judge's findings that, by refusing Charging Party Granville Tackett's request not to join the Union and by thereafter causing the Employer to terminate Tackett, the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act.

The complaint in Case 9-CB-8411 also alleges a failure to give nonmember unit employee Granville Tackett (and *only* Tackett) notice of his rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988), in violation of Section 8(b)(1)(A).⁴ After having been offered reinstatement following a 9-day strike in July 1992, Tackett reported to the Incisa jobsite and told Laborers' field representative Tony Youngblood that Tackett wanted to be a "financial core participant" and "not join the Union." On July 21, Youngblood obtained clearance from a project superintendent for Tackett to work at 3-percent dues checkoff.⁵ The same day, Laborers' steward Barry Williams, asked Tackett to sign two cards—one for the Respondent's 3-percent dues checkoff, and one for the Ohio Labor Council. Respondent Laborers never informed Tackett that he could object to having his dues or fees spent on nonrepresentational activities, or that individuals who objected would be charged only for representational activities.

On July 30, 1992, Williams told Tackett "that [the Laborers] couldn't live with the deal . . . that [Tackett] would have to join the Union." When Tackett refused, Incisa's project manager told Tackett that he would be laid off. The following day, Tackett was laid off because of "Conflicts with Article IX of the project agreement with Local #265 Regarding Union Membership in #265." By letter dated August 4, Respondent Laborers' confirmed that it had asked Incisa to enforce the 7-day union-security clause in its 8(f) agreement.

³ In Case 9-CB-8406, the judge also recommended dismissal of the allegation that, by obtaining 9(a) recognition while a valid petition was pending and simultaneously maintaining a collective-bargaining agreement which contained a union-security clause, Respondent Union violated sec. 8(b)(2). No exception has been filed to this dismissal.

⁴ The complaint also alleges that the Respondent Union violated Sec. 8(b)(1)(A) by misinforming Tackett about his right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1964), to be a nonmember—i.e., by telling Tackett that he would have to join the Union as a condition of his continued employment with Incisa. The judge did not pass on this allegation, and no exception has been filed to his failure to do so. Nonetheless, as stated in *California Saw & Knife Works*, 320 NLRB 224 (1995), "*Beck* rights accrue only to nonmembers. Thus, in order to fully inform nonmember employees of their *Beck* rights, a union must tell them of this limitation and must tell them of their *General Motors* right to be and remain nonmembers." *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995), rev'd. on other grounds sub nom. *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997), vacated 119 S.Ct. 442 (1998), expressly extended this concomitant notice obligation to all employees, including "those who are still full union members and did not receive those notices before they became members." 320 NLRB at 349.

⁵ Respondent Laborers' members paid 3 percent of gross wages as working dues and \$16 a month as monthly dues.

The judge found no evidence that Respondent Union sought to cause Tackett to pay money for nonrepresentational activities, he dismissed the allegation that it had violated Section 8(b)(1)(A) by failing to give Tackett *Beck* notice. The General Counsel excepts. We reverse.

In *Beck*, the Supreme Court held that the Act does not permit a collective-bargaining representative, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration, and grievance adjustment. 487 U.S. at 752–754. In *California Saw & Knife Works*, 320 NLRB 224 (1995), enfd. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 119 S. Ct. 47 (1998), the Board found that a union breached its duty of fair representation by failing to provide notice of *Beck* rights to employees covered by a union-security agreement. Specifically, *California Saw* requires that

when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. Id. at 233 [footnote omitted].

California Saw explained that these notice requirements furnish significant protection to the interests of the individual nonmember unit employee vis-à-vis *Beck* rights, without compromising the countervailing collective interests of bargaining unit employees in ensuring that every unit employee contributes to the cost of collective bargaining. The Board further emphasized that a union is afforded a wide range of reasonableness under the duty of fair representation in satisfying its notice obligation. Id. at 235. A union meets its notice obligation as long as it takes reasonable steps to ensure that all employees whom the union seeks to obligate to pay dues under a union-security clause are given notice of their *Beck* rights. Id. at 233.

The record reflects that Respondent Union failed to notify Tackett of his *Beck* rights at the time it first sought to obligate him to pay dues, as required under *California Saw*. It thereby violated Section 8(b)(1)(A).⁶

AMENDED CONCLUSIONS OF LAW

1. Add the following as Conclusion of Law 7.

⁶ Contrary to the judge, the Union's obligation to provide *Beck* notice to Tackett is not contingent on a showing that part of his dues were used for nonrepresentational purposes. *Teamsters Local 738 (E.J. Brach Corp.)*, 324 NLRB 1193 (1997).

"7. By failing to notify employee Granville Tackett of his *Beck* rights at the time it sought to obligate him to pay fees and dues under the union-security clause, Respondent Laborers has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act."

AMENDED REMEDY

Having found that Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2), we shall order it to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act. Having found that Respondent Union caused the Employer, Incisa, U.S.A., Inc. to unlawfully discharge Granville Tackett, we shall order Respondent Union to notify the Employer in writing, with copies to Tackett, that it has no objection to his reinstatement and that it affirmatively requests his reinstatement. We shall also order Respondent Union to make Tackett whole for any loss of wages and benefits he may have suffered as a result of the Respondent Union's conduct until such time as he either is reinstated by the Employer to his former or substantially equivalent position, or until he obtains substantially equivalent employment elsewhere, less interim earnings. *Electrical Workers IBEW Local 3 (Fishbach & Moore)*, 309 NLRB 856 (1992); *Sheet Metal Workers Local 355 (Zinsco Electrical Products)*, 254 NLRB 773 (1981). The amount of backpay shall be computed with interest as provided for in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In accordance with the Board's decision in *California Saw & Knife*, we shall order Respondent Union to notify Tackett of his rights under *Beck* and *General Motors*. The *Beck* notice shall contain sufficient information, for the accounting period or periods covered by the complaint, to enable Tackett to decide intelligently whether to object. See, e.g., *California Saw*, supra, 320 NLRB at 253.

We shall also order Respondent Union to accept Tackett's tendered resignation from the Union. If Tackett has paid dues or fees since he was subjected to the union-security clause or about July 20, 1992,⁷ and if, with reasonable promptness after receiving his notices, he makes a *Beck* objection with respect to those dues or fees, we shall order Respondent Union, in the compliance stage of the proceeding, to process his objection, nunc pro tunc, as it would otherwise have done, in accordance with the principles of *California Saw*. Respondent Union shall then be required to reimburse Tackett for the reduction of his dues and fees, if any, for nonrepresentational activities that occurred for the accounting period or periods covered by the complaint. Interest on the amount of proportionate back dues and fees owed to Tackett shall

⁷ The record does not definitively establish whether or not Tackett was ever charged any dues or fees.

shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that Respondent Laborers' Local 265, affiliated with the Laborers' International Union of North America, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Seeking and obtaining 9(a) recognition as the exclusive representative of Incisa, U.S.A., Inc.'s employees while a valid petition seeking an election among those employees is pending before the Board.

(b) Refusing to permit employees, including Granville Tackett, to exercise their right not to join the Union and causing their employer to terminate them because they refuse to join the Union.

(c) Failing to notify employees of their *Beck* and *General Motors* rights when it first seeks to obligate them to pay fees and dues under a union-security clause.

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

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

(a) Make employee Granville Tackett whole for losses he suffered as a result of discrimination against him, together with interest, in the manner set forth in the amended remedy section of this Decision and Order.

(b) Notify Incisa, U.S.A., Inc., in writing, with a copy to Granville Tackett, that it has no objection to his employment and that it requests that he be reinstated.

(c) Accept Granville Tackett's resignation from the Union.

(d) Notify Granville Tackett of his rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988), including that he has the right to be or remain a nonmember and that nonmembers have the right to object to paying for dues activities not germane to the Union's duties as bargaining agent and to obtain a reduction in fees for such activities. In addition, this notice must provide sufficient information to enable Tackett to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

(e) Process Granville Tackett's objections in the manner prescribed in the amended remedy section of this Decision.

(f) Reimburse Granville Tackett with interest if he files an objection under *Communications Workers v. Beck*, supra, for any dues and fees exacted from him for non-representational activities, in the manner prescribed in the amended remedy section of this Decision.

(g) Within 14 days from the date of this Order, remove from its files, and ask Incisa, U.S.A., Inc. to remove from

its files, any reference to the discharge of Granville Tackett, and within 3 days thereafter notify Tackett in writing that it has done so and that it will not use the discharge against him in any way.

(h) Within 14 days after service by the Region, post at its union hall copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent Union's authorized representative, shall be posted by Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members 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.

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

APPENDIX

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

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

WE WILL NOT seek and obtain recognition as the exclusive 9(a) representative of Incisa, U.S.A., Inc.'s employees while a valid petition seeking an election among such employees is pending before the Board.

WE WILL NOT cause employees to be discharged for exercising their right not to join the Union.

WE WILL NOT fail to notify employees of their *Beck* and *General Motors* rights when we first seek to obligate them to pay fees and dues under a union-security clause.

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

WE WILL notify Incisa, U.S.A., Inc., that we have no objection to the employment of Granville Tackett and that we do not object to Tackett's reinstatement and WE WILL request that Incisa reinstate him.

WE WILL make employee Granville Tackett whole for losses he suffered as a result of his discharge together with interest.

WE WILL notify Granville Tackett, in writing, of his rights under *Communications Workers v. Beck*, 487 U.S.

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

735 (1988), including that he has the right to be or remain a nonmember and that nonmembers have the right to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities. In addition, this notice must include sufficient information to enable the employee to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL accept Granville Tackett's resignation from the Union and WE WILL process *Beck* objections to nonrepresentational expenditures for the accounting period or periods covered by the complaint.

WE WILL reimburse Granvill Tackett with interest if he files an objection under *Communications Workers v. Beck*, supra, for any dues and fees exacted from him for nonrepresentational activities.

LABORERS' LOCAL 265, AFFILIATED
WITH THE LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO

Donald A. Becher, Esq., for the General Counsel.

Andrew J. Russell, Esq. (Smith & Smith Attorneys), of Louisville, Kentucky, and *David D. Dibari, Esq.*, of Washington, D.C., for the Respondent.

Samuel H. Heldman, Esq., of Birmingham, Alabama, for the Steelworkers.

Lawrence M. Oberdank, Esq., of Cleveland, Ohio, for Laborers' Local 265.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. Original charges were filed in Cases 9-CB-30158-1 and 9-CA-30158-2 on November 18, 1992. Thereafter, on December 31, 1992, the Regional Director for Region 9 of the National Labor Relations Board issued a complaint in Case 9-CA-30158-1 that alleged, in essence, that Incisa, U.S.A., Inc. (Respondent Employer or Respondent Incisa), violated Section 8(a)(1) and (2) of the National Labor Relations Act by recognizing Laborers' Local 265, affiliated with the Laborers' International Union of North America, AFL-CIO (Respondent Union), as the exclusive bargaining representative of specified employees at a time when a valid petition requesting an election among such employees was pending in Case 9-RC-16074. Respondent Employer filed timely answer denying it had engaged in the unfair labor practices alleged in the complaint. On January 11, 1993, the original charge in Case 9-CB-8406 was filed by Granville Tackett, an individual, and on January 14, 1993, the original charge in Case 9-CB-8411 was filed by J. C. Barker, an individual. Thereafter, on February 25, 1993, Cases 9-CB-8406 and 9-CB-8411 were consolidated for trial and a complaint was issued that alleged, in substance, that Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by: obtaining recognition from Respondent Employer on August 8, 1993, as the exclusive collective-bargaining agent of named unit employees although a valid petition seeking an election in such unit had been previously filed by the United Steelworkers of

America, AFL-CIO (Steelworkers); denying Tackett financial core membership on or about July 7, 1992, by telling him he would have to join Respondent Union as a condition of continued employment at Respondent Employer; and failing to notify Tackett during his period of employment with Respondent Employer of the percentage of Respondent Union's funds spent for nonrepresentational purposes. On the same date, Cases 9-CB-8406, 9-CB-8411, and 9-CA-30158-1 were consolidated for trial. Respondent Union filed timely answer denying that it had engaged in the unfair labor practices alleged in the February 25, 1993 complaint.

On April 7, 1993, the Regional Director consolidated Cases 9-CA-30158-1 and 9-CA-30158-2 for trial and he issued an amended complaint that realleged the allegations contained in the December 31 complaint against Respondent Employer and additionally alleged that Respondent Employer violated Section 8(a)(1) and (3) of the Act by refusing since July 8, 1992, to reinstate strikers who had made an unconditional offer to return to work, and by subordinating, since July 13, 1992, the recall rights of such strikers to the referral provisions of a collective-bargaining agreement between Respondent Employer and Respondent Union. On April 15, 1993, Cases 9-CA-30158-1, 9-CA-30158-2, 9-CB-8406, and 9-CB-8411 were consolidated for trial. Respondent Employer filed timely answer denying it had engaged in the unfair labor practices alleged in the April 7, 1993 amended complaint. Thereafter, Respondent Employer filed affirmative defenses to the allegations contained in the April 7, 1993 amended complaint.

Trial was held in the designated cases in Cincinnati, Ohio, on September 28 and 29, 1993. All parties appeared and were afforded full opportunity to participate. On the entire record, including careful consideration of posthearing briefs filed by the parties, and from my observation of the demeanor of the witnesses who appeared to give testimony, I make the following¹

FINDINGS OF FACT

I. JURISDICTION

Respondent Employer, a corporation, is engaged in heavy and highway construction and, during times material, was engaged in the reconstruction and rehabilitation of a 4-mile stretch of highway in Kenton County, Kentucky. During the 12-month period preceding issuance of the original complaint in Case 9-CA-30158-1 it purchased and received at its Kenton County, Kentucky jobsite goods valued in excess of \$50,000 directly from points outside the Commonwealth of Kentucky. It is admitted, and I find, that Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATIONS

It is admitted, and I find, that United Steelworkers of America, AFL-CIO, and Laborers' Local 265, affiliated with the Laborers' International Union of North America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

¹ The General Counsel's unopposed motion to correct the record at p. 3 of the brief is granted.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

On or about March 21, 1991, Respondent Incisa and Steelworkers entered a prehire agreement that was to govern the terms and conditions of employment of employees to be utilized on a highway project located in Kenton County, Kentucky. The work to be performed at the project entailed the reconstruction and rehabilitation of a 4-mile stretch of Interstate 75 between Covington, Kentucky, and Cincinnati, Ohio. As a dangerous curve in the highway was to be removed, the project became known as the "Death Hill Project." The above-described agreement was to be effective through June 30, 1992, and it contained a provision for automatic renewal if not terminated by one of the parties in accordance with its terms.

By certified letter (return receipt requested) dated April 17, 1992, Steelworkers notified Respondent Incisa it wished to terminate their agreement. The letter was returned to Steelworkers with indication that Respondent Incisa had been notified to pick up a certified letter on three dates but the letter had remained unclaimed. Initially, Respondent Incisa disputed Steelworkers' claim that it had given appropriate termination notice, but by June 22, 1992, Incisa accepted the termination notice.

The record reveals that during late spring 1992 Respondent Incisa wanted to extend their current 8(f) agreement with Steelworkers through the duration of the Kenton County Project. Steelworkers, on the other hand, were then negotiating with an employer association called Highway Contractors, Inc., and they notified Respondent Incisa they wanted to replace their current 8(f) agreement with a statewide rather than a project agreement. In early June 1992, Stuart Rothman, Incisa's attorney, proposed extension of the current 8(f) agreement through the end of the project with the understanding that Incisa would agree to abide by any changes reached by Highway Contractors, Inc., and Steelworkers during their negotiations (see G.C. Exh. 12). Steelworkers' position at the time was that "if a renewal agreement that encompasses statewide work is not reached by July 1, 1992, a strike will occur" (G.C. Exh. 13). In the same letter, Steelworkers suggested Respondent Incisa authorize the contractors association to bargain for them. By letter dated June 22, 1992, Incisa withdrew its offer to extend the contract and incorporate changes negotiated by Steelworkers and the Highway Association.

On June 23, 1992, Respondent Incisa representatives met with representatives of Steelworkers Local 14581, the body that actually supplied men for the death hill project. No representative from the International Union attended and the positions of the parties were not altered as a result of the meeting.

On June 30 representatives of Incisa and United Steelworkers International met at a motel in Fort Mitchell, Kentucky. Management was represented by Stuart Rothman (attorney), Orson Zinglerson (labor relations consultant), Santo Tropea (executive vice president), Dina Peletti and Fallica (Incisa officials). The Union was represented by Jay Smith (attorney), Ernest Thompson (staff representative), George Cantrell (vice president of Local 14581), Charles Cantrell (president of Local 14581), and J. C. Barker (union steward). Thompson and Smith described what occurred at the meeting. A composite of their testimony reveals that at the outset of the meeting, Smith withdrew the demand for a statewide agreement and withdrew the Union's suggestion that Incisa negotiate through the contrac-

tor's association. Smith then requested that Incisa recognize Steelworkers as the 9(a) representative of project employees observing that surely everyone agreed that Steelworkers represented a majority of workers on the project. Rothman indicated Incisa doubted the Union's claimed majority status and refused to extend recognition to Steelworkers. The attorneys, Thompson, and Zinglerson met privately away from the general meeting and Smith inquired whether Incisa would be willing to extend the agreement through the end of the project with Incisa's agreement to abide by changes that had been agreed on during recently concluded negotiations with Highway Contractors, Inc. Rothman asked what the changes were and Thompson described a couple of changes. Rothman indicated Incisa was not interested in entering any kind of agreement with Steelworkers at that time. After the negotiators returned to the general meeting room, Smith announced that Steelworkers would be striking for recognition the following morning. Rothman advised the job would be open for business for anyone who wanted to work.

Thompson indicated that, after leaving the June 30 meeting, he went to the project where he caused employees who were there to sign authorization cards. He further indicated that he returned to the site the next morning and asked those who had appeared to participate in the strike to sign authorization cards. The cards were placed in evidence as General Counsel's Exhibit 18.²

On July 1, 1992, Steelworkers commenced a strike at the death hill project. Pickets carried signs, the legends of which stated: "Incisa Unfair to Labor" and "USWA On Strike For Recognition." Some 39 individuals had been employed by Incisa on the project as of June 30, and approximately 50 demonstrators appeared at the project on July 1. No replacement workers appeared at the job on July 1, but some 50 feet of retaining wall had been poured the preceding day and about 9:30 a.m. the project superintendent, Dave Riley, and Zinglerson approached Thompson and Steward J. C. Barker to see if the Steelworkers would permit someone to finish the wall while the cement was green. Apparently, Riley asked Thompson if he would supply someone to accomplish the finishing and Thompson informed him he would not. Zinglerson claims Thompson then told Riley he would strongly urge that he not use his own people to do the finishing because feelings were running high and he would not want to see anything happen. Thompson's recollection is that his comment was that things were calm right then and he suggested they leave it like that. Picketing continued at the site from July 1-5 without incident. Respondent Incisa did not attempt to accomplish work at the project during that time period.

On July 2, Respondent Incisa and Respondent Laborers executed the collective-bargaining agreement placed in the record as General Counsel's Exhibit 25. The agreement was given an effective date of July 1, 1992, and was to remain in effect for the duration of the death hill project. The agreement contains a referral clause requiring the signatory employer to obtain journeymen and apprentices from the Union except in the event the Union cannot refer qualified applicants within 48 hours after a request. In that situation, the employer can employ applicants from other sources. Additionally, the contract contains a union-security clause requiring membership in the Union no later than

² There were 30 cards dated June 30, 1992; 15 dated July 1, 1992; and 9 dated June 31, 1992.

the 8th day following the beginning of their employment and it contains a no-strike clause.

Steelworkers sent Respondent Incisa a letter requesting 9(a) recognition on July 2. It claimed to have received authorization cards signed by a majority of employees in the following unit:

All employees performing Heavy Construction which shall include, but not be limited to the construction or modification or addition, or repair of: railroad bridges across commercially navigable rivers; ie. navigable to loaded barge tow, piledriving, pipe lines, piers, abutments, retaining walls, viaducts, shafts, tunnels, subways, tract elevators, drainage projects, aqueducts, flood control projects, reservoirs, water supply projects, water power development, hydroelectric development, duct lines, locks, dams, dikes, levees, revetments, channels, canal cutoffs, intakes, dredging projects, jetting sanitation projects, irrigation projects, transmission lines, breakwaters, docks, harbors, excavation and disposal of earth and rock, including the assembly operation, maintenance and repair of all equipment, vehicles and other facilities used in connection with and servicing the aforementioned work and services.

Also, including All employees performing highway construction work which is defined as follows:

1. All work let by the Kentucky Department of Transportation and the Ohio Department of Transportation.

2. All work normally included in highway or street construction contracts when let by the united States Corps of Engineers or by municipalities, counties or other political sub-divisions.

3. Storm sewers, sanitary sewers, supplying and distributing water lines, gas lines, telephone and television conduit, underground electrical lines and similar utility construction, when let by municipalities, counties or other political sub-divisions.

4. Airport flight strips, taxi strips, aprons, grading, drainage, paving and cross country railroads.

5. Reclamation projects.

But excluding the engineering staff, clerical employees, guards, watchmen, timekeepers, superintendents, master mechanics, assistant superintendents, general foremen, foremen, permanent off-the-project shop employees and supervisors having the right to hire or fire or effectively recommend same and in charge of classes of labor, but shall cover all other persons employed by the Employer in the performance of the work covered.

On July 6 Respondent Incisa sought to recommence work on the death hill project. At shortly after 7 a.m., its executive vice president, Santo Tropea, accompanied by Attorney Russell and 15 members of Respondent Laborers' Union arrived at the site in 15 cars. Utilizing a blueprint of the jobsite placed in the record as Respondent Employer's Exhibit 6, Tropea explained that he and the convoy entered the site using ramp C (colored yellow) and drove to a point marked C on the blueprint. At that time, some pickets and demonstrators were some distance from Tropea and his group (see circled area marked P on the exhibit), and they walked rapidly toward Tropea and his group. The number of pickets was estimated by Tropea to be 45-50 and was estimated to be 15-30 by George Cantrell, Steelworker

Local 14581's vice president.³ Tropea testified he attempted to photograph the demonstrators as they approached with his Polaroid camera, and he indicated a driver named Hopkins grabbed the picture and while doing so jammed the camera against his face. Tropea was not injured. It is uncontradicted that the demonstrators used vulgar language in addressing the Laborers' members, who remained in their cars, and that they called them scabs and referred to their union as a scab union. Several police cars arrived shortly after 7 a.m. George Cantrell admitted he suggested to the police that he thought they should separate the demonstrators and Laborers' members and suggested that management get the Laborers' members out of there to avoid a confrontation. In due course Tropea and the Laborers' members left the jobsite. Tropea estimated that 30-35 of the 41 Steelworkers employed on June 30 were at the site on July 6. He did not seek to name the employees he saw there.

At 3:30 p.m. on July 6 Respondent Incisa obtained a restraining order that was signed by a judge of the Kenton Circuit Court (R. Emp. Exh. 9). The restraining order was obtained after presentation of affidavits to the court, and it restrained and enjoined the Union from inter alia:

a. Picketing on or in the vicinity of the Project located in Kenton County, Kentucky, except for two stationary pickets at plaintiff's construction trailer located at 615 Pike Street, Covington, Kentucky; two stationary pickets at the staging area on Dixie Highway east of Mt. Allen Drive, Covington, Kentucky; and two stationary pickets at plaintiff's business office located at 100 Crisper Avenue, Crescent Springs, Kentucky;

b. Gathering together on either side of the public roadway easements at, near to, or in the vicinity of plaintiff's work on the Project in such a way as to interfere with traffic on the public roadway or into or out of said Project;

c. Being present individually or in crowds or groups at, near to, or in the vicinity of plaintiff's work on the Project, or within one hundred (100) yards, except for engaging in picketing activity as authorized in subparagraph (a) above[.]

Although the record reveals that Steelworkers International Representative Ernest Thompson was served with a copy of the above-described restraining order at the project on July 7, it fails to reveal the names or positions of others who may have been served with copies of the document. Through Thompson's testimony, Respondent Incisa placed in the record as Respondent Employer's Exhibit 10, defendant's response to plaintiff's first set of requests for admission and interrogatories in civil action no. 92.123 filed in the U.S. District Court for the Eastern District of Kentucky, Covington Division. Interrogatory no. 3 and the answer thereto are as follows:

INTERROGATORY NO. 3 Identify each and every member of the Steelworkers Union known to any of the Defendants who participated in picketing and/or demonstrations at or near the INCISA Job Site on July 6th, 7th or 8th, 1992 or at or near the INCISA Office on July 7, 1992, and for each such member state the dates and locations where such member engaged in picketing and/or demon-

³ Two photographs purportedly portraying the scene were placed in evidence as R. Emp. Exhs. 7(a) and (b). Inspection of those documents causes me to conclude there were approximately 30-35 pickets and/or demonstrators on the project shortly after 7 a.m. on July 6, 1992.

strations, the particular Steelworkers Local to which such member belongs and the period of time that such member has belonged to Steelworkers.

Steelworkers Local 14581 answered the described interrogatory by indicating, inter alia, that the following 35 named employees engaged in picketing and/or demonstrations on July 6, 7, or 8, 1992:

ANSWER: The following members of Local 14581 engaged in picketing:

Adkins, Hershel, Rt. 1, Box 254, West Liberty, KY 41472
 Adkins, Timmy, 7420 Fair Court, Florence, KY 41042
 Akers, Daniel, HC 74, Box 480, #8, Honaker, KY 41639
 Barker, J. C., Rt. 1, Box 598, West Liberty, KY 41472
 Barker, Thomas, Rt. 1, Box 598, West Liberty, KY 41472
 Barrowman, Charlie, 4646 Beach Grove Dr. #3, Independence, KY 41051
 Bolin, Gary D. (Jr.), RR 1, Box 143-P, Hazel Green, KY 41332
 Bressler, Michael, Rt. 5, Box 790, West Liberty, KY 41472
 Colemire, Charles (Jr.), Rt. 1, Box 389, Brooksville, KY 41004
 Colemire, Randall, RR 2, Foster, Brooksville, KY 41043
 Conn, Wilford, HC 74, Box 555, Dana, KY 41615
 Gilliam, Calvin, Rt. 1, Box 825, Sandy Hook, KY 41171
 Hampton, Clarence, P. O. Box 55, Jonaney, KY 41438
 Hickle, Charles, General Delivery, Camp Day, KY 41127
 Hocker, Gregory, 1503 Garrard St., Covington, KY 41011
 Hopkins, Harry, 1737 Normandy Rd., Lexington, KY 40504
 Jenkins, Gaylord, 3138 Rockhouse Creek Rd., Salyersville, KY 41465
 Jenkins, Raleigh, 2076 Highway 172, West Liberty, KY 41472
 Jenkins, William H., 1850 Highway 172, West Liberty, KY 41472
 Kent, Robert, 255 Tebbs Avenue, Lawrenceburg, KY 40342
 McDaniels, George, 38 Shelley St., Florence, KY 41042
 Napier, Barbara, Rt. 1, Box 130A, Butler, KY 41006
 Napier, Velinda, P. O. Box 582, Belfrey, KY 41514
 Powell, Donald, P. O. Box 781, Elkhorn City, KY 41522
 Rogers, Paul D., P. O. Box 606, Elkhorn City, KY 41522
 Rowe, Ronald, 10213 Dixie Highway, Florence, KY 41042
 Sellards, Marvin B., P. O. Box 214, Regina, KY 41559
 Sheets, Angela, Rt. 1, Box 598, West Liberty, KY 41472
 Smith, Alfred Kyle, P. O. Box 3296, Pikeville, KY 41502
 Smith, Vincent, 4864 Fegenbush Lane #3, Louisville, KY 40228
 Tackett, Granville, 3803 1/2 W. Cumberland Ave., Middlesboro, KY 40965
 Vaughn, Richard K. (Jr.), 514 Barbie Court, Ashland, KY 41002
 Ware, Sidney, Box 156, Brooksville, KY 41004
 Webb, Ralph, Rt. 2, box 180-A, Butler, KY 41006⁴

The record reveals that Steelworkers caused 150–200 pickets/demonstrators to appear at the project on July 7, and on July 8, approximately 100 appeared. By calling George Cantrell, Local 14581's vice president, and Gypsy Cantrell, the Local's

office manager, as adverse witnesses, Respondent Incisa established that Gypsy Cantrell assured increased numbers of Steelworkers on the jobsite on July 7 and 8 by calling members and by calling various signatory employers and exercising a so-called "organizing purposes" clause in their bargaining agreements that authorized Steelworkers time off for organizing purposes.

Respondent Incisa did not attempt to accomplish any work on the project on July 7 and 8, and the record fails to reveal any altercations occurred. At 12:07 p.m. on July 8, Steelworkers notified Respondent Incisa by fax that all striking employees at the death hill project were unconditionally offering to return to work and that the strike was terminated immediately. (See G.C. Exh. 19.) Respondent Incisa responded by faxing Steelworkers a letter dated July 8, 1992, the body of that states (G.C. Exh. 20):

In response to your memorandum of this date, please be advised that the Company will resume operations under its contract with the Laborers Union with its permanent employees employed under that contract and which presently constitute a full complement of required employees. With respect to the content of your memorandum, we will be back in touch with you in the very near future. There is no purpose to be served by having anyone report to work tomorrow.

On July 9 the former strikers reported for work but were not permitted to work. The General Counsel offered in evidence as General Counsel's Exhibit 24, a tape recording that depicted Respondent Attorney Andrew Russell conversing with Steelworkers at the site on the morning of July 9, 1992. I erroneously refused to receive the tape in evidence and that ruling is reversed at this time. Summarized, the tape reveals that: the Steelworkers present clearly indicated to Russell that they were unconditionally offering to return to work; Russell informed them Respondent Employer had written Steelworkers Representative Thompson a letter indicating the recall procedure to be utilized; there was no work available for Steelworkers at that time, and that Steelworkers would be recalled at a future time and any questions those present had should be directed to Thompson or Cantrell. On July 13, 1992, Respondent sent Steelworkers a letter, the body of which states (G.C. Exh. 21):

Supplementing our memorandum to you of July 8, 1992, INCISA's position regarding your alleged unconditional offer to return to work is as follows:

(a) INCISA and the Laborers' International Union of North America, Local 265, are parties to a collective bargaining agreement with which INCISA is legally obligated to comply, and the Laborers Union bargaining agreement contains a hiring hall clause which INCISA must observe when supplementing its existing workforce;

(b) Members of the United Steelworkers of America, AFL-CIO-CLC, who were covered under the expired agreement between INCISA and the Steelworkers Union (former Steelworkers Employees), and who were in the active employ of INCISA on June 30, 1992, will be placed on a preferential recall list and, except as provided for in paragraph c below, will be offered recall to work on a non-discriminatory basis as vacancies become available in jobs which they are qualified to perform; provided, however, that such recall opportunities shall be subject to obser-

⁴ Respondent Incisa employed 39 employees on June 30, 1992. In addition to the 35 named as participating in picketing and/or demonstrations, the following were also employed: Christopher Davidson, Michael Ellis, Harold Landers, and Claude Whitis.

vance by the Company of the provisions of the aforementioned hiring hall clause of the Laborers Union agreement;

(c) Former Steelworkers' employees who engaged in strike misconduct and employees who left their jobs on June 30, 1992, before completion of their scheduled work assignments in violation of the no-strike clause of the Steelworkers' contract have forfeited their employment with INCISA;

(d) All former Steelworkers' employees should understand that they are required to comply with all of INCISA's current terms and conditions of employment, including a drug screen and an orientation procedure on current policies and procedures and to comply with all of the terms of the current contract between the Laborers' Union and INCISA, including payment to the Laborers' Union of all required dues and fees;

(e) Any recall offers made to former Steelworkers' employees will be made without waiver of the company's position that it is not legally obligated to offer recall to any of said employees, and

(f) Former Steelworkers' employees will be notified individually of their recall in accordance with the usual recall procedures followed by the Company.

On July 14, 1992, Steelworkers filed an amended petition in Case 9-RC-16074. The document was signed by Jay Smith, attorney, and the sole change of substance was insertion of the following language at the bottom of the unit description:

And excluding any employees not performing work on Kenton County, Kentucky, project IDR-1R-175-8(63)187.

By letter from Steelworker Attorney Smith to Respondent Incisa Attorney Rothman dated July 17, 1992, Steelworkers indicated they were seeking an election only on the death hill project in a unit coextensive with that covered by the expired 8(f) contract.

By letter dated August 7, 1992, Respondent Laborers requested that Respondent Employer grant it 9(a) recognition. By letter dated August 8, 1992, after observing that a card check conducted by a Covington City Commissioner revealed that all of its then-current employees had designated Laborers' Local 265 as their collective-bargaining agent, Respondent Employer granted Respondent Laborers August 7, 1992 request.

The parties stipulated that since July 9, 1992, Incisa has made offers of employment to only two ex-striking employees, and they stipulated that another employee who was working on June 30, 1992, later registered at the Laborers hall and was referred to work at Incisa.

Granville Tackett, the alleged discriminatee in Case 9-CB-8406, is one of the two employees offered reemployment by Respondent Incisa since the strike. Tackett testified that during the week following the strike, Incisa's project manager, Dave Riley, telephoned him to ask if he would be interested in returning to work. Tackett told Riley he had some compunction about talking to him and indicated he felt he should discuss the situation with his local union officials. He testified he discussed the offer with Billy Thompson and the former steward at the project, J. C. Barker, and they jointly decided he should accept the offer to avoid a situation wherein Incisa could cause his unemployment claim to be denied because he refused a job offer. Tackett claims the union officials advised him to tell Respondent Laborers Union that he would work as a financial core member.

After deciding he would take the offer, Tackett asked for a letter from Incisa. He later received a letter from Incisa that was dated July 15, 1992, was signed by Santo Tropea, and stated (G.C. Exh. 27):

This letter is to confirm our telephone conversation with you on Tuesday, July 14, 1992 at 4:30 PM regarding returning to work on the I-75 project subject to the following conditions:

1. You are required to report to the corporate office on 7/20/92 for orientation.

2. You are required to consent to a drug screen and report to the testing facility to take the drug test.

3. You are required to report to the job site, should the drug test prove negative on 7/21/92.

4. You are subject to all terms and conditions of Incisa's union contract including payment of all union fees and dues.

Given these conditions of employment, you have agreed to report to work.

Tropea testified that when Tackett reported to the office on July 20, 1992, he read the body of the above-described letter to Tackett and his recollection was that Tackett agreed to work under the conditions indicated.

When Tackett reported to the jobsite on July 20, he testified he told Riley he was reporting for work, but he needed to talk to a union representative first. He claims that Youngblood arrived at the jobsite several hours later and that, after handing him the copy of the Tropea letter, he told him he "wanted to be a financial core participant, not to join the Union; that at my age my pension was vested in United Steelworkers Local 14581 and at my age I couldn't vest a pension in their union." Tackett claims that Youngblood said he had to make a telephone call and that shortly thereafter, Don Marksberry, the concrete superintendent on the job, came in and told him they agreed to let him go back to work "as a dues paying member at three percent check-off." Tackett testified he then left the office, found Youngblood in the parking lot, and verified with Youngblood that he was to go to work at a 3-percent checkoff. He claims Youngblood told him to see Barry, the union steward, to sign the appropriate card. Tackett testified he found Barry, who had two cards for him to sign; one for the 3-percent dues checkoff, and one for the Ohio labor council.

Tackett testified that he actually began work on the job on July 21, 1992. He claims that he worked from that time until Barry came to him 9 days later to tell him "that Mr. Youngblood had told him that they couldn't abide or live with the deal that we had made when I came back, that I would have to join their Union." Tackett testified he told Barry, "No, I didn't have to join his f'ing union, that I could go home." He claims he then went to Terrance Smith, who had replaced Riley as project manager and told him what Barry had told him. Smith told him to finish out the day; that he would check around. Tackett got back to Smith later and told Tackett there was nothing he could do, that they had a project agreement with Local 265, and they had no alternative but to lay him off. Tackett was given a layoff slip that was placed in the record as General Counsel's Exhibit 30. It indicates he was laid off on July 31, 1992, and that the reason for the layoff was:

Conflict with Article IX of the project agreement with Local # 265 Regarding Union Membership in # 265.

Tackett testified he was never told the specific amount of money he owed by anyone from the Laborers Union; that he was not told he could object to having money he paid spent on nonrepresentational activities; and he was not told that those who object to having nonrepresentational expenses deducted would only be charged for representational activities.

Local 265 Field Representative Tony Youngblood and Barry Williams, the Laborer's steward on the death hill project after July 1, 1992, disputed Tackett's claim that he told them he wanted to work on the project without joining their union.

Youngblood testified he had two conversations with Tackett. He claimed the first occurred when he went to Incisa's field office. His recollection was that Tackett showed him a letter he had received from Tropea; that after reading the letter, he called Robert Richardson, his business manager, to confirm the hire; and that he told Tackett it would be all right but he would have to sign the out-of-work list and he would have to become a member of the Union. Youngblood claims he then located the steward on the job and told him to sign Tackett up after he had been on the job 7 days. Youngblood testified his second conversation with Tackett took place about 9 days later. He claims he encountered Tackett in Incisa's parking lot around 10 a.m., explained how their local union works, and told him he had to become a member. He testified Tackett then told him he was a member of the Steelworkers and had been a member for 30 years. He claims he told Tackett Local 265 was not affiliated with the Steelworkers and he repeated that Tackett would have to become a member.

Barry Williams was a field representative of Local 265 at the time of the hearing. He testified that while he was the steward on the death hill project he gave Tackett an opportunity to obtain union membership by causing him to sign an authorization card and a dues-assessment authorization the eighth day Tackett was on the job. The authorization card was placed in the record as Respondent Local 265 Exhibit 1. It is dated July 21, 1992, and merely recites language that authorizes Local 265 to represent the signer in matters of rates of pay, wages, fringe benefits, hours of employment, and other conditions of employment. Williams denied that Tackett said anything to him about financial core membership. Williams indicated that the dues for persons working on the death hill project were 3 percent of gross for working dues and \$16 a month for monthly dues.

Robert Richardson, Local 265's business manager, sought to bolster the testimony given by Youngblood and Williams. He testified that the Local Union's policy in event a worker asked for financial core membership was to simply represent them but to charge them nothing. He claimed the Union had followed such a policy when two Nieman Plumbing employees had objected when asked to join the Union several years ago. Richardson, like Youngblood and Williams, denied that he was informed that Tackett sought financial core membership. Through Richardson's testimony, the General Counsel placed in the record as General Counsel Exhibit 31 a letter dated August 4, 1992, from Local 265 to Respondent Incisa. The body of the letter (signed by Youngblood) states:

This will confirm that I advised you to enforce Article IX of the Project Agreement between Incisa, U.S.A., Inc. and Laborers' District Council of Ohio on behalf of Laborers' Local Union 265 with respect to Granville Tackett.

Mr. Tackett was notified on at least two occasions, days prior to his termination, by representatives of Local

265 of the obligations of Article IX. Despite this notice and advice, Mr. Tackett chose not to tender the monetary obligations set forth in Article IX. To the contrary, it is my understanding that he told you that rather than pay what was required of him under this Article, he would quit your Company's employ and begin employment with another Employer who had a job for him.

Youngblood and Williams were not impressive witnesses and much of their testimony is absolutely unbelievable. I credit Tackett when his testimony, which is logical and believable, conflicts with that given by Youngblood and Williams. I do not credit Richardson's uncorroborated testimony concerning the Union's treatment of persons who request financial core membership.

Article IX of the project agreement entered by Respondent Incisa and the Laborers' District Council of Ohio is a union-security clause that requires membership in the Union as a condition of employment after 8 days (see G.C. Exh. 25, pp. 8 and 9).

B. Analysis and Conclusions

The Reinstatement Issues

Economic strikers' replacement rights were defined by the Supreme Court in *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375 (1967), where the Court stated (id. at 378):

Section 2(3) of the Act (61 Stat. 137, 29 U.S.C. § 152(3) provides that an individual whose work has ceased as a consequence of a labor dispute continues to be an employee if he has not obtained regular and substantially equivalent employment. If, after conclusion of the strike, the employer refuses to reinstate striking employees, the effect is to discourage employees from exercising their rights to organize and to strike guaranteed by §§ 7 and 13 of the Act (61 Stat. 140 and 151, 29 U.S.C. §§ 157 and 163). Under §§ 8(a)(1) and (3) (29 U.S.C. §§ 158(1) and (3)) it is an unfair labor practice to interfere with the exercise of these rights. Accordingly, unless the employer who refuses to reinstate strikers can show that his action was due to "legitimate and substantial business justifications," he is guilty of an unfair labor practice. *NLRB v. Great Dane Trailers*, 388 U.S. 26, 34 (1967). The burden of proving justification is on the employer.

With respect to "legitimate and substantial business justifications," the Supreme Court stated (id. at 379):

In some situations, "legitimate and substantial business justifications" for refusing to reinstate employees who engaged in an economic strike have been recognized. One is when the jobs claimed by the strikers are occupied by workers hired as permanent replacements during the strike in order to continue operations. *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 345-346 (1938); *NLRB v. Plastilite Corp.*, 375 F.2d 343 (C.A. 8th Cir. 1967); *Brown & Root*, 132 NLRB 486 (1961).

....

A second basis for justification is suggested by the Board when the striker's job has been eliminated for substantial and bona fide reasons other than considerations relating to labor relations: for example, "the need to adapt to changes in business conditions or to improve efficiency."

Patently, the facts set forth, above, reveal that Respondent Incisa refused, after the Steelworkers strike ended on July 8, 1992, to reinstate all but two of the striking employees whom it had employed immediately before the strike started.⁵ In an attempt to justify its actions, it offers the affirmative defenses discussed below.

(A) Respondent Incisa's first affirmative defense is that business necessity and a desire to remain a union contractor compelled it to enter a collective-bargaining contract covering the death hill project with the Laborers Union and the right to reinstatement, if any, possessed by the June 30 (strikers) employees is subject to the exclusive referral provisions of the Laborers Union's agreement.

I first note that Respondent Incisa offered no evidence to support its assertion that "business necessity" compelled it to enter a collective-bargaining agreement with the Laborers Union. Apart from that, however, it is clear that Respondent Incisa, by asserting the defense, contends that it was entitled to treat the strikers as applicants rather than employees after the strike ended. *NLRB v. Fleetwood Trailer Co.*, above, applies, and the defense described is without merit.

(B) The second affirmative defense interposed is that the June 30 employees forfeited any right to reinstatement they may have had by participating in a strike for recognition at a time when Steelworkers were unable to offer objective proof that they represented a majority of Respondent Incisa's employees in a specified bargaining unit.

I construe the described defense to be a contention that a minority union violates Section 8(b)(1)(A) if it engages in a strike with an object of obtaining recognition as the bargaining agent of an employer's employees. As noted by Steelworkers in their brief (p. 15), the Supreme Court held in *NLRB v. Teamsters Local 639*, 362 U.S. 274 (1960), that a minority union does not violate Section 8(b)(1)(A) by engaging in a strike with an object of organizing employees or obtaining recognition from their employer. See also *Laborers Local 784 (NVE Constructors)*, 296 NLRB 1325, 1329 (1989). Accordingly, I find that Respondent Incisa failed to establish that the June 30 employees forfeited their right to reinstatement by participating in an unlawful strike.

(C) Respondent Incisa's third affirmative defense is that by engaging in unlawful picket line conduct, including threats of violence and mass picketing, the strikers lost their right to reinstatement.

The only violence related testimony given during the hearing was Tropea's description of the incident involving driver Hopkins and the Polaroid camera. Significantly, Respondent Incisa has not argued in its brief that by taking a photograph from Tropea and causing the camera to touch Tropea's face, driver Hopkins engaged in misconduct that would justify a refusal to offer him reinstatement.

Turning to the mass picketing contention, it appears Respondent Incisa claims that mass picketing occurred on July 6, 7, and 8, 1992, and that the Steelworkers admitted by answer to interrogatories in civil action no. 92123 that 35 of the 39 Steelworkers employed by Incisa as of June 30, 1992, participated in picketing and/or demonstrations on July 6, 7, or 8, 1992, at the death hill project.

⁵ Initially, Respondent Incisa refused to reinstate any of the individuals employed on June 30, 1992, unless they registered out-of-work with the Laborers Union.

The main difficulty with Respondent Incisa's contention is the fact that the evidence offered to show what occurred at the jobsite on July 6 fails, in my view, to establish that Steelworkers pickets and demonstrators engaged in unlawful activity on that day. As revealed, above, Respondent Incisa sought to establish what occurred on July 6 by causing Tropea to describe what occurred and by placing in evidence as Respondent Employer's Exhibits 7(a) and (b) photographs taken at the jobsite on the morning of July 6. In sum, Tropea merely testified that he met some 15 Laborers at an offsite location and they, traveling in 15 autos, drove to the site and entered at ramp C. After Tropea and his group parked their cars on the site, 30-35 pickets and demonstrators approached them and called the Laborers scabs and called their union a scab union. Other than the physical activity engaged in by driver Hopkins, no contact between Steelworkers and Laborers or their vehicles occurred. Eventually, after police arrived, Steelworkers Vice President Cantrell suggested that Tropea and the Laborers leave to avoid a confrontation and that group elected to leave. Significantly, the record fails to reveal that any of the Laborers who appeared at the site that day sought to perform any work. By the same token, the record fails to reveal that the Steelworkers pickets and/or demonstrators sought to form an unbroken picket line or otherwise sought to physically bar the Laborers from moving around the construction site on July 6. In short, the record fails to reveal that the Steelworkers engaged in mass picketing or other activity designed to prevent the Laborers from working at the jobsite on July 6, 1992.

Patently, absent proof that unlawful mass activity occurred at the jobsite on July 6, 1992, Steelworkers admission, when responding to interrogatories, that 35-named persons employed on June 30, 1992, engaged in picketing and/or demonstrating on July 6, 7, or 8 is meaningless; all of those named could have picketed or demonstrated on June 6. I find Respondent Incisa's third affirmative defense to be without merit.

(D) Respondent Incisa's fourth affirmative defense is that the work stoppage that began July 1, 1992, was unprotected because Steelworkers were striking to force Incisa to join Highway Contractors, Inc. and/or to accept the agreement negotiated by HCI and Steelworkers, and by participating in an unprotected and unlawful work stoppage the participants forfeited their right to reinstatement.

I find the described affirmative defense to be without factual support and thus to be without merit. As indicated, above, I have found that Steelworkers Attorney Smith withdrew a suggestion that Incisa negotiate through the contractor's association during the course of the June 30, 1992 meeting. That suggestion and/or demand was never reinstated thereafter. Moreover, the record clearly reveals that Smith stated at the same meeting that Steelworkers would strike for recognition the following day, and the legend on the picket signs advertised a strike for recognition. In sum, Respondent Incisa failed to establish that the work stoppage that commenced on July 1, 1992, was unlawful or unprotected.

In its brief (p. 98), Respondent Incisa contended, inter alia, that the Steelworkers strike was unlawful as it "sought to compel Incisa to grant it 9(a) recognition in the face of a claim by a rival union during the pendency of an election petition." In support of the contention, it cites, inter alia, *St. Regis Paper Co. v. NLRB*, 623 F.2d 487 (6th Cir. 1980), and *Hoover Co. v. NLRB*, 191 F.2d 380 (6th Cir. 1951). In the cited cases, employees struck, while a petition for an election was pending,

with an object of causing their employer to grant 9(a) recognition to a union other than the one that had filed the petition. The instant case is clearly distinguishable as here: (1) Steelworkers filed a petition seeking 9(a) recognition on July 6, 1993; and (2) the Laborers' agreement with Respondent Incisa raises no presumption of majority status, nor does that contract operate to bar an election.

Similarly, Respondent argues in its brief that the Supreme Court's decision in *NLRB v. Sands Mfg. Co.*, 306 U.S. 332 (1939), is applicable, and the rationale expressed there justified its decision to do business with a new union and a new work force. In *Sands*, the Supreme Court found the employer lawfully replaced employees who engaged in unlawful conduct by refusing to abide by contractual provisions that had been jointly agreed on by their union and Sands. Here, employees ceased work to engage in a lawful strike with an object of causing Respondent Incisa to grant Steelworkers 9(a) recognition. In the circumstances described, I find Respondent Incisa's contention that the June 30 employees' participation in a work stoppage constituted unprotected activity to be without merit.

(E) The fifth affirmative defense is, assuming the Steelworkers employed on June 30, 1992, remained employees of Incisa, the Laborer-Incisa collective-bargaining agreement that became effective July 2, 1992, contained a no-strike clause and by violating it, the strikers forfeited their right to reinstatement.

Respondent Incisa cites no authority for the proposition that an employer and a union, which does not purport to represent striking employees, can contractually eliminate such employees' right to engage in an economic strike. Particularly this is true when, as here, the record reveals the employees participating in protected concerted activity are unaware of such a contractual agreement and/or no-strike clause.

In sum, I find that the 39 individuals employed by Respondent Incisa on the death hill project on June 30, 1992, engaged in a lawful economic strike during the period July 1–8, 1992. An unconditional offer to return to work was made on their behalf on July 8, 1992, and Respondent Incisa has refused since that time to offer such employees reinstatement to their former jobs. Respondent Incisa adduced no evidence that would prove that it hired permanent replacements to fill the jobs of the strikers before they offered unconditionally to return to work, nor has it offered any other evidence that would establish it had lawful business reasons for its refusal to offer reinstatement to such employees. I find, as alleged, that by refusing to reinstate the 39 employees identified heretofore in this decision, Respondent Incisa violated Section 8(a)(1) and (3) of the Act as alleged.

C. The Recognition/Contract Issues

Respondent Incisa is alleged to have violated Section 8(a)(1) and (2) of the Act by recognizing and bargaining with Respondent Union as the exclusive 9(a) representative of employees in a specified unit at a time when a valid petition for an election had been filed by Steelworkers. Respondent Union is alleged to have violated Section 8(b)(1)(A) of the Act by obtaining 9(a) recognition as the exclusive representative of specified Respondent Incisa employees at a time when a valid petition for an election had been filed by Steelworkers.

As revealed, above, Steelworkers filed the petition in Case 9–RC–16074 on July 6, 1992. The unit described in the petition included, *inter alia*, “All work let by the Kentucky Department of Transportation and the Ohio Department of Transportation.” On July 14, 1992, Steelworkers filed an amended petition that

tracked precisely the original petition but added the following: “And excluding any employees not performing work in Kenton County, Kentucky, project no. IDR–IR–175–8(63) 187.” As further revealed by the record, Steelworkers Attorney Jay Smith informed Respondent Incisa's counsel, Stuart Rothman, by letter dated July 17, 1992, that Steelworkers were seeking 9(a) status solely on the death hill project. Although Respondent Incisa and Respondent Union contend the Steelworkers' petitions were invalid because that union failed to make the requisite showing of interest necessary to support its petitions, the Regional Director rejected a like contention in Case 9–RC–16074, stating: “I find that the Petitioner's recently expired collective-bargaining agreement covering the unit sought constituted an adequate showing of interest in support of the petition. *Stockton Roofing Co.*, 304 NLRB [699] (1991).” On August 7, 1992, Respondent Incisa received a letter from Laborers' Local 265 requesting 9(a) recognition. After a card check conducted by Covington City Commissioner Jim Ruth on August 8 revealed that all 55 of Respondent Incisa's active employees had designated Local 265 as their collective-bargaining agent, Respondent Incisa granted Respondent Union 9(a) recognition on the death hill project.

In *Bruckner Nursing Home*, 262 NLRB 955, 957 (1982), the Board formulated the following policy:

[W]e will no longer find 8(a)(2) violations in rival union, initial organizing situations when an employer recognizes a labor organization which represents an uncoerced, unassisted majority before a valid petition for an election has been filed with the Board. However, once notified of a valid petition, an employer must refrain from recognizing any of the rival unions. [Citation omitted.]

Respondent Incisa and Respondent Union seek to avoid the application of the described policy by contending they did not know on August 8, 1992, that the Steelworkers petition sought 9(a) status on the death hill project; that the doctrine of estoppel should preclude a finding of violation because Steelworkers' actions during the period July 1–8 prevented Laborers from obtaining majority status prior to August 8; and that the Steelworkers showing of interest was inadequate.

I reject each of the described contentions. With respect to the unit description, the amended petition filed on July 14, 1992, together with that information supplied to Rothman by Smith's July 17 letter, placed Respondent Incisa on notice of the fact that the unit sought was confined to those employees employed by Respondent Incisa on the death hill project. With respect to the estoppel argument, that contention lacks evidentiary support as I have found that the pickets and/or demonstrators have not been shown to have engaged in any unlawful action at the death hill project at a time when members of Laborers were present. Finally, I reject the showing of interest contention as such determinations are administrative matters that are properly handled by the Regional Director.

In sum, for the reasons stated, I find that by granting 9(a) recognition to Respondent Laborers on August 8, 1992, Respondent Incisa violated Section 8(a)(1) and (2) of the Act as alleged. I further find that by seeking and obtaining 9(a) recognition on August 7 and 8, 1992, Respondent Union violated

Section 8(b)(1)(A) of the Act. *Haddon House Food Products, Inc.*, 269 NLRB 338, 341 (1984).⁶

D. The Alleged 8(b)(1)(A) and (2) Violations

The complaint alleges that by enforcing a union-security clause that required membership in the Union (after 8 days), thereby causing Respondent Incisa to terminate the employment of employee Tackett, and by failing to notify Tackett “of the percentage of Respondent’s funds spent for nonrepresentational purposes,” Respondent Union violated Section 8(b)(1)(A) of the Act.

Briefly recapitulated, the facts, above, reveal that employee Tackett was permitted by Laborers Local 265 Official Youngblood to go to work on the death hill project on July 21 after the employee indicated he wanted to work as a financial core participant, and Youngblood obtained clearance to let him work at 3-percent dues checkoff.⁷ Nine days later, Union Steward Barry Williams told Tackett “that Mr. Youngblood had told him that they couldn’t live with the deal . . . that I would have to join their union.” When Tackett refused to join the Laborers Union, the project manager told him there was nothing he could do; that they had a project agreement with Local 265 and they had no alternative but to lay him off. By letter dated August 4, 1992, Local 265 confirmed the fact that it had advised Respondent Incisa to “enforce Article IX of the Project Agreement . . . with respect to Granville Tackett.”

The facts set forth clearly establish, and I find, that by refusing to permit Tackett to work as a financial core member and by causing Respondent Incisa to terminate Tackett, Respondent Union violated Section 8(b)(1)(A) and (2).⁸

Remaining is the General Counsel’s contention that Respondent Union further violated Section 8(b)(1)(A) by failing to notify Tackett “of the percentage of Respondent’s funds spent for nonrepresentational purposes, that nonmember employees could object to having their union security payments spent on such activities or that those nonmember employees who requested would be charged only for representational activities.”

As revealed, above, Tackett testified that no Laborers Union official discussed nonrepresentational activities or their costs with him and he was not informed he would only be charged for representational activities.

In the absence of record evidence that would reveal that Respondent Union sought to cause employee Tackett to pay it moneys that would be used to pay for nonrepresentational activities, I recommend that the allegation under discussion be dismissed.

⁶ The complaint (in Cases 9–CB–8406 and 9–CB–8411) alleges that by obtaining 9(a) recognition while a valid petition was pending, and by simultaneously maintaining a collective-bargaining agreement that contained a union-security clause, Respondent Union violated Sec. 8(b)(2) of the Act. Noting that the agreement in question was an 8(f) agreement when it was entered, and the fact that the General Counsel failed to contend the agreement was entered unlawfully, I refrain from finding the 8(b)(2) violation.

⁷ Union Steward Barry Williams testified that members pay 3 percent of gross as working dues and \$16 a month, monthly dues.

⁸ The complaint (G.C. Exh. 1(L)) does not contain an allegation that Respondent Union violated Sec. 8(b)(2) by demanding that Tackett be discharged pursuant to a union-security clause. The issue was fully litigated, however, and I deem this finding to be proper in the circumstances.

CONCLUSIONS OF LAW

1. Incisa, U.S.A., Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Steelworkers of America, AFL–CIO–CLC, and Laborers’ International Union of North America, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

3. By refusing, without business justification, to reinstate the 39 employees it employed at its Kenton County, Kentucky project on June 30, 1992, after they ceased an economic strike and offered unconditionally to return to work on July 8, 1992, Respondent Incisa violated Section 8(a)(1) and (3) of the Act.

4. By recognizing Respondent Union as the 9(a) exclusive bargaining agent of employees in the unit set forth below, at a time when a valid petition for an election among such employees was pending, Respondent Incisa violated Section 8(a)(1) and (2) of the Act. The unit is:

All employees of the Employer performing heavy and high-way construction at the Employer’s Kenton County, Kentucky project excluding all other employees and all guards and supervisors as defined in the Act.

5. By seeking and obtaining 9(a) recognition as the exclusive bargaining agent of Respondent Incisa’s employees in the unit described in paragraph 4 above, at a time when a valid petition seeking an election among such unit employees was pending, Respondent Union violated Section 8(b)(1)(A) of the Act.

6. By failing and refusing to permit Granville Tackett to work as a financial core member and by enforcing a union-security clause that required that employees join and remain members of Respondent Union as a condition of employment and thereby causing Respondent Incisa to terminate Tackett, Respondent Union violated Section 8(b)(1)(A) and (2) of the Act.

THE REMEDY

Having found that Respondent Incisa has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (2), and that Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2), I shall recommend that they be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

Respondent Incisa shall be required to offer the employees employed on the death hill project on June 30, 1992, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole, with interest, for any loss of earnings, and other benefits suffered as a result of the unfair labor practice practiced against them. Questions concerning whether alleged discriminatees would have been transferred to other projects in event the death hill project has been completed will be determined at compliance. See *Dean General Contractors*, 285 NLRB 573 (1987). Interest will be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Additionally, Respondent Incisa will be ordered to withdraw and withhold from Respondent Laborers Union all recognition as the collective-bargaining representative of employees employed by Respondent Incisa at its death hill project and to cease giving effect to any collective-bargaining agreement covering such employees unless and until Respondent

Union has been certified as the bargaining agent of such employees pursuant to a Board-conducted election among such employees in an appropriate unit for bargaining.

Further, Respondent Union shall be ordered to withdraw from acting as bargaining representative of the aforesaid employees or giving any force or effect to such aforesaid bargaining agreement unless and until Respondent Union shall have been certified as bargaining representative pursuant to a Board-conducted election. Respondent Union will be required to make employee Granville Tackett whole for any losses he sustained as a result of the unfair labor practices practiced against him from July 31, 1992, forward, with interest to be computed in accordance with *New Horizons for the Retarded*, above.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

A. The Respondent Incisa, U.S.A, Inc., Kenton County, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in United Steelworkers of America, AFL-CIO-CLC, or any other labor organization, by refusing without business justification to reinstate economic strikers to their former or substantially equivalent positions of employment after they have abandoned their strike and have unconditionally offered to return to work.

(b) Assisting, aiding, and supporting Laborers' Local 265, affiliated with Laborers' International Union of North America, AFL-CIO by granting it 9(a) recognition as the exclusive representative of employees while a valid petition seeking an election among such employees is pending.

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

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

(a) Offer the following employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed, and make them whole for any loss of pay and other benefits suffered as a result of its discrimination against them in the manner set forth in the remedy section of this decision:

- | | |
|----------------------|--------------------|
| Hershel Adkins | William H. Jenkins |
| Timmy Adkins | Robert Kent |
| Daniel Akers | Harold Landers |
| J. C. Barker | George T. McDaniel |
| Thomas Barker | Barbara Napier |
| Charlie B. Barrowman | Velinda Napier |
| Gary D. Bolin | Donald Powell |
| Mike Bressler | Paul Rogers |
| Charles Colemire | Ronald Rowe |
| Randell Colemire | Marvin Sellards |
| Wilford E. Conn | Angela Sheets |
| Christopher Davidson | Kyle Smith |
| Michael Ellis | Vincent Smith |

⁹ If 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.

- | | |
|--------------------|-------------------|
| Calvin Gilliam | Granville Tackett |
| Clarence Hampton | Richard Vaughn |
| Charles Hickle | Sidney Ware |
| Gregory Hocker | Ralph Webb |
| Harry Hopkins | Claude Whitis |
| Gaylord Jenkins | Thurman Wright |
| William H. Jenkins | |

(b) Withdraw recognition from Respondent Laborers' Local 265 as the exclusive collective-bargaining agent of the employees in the unit described below until the union has been certified as the representative of said employees after a Board-conducted election. The unit is:

All employees of Respondent Employer performing heavy and highway construction at the Employer's Kenton County, Kentucky project excluding all other employees and all guards and supervisors as defined in the Act.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records and other documents necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Kenton County, Kentucky facility copies of the attached notice marked "Appendix A."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

B. Respondent Laborers' Local 265, affiliated with Laborers' International Union of North America, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Seeking and obtaining 9(a) recognition as the exclusive representative of Incisa, U.S.A, Inc.'s employees while a valid petition seeking an election among such employees is pending.

(b) Refusing to permit employees, including Granville Tackett, to exercise their right to work as financial core members by causing their employer to terminate them pursuant to a contractual union-security clause.

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

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

(a) Make employee Granville Tackett whole for losses he suffered as a result of the discrimination practiced against him, together with interest, in the manner set forth in the remedy section of this decision.

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Post at its union hall copies of the attached notice marked "Appendix B."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Forward to the Regional Director for Region 9 signed copies of the aforesaid Notice to Members for posting by Respondent Employer at its Kenton County, Kentucky location for 60 consecutive days in places where notices to employees are customarily posted.

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

APPENDIX A

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

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

WE WILL NOT discourage membership in Steelworkers of America, AFL-CIO-CLC, or any other labor organization, by refusing without business justification to reinstate economic strikers to their former or substantially equivalent positions of employment after they have abandoned their strike and have unconditionally offered to return to work.

WE WILL NOT assist, aid, and support Laborers' Local 265, affiliated with Laborers' International Union of North America, AFL-CIO by granting it 9(a) recognition as the exclusive representative of employees while a valid petition seeking an election among such employees is pending.

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 offer the following employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed, and make them whole for any loss of pay and other benefits suffered as a result of our discrimination against them.

Hershel Adkins
Timmy Adkins
Daniel Akers
J. C. Barker

William H. Jenkins
Robert Kent
Harold Landers
George T. McDaniel

Thomas Barker
Charlie B. Barrowman
Gary D. Bolin
Mike Bressler
Charles Colemire
Randell Colemire
Wilford E. Conn
Christopher Davidson
Michael Ellis
Calvin Gilliam
Clarence Hampton
Charles Hickle
Gregory Hocker
Harry Hopkins
Gaylord Jenkins
William H. Jenkins

Barbara Napier
Velinda Napier
Donald Powell
Paul Rogers
Ronald Rowe
Marvin Sellards
Angela Sheets
Kyle Smith
Vincent Smith
Granville Tackett
Richard Vaughn
Sidney Ware
Ralph Webb
Claude Whitis
Thurman Wright

WE WILL withdraw recognition from Respondent Laborers' Local 265 as the exclusive collective-bargaining agent of our employees in the unit described below until said Union has been certified as the representative of our employees after a Board-conducted election. The unit is:

All employees of Respondent Employer performing heavy and highway construction at the Employer's Kenton County, Kentucky project excluding all other employees and all guards and supervisors as defined in the Act.

INCISA, U.S.A, INC.

APPENDIX B

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

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

WE WILL NOT seek and obtain 9(a) recognition as the exclusive representative of Incisa, U.S.A, Inc.'s employees while a valid petition seeking an election among such employees is pending.

WE WILL NOT refuse to permit employees, including Granville Tackett, to exercise their right to work as financial core members by causing their employer to terminate them pursuant to a contractual union-security clause.

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

WE WILL make employee Granville Tackett whole for losses he suffered as a result of the discrimination practiced against him, together with interest.

LABORERS' LOCAL 265

¹¹ See fn. 10, supra.