Judge & Dolph, Ltd., a Division of Wirtz Corp. *and* Teamsters Local Union No. 325. Case 33–CA–11482

January 31, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND WALSH

The issues raised in this case,[1] which involves the Board's accretion doctrine, is whether the judge correctly found that the Respondent violated Section 8(a)(1) and (2) of the Act by compelling employees, as a condition of employment, to withdraw membership from their union and to join another union that represented an existing unit of the Respondent's employees, and by thereafter applying to these employees the terms of an existing collective-bargaining contract between the Respondent and incumbent union.

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

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Judge & Dolph, Ltd., a Division of Wirtz Corporation, Rockford, Illinois, its officers, agents, successors and assigns, shall take the action set forth in the Order.

Debra L. Stefanik, for the General Counsel.

Scott A. Gore and *Arthur B. Muchin (Laner, Muchin, Dombrow, Becker, Levin & Tominberg),* of Chicago, Illinois, for the Respondent.

Marc M. Pekay, of Chicago, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Rockford, Illinois, on November 14, 1996.[1] On June 26 the Regional Director for Region 33 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing, based on an unfair labor practice charge filed on January 19, alleging violations of Section 8(a)(1) and (2) 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. Introduction

This case presents allegations that Section 8(a)(1) and (2) of the Act have been violated. Those allegations arise from the sale of certain assets by Continental Distributing Co., Inc. (Continental) to Judge & Dolph, Ltd., a Division of Wirtz Corporation (Respondent), a Delaware corporation with an office and place of business in Rockford, engaged in the business of wholesale selling and distributing alcoholic liquors and wines to retailers.[2] Among those assets was a warehouse facility located in Rockford. Respondent began conducting operations there on January 9. Prior to that sale, warehouse employees working in Rockford for Continental had been represented by Teamsters Local Union No. 325 (the Union).[3]

Since 1989 Respondent had been operating from a smaller facility in Rockford. For over a decade prior to January 9, however, it had not employed at that facility any warehouse employees who were permanently assigned to Rockford. In contrast, truckdrivers had been assigned to work out of that smaller facility and they had been represented by Teamsters Local Union No. 705. The smaller facility was closed when Respondent began Rockford operations at the one acquired from Continental.

Prior to January 9 Respondent had been conducting its warehouse operations at two other northern Illinois facilities: at a full-service distribution center located in Elk Grove Village and at a warehouse located in Rolling Meadows. Warehouse employees were employed at both facilities. They were being represented, in a single combined bargaining unit, by Liquor and Wine Sales Representatives, Warehousemen, Clerical, Distillery, Rectifying, Tire, Plastic and Allied Workers' Union Local No. 3 (Local 3).[4]

Respondent had initially intended to conduct the same type of operation at the newly acquired Rockford facility as it had been conducting at the smaller one in Rockford. That is, it did not intend to permanently assign any warehouse employees to work there. But, prior to January 9 it changed direction in that regard. Its officials decided to employ warehouse employees at Rockford. They also decided to accrete those warehouse employees into Local 3's then-existing two-facility bargaining unit, so that warehouse employees at all three facilities—Elk

[1] On May 6, 1997, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the judge's decision and an answering brief.

[1] Unless stated otherwise, all dates occurred during 1996.

[2] Respondent acknowledges that, at all material times, it has been engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act, based on the admitted facts that, in conducting the above-described operations during calendar year 1995, it derived gross revenues in excess of $500,000 and, further, purchased goods valued in excess of $50,000 which it received in Rockford directly from points outside of Illinois.

[3] At all material times the Union has been a labor organization within the meaning of Sec. 2(5) of the Act.

[4] The parties stipulated that, at all material times, Local 3 has been a labor organization within the meaning of Sec. 2(5) of the Act. Though served with a copy of the Order setting date, time, and place of hearing (G.C. Exh. 1(g)), Local 3 did not enter an appearance at the hearing.

Grove Village, Rolling Meadows, and Rockford—would be encompassed by a single bargaining unit represented by a single bargaining agent. The Rockford-based truckdrivers would continue to be represented by Teamsters Local Union No. 705.

On January 9, Respondent began operating from the newly acquired Rockford facility with three warehouse employees: Thomas F. Bessert, Randy Bredeson, and Scott Cornelius. Respondent does not dispute that those three employees had been told that, to be hired, they would each have to withdraw from membership in the Union and become members of Local 3. Proof of withdrawal from the Union's membership had to be submitted to Respondent. Later during January, representatives of Local 3 journeyed to Rockford and were allowed to meet with the three warehouse employees on company time and premises. They secured membership applications and checkoff authorizations from Bessert, Bredeson, and Cornelius.

Respondent contends that its actions amounted to no more than a lawful accretion of Rockford warehouse employees to an already existing bargaining unit, based on a community of interest shared by all employees following the acquisition. The General Counsel and the Union dispute that conclusion. The complaint alleges that Respondent unlawfully accreted Rockford warehouse employees to the formerly two-facility unit represented by Local 3 and, moreover, that Respondent unlawfully compelled Bessert, Bredeson, and Cornelius to withdraw from membership in the Union and to become members of Local 3. For the reasons set forth post, I conclude that a preponderance of the credible evidence supports those allegations.

B. The Pretransfer Situation

Continental had been a wholesale distributor of liquor and wine products with facilities, at least, in Rosemont, Illinois, a suburb of Chicago, and in Rockford, approximately 80 miles from the Rosemont facility. The one at Rockford had offices and a warehouse with docks. It was operated by Continental as a full-service warehouse. All products sold from there were either warehoused on the premises or were ordered for delivery to Rockford and, eventually, to customers.

During the period immediately preceding the facility's transfer to Respondent, two full-time warehouse employees and approximately eight truckdrivers worked there for Continental. As dictated by business, truckdrivers would sometimes work in the warehouse, helping and performing the same duties as warehousemen.

All operations at Continental's Rockford facility were under the immediate supervision of the general manager located there. That had been Ken Kotlarz for the last few years of Continental's operation of that facility. Kotlarz was responsible for such matters as hiring, firing, sales, and purchasing. In short, that facility operated under Continental pretty much as a self-contained one.

As set forth in subsection A, prior to January 9 Respondent had operated at three northern Illinois locations. At Elk Grove Village it operated a distribution center which was its headquarters and administrative and sales center. There, also, Respondent operated a warehouse. A conveyor system runs through it. Warehouse operations, as described more fully in subsection D, infra, are divided into four areas: split aisle, full-case flow rack or speed line, yellow rack or odd ball, and bulk warehouse storage. Also located there during January had been a bond room for storage of imported spirits.

The Rolling Meadows facility, located about a 15-minute drive from Elk Grove Village, was opened by Respondent during September 1995, about 4 months before Respondent acquired the Rockford facility from Continental. Only bulk warehouse storage is located at Rolling Meadows. Apparently, no products are shipped directly to customers from that location. Instead, product is shipped from there to Elk Grove Village from which it, then, is shipped to retailers.

During 1989 Respondent acquired certain assets of Janenicke Distributing. Included was a facility in Rockford. Initially, warehouse employees were sent there by Respondent from Elk Grove Village. They worked at closing down the warehouse storage operation that had been conducted there. Thereafter, Respondent employed no warehouse employees at Rockford. The only operation conducted there was cross-docking: each day merchandise was delivered there from Elk Grove Village, the merchandise was unloaded on the dock and allocated for delivery to Rockford-area customers. It then was loaded onto smaller vehicles and their drivers made those local deliveries.

Respondent's truckdrivers, including those stationed at Rockford, were represented by Teamsters Local Union No. 705, while Local 3 represented Respondent's warehouse employees at Elk Grove Village and, since September 1995, at Rolling Meadows. Collective-bargaining contracts between those parties were negotiated, with the most recent one between Local 3 and Respondent having a stated term of October 1, 1995, through September 30, 1997, with provision for annual renewal absent notice by one of the parties of desire to terminate or modify that contract. Its recognition provision, article 1, states that Local 3 is recognized "as the sole and exclusive bargaining agent for all warehouse employees of [Respondent] including but not limited to general warehouse workers, truck helpers, checkers, truck movers, picker operators, and forklift operators," excluding "office and clerical employees, teamsters, salesmen, guards, watchmen and professional and supervisory employees as defined in the" Act.

Continental and the Union had also been parties to a collective-bargaining contract at the time that the Rockford facility was transferred to Respondent. That contract had an effective term which ended on March 30, 1997, with provision for annual renewal absent notice by one of the parties of desire to terminate, amend, or modify it. Article I(1) of that contract states that Continental "recognizes the Union as the exclusive representative of all liquor drivers, relief drivers, helpers, warehousemen, and platform men employed by" it. Despite the seeming breadth of that language, John D. Calhoun, the Union's president, testified that none of Continental's other locations were covered by that contract and there is no evidence contradicting that testimony.

C. Transfer of the Rockford Facility to Respondent

By letter of November 30, 1995, Continental's vice president notified the Union that Continental was planning to sell most of its assets to Respondent on December 30, 1995, after which it

would cease operations in Rockford. The letter further states that Continental understood that Respondent "INTENDS TO OPERATE [the Rockford] LOCATION AND PROVIDE EMPLOYMENT OPPORTUNITIES FOR MOST, IF NOT ALL OF CONTINENTAL'S EMPLOYEES."

Warehouse employee Bessert testified that on December 29, 1995, he had been summoned to Kotlarz' Rockford office where Kotlarz said that he wanted Bessert and the other full-time warehouse employee, Randy Bredeson, as well as then-truckdrivers Scott Cornelius and John Rewerts, to work for Respondent "in the warehouse as warehousemen."[5] According to Bessert, Kotlarz said that, to work for Respondent, Bessert would have to take a drug test, fill out a new job application "and then I would have to go and get the withdrawal card from [the Union] and we would be required to join Local 3 out of Chicago." Though he appeared as a witness for Respondent, Kotlarz did not deny having made those remarks to Bessert on December 29, 1995.

Nor did Kotlarz deny Bessert's testimony that when Bredeson and Rewerts had arrived in the office that day, as Kotlarz was speaking to Bessert, Kotlarz "brought both of those men into . . . his office and sat down and told them exactly what he told me and we all three agreed to" take the drug test, fill out applications, withdraw from the Union, and join Local 3. On the following day, however, Kotlarz informed the three employees that "an agreement on the lease for the warehouse had not been reached and that we were to continue working for Continental . . . until the agreement would be reached on the building."

Calhoun testified that, during December 1995, he had spoken with Kotlarz about sale of the Rockford facility. At some point Kotlarz faxed Calhoun the card of Chris Mueller, Respondent's vice president operations manager, who was in charge of all functions at Elk Grove Village and of its satellite warehouse in Rolling Meadows. "[I]n late December," he testified, Calhoun tried to telephone Mueller, at the number shown on the card, but was told that Mueller was not available. Calhoun left his telephone number, requesting that Mueller call him. Instead, Calhoun received a call from someone who identified himself as Respondent's attorney. Calhoun testified that he told the attorney that the Union should represent the Rockford warehouse employees and he requested a meeting. The attorney responded that a meeting did not seem necessary and, if there was a dispute about representation of employees at Rockford, that Calhoun should contact Local 705.

Respondent did not acquire Continental's assets until, according to a stipulation of the parties, January and did not begin operating at the former Continental facility until January 9. Mueller testified that initially "we believed [there] was going to be a January 2nd closing." But, due to a problem with the quantity and value of inventory at Continental's Rosemont facility,[6] the final documents were not signed until Tuesday, January 9. On that same date, according to Mueller, Respondent began operating a self-sufficient distribution center, apparently like that at Elk Grove Village, in Peoria, Illinois. However, in contrast to what occurred at Rockford, Local 3 was not recognized as the bargaining agent of warehouse employees working at the Peoria facility. Apparently, that was because Peoria lies outside of the territorial jurisdiction of Local 3.

Mueller testified that Respondent had initially planned to send Elk Grove Village warehouse employees to Rockford temporarily, to clear out the inventory and equipment there which had not been sold to Respondent, so that it could be sent to Continental's Rosemont facility. Thereafter, only cross-docking operations would be conducted at the newly acquired Rockford facility, as had been conducted at the smaller former-Janenicke Rockford warehouse, which Respondent would close. However, claimed Mueller, business picked up at Elk Grove Village and, due to the delay in acquiring Continental's assets, no Elk Grove Village personnel were available to work in Rockford. So, Respondent's officials reversed direction and decided to hire former Continental warehouse employees to clear out the facility which Continental had been operating. They also decided to utilize those warehouse employees in the cross-docking operation which would be relocated there from the former Janenicke warehouse.

Kotlarz, who became Respondent's general manager at the Rockford facility, testified that, from Tuesday, January 9 through Thursday, January 11, Respondent's newly hired personnel began inventorying and preparing to return to Continental the assets in the facility which Respondent had not acquired. Cross-docking operations began there on Friday, January 12.

Kotlarz further testified that on January 9 he had told Bessert, Bredeson, and Cornelius that "a position was available to them based on the fact that they use Local 3 employees and that they would have to get a withdrawal card from the Union and sign up with Local 3." The three employees were allowed to go to the Union's hall, while on Respondent's payroll, to obtain withdrawal cards. They were obliged to produce those withdrawal cards and permit Kotlarz to inspect and to photocopy them. The copies were then transmitted by Kotlarz to Respondent's Elk Grove Village headquarters.

Respondent's officials never explained why it had insisted that Bessert, Bredeson, and Cornelius obtain and produce withdrawal cards from the Union. Nor is a legitimate explanation advanced in Respondent's brief. Even assuming arguendo that a legitimate accretion had occurred, there seems no valid reason for Respondent to have intervened and insisted that withdrawal cards be obtained and, then, be produced for Respondent to inspect and copy them. Absent such a legitimate explanation, the only explanation suggested by the record is that Respondent wanted to eliminate any possibility of a competing claim to representation based on membership in a labor organization other than Local 3. Of course, as discussed in section II, infra, that hardly is a reason which is legitimate under the Act.

[5] As pointed out in subsection B, Continental's Rockford truckdrivers occasionally worked in the warehouse, performing the same work as warehouse employees. Cornelius and Rewerts had been the truckdrivers who had done so the most.

[6] It appears that Respondent purchased Continental's Rosemont merchandise, but not the facility, itself, since Respondent later leased space from Continental in that facility.

On January 22, well before expiration of the 30-day period specified in the union-security provisions of Respondent's contract with Local 3, that labor organization's representatives appeared at Rockford. Kotlarz ushered Bessert, Bredeson, and Cornelius from their work stations into the salesmen's room where they met with Local 3's representatives who said, Bessert testified without contradiction, "they would be representing us." That statement, of course, reinforced what Kotlarz had said during the preceding month, as described above. The three warehouse employees signed applications for membership in Local 3 and, also, checkoff authorizations produced by Local 3's representatives.

D. Operations After January 9

By the end of January, Respondent was operating facilities at Elk Grove Village, Rolling Meadows, Rockford, and Peoria. During February it leased commercial warehouse space from a firm called Quality House at a location approximately 5 minutes driving time from Elk Grove Village. The bond room was relocated to Quality House. During March it leased additional warehouse space in Continental's Rosemont facility.

On July 1 Respondent opened a 140,000-square-foot bulk warehouse in Wood Dale, a suburb of Chicago which is approximately a 5-minute drive from Elk Grove Village. That allowed it to conclude its lease with Continental. As of the hearing, Respondent was continuing to lease space at Quality House, though it intended to relocate the bond room to Rolling Meadows and, presumably, terminate the lease with Quality House. In any event, by the time of the hearing, it was operating facilities at Elk Grove Village, Rolling Meadows, Wood Dale, Rockford, Quality House, and Peoria.

There is scant evidence as to what type of operation is conducted by Respondent at Peoria, other than that it is a distribution center similar to that operated by Respondent at Elk Grove Village. At the latter, a two-tier conveyor system runs through the warehouse which is divided into four areas. One is designated the split aisle. Handled there are orders involving less than a case of spirits. Bottles are picked from a four-pod carousel which holds them. The bottles are placed in cases for each customer and the cases are loaded onto the conveyor for movement to the area from which they will be loaded on trucks and shipped.

The second warehouse area is designated the full case flow rack or speed line. Cases of product are picked and loaded onto the conveyor for movement to the loading and shipping location. The third area is designated as the bulk warehouse. In that area, Respondent stores on pallets an approximately 3-day supply of cases of its fastest moving products. As ordered, pallets are loaded onto the conveyor. Unclear is whether those pallets move to the yellow racking or speed line areas to be allocated by order or, instead, whether that occurs in the loading and shipping location.

The final warehouse area at Elk Grove Village is designated yellow rack or odd ball. There, Respondent stores on steel racks cases of products which are the slowest moving full-case items. As with the other three areas, whenever one of those items is ordered, it is pulled from the rack, loaded onto the conveyor, and moves to the loading and shipping location.

By the time of the hearing there were three warehouse shifts at Elk Grove Village. Mueller estimated that, at any given time, "probably 95 to 100" warehouse employees are employed there, about 25 of whom work on day shift. According to Mueller, four to six warehouse employees ordinarily work in the bulk warehouse area during the day shift and one-to-four employees will work there during the night shift, with "none" working there during the intervening shift. However, whenever an unusually high number of loads arrives at Elk Grove Village, as many as 15 warehouse employees may be assigned to the bulk warehouse area to unload and store that merchandise.

Both Wood Dale and Rolling Meadows are bulk storage warehouses, apparently similar to the bulk storage warehouse area at Elk Grove Village. Stocked at each of those satellite warehouses is merchandise for which there is no room at Elk Grove Village. That merchandise is then fed to Elk Grove Village as needed for shipment from that distribution center. At the time of the hearing only one warehouse employee was working at Rolling Meadows, according to Mueller, "because there is not a lot of activity going on, but prior to right now there . . . were three or four employees working there." "I think four or five," he further testified, warehouse employees work at Wood Dale. Mueller testified that Respondent had no employees working at Quality House at the time of the hearing.

From January 9 through September 30 Respondent had only the three initially hired warehouse employees assigned to work at Rockford. For approximately 45 days, they, as well as employees occasionally dispatched from Elk Grove Village to help them, had worked at clearing out the Rockford facility. Bessert, Bredeson, and Cornelius also performed cross-docking during that period and, after it, through September 30. However, as of October 1, Respondent made two changes in operations at Rockford. First, it began warehousing there, Mueller testified, "approximately 300, 350 of the fastest moving, what we call SKU's [sic] which are brand codes which are individual items." Those items are picked from the warehouse and added to other products still arriving from Elk Grove Village each day, after which the consolidated orders are then delivered to retailers.

Second, a night shift was added at Rockford on October 1. To staff it, two warehouse employees—Marc Brennan and Rick Nelson—were transferred from Elk Grove Village, where they had been hired and were being trained in warehouse operations as conducted by Respondent. Bredeson also was moved from day to night shift at Rockford. The night-shift warehouse employees pick merchandise which has been ordered, move it to the loading dock and, then, combine it with merchandise arriving from Elk Grove Village, now at approximately 10:30 p.m. The combined orders are then loaded on the vehicles whose drivers continue to make deliveries to Rockford-area retailers. According to Mueller, the two day-shift warehouse employees "would be receiving merchandise and putting it away" in the Rockford warehouse, although they also will help the night shift complete staging and loading merchandise in the mornings, whenever that work has not been completed by the time that Bessert and Cornelius arrive for work.

II. DISCUSSION

As set forth in section I,C, above, Respondent insisted that Bessert, Bredeson, and Cornelius withdraw from membership in the Union, and prove that they had done so, as a condition of employment with Respondent. Section 8(a)(1) of the Act makes it an unfair labor practice "to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 7" of the Act. Two rights guaranteed employees by Section 7 are "to . . . join . . . labor organizations" and "to bargain collectively through representatives of [employees'] own choosing[.]" Obviously, those statutorily guaranteed rights are interfered with whenever an employer insists that, to obtain employment, applicants must withdraw from membership in a particular labor organization. More specifically, such insistence deprives those employees of their statutory right to remain members of a labor organization which they have chosen to join.

Furthermore, like authorization cards, union membership is a long established means for showing that a labor organization is authorized to represent and bargain on behalf of employees who are its members. *Campbell Machine Co.*, 3 NLRB 793, 798 (1937). More recently, see *NLRB v. Rayel Electric Co.*, 709 F.2d 939 fn. 4 (5th Cir. 1983). The natural effect of insisting that Bessert, Bredeson, and Cornelius withdraw from membership in the Union is to have deprived them of one means of proving that the Union continued to be their desired bargaining agent. In turn, such action naturally restricted, if not deprived, the Union's ability to claim recognition on their behalf as those three warehouse employees' bargaining agent. That is, by insisting that Bessert, Bredeson, and Cornelius withdraw from the Union, Respondent eliminated their membership in the Union as a means by which the latter could prove that it continued to be their designated bargaining agent. Therefore, by insisting that those three warehouse employees withdraw from the Union's membership as a condition of obtaining employment, Respondent interfered with, restrained, and coerced them in the exercise of rights guaranteed by Section 7 of the Act, thereby violating Section 8(a)(1) of the Act.

Beyond that, Respondent's insistence that Bessert, Bredeson, and Cornelius withdraw from the Union's membership had been an integral aspect of its accretion of Rockford warehouse employees to the unit represented by Local 3. Even assuming, arguendo, that Respondent properly accreted those employees to that unit, there has been no showing that the Union would have necessarily insisted that those three employees obtain membership withdrawals as a consequence of having to observe the union-security obligations of Local 3's contract with Respondent. In short, Respondent usurped a choice which belonged in that respect to the Union.

In the process of usurping that choice, Respondent naturally advanced the cause of Local 3's representation situation. As set forth above, union membership is one means by which a labor organization may demonstrate its designation of bargaining agent status. Withdrawals from membership eliminate the possibility of membership's use as a basis for claiming representative status. To the extent that Local 3 benefited from elimination of that basis for a potentially competing claim to represent the Rockford warehouse employees, it received assistance from Respondent.

Section 8(a)(2) of the Act provides, in pertinent part, that it is an unfair labor practice "to . . . interfere with the . . . administration of any labor organization or contribute . . . other support to it[.]" Here, by imposing withdrawal from the Union as a condition of hiring Bessert, Bredeson, and Cornelius, Respondent not only inherently interfered with the Union's ability to continue representing Rockford warehouse employees, but it naturally strengthened—supported—Local 3's situation in what has become a dispute over whether its representation of Respondent's warehouse employees should have been extended to the Rockford warehouse employees formerly employed by Continental.

In that respect, it matters not whether Respondent's assistance to Local 3—by insisting that Bessert, Bredeson, and Cornelius withdraw from the Union—had been malevolently motivated by an actual intention to eliminate the potentially competing representation claim of the Union to represent Rockford warehouse employees. "We find nothing in the statutory language prescribing scienter as an element of the unfair labor practice here involved." *Garment Workers (Bernhard-Altmann) v. NLRB*, 366 U.S. 731, 738–739 (1961). Accordingly, "neither good faith nor lack of intent to violate the Act are of significance . . . for it is the effect, and not the motivation of an action, which determines whether the Act has been violated." *Double A Products Co.*, 134 NLRB 222, 228 (1961), and cases cited in footnote 5.

Respondent's insistence that Bessert, Bredeson, and Cornelius withdraw from membership in the Union, as a condition for being hired by it, naturally supported Local 3's representation position at Rockford. Therefore, by having done so, Respondent unlawfully assisted Local 3 and violated Section 8(a)(2) of the Act.

Beyond unlawful insistence that Bessert, Bredeson, and Cornelius withdraw from the Union, Respondent also insisted that they become members of Local 3, to be employed by Respondent. It made its facility and the paid time of those three employees available on January 22, so that Local 3 could enroll the three Rockford warehouse employees as members and, also, secure checkoff authorizations from each of them. Of course, January 22 is less than 30 days from the time that Bessert, Bredeson, and Cornelius had begun working for Respondent.

There is no allegation that Respondent had violated Section 8(a)(3) of the Act, though Respondent's above-reviewed conduct had an obvious affect of depriving Bessert, Bredeson, and Cornelius of their statutory 30-day period to decide whether or not to comply with the union-security requirements of Respondent's collective-bargaining contract with Local 3. In addition, by insisting that those three employees become members of Local 3, Respondent deprived them of rights to which they are entitled under the principles enunciated in *Communications Workers v. Beck*, 487 U.S. 735 (1988), and *California Saw & Knife Works*, 320 NLRB 224 (1995).

Even so, absence of allegation that Section 8(a)(3) of the Act was violated does not bar consideration of that same conduct under Section 8(a)(1) and (2) of the Act. By insisting that Bessert, Bredeson, and Cornelius become members of Local 3,

Respondent rendered support to the latter by enabling it to facially perfect a claim to representation of those three employees and, concomitantly, to strengthen its position against any competing representation claim by the Union. In so doing, Respondent injected itself into a situation where it should have "kept [its] hands off, and completely." *NLRB v. Thompson Products,* 130 F.2d 363, 368 (6th Cir. 1942). Further, its conduct inherently deprived those three warehouse employees of the statutory right to decide whether or not to become members of Local 3. Therefore, Respondent violated Section 8(a)(1) and (2) of the Act by insisting, as a condition of employment, that Bessert, Bredeson, and Cornelius become members of Local 3 and by assisting Local 3 in ensuring that those three employees did become its members.

As to Respondent's accretion of the Rockford warehouse employees to the then-existing bargaining unit of Elk Grove Village and Rolling Meadows warehouse employees, prior to January 9 Continental's Rockford warehouse employees had been included in a single or combined bargaining unit with Rockford-based truckdrivers. Employees in that single or combined unit had been represented historically by the Union. That historic Rockford unit was bifurcated following transfer of the Rockford facility from Continental to Respondent, with the warehouse employees being assigned representation by Local 3 and Rockford truckdrivers being represented by Teamsters Local Union No. 705.

In actuality, there was no change in Rockford truckdrivers' representation. For, since it had begun operating from the former Janenicke facility during 1989, Respondent's truckdrivers there had been represented by Teamsters Local Union No. 705. Those were the only truckdrivers who continued driving for Respondent out of Rockford on and after January 9. As to them the lone difference was the facility from which they delivered merchandise: from the former Janenicke facility prior to January 9 and from the former Continental one on and after that date. Accordingly, no accretion of Rockford-based truckdrivers occurred as a result of Respondent's initiation of operations from the former Continental facility in Rockford. Respondent's Rockford truckdrivers had been and continued to be represented by Teamsters Local Union No. 705.

There was an allegation in the complaint that Respondent unlawfully refused to consider for employment former Continental truckdrivers. However, that allegation was withdrawn based on a settlement of it. More importantly, so far as the record discloses, there never was an allegation that Respondent had violated the Act when it continued recognizing Teamsters Local Union No. 705 as the bargaining agent of Respondent's Rockford employees. In consequence, the unlawful accretion allegation is confined to warehouse employees whom Respondent has been employing at Rockford.

As to that allegation, the only contention pertains to Respondent's recognition of Local 3 as the collective-bargaining agent of those employees. There is no allegation that Respondent should have recognized the Union as the bargaining agent of the newly hired Rockford warehouse employees. As a result, the only issue presented here is whether, instead of recognizing Local 3 as the bargaining agent of Rockford warehouse employees, Respondent should have regarded those employees as unrepresented or, at least, petitioned for a representation election under Section 9(c)(1)(B) of the Act or, alternatively, for unit clarification under the Board's Rules and Regulations, Section 102.60(b) and Statements of Procedure, Section 101.17. See *Firemen & Oilers IBF&O*, 145 NLRB 1521–1524 (1964); *Shop Rite Foods,* 247 NLRB 883 (1980); and *Holly Hill Fruit Products*, 256 NLRB 209 fn. 1 (1981).

A violation of Section 8(a)(2) of the Act, of course, can exist even though, absent unlawful recognition of a labor organization, employees would be left without representation. For, underlying Section 8(a)(2) of the Act is the fundamental policy that employees "should be given an opportunity to determine for themselves which union they wish to represent them, or whether they wish to reject union representation entirely." *Sheraton-Kauai Corp. v. NLRB*, 429 F.2d 1352, 1354 (9th Cir. 1980). Accordingly, to establish that Respondent unlawfully extended historic representation of Local 3 to Rockford warehouse employees, the General Counsel is not required to allege or establish that the Union, or any other labor organization, had instead to be recognized. "Under [Sec.] 7 of the Act the employees have 'the right to refrain from any or all' concerted activities relating to collective bargaining . . . as well as the right to join a union and participate in those concerted activities." *NLRB v. Textile Workers Local 1029 (International Paper)*, 409 U.S. 213, 216 (1972).

Existence of that statutory right does not bar altogether, without an election, the ability of employers and labor organizations to add to an existing bargaining unit newly created classifications or employees of newly acquired or expanded facilities. For, even if employees are not accorded a right to participate in an election of representative, nor a right to demonstrate their support of a particular representative by some other means, such as signed authorization cards or union membership, they still may be included in an already existing unit under the doctrine of accretion. That doctrine is essentially a "process through which the Board has added new employees to an existing group without holding an election." *Westinghouse Electric Corp. v. NLRB*, 440 F.2d 7, 11 fn. 3 (2d Cir. 1971), cert. denied 404 U.S. 853 (1971).

"An accretion is simply the addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity." *Lammart Industries v. NLRB*, 578 F.2d 1223, 1225 fn. 3 (7th Cir. 1978). Accord: *NLRB v. R. L. Sweet Lumber Co.*, 515 F.2d 785, 794 (10th Cir. 1975), cert. denied 432 U.S. 986 (1977); and *Westinghouse Electric Corp. v. NLRB*, supra at 10. It is to that doctrine which Respondent points in arguing that the Rockford warehouse employees have no separate identity and, conversely, shared a sufficient community of interest with Respondent's Elk Grove Village and Rolling Meadows warehouse employees, as of January 9, to be regarded as a proper accretion to the historic warehouse employee unit represented by Local 3.

Unlike the situation with Rockford-based truckdrivers, there is no basis for concluding that Local 3 had been representing warehouse employees working regularly for Respondent at Rockford. When it began operating out of the former Janenicke facility there during 1989, Respondent had dispatched a crew of

Elk Grove Village Local 3-represented warehouse employees to Rockford. There, they worked for approximately 2 or 3 months, essentially clearing out that facility. However, according to Mueller, "There was minimal warehouse work that had to be done at that [Rockford] facility after December '89." What occasional warehouse work had to be performed there was done by warehouse employees sent from Elk Grove Village on what Mueller characterized as an "ad hoc" basis to "work on your unsaleables." Of course, those warehouse employees were represented by Local 3 while working at Elk Grove Village and Respondent continued to recognize Local 3 as their bargaining agent during the brief periods—"3/4 days," Mueller testified—while they would work in Rockford. Nonetheless, for over half a decade no warehouse employees had regularly worked for Respondent at Rockford.

By January 9 Respondent also had been operating a warehouse facility at Rolling Meadows for approximately 4 months. It had recognized Local 3 as the bargaining agent of the one warehouse employee working there at the time of the hearing and, also, of the three or four warehouse employees who had worked there from September 1995 until Respondent reduced the warehouse-employee complement to a single employee, shortly before the hearing in the instant proceeding. However, in contrast to what would occur on January 9 at Rockford, the three or four warehouse employees at Rolling Meadows had been transferred there from Elk Grove Village and, presumably, had been represented by Local 3 at the time that they began working at Rolling Meadows.

The Board has concluded that it will apply the accretion doctrine to situations where separately represented units of employees have been consolidated and merged into a single work force and, thereafter, one of those bargaining agents has represented the overwhelmingly predominant number of the now-consolidated work force. See *Custom Deliveries*, 315 NLRB 1018, 1020 (1994), and cases cited therein. Here, there were 95 to 100 warehouse employees at Elk Grove Village and an additional three or four such employees at Rolling Meadows as of January 9 and for several months thereafter. Obviously the three warehouse employees hired at Rockford constituted less than the "30 percent or more of the bargaining unit" which the Board concludes would be needed to establish a substantial claim of interest by the Union among all warehouse employees employed by Respondent as of January 9.

Custom Deliveries and the cases cited in it, however, each presented situations where all employees began working in the same or in immediately adjacent locations following the consolidation or merger of previously separate operations. That is not the situation presented here. Rockford warehouse employees work at a location approximately 70 to 80 miles from Elk Grove Village and Rolling Meadows. Similar distances appear to separate Rockford from the locations of the subsequently opened warehouse facilities at Quality House and at Wood Date.

To be sure, such a distance is hardly immense and prohibitive to transit. Indeed, one Elk Grove Village employee daily commutes to work there from the Rockford area. Even so, geographic separation is one factor which tends to create a separate and distinct community of interest between employees at different locations. For, "there is apt to be a bond of interest among all persons employed by the same employer in connection with the same enterprise at the same locus." *NLRB v. Living & Learning Centers*, 652 F.2d 209, 213 (1st Cir. 1981). Presence or absence of geographic proximity between employees also can affect ability of employees at separate locations to participate in unit activities. *NLRB v. Carson Cable TV*, 795 F.2d 879, 886 (9th Cir. 1986). See also *NLRB v. Bogart Sportswear Mfg. Co.,* 485 F.2d 1203, 1206 (5th Cir. 1973) (involving plants separated by 25 and 65 miles).

Of course, geographic separation is not the sole, nor even a predominant, factor in evaluating an issue of accretion. Still, it is a factor which differentiates cases such as the instant one from cases such as *Custom Deliveries*, and it also is a factor which tends to show that Rockford warehouse employees possess a community of interest which is naturally different and distinct from similarly classified employees at Respondent's warehouse facilities clustered in and near the Elk Grove Village distribution center. Additional factors to which the Board has given weight in making accretion determinations include "integration of operations, centralization of managerial and administrative control . . . similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, and interchange of employees." (Footnote omitted.) *Gould, Inc.*, 263 NLRB 442, 445 (1982). See also *Lammart Industries v. NLRB,* supra 578 F.2d at 1225; *GHR Energy Corp.*, 294 NLRB 1011, 1016 (1989).

Here, prior to January 9, there was a relatively prolonged bargaining history for warehouse employees working in a unit confined to a single location in Rockford. Similarly, there appears to have been a relatively lengthy separate bargaining history confined to warehouse employees working at Respondent's Elk Grove Village distribution center and, more recently, at warehouse facilities located relatively proximate to Elk Grove Village. Of course, prior to January 9 the Rockford warehouse employees had been included in a combined unit with truckdrivers based in Rockford. And those truckdrivers had occasionally worked in the Rockford facility, performing many of the same duties as the warehouse employees who were working there. But, there is no evidence that, since January 9, truckdrivers have performed warehouse functions at Rockford. Units separating warehouse employees from truckdrivers, even ones who make only local deliveries, have long been concluded by the Board to be appropriate. See, e.g., *H. P. Wasson & Co.*, 153 NLRB 1499, 1501 (1965); *Cal-Maine Farms,* 249 NLRB 944 (1980) (dockworkers); and *NLRB v. Crockett-Bradley, Inc.*, 523 F.2d, 449–451 (5th Cir. 1975). Accordingly, it cannot be said that departure of truckdrivers from the historic Rockford unit somehow destroyed any possibility of continued separate community of interest among warehouse employees working at that single location.

Respondent argues that its own bargaining history with Local 3 also must be considered in situations where it has employed warehouse employees in locations other than Elk Grove Village. Indeed, it must. But, the evidence of such history is somewhat limited.

Until September 1995 there is no evidence that Respondent employed any warehouse employees outside of the Elk Grove

Village distribution center on a permanent basis. During that month a few warehouse employees became employed permanently at the Rolling Meadows facility. But, they were warehouse employees who had been sent the relatively short distance there from the Elk Grove Village distribution center and who, presumably, were already being represented by Local 3. There is no evidence of any other facility being opened by Respondent which had been treated as an accretion to the warehouse unit at Elk Grove Village.

Respondent points out that it treated warehouse employees who worked in Rockford at the former Janenicke facility as part of the bargaining unit represented by Local 3. However, there never were any warehouse employees assigned permanently to that facility by Respondent. The occasional warehouse work which had to be performed there was done by Elk Grove Village employees sent temporarily to the former Janenicke facility. Once they completed their warehouse duties there, those warehouse employees returned to Elk Grove Village where they resumed working permanently. Such occasional temporary assignments hardly suffice to establish a history of recognizing Local 3 as the bargaining agent of Rockford warehouse employees as part of a single-bargaining unit encompassing Rockford and Elk Grove Village.

In contrast to the initial staffing of Respondent's Rolling Meadows facility, Bessert, Bredeson, and Cornelius never had been employed by Respondent prior to its employment of them on January 9. Furthermore, each of them had been a total stranger to representation by Local 3 prior to that date. True, they did become members of Local 3. As concluded above, however, that occurred as a result of Respondent's unlawful conduct directed to each of those three employees. There is no evidence whatsoever that, absent those unfair labor practices, any one of those three warehouse employees would have withdrawn from the Union's membership and joined that of Local 3. So, there is no basis for concluding that what had occurred in connection with the former Janenicke facility and at Rolling Meadows shows a history of bargaining which applies to what occurred when Respondent took over the Rockford facility from Continental.

In that connection, it should be pointed out that there is no after-acquired provision in Respondent's collective-bargaining contract with Local 3. Article 29 provides that the contract "shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, successors and assigns of the parties," as well as "upon, and assumed by, any entity which shall be a purchaser or other transferee of the business assets of" Respondent. But, neither that article, nor any other article of Respondent's 1994–1997 contract with Local 3 contains "a clause requiring the Respondent to recognize [Local 3] and apply the terms of the contract at all facilities, including those that might be acquired in the future." *Ebon Services*, 298 NLRB 219 fn. 3 (1990).

Of course, even had such a clause been included in that contract, it would only "constitute a waiver of [Respondent's] right to insist upon a Board-conducted election when faced with a demand for recognition but [would] not relieve [Local 3] of its obligation to provide [Respondent] with proof of its majority status among the employees in the group to be added to the existing unit." *Joseph Magnin Co.*, 257 NLRB 656 (1981). Not only did Local 3 not provide evidence of such support, aside from that arising from Respondent's unlawful assistance, but from Mueller's description of his conversations with Local 3, it appears that the intention to accrete the Rockford warehouse employees originated with Respondent. It, then, notified Local 3 of that intention. To the great surprise of probably no one, Local 3 promptly endorsed Respondent's suggestion. However, that suggestion and the endorsement of it are not based on any provision of the contract between Local 3 and Respondent.

No doubt warehouse operations at Rockford changed following Respondent's acquisition of Continental's facility there. For approximately 9 months Respondent conducted only cross-docking operations at Rockford, just as it had been conducting at the former Janenicke facility. Previously, Continental had operated that facility as a self-contained distribution center. As a result of Respondent's change in operations, the Rockford facility was dependent completely upon receipt of product from Elk Grove Village until October 1.[7] Even so, the fact remains that, prior to January 9, operations at the Rockford facility were dependent on receipt of product from somewhere.

There is a high degree of centralization of administrative and managerial functions at Elk Grove Village for all of Respondent's Northern Illinois facilities. During the first part of 1996, all product being shipped from Rockford came from the Elk Grove Village distribution center. All orders for product are processed by personnel at Elk Grove Village. All billing originates from Elk Grove Village. Furthermore, it is there that all ultimate determinations are made concerning Rockford warehouse employees. Their timecards are submitted to Elk Grove Village, their pay records are maintained there and their paychecks originate at Elk Grove Village. As is true of all other northern Illinois facilities, warehouse employees at Rockford are subject to ultimate supervision by Vice President Operations Manager Mueller and, below him, to supervision by Rocky Ruane, head of shipping operations at Elk Grove Village.

Still, the unit represented by Local 3 after the accretion is not one which is employerwide in scope. As pointed out in section I,D, above, on January 9 Respondent opened another distribution center in Peoria. But, Local 3 did not become the bargaining agent for the warehouse employees, nor were those employees accreted to the historic Elk Grove Village-oriented bargaining unit. From the testimony of Respondent's wit-

[7] As pointed out in sec. I,D, above, on and after October 1 Respondent began warehousing a considerable portion of the merchandise which it shipped to Rockford-area retailers. To handle that change in operations, Respondent added a second shift at Rockford and assigned two additional employees, as well as Bredeson, to work on that shift. However, those events occurred well after Respondent had accreted Rockford warehouse employees to the unit historically represented at Elk Grove Village by Local 3. Moreover, there is no evidence that, during January or during the months immediately thereafter, Respondent had contemplated such a change at Rockford. Consequently, the events of October are accorded little weight in evaluating the lawfulness of Respondent's January accretion to the Elk Grove Village-oriented warehouse employee bargaining unit.

nesses, it appears that the reason for not having done so is that Peoria lies outside the geographic jurisdiction of Local 3. Thus, the less than employerwide unit which Respondent contends should be regarded as appropriate—the one which combines Rockford warehouse employees with those working in and near Elk Grove Village—is one which is based on Local 3's ability to organize employees in light of its territorial jurisdiction. If that is not the same as, it certainly is quite close to contending that the Board should endorse a bargaining unit based upon the extent to which a labor organization can organize employees. That, of course, would be a conclusion which is contrary to the prohibition of Section 9(c)(5) of the Act. Even if that is not so, however, the fact remains that the situation presented here is not one where the competing unit choices are between single location and employerwide bargaining units.

While the Rockford employees at issue are classified generally as warehouse employees, as are Respondent's other employees whom Local 3 represents, "a generic classification may not be the controlling factor," *Regency House*, 171 NLRB 1347–1348 (1968), in evaluating community of interest. For approximately 8 months Rockford warehouse employees, after having cleared out Continental's merchandise and equipment, worked essentially as dockworkers at an empty warehouse: they unloaded merchandise delivered by truck from Elk Grove Village, allocated it on the dock among local retailers, and reloaded it for delivery to those customers. No split aisle, full-case flow rack or yellow racking operations are performed at Rockford by warehouse employees assigned there, in contrast to operations at Elk Grove Village where such areas do exist and are staffed by warehouse employees who rotate through them, as well as through the bulk warehouse there.

Of course, the duties performed by Elk Grove Village employees classified as warehouse employees are similar to the more limited duties performed at Rockford by similarly classified employees. Nevertheless, Mueller conceded that, even with the October addition of bulk warehouse operations at Rockford, warehouse "skills are lesser at the Rockford facility than they are at Elk Grove." Accordingly, though the difference in job skills may not be extensive, there is a distinction between those which suffice to work as a Rockford warehouse employee and the relatively greater skill necessary to work in the split aisle, full-case flow rack, yellowing racking and bulk warehouse areas at Elk Grove Village.

For at least the first 9 months of Respondent's operation of the former Continental Rockford facility, that facility's continued operation was dependent on receipt of all product from Elk Grove Village. That is, to conduct its exclusively cross-docking operations, spirits had to be received daily from Elk Grove Village, so that they could be unloaded and reloaded for local delivery. But, there was an obvious difference between the manner in which Respondent had been conducting cross-docking in Rockford before January 9 and the manner in which it did so after that date. For, no warehouse employees had been employed regularly in Rockford by Respondent prior to January 9. In contrast, Bessert, Bredeson, and Cornelius were employed permanently there by Respondent after January 9. Consequently, while Respondent conducted cross-docking operations at Rockford before and after that date, there was a difference between those cross-docking operations and that difference pertained directly to employment of warehouse employees.

In the course of performing their ordinary duties at Rockford, there is no evidence that Bessert, Bredeson, and Cornelius come into contact with warehouse employees from Respondent's other facilities. True, the three Rockford warehouse employees have daily contact with truckdrivers making deliveries from Elk Grove Village. Even so, those truckdrivers are represented in a unit separate from the one to which Respondent chose to accrete the three Rockford warehouse employees. Consequently, such daily contact hardly serves to show any community of interest with other employees in the unit to which Respondent accreted Bessert, Bredeson, and Cornelius. As to those other employees, they have no contact with the warehouse employees who work regularly in Rockford.

Obviously, the foregoing distinctions between warehouse employees working at Respondent's various northern Illinois facilities would be mitigated if there has been ongoing permanent and temporary interchange of warehouse employees between Rockford and those other facilities. Movement of personnel between locations is a "most reliable indicium of common interests among employees [arising from] similarity of skills, duties, and working conditions," *Pacific Southwest Airlines v. NLRB*, 587 F.2d 1032, 1042 (9th Cir. 1978), inasmuch as employees would be working together for significant periods in the normal course of performing their duties. Absent common representation, interchange between employee groups may breed "friction between employees and chaos in labor relations," since "some employees [are] under union rules as to wages, hours, seniority, grievance procedures, etc. when the employees working beside them in the same category [are] not." *NLRB v. Purity Food Stores,* 379 F.2d 497, 501 (1st Cir. 1967), cert. denied 389 U.S. 959 (1967).

Here, there is no evidence of either temporary or permanent interchange between warehouse employees working ordinarily at Respondent's Rockford facility and similarly classified employees who work regularly for it at Rolling Meadows or at the more recently opened Wood Dale bulk warehouse. That is, no Rockford warehouse employee has ever worked, permanently or temporarily, at Rolling Meadows or Wood Dale. And no warehouse employee from either of those two facilities has ever been assigned, permanently or temporarily, to work at Rockford for Respondent.

No warehouse employee has ever been transferred permanently from Respondent's Rockford facility to its Elk Grove Village distribution center. Conversely, on only a single occasion has there been a permanent transfer of warehouse employees from that distribution center to Rockford. That did not occur until Respondent initiated a second shift at Rockford, over a half-year after the Rockford accretion had been effected. There is no evidence which would show that, at the time of that accretion, Respondent had contemplated starting a second shift at Rockford.

When Respondent did decide to initiate a second Rockford shift, two employees—Marc Brennan and Rick Nelson—were transferred from Elk Grove Village to Rockford to staff that shift, along with Bredeson who transferred from day-to-night

shift. It should not escape notice, however, that neither Brennan nor Nelson was a senior Elk Grove Village warehouse employee who had been offered an opportunity to bid for transfer to Rockford, pursuant to article 26 of Respondent's collective-bargaining contract with Local 3. Instead, testified Mueller, "They were hired [by Respondent] because we needed their help at Elk Grove and we knew that at some point in time we were going to start up a night shift" at Rockford. Thus, their eventual employment there did not arise from usual application of the provisions of the contract with Local 3 to Rockford. Rather than following that contract's provisions, Respondent hired two employees—who had worked for Continental at Rockford prior to January 9—and utilized them at Elk Grove Village until a second shift was initiated at Rockford. Then, seemingly without regard to the contract with Local 3, Respondent simply transferred those newly hired employees to Rockford. Their one-time transfer there hardly supplies substantial evidence of significant permanent interchange between the Rockford warehouse and Respondent's other warehouse facilities.

That leaves for consideration temporary interchange: temporary transfers of warehouse employees between Rockford and Respondent's other facilities for only limited periods. There is no evidence that any warehouse employees assigned to Rolling Meadows or Wood Dale have ever been sent to work temporarily at Rockford. Nor is there evidence that Rockford warehouse employees have been sent to work temporarily at Rolling Meadows or Wood Dale.

The evidence as to similar transfers from Elk Grove Village to Rockford shows only infrequent occasions when that has occurred. According to Mueller, two individuals were sent for "a couple of nights after [Brennan and Nelson] started" at Rockford to "walk[ ] them through what they needed to do at the night shift at . . . Rockford," and, in addition, a warehouse employee is sent to Rockford, for "3/4 days" ideally "quarterly," to check and prepare for shipment to Elk Grove Village inventory which has become unsaleable. That latter situation, of course, would not have been occurring before the second shift had been initiated at Rockford. For, once Continental's inventory had been finally cleared from Rockford during late February, no inventory was warehoused there until Respondent created a second Rockford shift and began warehousing Rockford-oriented product there.

There is evidence, from timecards discussed below, that Brennan and Nelson had worked occasionally at Rockford, before they had been transferred permanently there and while they were still assigned to Elk Grove Village. For example, both worked at Rockford on April 12, which appears to be the first time that either had done so. Brennan then worked there on May 22, 24, 30, and 31, on June 20, 27, and 28, on July 25 and 26, and with a fair degree of regularity during August and September, immediately before the second shift started there. After April 12, Nelson worked at Rockford on June 14, on August 26 and 27, and fairly regularly during September. Yet, both these employees had been hired for the specific purpose of eventually transferring them to Rockford. So, though nominally assigned to Elk Grove Village, it is not surprising that they would have spent some time working at Rockford and, moreover, that the frequency with which they had done so would increase as initiation of the second shift there approached. Significantly, since their permanent transfers to Rockford, neither Brennan nor Nelson has performed any work at Elk Grove Village, nor at any of Respondent's other facilities.

As to Bessert, Bredeson, and Cornelius, the record discloses evidence that each has worked temporarily at Elk Grove Village since January 9. But, not so much as would necessitate a conclusion that such work created a community of interest between them and Elk Grove Village warehouse employees, and destroyed any separate community of interest among those Rockford warehouse employees.

Kotlarz testified that Ruane will make requests for warehouse employees to work at Elk Grove Village based on, "Availability. For example, overtime is available on a regular basis. If there's a specific situation, he will call me and request, ask me . . . to notify personnel to report to Elk Grove Village." Still, so far as the evidence shows, such requests do not give rise to obligations on the part of Rockford warehouse employees. That is, there is no evidence showing that Rockford employees must report to Elk Grove Village, or elsewhere, for overtime work. In fact, not until Saturday, February 10—a month after the accretion—did any one of the Rockford warehouse employees, Randy Bredeson, work—on a Saturday—at Elk Grove Village.

Seemingly, the most reliable evidence of work history since January 9 would be the timecards of Bessert, Bredeson, and Cornelius. Timecards for them were received into evidence (R. Exh. 2), as well as for Brennan and Nelson. Those timecards cover the period January 9 through the weekly pay period ending Tuesday, November 5. However, review of them is not so helpful in reaching firm conclusions as might be anticipated.

Initial testimony appeared to show that timeclock-stamped entries could be relied on to show presence at Rockford, while handwritten entries reflected presence at Elk Grove Village. Thus, if an employee stamped in or out on a particular day and, then, handwrote an out or in time, respectively, for that same day, it could be concluded that such entries showed a workday split between Rockford and Elk Grove Village. But, it turned out that such a conclusion could not so readily be reached.

Occasionally, the Rockford timeclock malfunctions, leaving warehouse employees there no choice but to handwrite their arrival and departure times, sometimes both—such as for the workweeks ending March 26 through April 16 when the timeclock was inoperative for that entire period. Indeed, individual handwritten entries for arrivals and departures on particular days before and after that 4-week period are not reliable indicators of work at Elk Grove Village. For example, Bessert's and Bredeson's January timecards show handwritten entries for 2 days, while those of Cornelius show one handwritten entry. Yet, Kotlarz testified that none of the Rockford warehouse employees had worked at Elk Grove Village before Bredeson had done so on one February Saturday. In fact, confusion as to what could be discerned from the faces of those timecards eventually led Respondent to abandon its effort, during the hearing, to introduce an abstract prepared on the basis of the timecards.

From the timecards and the other evidence, four conclusions seem fairly firm with regard to Rockford warehouse employees working temporarily at other locations since January 9. First, there is no evidence that any Rockford warehouse employee ever worked at Rolling Meadows, Quality House, or, after it opened mid-year, Wood Dale. Second, at most Bessert worked a total of 3 days at Elk Grove Village from January 9 through November 14. One of those days was for training on returns. Third, at most Cornelius worked 2 days at Elk Grove Village. One of those days, and 1 of the other 2 days that Bessert had work there, had been due to, according to Kotlarz, "a problem in the warehouse" at Elk Grove Village. As to that day, the Board has held that it does not "find it significant that . . . instances of transfer may arise as a result of emergency conditions, since any community of interest created thereby . . . is merely temporary." *Long Island College Hospital*, 239 NLRB 1135, 1138 (1978). Finally, as pointed out above, neither Brennan nor Nelson has worked at Elk Grove Village since being permanently transferred to Rockford.

That leaves for consideration one Rockford warehouse employee who did work fairly regularly at Elk Grove Village after January. That is Bredeson. So far as the timecards and other evidence reveals, he performed only overtime work at Elk Grove Village. That is, having completed full workweek shifts at Rockford, he worked overtime at Elk Grove Village on Saturdays and Sundays, though Kotlarz testified that Bredeson had also been working overtime there during Monday evenings since the second Rockford shift had been created. The issue which emerges from Bredeson's overtime work is whether a community of interest can be predicated on essentially a single employee's choice to regularly volunteer for overtime work at another location when such work is not ordinarily required as part of that employee's, or any other employee's, usual job.

To conclude that a community of interest arises as a result of a single employee's choice to work overtime at another location is to effectively hold the temporary interchange factor hostage to the whim of that employee. There is no evidence that Bredeson had been required by Respondent, as part of his duties as a Rockford warehouse employee, to work overtime at Elk Grove Village. So far as the record shows, his decision to volunteer for that overtime had been for his own benefit and not because he had been expected by Respondent to volunteer for such work as part of his ordinary duties. Had he, like Bessert, chosen not to volunteer for Elk Grove Village overtime work, there is no evidence that he ever would have worked there and there would be no issue of temporary interchange. Indeed, should Bredeson suddenly decide to cease volunteering for mostly weekend overtime work at Elk Grove Village, there would no longer be any significant temporary interchange between the two facilities.

In evaluating community of interest, "the overriding policy of the Act is in favor of the interest in employees to be represented by a representative of their own choosing for the purpose of collective bargaining." *NLRB v. Western & Southern Life Insurance Co.*, 391 F.2d 119, 123 (3d Cir. 1968), cert. denied 393 U.S. 978 (1968). See also, *Meijer, Inc. v. NLRB*, 564 F.2d 737, 743 (6th Cir. 1977). Even so, the Board has long held that subjective desires of particular employees are not "generally relevant in Board unit determinations." *Ideal Laundry & Dry Cleaning Co.*, 152 NLRB 1130–1131 fn. 6 (1965). To allow the temporary interchange factor to be governed by the discretionary overtime requests of a single employee is effectively to allow that factor to be governed by the desire of that particular employee. And it should not escape notice that there is no evidence that, during his overtime work at Elk Grove Village, Bredeson had performed other than bulk warehouse work or had come into contact with any significant number of Elk Grove Village warehouse employees.

Even according weight to Bredeson's volunteered overtime work at Elk Grove Village, and to Brennan's and Nelson's temporary work at Rockford before being permanently transferred there, whatever temporary interchange that shows is not substantial enough to overcome the totality of the evidence showing a lack of substantial interchange between Rockford and Respondent's facilities at Elk Grove Village, Rolling Meadows, Quality House and Wood Dale. There is no evidence that Bessert or Cornelius—nor Brennan or Nelson, once transferred to Rockford—worked temporarily at Respondent's other facilities on a significant number of occasions. Nor is there evidence of significant temporary work at Rockford by warehouse employees from Respondent's other facilities. No warehouse employee has ever been transferred permanently from Rockford to Respondent's other warehouses. On only a single occasion, in connection with a change in operations at Rockford, have employees been transferred to Rockford from one of Respondent's other facilities. There is no evidence that such a change in Rockford operations had been anticipated, or could fairly have been anticipated, at the time of the accretion. Further, those two employees did not begin working at Elk Grove Village until Respondent began planning for a second shift at Rockford and hired those two employees to eventually staff that shift there.

Another factor significant in evaluating community of interest is supervision. This factor is meaningful because, where separate supervision exists at each of multiple locations, "day-to-day problems and concerns among the employees at one location may not necessarily be shared by employees who are separately supervised at another location." (Footnote omitted.) *Renzetti's Market,* 238 NLRB 174–175 (1978). A finding of separate community of interest is not contingent on local supervision exercising the full extent of powers which a supervisor can exercise as, for example, enumerated in Section 2(11) of the Act. It does contemplate, however, "authority beyond mere power to implement centrally formulated policies." *NLRB v. Wolverine World Wide, Inc.*, 477 F.2d 969, 970 (6th Cir. 1973). "[W]hat is most relevant is whether or not the employees at a [single location or area] perform their day-to-day work under the immediate supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems." Ibid.

Here, there is considerable centralization of warehouse supervision at Respondent's Elk Grove Village distribution center. Personnel policies and procedures are centrally formulated and administered from that location for all warehouse employees. All warehouse employees are subject to ultimate supervi-

sion by Mueller and, more directly, by Ruane. Between them, the numbers of warehouse employees to be employed at each facility are determined, work schedules for each facility are set, the necessity for overtime at each location is evaluated, and vacation requests are approved or denied.

Nevertheless, Mueller conceded that he had only "been to Rockford twice in my career." Further, while he claimed that Ruane "is in contact with the other facilities on a daily basis," Mueller gave no testimony showing that Ruane had been to Rockford on any regular basis, nor is there evidence that Ruane had gone there even on a single occasion since January 9. To the contrary, Bessert testified that he had never been introduced or spoken to Ruane. Consequently, so far as the record shows, Ruane and Mueller exercise their control over Rockford warehouse employees from Elk Grove Village and "it would be an extraordinary feat to exercise [such] control on a day to day basis." *Prudential Insurance Co. of America v. NLRB*, 529 F.2d 66, 68 (6th Cir. 1976), cert. denied 425 U.S. 975 (1976).

Obviously, Respondent's warehouse jobs are fairly well-defined and were especially so at Rockford while operations there had been confined to cross-docking. Even so, Kotlarz, an admitted statutory supervisor, is present at that facility on a day-to-day basis. While his primary responsibility now appears to pertain to sales, the record shows that he is able to exercise some meaningful authority over Rockford warehouse employees, "beyond mere power to implement centrally formulated policies." Ibid.

Most significantly, Mueller testified that ordinarily Ruane interviews prospective warehouse employees and brings his recommendations, based on those interviews, to Mueller for "the final decision as to whether or not we will hire" them. But, Ruane did not interview Bessert, Bredeson, or Cornelius. Instead, testified Kotlarz, "On the 29th of December, I had received a call from Chris Mueller concerning the availability of having them warehousemen work for [Respondent] and at that time gave the recommendation to him" to hire Bessert, Bredeson, and Cornelius.

Even later, well after the Rockford warehouse employees had been accreted to Local 3's bargaining unit, it had been Kotlarz who had recommended that Brennan and Nelson be hired for the second shift then being planned for Rockford: "I gave a recommendation to Chris Mueller when he had called me and says we want to start up a night crew, and I gave recommendation as to personnel . . . for that." Mueller also followed that recommendation, Brennan and Nelson were hired by Respondent, and those two employees were eventually assigned to the Rockford warehouse night shift. All that occurred, so far as the record discloses, with no role whatsoever being played by Ruane. Nor is there any evidence that Ruane had been involved in any way in the selection of Bessert, Bredeson, and Cornelius for hire during January. There is no evidence that Ruane ever interviewed any of those five employees. There is no evidence that he made any recommendation in connection with the selection of any one of them for employment with Respondent. Instead, it had been the Rockford-based Kotlarz who made the recommendations which were effective in connection with hiring those five warehouse employees.

Beyond hiring, the record shows that Kotlarz possesses authority, within limits, to authorize overtime work by warehouse employees at Rockford. Ruane must approve overtime work on Saturdays and Sundays. And Ruane must approve overtime whenever more than 3 hours of it must be authorized. Within those limitations, however, neither Mueller nor Ruane appears to become involved whenever what Mueller referred to as "general course of doing business" overtime—"an hour, an hour-and-a-half of extra time to get the trucks done and out" during a workday—is authorized. So far as the evidence discloses, Kotlarz alone makes decisions in connection with that overtime at the Rockford warehouse.

Such overtime at Rockford is not insignificant. For example, the timecards show that for the weekly pay period ending January 30, Bessert and Bredeson each worked a total of 7-1/2 hours of overtime, while Cornelius worked a total of 6 hours of overtime. Those figures are not unusual. During any particular weekly pay period thereafter, overtime—varying between 1/2 hour and 2 to 3 hours at a time—have been worked by Rockford warehouse employees. Accordingly, earnings from overtime work appear to constitute a significant portion of the income of warehouse employees who work there. Thus, the power to authorize it cannot be disregarded as somehow insignificant in its affects on those employees.

Kotlarz also approves at least some requests for time off. "If it was just a day's situation and it did not interfere with the normal course of operations and we were covered," he testified, "I wouldn't notify [Ruane] about it for a day." Of course, such notice represents no more than after-the-fact notification of action already authorized and taken. A like situation prevails regarding vacation requests. Ruane must approve them. But, Kotlarz testified that, in practice, so long as vacations of two Rockford warehouse employees do not overlap, or do not otherwise interfere with Rockford operations, he can and does approve vacation requests, without prior authorization by Ruane.

The significance of that authority should not be minimized, since the timecards show that Rockford warehouse employees have taken both days off and vacations. No one from Elk Grove Village, or from any of Respondent's other facilities, has been sent to replace those employees at Rockford whenever they have taken off for a day or have gone on vacation. Accordingly, it would appear that all of those days off and vacations were approved locally by Kotlarz. Such approval is evidence of the type of personal involvement by Kotlarz "with the daily matters which make up . . . routine problems" of Rockford warehouse employees. *Renzetti's Market,* supra.

There is no evidence pertaining to such subjects as performance ratings and grievances. Perhaps such situations have not arisen since January 9, else one or the other party would have presented evidence addressing them. Even so, it is difficult to ascertain how either Ruane or Mueller could evaluate and rate the performances of Rockford warehouse employees, since neither of those Elk Grove Village officials has been at Rockford with any degree of regularity. Similarly, the infrequency of visits there by them leaves it unlikely that either Elk Grove Village official would be present whenever a lone Rockford warehouse employee, or some of them, voiced the type of com-

plaint which might "serve as both a natural prelude to, and an efficient substitute for, the filing of a formal grievance." *NLRB v. City Disposal Systems,* 465 U.S. 822, 836–837 (1984). In the circumstance, Kotlarz appears to be the first-line of supervision who would receive and try initially to resolve such complaints.

In the final analysis, no supervisor or manager, save an owner, exercises unbridled authority. Every one of them is subordinated to higher authority exercised by someone else. Every one of them possesses authority which to some degree is circumscribed. Here, Kotlarz is subject to Respondent's general policies and, also, to the guidelines within which Mueller and Ruane allow him to operate at Rockford. Within those guidelines, however, Kotlarz appears to exercise meaningful authority over employees whom he recommended be hired by Respondent. As to yet untested areas, Kotlarz also appears to be the logical official, as opposed to the infrequently present Mueller and Ruane, to address, at least initially, situations which arise at the Rockford warehouse. In consequence, he possesses more than "mere power to implement centrally formulated policies," *NLRB v. Wolverine World Wide,* supra, and exercises powers which affect Rockford warehouse employees in a manner that "may not necessarily be shared by employees who are separately supervised at," *Renzetti's Market,* supra, Respondent's other warehouse facilities.

In sum, there are some community-of-interest factors which would support an employerwide bargaining unit of Respondent's warehouse employees: centralized administrative, sales and managerial control, similarly classified employees performing duties which are similar, some permanent and temporary interchange of employees between warehouse facilities. However, an employerwide unit was not created when Respondent accreted warehouse employees employed at Rockford to the warehouse unit then being represented by Local 3. Instead, the scope of the unit created was one which accommodated the territorial jurisdiction within which Local 3 was able to represent employees and excluded employees employed at Respondent's Peoria distribution center. There is no evidence that such a unit corresponds to any administrative division of Respondent's operation.

Beyond that, as described above, there is significant geographic separation between Rockford and the other facilities in the unit created as a result of the accretion; warehouse operations at Rockford are not as extensive as those conducted at Elk Grove Village; Rockford warehouse employees at Rockford do not work in all of the areas in which similarly classified Elk Grove Village employees work; warehouse employees at Rockford perform less diverse duties which require lesser skills than warehouse employees at Elk Grove Village where the preponderant majority of Respondent's northern Illinois warehouse employees work; there is no daily or even regular contract between warehouse employees at Rockford and those at Respondent's other facilities; Rockford employees have been locally recommended for hire and there has been only a single instance of permanent transfer to Rockford of warehouse employees from any of Respondent's other facilities, with no transfer of Rockford employees to any of Respondent's other facilities; what temporary interchange has occurred between Rockford and other facilities has been insignificant, save for a single Rockford employee who has volunteered for warehouse work at Elk Grove Village which is not an incident of his ordinary duties and which is performed in addition to his ordinary duties at Rockford; there is meaningful separate immediate supervision of Rockford warehouse employees; and, there is a history of bargaining for Rockford warehouse employees on a single-facility basis. These factors show that, had it been afforded the opportunity to do so, the Board likely would have concluded that Respondent's Rockford warehouse employees constitute a separate appropriate bargaining unit within the meaning of Section 9(b) of the Act.

The Board was not afforded that opportunity. Instead, Respondent accreted the Rockford warehouse employees to the somewhat distant bargaining unit represented by Local 3. However, Local 3 had no claim to represent those Rockford warehouse employees. There is no after-acquired provision in its collective-bargaining contract with Respondent. Absent the unlawful assistance of Respondent, it had no authorization by Rockford warehouse employees to act as their collective-bargaining agent. To the contrary, those employees had been members of the Union until unlawfully forced to withdraw their membership in order to become employed by Respondent at Rockford. In the totality of the foregoing circumstances, a preponderance of the credible evidence establishes that Respondent unlawfully accreted Rockford warehouse employees to the unit represented by Local 3, unlawfully recognized Local 3 as the bargaining agent of those employees, and unlawfully applied Local 3's contract to the Rockford warehouse employees, all in violation of Section 8(a)(2) and (1) of the Act.

CONCLUSION OF LAW

Judge & Dolph, Ltd., a Division of Wirtz Corporation has committed unfair labor practices affecting commerce by accreting newly hired warehouse employees at Rockford, Illinois, to a bargaining unit of warehouse employees employed at other northern Illinois facilities, by compelling those Rockford employees to withdraw their membership in Teamsters Local Union No. 325 and become members of Liquor and Wine Sales Representatives, Warehousemen, Clerical, Distillery, Rectifying, Tire, Plastic and Allied Workers' Union, Local No. 3 as a condition of being employed at Rockford, and by recognizing and applying the terms of the contract with Local 3 to Rockford warehouse employees at a time when Local 3 was not the designated collective-bargaining agent of those employees, in violation of Section 8(a)(2) and (1) of the Act.

REMEDY

Having concluded that Judge & Dolph, Ltd., a Division of Wirtz Corporation 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 withdraw recognition of Liquor and Wine Sales Representatives, Warehousemen, Clerical, Distillery, Rectifying, Tire, Plastic and Allied Workers' Union, Local No. 3 as the bargaining agent of warehouse employees working at Judge & Dolph's Rockford, Illinois facility and, further, to cease applying its collective-bargaining contract with Local 3

to Rockford warehouse employees, provided that this remedy does not require Judge & Dolph to withdraw or eliminate any wages or benefits enjoyed by Rockford warehouse employees as a result of application of that contract to them. In addition, it shall be ordered to reimburse all former and present warehouse employees whom it has employed in Rockford for dues, fees, and any other money paid by them, or deducted from their pay, to comply with the union-security provisions of the collective-bargaining contract with Local 3 which was unlawfully applied to them, with interest on amounts owing as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

Judge & Dolph, Ltd., a Division of Wirtz Corporation, Rockford, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Demanding as a condition of employment that employees withdraw from membership in Teamsters Local Union No. 325, or any other labor organization.

(b) Accreting to an existing bargaining unit employees at a newly acquired facility where that facility can constitute a separate appropriate bargaining unit and where the employees at that facility have not authorized the representative of that existing bargaining unit to act as their collective-bargaining agent.

(c) Demanding as a condition of employment at its Rockford, Illinois facility that warehouse employees become and remain members of Liquor and Wine Sales Representatives, Warehousemen, Clerical, Distillery, Rectifying, Tire, Plastic and Allied Workers' Union, Local No. 3 unless and until it has been certified by Board as the exclusive bargaining representative of Rockford warehouse employees in an appropriate bargaining unit.

(d) Recognizing Local No. 3 as the exclusive collective-bargaining agent of warehouse employees employed at its Rockford, Illinois facility unless and until Local No. 3 has been certified by the Board as the exclusive bargaining representative of Rockford warehouse employees in an appropriate bargaining unit.

(e) Applying the terms of its collective-bargaining contract with Local 3 to warehouse employees employed at its Rockford, Illinois facility, provided that this does not require withdrawal or elimination of wages or other terms and conditions of employment established at Rockford as a result of application of that contract to Rockford warehouse employees.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by the National Labor Relations Act.

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

(a) Withdraw recognition of Local 3 as the bargaining agent of warehouse employees employed at its Rockford, Illinois facility.

(b) Reimburse all warehouse employees employed at its Rockford, Illinois facility since January 9, 1996, for dues, fees, and other money which they have been compelled to pay to, or which have been deducted from their pay for, Local 3 to comply with union-security provisions of the collective-bargaining contract unlawfully applied to Rockford warehouse employees, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying all payroll and other records necessary to analyze the amounts to be reimbursed to Rockford warehouse employees under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Rockford, Illinois facility copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by its authorized representative, shall be posted by Judge & Dolph, Ltd., a Division of Wirtz Corporation and be maintained by it for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. It shall take reasonable steps 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, it has gone out of business or closed the Rockford facility involved in these proceedings, Judge & Dolph, Ltd., a Division of Wirtz Corporation shall duplicate and mail, at its own expense, a copy of the notice to all employees employed by it at Rockford at any time since January 9, 1996.

(e) 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 steps that it has taken to comply.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusion, 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.

[9] 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."

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 as a condition of employment demand that you withdraw from membership in Teamsters Local Union No. 325, or any other labor organization.

WE WILL NOT accrete to an existing bargaining unit employees at a newly acquired facility where that facility can constitute a separate appropriate collective-bargaining unit and where those employees have not designated the representative of that existing bargaining unit to act as their collective-bargaining agent.

WE WILL NOT demand as a condition of employment at our Rockford, Illinois facility that warehouse employees become and remain members of Liquor and Wine Sales Representatives, Warehousemen, Clerical, Distillery, Rectifying, Tire, Plastic and Allied Workers' Union, Local No. 3, unless and until it has been certified by the Board as the exclusive bargaining representative of Rockford warehouse employees in an appropriate bargaining unit.

WE WILL NOT recognize Local No. 3 as the exclusive collective-bargaining agent of warehouse employees employed at our Rockford, Illinois facility unless and until it has been certified by the Board as the exclusive bargaining representative of Rockford warehouse employees in an appropriate bargaining unit.

WE WILL NOT apply the terms of our collective-bargaining contract with Local No. 3 to warehouse employees employed at our Rockford, Illinois facility, but this does not require withdrawal or elimination of wages or other terms and conditions of employment which have been established at Rockford as a result of application of that contract to warehouse employees working at our Rockford facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights protected by the National Labor Relations Act.

WE WILL withdraw recognition of Local No. 3 as the bargaining agent of warehouse employees employed at our Rockford, Illinois facility.

WE WILL reimburse all Rockford warehouse employees for dues, fees, and other money which they have been compelled to pay, or which have been deducted from their pay, to comply with the union-security provisions of the collective-bargaining contract with Local No. 3 which was unlawfully applied to those employees, with interest to be paid on the amounts which are owing.

JUDGE & DOLPH, LTD., A DIVISION OF WIRTZ CORPORATION