Williams Energy Services *and* Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL–CIO, Local 4-227. Case 16–CA–20164

September 28, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On August 11, 2000, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order.

1. For the reasons set forth in the majority opinion in *St. Elizabeth Manor*, 329 NLRB 341 (1999), we reject our dissenting colleague's criticism of the successor-bar doctrine, under which a collective-bargaining representative is "entitled to a reasonable period of bargaining without challenge to its majority status." Id. at 344. After a reasonable period for bargaining elapses, the employees will have an opportunity to change or eliminate their bargaining representative if they so choose. Id. at 346.

Here, we agree with the judge that a reasonable period for bargaining has not elapsed. The parties met twice. At the first session, the Respondent rejected the Union's proposal that it adopt the predecessor's collective-bargaining agreement. At the second session, the Respondent presented the Union with a letter, with the employee petition attached, asking the Union to voluntarily withdraw as the employees' collective-bargaining representative or participate in a secret-ballot election. Like our dissenting colleague, we take seriously the Act's goal of protecting employees' free choice. However, we are also mindful of the Act's competing goal of promoting stable labor-management relations by encouraging the practice and procedure of collective bargaining. We believe that the application of the successor bar in the instant case strikes the appropriate balance between these competing policies. Our colleague correctly points out that the employee petition disavowing the Union was unanimous. This fact, he suggests, demonstrates a serious infringement of employees' Section 7 rights and makes fruitful collective bargaining unlikely, since the union would appear to have no support. The successor bar, of course, is a bright-line rule: a union is entitled to a period free from any challenge, no matter how strong it seems. The Board and the courts have recognized the value of bright-line rules, which promote certainty, predictability, and administrative efficiency, even if their application in a particular case may seem unjust or unwise. See, e.g., *Cleveland Indians Baseball Co.*, 333 NLRB 579 (2001); *NLRB v. Maryland Ambulance Services*, 192 F.3d 430, 434 (4th Cir. 1999). ("While bright-line rules . . . may run the risk of being over or under-inclusive in their coverage, it is generally recognized that the certainty and stability such a rule affords outweighs any harm done when the rule is applied evenly.") We could not take into account the extent of a union's apparent loss of support in applying the rule of *St. Elizabeth Manor* without losing the benefits of a bright-line rule. Moreover, the reasons for temporarily disregarding evidence of apparent loss of support obtain, regardless of whether employees are united or divided in their views. If, in fact, most or all employees no longer desire union representation, and if, in fact, nothing the union is able to achieve during a reasonable period for bargaining changes their feelings, then the union's tenure will, indeed, be temporary. But for the reasons explained in *St. Elizabeth Manor*, the Union is entitled to an opportunity to prove itself to employees. Whether pursuing that opportunity is worthwhile is for the Union, not the Board, to determine. Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union and by withdrawing recognition from the Union.

2. For the reasons fully set forth in *Caterair International*, 322 NLRB 65 (1996), we find that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition from the Union. We adhere to the view, reaffirmed by the Board in that case, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employee." Id. at 68.

[1] The Respondent, relying on *Harley-Davidson Transportation Co.*, 273 NLRB 1531 (1985), contends that there is a substantive difference between representation cases like *St. Elizabeth Manor*, 329 NLRB 341 (1999), and this case. As the Board explicitly stated in *Inn Credible Caterers, Ltd.*, 333 NLRB 898 (2001), however, the effect of the decision in *St. Elizabeth Manor* was to return to the principle expressed in *Landmark International Trucks*, 257 NLRB 1375 (1981), enf. denied 699 F.2d 815 (6th Cir. 1983), that a successor employer violates Sec. 8(a)(5) if it withdraws recognition before a reasonable period of time for bargaining has elapsed, whether that withdrawal is based on a good-faith doubt of the union's continuing majority status or evidence of actual loss of majority status. Accordingly, the contrary view, as expressed in *Harley-Davidson Transportation Co.*, 273 NLRB 1531 (1985), is no longer good law after *St. Elizabeth Manor*.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Building Material v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In the *Vincent* case, the court summarized the court's law as requiring that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three consideration: (1) the employees' § 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." Id. at 738.

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the employer's withdrawal of recognition. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation.

Moreover, ordering the successor employer to bargain for a reasonable period of time with the incumbent union, as in this case, serves "to protect the newly established bargaining relationship and the previously expressed majority choice, taking into account the stresses of the organizational transition may have shaken some of the support the union previously enjoyed." *St. Elizabeth Manor*, supra at 345. To require bargaining to continue only for a reasonable period of time, not in perpetuity, fosters industrial peace and stability and will ensure that the bargaining relationship established between the Respondent and the Union will have a fair chance to succeed.

(2) The affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining or to engage in any other conduct designed to further discourage support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

(3) A cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent's violations because it would permit a decertification petition to be filed before the Respondent had afforded the employees a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case. Accordingly, we shall reaffirm the Board's prior order that the Respondent recognize and, on request, bargain in good faith with the Union.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Williams Energy Services, Galena Park, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

CHAIRMAN HURTGEN, dissenting.

The Respondent took over the business on August 2, 1999, as a successor employer. On August 5, an employee of the Respondent filed a decertification petition with the NLRB Regional Office. The Respondent then declined to bargain. Following the filing of unfair labor practice charges, the Respondent agreed to bargain with the Union, and such bargaining began on September 29. On November 3, the Respondent was presented with a petition, signed by all unit employees, saying that they did not wish to be represented by the Union. On November 5, the Respondent wrote the Union, stating that it no longer enjoyed majority support, and asking whether the Union wanted to withdraw as bargaining representative or proceed to an election to determine the issue of representative status. On November 9, the Region dismissed the August 5 decertification petition, citing *St. Elizabeth Manor*, 329 NLRB 341 (1999).

My colleagues find that the Respondent withdrew recognition on November 17, 1999, and that such withdrawal violated Section 8(a)(5). In doing so, my colleagues do not contend that the November 3 petition was tainted. They contend only that the Union's majority status was immune from attack for a reasonable period of time after the successor employer began to bargain. See *St. Elizabeth Manor*, supra. My colleagues then conclude that a reasonable period had not elapsed.

For the reasons stated in the dissenting opinion in *St. Elizabeth Manor*, supra. 329 NLRB 341 at 346, I dis-

agree with the holding of that case.[1] See also my dissenting opinion in *Hill Park Health Care Center*, 334 NLRB 328 (2001). Accordingly, I conclude that the employees were free to reject the Union, and that the Respondent thus did not violate Section 8(a)(5) by refusing to bargain with the Union.

My view is consistent with the Supreme Court's language in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987):

> If, during negotiations, a successor questions a union's continuing majority status, the successor "may lawfully withdraw from negotiation *at any time* following recognition if it can show that the union had in fact lost its majority status at the time of the refusal to bargain or that the refusal to bargain was grounded on a good faith doubt based on objective factors that the union continued to command majority support." [482 U.S. at 41 fn. 8; Emphasis supplied.]

Further, my position properly balances the competing interests of fostering collective bargaining and ensuring employee free choice. Under *Burns*, if a majority of the successor's employees come from the predecessor, the union's majority status is presumed to continue, and the successor is obligated to honor the collective-bargaining relationship that existed between the predecessor and the union. However, if a majority of the successor's employees make it clear that they do not wish to be represented by the union, that Section 7 right must prevail. "Of paramount importance . . . is the employees' Section 7 right to select a union representative of their own choice or to have no union represent them at all." 329 NLRB 341 at 347.

The contrary result reached by my colleagues demonstrates the enormity of the majority's error in *St. Elizabeth Manor*. Under that majority view, as applied to the instant case, the "successor bar" principle serves to handcuff employees' fundamental Section 7 rights on the issue of representation. This happened not once, but at two junctures in this case. First, based on *St. Elizabeth Manor*, the Region dismissed a valid decertification petition filed promptly after the Respondent commenced operations in August 1999. Through that petition, employees sought to invoke their Section 7 right to an election to determine whether to continue Union representation. Second, relying on *St. Elizabeth*, the majority has negated the employees' *unanimous* employee petition, presented to the Respondent on November 3, 1999, stating that: "We the employees of Williams, elect not to have the Union (P.A.C.E.) represent us as a collective unit."

The effect of these applications of *St. Elizabeth Manor* is to "seriously [infringe] on employees' Section 7 rights to engage in or refrain from engaging in union activity." 329 NLRB 341 at 346.[2] Indeed, it serves to impose on unit employees—both those carryovers from the predecessor unit and new hires alike—a collective-bargaining representative that they have clearly and *unanimously* rejected. Part of the rationale of the majority's holding in *St. Elizabeth Manor* is to allow an insulated period for fruitful collective bargaining with the new employer. It is hard to imagine, however, a more fruitless bargaining endeavor where the union has little support, or as in this case, no support.

My colleagues concede that the employees demonstrated unanimous opposition to the Union in their November 3 petition. They seek to justify disregarding this clearly expressed sentiment on the basis that *St. Elizabeth Manor's* successor-bar rule is a *bright-line* test, which type of test is favored by the Board and courts because it promotes "certainty, predictability, and administrative efficiency." This argument misses the mark. In my view, none of the factors of "certainty, predictability, and administrative efficiency," considered separately, or as a whole, warrant deprivation of employees' Section 7 rights. Indeed, the fact that fundamental Section 7 rights are negatively implicated clearly demonstrates that this is an instance when such a bright-line test was improvidently adopted.

Nor are employees sufficiently safeguarded, as argued by my colleagues, because at some unspecified future date (once a "reasonable period" for bargaining has elapsed), their Section 7 rights will be resurrected. Those rights are frustrated at least for some period. Further, if the union reaches an agreement with the successor employer, the deprecation can be as much as 3 more years.

Finally, my colleagues contend that their application of the *St. Elizabeth Manor* successor-bar rule appropriately balances the competing interests of employee free choice and labor stability. I do not agree. Weighing both interests, I find that the appropriate balance must be struck in favor of employees' Section 7 right to choose whether or

[1] As set forth in the dissent in *St. Elizabeth*, that case overruled longstanding precedent. The majority herein expressly adds *Harley Davidson*, 273 NLRB 1531, to the string of overruled precedent.

[2] There is no allegation that the unanimous November 3 petition (or, indeed, the August 5 decertification petition) was tainted by any unlawful Respondent conduct. Cf. *Inn Credible Caterers*, 333 NLRB 898 (2001) (concurring opinion).

not to be represented. My colleagues, through *St. Elizabeth Manor*, improperly deprive them of this right.

In sum, I would not foreclose employee free choice. Accordingly, I dissent.

Tamara J. Gant, Esq., for the General Counsel.
R. Mark Solano, Esq., for the Respondent.
Bernard L. Middleton, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was submitted by stipulation dated May 26, 2000. The charge was filed on November 9, 1999.[1] The complaint issued on March 31, 2000. The complaint alleges that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act by failing and refusing to recognize and bargain with the Charging Party Union and by withdrawing recognition from the Union. Respondent's answer denies any violation of the Act. I find that Respondent violated the Act as alleged in the complaint.

On the entire record, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Williams Energy Services, a Delaware corporation, is engaged in the provision of petroleum storage services at various locations including its facility in Galena Park, Texas, and, based on a projection of its operations, it will annually perform services valued in excess of $50,000 directly to Colonial, Arco, Lyondell, and Shell Pipelines enterprises that are directly engaged in interstate commerce. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL–CIO, Local 4-227, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

Prior to August 1999, Respondent Williams Energy Services (Williams or the Company) entered into negotiations to purchase the Galena Park facility from Amerada Hess Corporation. Employees of Amerada Hess working as truckdrivers and operating and maintenance employees were, and since 1950 had been, represented by the Union.[2] Amerada Hess and the Union had entered into a collective-bargaining agreement that was, by its terms, effective from May 1, 1998, through April 30, 2001.[3] There was not a successorship clause in the collective-bargaining agreement.

The Union learned of the impending purchase of the Galena Park facility prior to its actual consummation, and Local Union President Tom Gentry called Joe Streif, director of independent terminals for the Company. By letter dated July 23, Gentry confirmed his call and formally requested that the Company meet with the Union and enter into negotiations "to establish wages, hours of work, and other conditions of employment for represented employees at . . . Galena Park." The Company did not respond immediately to this letter.

The Company purchased the Galena Park facility on August 2. The Company continued to operate the business in unchanged form, and it hired a majority of the former unit employees. The parties have stipulated that Williams is a successor to Amerada Hess. On August 5, a decertification petition was filed in Case 16–RD–1441 by Russell Holman, an individual. The petition reflects that, at that time, the unit contained 16 employees. This petition was dismissed on November 9, after various intervening events. The dismissal letter, citing *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999), states that after a successor employer's duty to bargain attaches a union is entitled "to a reasonable period of bargaining without challenge to its majority status through a decertification effort."

On August 12, the Union filed a charge in Case 16–CA–20026 alleging that, since July 23, Williams had refused to bargain. At some point following the filing of the charge, the stipulation does not state the date the Company agreed to meet and bargain. The charge was dismissed on September 30. The dismissal letter states that upon being contacted regarding the charge the Company "stated that it would recognize and bargain with the Union, and has, in fact done so." The letter additionally notes that, although there was a "slight delay" in the Company's response to the Union it was "not of sufficient length to constitute a refusal by Williams to recognize and bargain with the Union."

On September 29, the day prior to the dismissal of the Union's unfair labor practice charge, the parties met. The Union sought to have the Company agree to retain the existing collective-bargaining agreement. The Company rejected this proposal. Due to scheduling conflicts, no bargaining sessions were scheduled for October. The parties did agree to meet on November 5, 18, 19, and December 16 and 17.

The September 30 letter dismissing the Union's charge provided that any appeal should be filed by October 14. The Union initially requested an extension of time for filing an appeal until October 28, and thereafter requested a subsequent extension until November 12. Both requests were granted. No appeal was ever filed. The charge herein was filed November 9.

On November 3, 2 days prior to the next scheduled bargaining session, Chuck Bigi, Gulf Coast Marine Terminal Systems operations manager, found an employee petition signed by "all seventeen (17) unit employees" on his desk. The petition states:

[1] All dates are in 1999 unless otherwise indicated.

[2] The alleged and admitted appropriate unit is:

> Included: All truck drivers, operating and maintenance employees at the Galena Park facility formerly operated by Amerada Hess; excluded: All office, warehouse, technical, plant guard, clerical, and supervisory employees.

[3] The collective-bargaining agreement is between Amerada Hess and Oil, Chemical and Atomic Workers International Union, Local 4-227, the legal predecessor of the Union.

"We, the employees of Williams, elect not to have the Union (P.A.C.E.) represent us as a collective unit."

On November 5, Streif wrote Gentry, attaching a copy of the petition and noting that the Union no longer enjoyed majority support. The letter refers to 17 of 21 employees. In view of the parties' stipulation that there were 17 unit employees, it appears that Streif's figure of 21 included 4 nonunit employees. The letter asks if the Union wished to voluntarily withdraw as the employees' collective-bargaining representative or participate in a secret-ballot election conducted by the Board or a neutral third party. Streif presented this letter to Gentry at the beginning of the scheduled November 5 bargaining session. No bargaining occurred.

On November 9, the Union filed the charge herein. By letter dated November 11, Gentry advised that the found Streif's letter "to be without merit," and he requested that the Company meet on their next scheduled date, November 18.

By letter dated November 17, Streif stated that the Company intended "to abide by the wishes of the overwhelming majority of our employees" and that, therefore, it would not meet on November 18.

There is no evidence and no allegation that anyone from the Company solicited the petition from the employees or otherwise tainted the obtaining of the petition.

C. Contentions of the Parties

The General Counsel and the Charging Party contend that the Company was not privileged to refuse to meet and bargain notwithstanding its receipt of the untainted petition on November 3. Citing *St. Elizabeth Manor, Inc.*, supra, the General Counsel argues that the Union was entitled to "a reasonable period of time for bargaining without challenge to its majority status."

The Company contends that *St. Elizabeth Manor* is inapposite and incorrectly decided. In arguing that it is inapposite, the Company points out that *St. Elizabeth Manor* arose in a representational context and that the specific holding related to the processing of an employer filed RM petition. The employer had neither refused to bargain nor withdrawn recognition from the union. The Company further argues that *St. Elizabeth Manor* did not specifically overrule *Harley-Davidson Co.*, 273 NLRB 1531 (1985), which held that a successor employer "may lawfully withdraw from negotiation at any time following recognition if it can show that the union had in fact lost its majority status." In arguing that *St. Elizabeth Manor* was incorrectly decided, the Company summarizes the rationale and authority cited in the dissenting opinion in *St. Elizabeth Manor* and restates the Section 7 mandate that employees have the right to engage in self-organization or "to refrain from any or all such activities."

D. Analysis and Concluding Findings

In *St. Elizabeth Manor*, the Board adopted a "successor bar rule" and remanded the case to the Regional Director to determine whether "a reasonable period for bargaining had elapsed" at the time the RM petition therein was filed. The Board stated that it saw "no reason in law or logic why a bargaining representative's status once the successor's duty to recognize it attaches should not be given at least as much protection as is given to a representative's status following the extension of voluntary recognition after ascertaining demonstrated majority support." Id. at 344. Consistent with this rationale, the Board adopted a "successor bar" rule that would preclude petitions challenging a union's majority status "for a reasonable period after a successor employer's obligation to recognize an incumbent union is triggered." Ibid. In a footnote the decision refers to the bar as affecting both the processing of a petition "or to any other challenge to the union's majority status." Id. at fn. 8. The Board notes that, in the absence of the successor-bar rule, "the successor may be reluctant to commit itself wholeheartedly to bargain for a collective-bargaining agreement with the incumbent union when at any time following the recognition, the union's majority may be attacked." Id. at 343.

I am mindful that an employee filed decertification petition does not establish that a majority of the unit no longer desires representation. The Board's Statements of Procedure, section 101.18(a), requires that such a petition be supported by only 30 percent of the unit. Thus, I agree with the Company that there is a substantive difference between cases arising in a representational context and cases such as the instant case and *Harley-Davidson Co.*, supra, where there is objective evidence of an actual loss of majority. Contrary to the Company's argument, however, it is clear that *St. Elizabeth Manor* is applicable. Although the Board majority did not state that it was overruling *Harley-Davidson Co.*, the reference to "any other challenge to the union's majority status" in footnote 8 confirms that the Board majority intended the principle of giving a union a "reasonable period of time for bargaining without challenge to its majority status" to apply even when there is objective evidence of loss of majority. Id. at 344. The dissenting members of the Board certainly understood this to be the case. They state:

> [I]n its unfair labor practice form, the "successor bar" rule establishes a presumption which forbids the successor employer from withdrawing recognition, regardless of the facts. Thus, the majority impliedly, but necessarily, reverses *Harley-Davidson Transportation Co.*, which held that a successor employer, unlike an employer which voluntarily recognizes a majority representative in an initial organizing context, may, without bargaining for a reasonable period of time, withdraw recognition from an incumbent union if it "can show that the union had in fact lost its majority status at the time of the refusal to bargain or that the refusal to bargain was grounded on a good- faith doubt based on objective factors that the union continued to command majority support." [Id. at 347.]

The majority opinion in *St. Elizabeth Manor* does not state that the dissenting opinion is incorrect in stating the that its holding "impliedly . . . reverses" *Harley-Davidson Co.* The majority specifically responded to the assertion in the dissent that the Supreme Court had adopted the rationale of *Harley-Davidson Co.*, in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987), stating:

> The primary issue decided in *Fall River Dyeing* was whether a successor employer's obligation to bargain with the union that had represented the predecessor's employees was limited to situations in which the union in ques-

> tion had been certified only recently before the transition. The Court agreed with the Board that the obligation was not thus limited. Even if a union's majority status at the time of transition is based on the rebuttable presumption that arises 1 year after the initial certification, its majority status and the accompanying bargaining obligation will apply despite the change in employers if the work force includes a majority of the predecessor's employees. The Court's description of the presumption as rebuttable was neither necessary to the Court's ultimate decision nor surprising but was simply a reflection of Board law at the time. The issue in the present case, whether the successor's recognition should result in an irrebuttable rather than a rebuttable presumption of majority status for a reasonable period of time, was not presented in *Fall River Dyeing*. Thus, neither the Board nor the Court had any occasion to consider whether the policies of the Act might be better effectuated by providing a protected period for bargaining after a *Burns* successor's bargaining obligation is triggered. Id at fn. 7.

I reject the Company's argument that *St. Elizabeth Manor* is "a single, aberrant Board case." The case, decided by the full Board, fully discusses the underlying principles involved and announces the concept of a successor bar pursuant to which a recognized collective-bargaining representative is given an "irrebuttable rather than a rebuttable presumption of majority status for a reasonable period of time." Id. Insofar as this is the requirement of current Board precedent, I am obligated to apply it.

The Board, in *St. Elizabeth Manor*, remanded the case to the Regional Director for a determination of whether there had been a "reasonable period of time" for bargaining. In that case, the parties had held three bargaining sessions in a 3-month period. In the instant case, the parties met twice. At the single bargaining session that was held, the Company rejected the Union's proposal that it adopt the collective-bargaining agreement into which it had entered with the Company's predecessor. At the scheduled November 5 bargaining session, Streif presented his letter attaching the petition to Gentry. There was no bargaining after this event. I find that there had not been a reasonable period of time for bargaining. See *Gerrino Restaurant*, 306 NLRB 86, 90 (1992); *King Soopers, Inc.*, 295 NLRB 35, 37 (1989).

The complaint alleges, but the answer denies, that the Company failed and refused to recognize and bargain with the Union on November 5, the date that Streif presented his letter and the petition to Gentry. The letter states that "your union no longer enjoys majority support" and asks whether the Union wishes to withdraw as the employees' collective-bargaining representative or go to an election. I find that the foregoing letter constituted, at the least, a refusal to recognize and bargain pending the outcome of an election, a condition upon which the Company, having voluntarily recognized the Union, could not predicate its actions. This finding is virtually immaterial since the complaint alleges and the answer admits that the Company withdrew recognition from the Union on November 17. Consistent with the principles enunciated in *St. Elizabeth Manor*, I find that the Company's actions violated Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing and refusing to bargain with the Union and by withdrawing recognition from the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having unlawfully failed and refused to bargain with the Union and having withdrawn recognition from the Union, Respondent shall be ordered to recognize and meet and bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit. *Exxel-Atmos, Inc.*, 323 NLRB 888 (1997).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Williams Energy Services, Galena Park, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from, and refusing to meet and bargain collectively with, Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL–CIO, Local 4-227, the Union, as the exclusive bargaining representative of its employees in the appropriate bargaining unit set forth below.

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

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

(a) On request, recognize, meet and bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of its employees in the unit described below, regarding wages, hours, and other terms and conditions of employment, and if an agreement is reached, embody it in a signed contract. The appropriate unit is:

> All truck drivers, operating and maintenance employees employed at the Galena Park facility; excluding all office, warehouse, technical, plant guard, clerical, and supervisory employees.

(b) Within 14 days after service by the Region, post at its facility in Galena Park, Texas, copies of the attached notice

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

marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 5, 1999.

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

[5] 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.

WE WILL NOT withdraw recognition from, and refuse to meet and bargain collectively with, Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL—CIO, Local 4-227, the Union, as your exclusive bargaining representative in the appropriate bargaining unit set forth below.

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

WE WILL, on request, recognize and bargain in good faith with the Union as your exclusive collective-bargaining representative in the following appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed written agreement:

> All truck drivers, operating and maintenance employees employed at the Galena Park facility; excluding all office, warehouse, technical, plant guard, clerical, and supervisory employees.

WILLIAMS ENERGY SERVICES