After carefully examining all testimonial and documentary evidence in the record, we agree with the Administrative Law Judge's conclusion that Respondent attended and nominally participated in numerous bargaining sessions without any intention of reaching an agreement and that it purposefully engaged in bargaining tactics which effectively precluded the negotiation of a contract. Thus, the Administrative Law Judge found, and we agree, that Respondent persistently refused to negotiate concerning economic issues despite the Union's repeated request for such discussion.\(^\text{5}\) attempted to exclude from the bargaining unit certain categories of employees includable under the terms of the Regional Director's Certification of Representative,\(^\text{4}\) adamently refused to consider any provision concerning union security or any alteration of its proposed volunteers clause, unreasonably delayed in responding to the Union's repeated requests for the job descriptions of employees, and refused to meet with union negotiators on a number of occasions, including during a 2-month period after charges were filed against the Union by Respondent and prior to the dismissal of the charges.

We further agree with the Administrative Law Judge's finding that Respondent's conduct during the bargaining session of October 18, 1976, the day before the strike was scheduled to commence, constitutes particularly strong evidence that Respondent failed to take seriously its duty to bargain in good faith. The proposals submitted by Respondent during the October 18 meeting were more restrictive than agreements reached earlier or cut back substantially the then-current benefits of employees. By its demonstrated unwillingness to engage in meaningful negotiation, Respondent frustrated and undermined the collective-bargaining process. Accordingly, on the basis of the record as a whole and in light of the totality of Respondent's conduct during the negotiations, we hold that the Administrative Law Judge correctly concluded that Respondent violated Section 8(a)(5) and (1) of the Act.

We disagree, however, with the Administrative Law Judge's conclusion that Respondent's position

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1. Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Steel Wall Products, Inc., 91 NLRB 544 (1950), enf'd 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

2. Essentially, the bargaining unit, described at part 2(a) of the Administrative Law Judge's Decision, includes counselors, the abortion and pop clinic coordinators, nurses aides and trainees, and excludes secretaries, bookkeeping employees, nurses, and physicians. In September 1976, the Regional Director clarified the unit and added the classifications of medical chart clerks, admitting officers, receptionists, and maintenance employees.

3. Initially, the Union suggested that noneconomic issues be discussed first, but later it requested discussion of wages and other economic issues. Respondent then refused to discuss such issues for many months. In addition, we note as found by the Administrative Law Judge, that in more than a year of negotiations Respondent at no time gave the Union a comprehensive contract draft, though it refused to use the Union's contract draft of December 5, 1975, as a working model from which to negotiate.

4. Respondent did not agree to accept the Regional Director's description of the bargaining unit until November 19, 1976. Prior to that date, Respondent insisted on the exclusion from the unit of trainees and part-time employees who worked fewer than 16 hours per week, notwithstanding the fact that the Regional Director's Certification of Representative of May 1975 included in the unit both trainees and regular part-time employees.
on the question of management rights constituted evidence of a refusal to bargain in good faith. Respondent submitted its management-rights proposal during the June 8, 1976, negotiating session. It provided, inter alia, that except where such rights are specifically relinquished or limited by the contract, the Employer retains all prior rights and, in addition, retains the unquestioned right to manage the affairs of the clinic and to direct the work force. In addition, the June 8 proposal conferred on Respondent a number of specific rights with respect to the operation of the clinic and the utilization of employees, including, inter alia, the right to discontinue processes or operations or to discontinue their performance by employees; the right to relieve employees from duty for any legitimate reason in the best interests of employees; the right to prescribe, modify, and enforce reasonable rules regarding discipline and work performance; and the right to establish contracts of subcontracts for clinic operations. Finally, Respondent's proposal provided that such rights were irrevocable in any grievance or arbitration proceeding but that the manner of the exercise of such rights might be subject to the grievance procedure.

Reasoning that Respondent's chief negotiator in all probability knew that the broad management-rights clause he had proposed would be unacceptable to the Union and would result in fruitless discussion, the Administrative Law Judge concluded that the clause in issue constituted another indicium that Respondent's conduct was designed to prolong the negotiations. We disagree. It is not illegal per se for an employer to propose and bargain concerning a broad management-rights clause. Hence, Respondent did not violate Section 8(a)(5) by the mere act of proposing the provision in question. And, while a rigid and inflexible insistence on the inclusion in a contract of a sweeping management-rights clause may under some circumstances constitute evidence of bad-faith bargaining, the record reveals that Respondent did not adopt an intransigent position with respect to the provision in question. After a brief discussion of the management-rights proposal on June 8, the parties moved on to discuss other issues. On August 19, the Union submitted a counterproposal dealing with management rights. On August 25, Respondent submitted its own counterproposal, which the Union agreed to accept on that date. Hence, contrary to the Administrative Law Judge's conclusion, it appears that Respondent, though it waited 6 months to submit its initial proposal of broad management rights that were not to be revocable in a grievance or arbitration proceeding, did not in fact impede the negotiating process in submitting its proposal.

We further disagree with the Administrative Law Judge's conclusion that the bellicose and argumentative behavior of Leon Kowal, Respondent's chief negotiator, constituted independent evidence of Respondent's refusal to bargain in good faith. While Kowal admittedly engaged in a number of arguments with union representatives during the negotiations, such behavior often accompanies attempts by the parties to hammer out an agreement and to compromise their differences. In our view, Kowal's bellicose manner, standing alone, was not sufficiently extreme or disruptive to constitute evidence of a refusal to bargain in good faith.

With respect to Respondent's questioning of its health care employees about their strike intentions, the Administrative Law Judge found that Respondent may lawfully engage in such questioning but that Respondent violated Section 8(a)(1) by telling employees that their jobs would be in jeopardy if they did not respond to the questioning. For the reasons stated below, we agree with these findings.

After the Union sent Respondent a 10-day notice concerning its intention to institute a strike, as required by Section 8(l) of the Act, Diane Richards, Respondent's director, instructed Preterm's supervisors to ask all employees whether they intended to work during the strike. Subsequently, Yvonne Sullivan, the coordinator of medical records and telephone counselors, individually questioned 11 employees, asking each whether she intended to report for work on the first day of the strike. Sullivan explained that she was asking for scheduling purposes. When two of the questioned employees, Ann Wax and Joan Levine, refused to respond to her inquiry, Sullivan told each woman that if she refused to answer Sullivan would assume she was not coming to work and was therefore putting her job in jeopardy.

On October 5, 1976, 5 days later, Respondent circulated a questionnaire among its employees to determine whether or not they would report for work during the strike. The memorandum which accompanied the questionnaire explained:

Mr. Small [a negotiator for the Union] also charged Preterm with having committed an unfair labor practice by making inquiries concerning your intentions of reporting to work on October 19, 1976. We are assured we can inquire of our employees as to their intentions of coming to work at the beginning of the strike. Our purpose in asking you is to make it possible to schedule incoming patients and have employees available

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to take care of them. We want to assure you that you are free to make your own decision. No reprisals will be taken against you whatever your decision may be.

If you refuse to answer, we will not know whether you will be working and will therefore have to schedule a replacement.

The Administrative Law Judge concluded that a health care institution which has received a 10-day strike notice may properly attempt to determine whether or not employees intend to participate in the anticipated strike. We agree. In enacting Section 8(g), Congress was concerned about insuring the continuity of patient health care. Accordingly, the Administrative Law Judge correctly concluded that once an employer receives a 10-day notice and a strike therefore appears imminent he may properly attempt to determine the need for replacements by asking employees if they intend to strike.

The Administrative Law Judge held, however, that Sullivan exceeded the bounds of permissible inquiry in warning employees Wax and Levine that if they refused to answer her inquiry she would assume they would not report for work during the strike and were therefore putting their jobs in jeopardy. Sullivan’s remarks could reasonably have been interpreted by the employees as a threat to discharge them if they participated in the strike. Inasmuch as such threats violate Section 8(a)(1) of the Act, we adopt the Administrative Law Judge’s holding.

In reaching his conclusions, the Administrative Law Judge, in addition to analyzing Sullivan’s conversation with Wax and Levine, also stated that he believed the strict safeguards of Johnnie’s Poultry Co. and John Bishop Poultry Co. should be relaxed” in cases involving the interrogation of prospective strikers by health care institutions. The General Counsel excepted, contending that the safeguards outlined in Johnnie’s Poultry Co., supra, and Strakosne Construction Co., Inc., should regulate the manner in which such interrogation is deconducted, citing the Board’s decision in Commercial Management, Inc., 233 NLRB 665, 676 (1977).

We agree with the General Counsel. In order to lessen the inherently coercive effect of the polling of its employees, Respondent had an obligation to explain fully the purpose of the questioning, to assure the employees that no reprisals would be taken against them as a result of their response, and to refrain from otherwise creating a coercive atmosphere. By the failure of its representative to comply with these requirements in questioning a number of employees, Respondent interfered with, restrained, and coerced its employees in the exercise of their right to engage in protected concerted activity.

In contrast, however, Respondent’s memorandum of October 5 satisfied these requirements in full. That memorandum explained the purpose of the questionnaire in a clear manner, informed the employees that they were free to make their own decision, and assured them that no reprisals would be taken against them because of their decision on whether or not to strike. Hence, in distributing its memorandum and questionnaire, Respondent did not exceed its right to determine the strike intentions of its employees.

The Remedy

In adopting the Administrative Law Judge’s recommended Order, we agree with him that backpay shall commence for each striking employee 5 days after he or she makes an unconditional offer to return to work. Drug Package Company, Inc., 228 NLRB 108 (1977). This provision is, however, subject to the caveat that if Respondent herein has already rejected or hereafter rejects, unduly delays, or ignores any unconditional offer to return to work, or attaches unlawful conditions to its offer of reinstatement, the 5-day period serves no useful purpose and backpay will commence as of the date of the unconditional offer to return. Newport News Shipbuilding and Dry Dock Company, 236 NLRB 1637 (1978). And while here bound by these cases as representing the Board majority view, Chairman Fanning and Member Jenkins note that, in accordance with their dissent in Drug Package Company, Inc., they would make whole employees who apply for reinstatement without a 5-day waiting period.

Respondent excepted to the Administrative Law Judge’s recommendation that Respondent be ordered to reimburse the employee-members of the Union’s negotiating committee for any wages lost while attending past negotiating sessions. We have decided to adopt the Administrative Law Judge’s recommendation. See M.F.A. Milling Company, 170 NLRB 1079 (1968), enfd. sub nom. Local 676, Laborers’, 463 F.2d 953 (D.C. Cir. 1972). However, interest on such wages should be computed in the same manner as the interest on backpay rather than at the specific rate of 7 percent specified by the Administrative Law Judge.
ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Preterm, Inc., Brookline, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Administrative Law Judge's recommended Order, as so modified:

1. Insert the following as paragraph (c) and reletter the remaining paragraphs accordingly:
   "(c) Coercively interrogating employees concerning their intention to work during a strike and threatening job loss for failure to respond."

2. Add the phrase "as modified by the remedy section of the Board's Decision" to the last sentence of paragraph 2(a).

3. Substitute the following for paragraph 2(d):
   "(d) Make whole each employee-member of the negotiating committee of the Union for earnings lost while attending past bargaining sessions, with interest computed in the same manner as that specified by the Administrative Law Judge for the computation of interest on backpay."

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

After a hearing in which all parties had an opportunity to present evidence, to examine and cross-examine witnesses, and to submit legal briefs, it has been determined that we have violated the National Labor Relations Act, and we have been ordered to post the following:

We will not fail or refuse to furnish the Union, with reasonable promptness, information duly requested by it concerning employees' wages, hours, or terms or conditions of employment that is relevant to the Union's collective-bargaining duties, including the administration of any subsisting contract.

We will not coercively interrogate employees about their intention to work during a strike or threaten job loss for their failure to respond.

We will not threaten to replace permanently any employees who participate in a lawful strike in protest of our unfair labor practices.

We will not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act.

We will, upon request, bargain collectively concerning rates of pay, wages, hours of employment, and other terms and conditions of employment with District 1199, National Union of Hospital and Health Care Employees, a Division of RWDSU, AFL-CIO, as the exclusive collective-bargaining representative of all the employees in the appropriate unit described below, and if an agreement is reached, we will embody it in a signed contract. The Union's certification year shall extend 1 year from the date such new bargaining negotiations begin. The appropriate unit is:

All full-time and regular part-time counselors, telephone counselors, the abortion coordinator, nurses aides, supervisor of the telephone room, pap clinic coordinator, medical chart clerks, admitting officers, receptionists, including the first floor receptionist and medical center manager, maintenance employee, and trainees, employed at the Employer's Brookline, Massachusetts, location, but excluding bookkeeping employees, administrative assistant, administrative secretary, medical director's secretary, all other coordinators, counselor training assistants, and evaluators, student interns, registered nurses, licensed practical nurses, physicians, physicians' assistants, guards, and supervisors as defined in the Act.

We will reimburse employee-members of the union negotiating committee for wages lost, if any, while attending past negotiating sessions, with appropriate interest.

We will, upon their application, offer immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed, to all our employees who have engaged in a strike which began on October 19, 1976, and who have not already been reinstated, dismissing, if necessary, any employees hired as replacements since the beginning of the strike. If insufficient jobs are not available for these employees, they shall be placed on a preferential hiring list and will be offered employment before any other persons are hired for such work.

We will make such applicants whole for any loss of earnings, together with interest thereon.
they may suffer by reason of any refusal on our part to reinstate them beginning 5 days after their application for reinstatement until the date of our offer of reinstatement.

Preterm, Inc.

DECISION

STATEMENT OF THE CASE

HERBERT SILBERMAN, Administrative Law Judge: These consolidated proceedings were heard in Boston, Massachusetts, on various days between February 28 and March 31, 1977. In addition, the deposition of Yvonne Sullivan taken on April 21, 1977, was made part of the record by an Order issued on May 2, 1977. Thereafter, pursuant to leave given the parties, briefs were filed with the Administrative Law Judge on behalf of General Counsel and Respondent.

Upon the entire record in the cases and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Preterm, Inc., herein sometimes called the Company, the Clinic, or the Employer, is a nonprofit Massachusetts corporation engaged in providing family planning services on an outpatient basis from its place of business in Brookline, Massachusetts. Respondent's annual income is in excess of $250,000 and annually it receives medical supplies, materials, and equipment valued in excess of $50,000 which are shipped to its Brookline facility through channels of interstate commerce from locations outside the Commonwealth of Massachusetts. The complaint alleges, Respondent admits, and I find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

District 1199 Mass. National Union of Hospital and Health Care Employees, a Division of RWDSU/AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Pleadings

The charge and the amended charge of unfair labor practices in Case 1-CA-12325 were filed by the Union on October 14 and November 29, 1976, respectively. A complaint thereon was issued on January 5, 1977, which was amended on February 24, 1977, and was further amended at the opening of the hearing. The complaint, as amended, in substance, alleges that, in violation of Section 8(a)(5) and (1) of the Act since April 14, 1976, Respondent has refused to bargain collectively with the Union as the duly certified representative of a unit of the Company's employees, as alleged in paragraph 13, by:

(a) refusing since April 14, 1976, to submit or discuss economic proposals unless the Union agreed to a recognition clause proposed by the Company which would exclude certain job classifications included in the collective-bargaining unit certified by the Board;
(b) refusing since October 8, 1976, to submit or discuss economic proposals after the Union had issued a 10-day notice of strike;
(c) making a proposal on October 18, 1976, the last of 21 negotiating sessions before the commencement of a strike, increasing the number of hours of work per week required for an employee to retain or to obtain full-time employee status;
(d) refusing to furnish the Union information requested by it regarding: (1) the job classifications of employees in the collective-bargaining unit, (2) employer and employee contributions under the Company's Blue Cross/Blue Shield health plan, (3) the life insurance and disability insurance policies, and (4) "the names of all employees and their wages and the base salary for job classifications";
(e) imposing as a condition before it will make economic proposals that agreement be reached on all noneconomic issues despite repeated requests by the Union for economic proposals.

The complaint further alleges that on October 19 Respondent's employees went on a strike caused by Respondent's unfair labor practices. Respondent duly filed an answer to the complaint denying that it has engaged in the alleged unfair labor practices.

By an Order of the Board on March 24, 1977, reversing a contrary ruling by the Administrative Law Judge, Case 1-CA 12326 was consolidated with Case 1-CA-12325, and the complaint in the latter case was further amended to reflect such consolidation and to add to paragraph 13 the following:

(f) interrogating employees about their strike intentions and, at the same time, threatening permanently to replace them, which was done on October 7, 1976, by Respondent's agent, Yvonne Sullivan;
(g) during negotiations, on October 18, 1976, by its agent, Leon Kowal, in the presence of employees, reiterating its refusal to give economic proposals because of the pending strike notice;
(h) on October 18, 1976, by its agent, Leon Kowal, threatening permanently to replace employees who are alleged to be unfair labor practice strikers;
(i) threatening to replace permanently employees who are alleged to be unfair labor practice strikers by Respondent's agent, Diane Richards, in a letter writ-

1 Upon review of the deposition of Yvonne Sullivan, I find that there are no pending objections to any of the answers given by Yvonne Sullivan.

2 A charge of unfair labor practices was filed by the Union in said case on October 14.
ten by her to Respondent's employees on October 1, 1976.

These additional allegations of unfair labor practices were duly denied by Respondent.

Thereafter, during the hearing, counsel for the General Counsel made a motion further to amend the complaint by alleging that the incidents set forth in subparagraphs (f), (g), (h), and (i), of paragraph 13 of the complaint constitute violations of Section 8(a)(1) independent of the alleged violations of Section 8(a)(5). This motion was denied. Subsequently, by a motion in writing dated July 7, 1977, General Counsel moved to amend the complaint by deleting subparagraphs (f) through (i) inclusive from paragraph 13 of the complaint and repeating the subparagraphs separately as incidents constituting interference with and restraint and coercion of employees in the exercise of their rights guaranteed in Section 7 of the Act. Respondent duly filed objections to this motion. I deny the motion for the following reasons: First, subparagraphs (f) through (i) inclusive were added to paragraph 13 of the complaint by an Order of the Board. I have no authority to act upon General Counsel's motion, which would modify the Board's Order. Second, the proposed amendment is unnecessary. The incidents embraced by the allegations set forth in subparagraphs (f) through (i) were fully litigated at the hearing. The complaint alleges that there constitute violations of Section 8(a)(1) as well as 8(a)(5). The remedy will be the same regardless of whether or not these allegations are pleaded as violations of Section 8(a)(1) independent of any other violations of the Act.

The underpinning of the complaint, as explained by counsel for the General Counsel in her opening statement, is that the Company engaged in negotiations with the Union with no intention of reaching an agreement, and the incidents set forth in paragraph 13 are illustrative of Respondent's bad faith.

B. Background

1. The Employer's operations

Preterm, Inc., operates an ambulatory clinic in the area of reproductive health care. It provides abortion, gynecological, female sterilization, and male sterilization services. As an adjunct to the abortion clinic, the Company operates a postabortion clinic which provides checkups for patients. The abortion (AB) clinic and the gynecological (GYN) clinic each serve about 12,000 patients per year. The Company employs approximately 100 persons on its regular payroll and about 40 independent contractors, mostly physicians. The abortion clinic, gynecological clinic, laparoscopy clinic, vasectomy clinic, and postabortion clinic are staffed with lay counselors who provide the patients with information concerning the procedures involved and other relevant matters and, in the case of the abortion clinic, with counselors who remain with the patients while they are submitting to the medical procedures.

The principal management officials of the Company are Jane Levin, its administrator, and Diane Richards, its director. Also functioning in supervisory capacities are Deborah Feinblatt, coordinator for abortion counseling, and Yvonne Sullivan, coordinator for telephone counseling and the medical records department.

2. The representation proceedings

A petition having been filed by the Union in Case 1 RC-13642 seeking certification as a representative of the Company's employees and a hearing thereon having been held, a Decision and Direction of Election was issued on April 14, 1975, by the Regional Director for Region 1. The Decision disposed of various disputes concerning the composition of the appropriate collective-bargaining unit, except that no determination was made with respect to medical chart clerks, the supervisor of the medical chart room, receptionists, admitting officers, and the maintenance employee, in accordance with the Board's decision in Baptist Medical Center-Princeton, 216 NLRB 516 (1975), and those employees were permitted to vote subject to challenge. The tally of ballots for the election held on May 10, 1975, shows that of approximately 51 eligible voters, 38 votes were cast for the Union, 3 votes were cast against the Union, and 8 ballots were challenged. As the challenged ballots were not sufficient to affect the results of the election, the Regional Director for Region 1 issued a Certification of Representative, dated May 19, 1975, certifying the Union as the exclusive representative of the employees in the following described unit:

All full-time and regular part-time counselors, telephone counselors, the abortion coordinator, nurses' aides, supervisor of telephone room, workup clinic coordinator, and trainees, employed at the Employer's Brookline, Massachusetts location, excluding bookkeeping employees, administrative assistant, administrative secretary, medical director's secretary, all other coordinators, counselor training assistants and evaluators, student interns, registered nurses, licensed practical nurses, physicians, physicians' assistants, guards and supervisors as defined in the Act.

Subsequently, on September 8, 1976, the Regional Director for Region 1 issued a Decision and Clarification of Bargaining Unit in Case 1 UC-192, which clarified the certified unit described above by adding as included categories "medical chart clerks, admitting officers, receptionists, including the first floor receptionist and medical center manager, maintenance employee." The Company and the Union participated in 15 negotiating sessions before the date on which the unit clarification decision was issued.

C. The Negotiations

1. Introduction

Although the certification was issued on May 19, 1975, more than 6 months elapsed before the Union requested a meeting with the Company. The explanation for the delay is that, because there was a large turnover of personnel during the summer months, the employees waited until the work force had become stable before they began to draft their contract demands, and in consequence it was November before they were able to assemble their proposals.
The Company was represented at the negotiating sessions by its attorney, Leon Kowal, who sometimes was assisted by his associate, Harold Kowal. Jane Levin and Diane Richards also attended negotiating sessions, although neither attended all the meetings. The union representatives at the negotiating sessions were its president, Elliott Small, and its organizer, Deborah Megrian. Another organizer, Ken Allen, attended the December 1, 1975, meeting but thereafter resigned his position with the Union and attended no later meetings. Elliott Small attended all meetings except those on December 1, 1975, and February 3 and August 19, 1976. Deborah Megrian attended all the negotiating sessions except the one on June 14. In addition to the union representatives, the employees were represented by members of their negotiating committee. The committee was informally selected. In practice, anyone who volunteered to attend a negotiating session was deemed a member of the committee. From time to time, members of the Union's negotiating committee prepared and circulated among the Company's employees newsletters which described the progress of the negotiations and other matters of interest to the employees.

The Company and the Union participated in 25 negotiating sessions between the first meeting on December 1, 1975, and the last meeting prior to the hearing in these cases on January 24, 1977. There were 21 meetings between December 1, 1975, and October 19, 1976, when the employees went on strike. The last nine meetings preceding the strike were conducted under the auspices of Federal mediators, as were the four meetings held thereafter. The principal issue in this case is whether the Company participated in the negotiations with a good-faith intention of arriving at a collective-bargaining agreement if possible or whether the Company attended meetings, exchanged proposals, and engaged in related activities merely to convey the appearance that it was engaged in collective bargaining, although it had no intention of reaching an agreement with the Union—a tactic which is calculated to frustrate negotiations, disillusion employees with their representative, and undermine the strength of the Union. Subsidiary to this basic question is whether certain conduct of the Company, independent of the Company's general negotiating tactics, constitutes violations of the Act.

The Company adduced considerable testimony about events not directly related to the negotiations, such as the distribution of handbills to the neighbors of Mrs. Levin and Mrs. Richards, damage to property of the Clinic and of its principals (for which union responsibility was not established), and union misconduct in connection with the picketing of the Company's premises. Events occurring away from the negotiating sessions can influence a party's attitude in regard to the bargaining. The strike and other conduct was intended to exert pressure on the Clinic to conclude an agreement with the Union. However, such tactics can backfire, and instead of weakening resistance to the union's demands they sometimes strengthen the employer's resolve. In this case the strike and the other pressures against the Company were not successful. I have given consideration to the evidence adduced at the hearing regarding such extraneous events, and in reaching my decision I have taken into account the fact that a firm resolve not to capitulate to a strike, to force, or to other pressures exerted away from the bargaining table is understandable, is not unlawful, and does not evidence bad faith in the collective-bargaining negotiations.

The principal witnesses in regard to the negotiations were Deborah Megrian for the General Counsel and Leon Kowal for Respondent. Both Megrian and Leon Kowal in large part depended on notes, which they and others had taken, to describe the transitions about which they testified. There is considerable conflict between the testimony of Mrs. Megrian and Mr. Kowal. The latter undertook the difficult task of representing Respondent in the hearing of these proceedings and also offering himself as the principal witness for the Company. The transition from advocate in the case to a witness in the case is difficult to make. In this Leon Kowal was unsuccessful. His testimony, which reflects his passionate advocacy of his client's cause, went beyond the recitation of events as he remembered them to include perorations justifying his bargaining conduct and angry outbursts. Megrian was an unruffled and straightforward witness. Although I do not accept all her testimony, I find that she was more creditable than Leon Kowal and was generally a reliable witness.

There were 14 days of hearing in this matter, and many exhibits were introduced in evidence. To summarize all the testimony and to describe all the exhibits would unduly lengthen this Decision. My discussion of the evidence is limited to such facts as I believe are helpful in describing the bases for my conclusions. The description below as to what transpired at each of the meetings purports neither to be complete nor to set forth the topics discussed in the sequence that they were discussed. However, my findings are derived from consideration of all the evidence adduced at the hearing, including the conflicts of testimony, and not from just the events herein summarized.

2. The meetings

December 1, 1975: Present were Leon Kowal, the Company's attorney and principal negotiator, Union Organizers Ken Allen and Deborah Megrian, and four members of the bargaining committee. No substantive subjects were discussed. Allen promised that he would mail to Leon Kowal the Union's demands. Allen suggested, and Kowal agreed, that the negotiators would consider and discuss noneconomic issues before the economic issues.

On December 5, 1975, the Union mailed to Leon Kowal a draft of a contract and additional departmental demands. The items are simply phrased and not lengthy. December 29, 1975, and January 26, 1976. These sessions.

were devoted to a review and discussion of the Union's contract proposals. At the December 29 meeting, the Union requested that the Company furnish job descriptions for all the bargaining unit positions and information regarding its life, health, and disability insurance, including Blue Cross/Blue Shield, which it currently was providing its employees. The Company promised that it would give the Union the requested information. At the January 26 meeting, the Union submitted to the Company 16 demands on behalf of the abortion counselors and 4 demands on behalf of the gynecological counselors. There was very little discussion of the various departmental demands, and after the strike began the Union offered to withdraw all the departmental demands. Also at the January 26 meeting, Union President Elliott Small reaffirmed the understanding that the noneconomic issues would be discussed before the economic issues.

February 2: At this meeting the Company submitted several proposals, which are set forth below.

a. Recognition

In its contract draft (GC-3), the Union included the following recognition clause: "Those covered under the contract will be all aides, counselors, telephone counselors, receptionists, chart room people, autoclave technicians, and maintenance people." The Company's proposal (GC-4) was as follows:

The Employer recognizes the Union as the collective bargaining agent for the following classifications of its employees who are employed at its location in Brookline, Massachusetts:

All full time Abortion Counselors, Gyn Counselors, and Telephone Counselors;

Excluded are all other employees including:

Nurses Aides,
Office and Medical Clerical Employees,
Bookkeeping Employees,
Medical Chart Clerks,
Administrative Assistant,
Administrative Secretary,
Coordinators,
Receptionists, Office Clerical,
Admitting Officers,
Counselor Training Assistants and Evaluators,
Supervisor of Telephone Room and Medical Chart Room,
Student Interns,
Trainees,
Registered Nurses,
Licensed Practical Nurses,
Physician's Assistants,
Registered Nurse Practitioner,
Doctors,
Medical Center Manager,
Maintenance Employees,
Guards and Supervisors within the meaning of the Act.

For the purposes of this Article only employees who are regularly scheduled and are regularly employed for 20 or more hours per week shall be considered full time employees.

The Employer agrees to meet and bargain with accredited representatives of the Union on all matters pertaining to wages, hours and conditions of employment.

Although the Union's recognition clause is inartfully phrased, in general it includes the classifications described in the May 19, 1975, certification plus the undetermined classifications referred to in the Decision in Case 1-RC 13642. The recognition clause submitted by the Company, on the other hand, almost completely ignores the Decision in that case, which, over the objections of the Employer, specifically included in the appropriate unit the following: part-time employees; nurses aides; abortion counselor; supervisor of telephone room; pap clinic coordinator; and trainees. Nevertheless, these classifications—as well as the classifications which were permitted to vote subject to challenge—were excluded from the recognition clause proposed by the Company. Leon Kowal's explanation for these deviations from the certification is that the Union was "seeking to negotiate into the contract the four challenged positions; and frankly, my first instinct was, since they were trying to add some, I would leave a few out to negotiate." However, the difference between the Union's tactic and the Company's tactic is that the Union sought to include in the recognition clause the classifications as to which the Regional Director had deferred decision, while the Employer sought to exclude not only those classifications but also classifications which were specifically included in the certified unit. Although in the course of bargaining the Employer receded to some extent from its obstructionist position regarding exclusions from the certified unit, it remained steadfast in its insistence that part-time employees (except those who work at least 20 hours per week—later changed to 16 hours per week) and trainees should be excluded—despite the language of the certification.

During the discussions at this meeting, it was agreed that the abortion coordinator should be included in the recognition clause of its Employees who are employed at its location in Brookline, Massachusetts:

Physician's Assistants.

6 On September 8, the Company gave the Union a booklet describing the employees' Blue Cross/Blue Shield coverage. It was not until November 26 that the Company provided all the information that the Union previously had requested.

7 Similar departmental demands had been submitted with the December 5 contract proposals covering nurses aides, autoclave technicians, and telephone counselors.

8 For reference purposes the exhibit number of various documents in evidence will be noted as "GC-" or "R-"
nized unit and that the supervisor of the telephone room and chart room should be excluded. Also, it was agreed to exclude the supervisor of Saturday counselors.  

b. Seniority

The Company's proposal (GC-5) is as follows:

(a) Seniority shall be based upon length of service and shall be applicable solely within classifications.
(b) Seniority shall become effective upon the completion of an Employee's probationary period and shall begin from his/her first day of employment in the classification.
(c) The probationary period shall be 3 months of continuous employment from the date of hire, during which time the Clinic, at its sole discretion may terminate said employment. If an Employee accepts a position in another classification she will be on probation for an additional 3 month period.
(d) The principle of seniority shall be recognized in the laying off and rehiring of Employees insofar as it is consistent with efficient operations.

Where a layoff is to occur the Clinic will attempt to apply it in the following order within each classification:
1. Temporary Employees
2. Regular part time Employees
3. Regular four day Employees
4. Regular 5 day Employees

Where it is necessary to lay off 4 and/or 5 day Employees and part-time positions are available said Employee may elect to work part time with the 5 day Employees having the first option in order of their seniority. Recall of Employees will be made in the inverse order of seniority in the same manner as described above.

(e) An Employee shall cease to have seniority rights if:
   (1) He/she quits voluntarily.
   (2) He/she is discharged for proper cause.
   (3) He/she is absent for five (5) consecutive working days without notifying the Clinic.
   (4) He/she does not return to work within three (3) working days after being recalled by the Clinic by a letter sent by registered mail with return receipt requested, addressed to him/her at the last address he/she has given the Clinic.
   (5) He/she exceeds a leave of absence without written approval of the Clinic.
   (6) An Employee has been on lay off for a period of 9 months or length of service in their classification, whichever is sooner.  

This is an extremely restrictive proposal which was bound to develop controversy. First, it gives the Employer wide discretion in its application, as the principle of seniority is recognized only "insofar as it is consistent with efficient operations." Second, seniority accrues only after completion of a 3 months' probationary period. Third, seniority applies within classifications only. Thus, employees who change positions within the Company lose their accrued seniority; and some classifications have very few employees, so that as to them the seniority proposal is almost valueless. Fourth, although 4-day and 5-day employees theretofore had been considered by the Employer full-time employees, the Company's proposal gives preference to 5-day employees over 4-day employees.

c. Grievance procedure (GC-13) and arbitration (GC-14)

The Company's proposals in regard to these topics differ from the Union's proposals. Agreement on an arbitration provision was reached at the June 28 meeting, but there was no agreement as to a grievance procedure. The Union objected to the Company's proposed grievance procedure because: (1) a grievance at the first step had to be in writing; (2) a grievance had to be signed by an employee and could not be signed by the Union; and (3) the employees were given 5 days from the date of the occurrence, rather than from the date on which they obtained knowledge of the occurrence, within which to file a grievance.

d. Bulletin board

The employer submitted the following (GC-16):

The Clinic shall provide a Bulletin Board for the purpose of posting notices of Union meetings or Union activities. No statements derogatory of the Employer shall be posted.

The corresponding provision in the Union's contract draft is as follows:

1. A representative of the Union shall have reasonable access to the Employer's premises for the purpose of conferring with the Employer, delegates of the Union and/or Employees, and for the purpose of administering this Agreement.
2. The Employer shall provide Bulletin Boards which shall be used for the purpose of posting proper Union notices. Such Bulletin Boards shall be placed conspicuously and at places readily accessible to workers in the course of employment.

Agreement was reached with respect to the Company's bulletin board proposal at the June 14 meeting.

e. Meetings

The Company submitted the following proposal (GC-12):

Employees who are required to attend Clinic meetings—for any purpose shall be paid for time spent at the appropriate hourly rate.

This provision was agreed to in June.

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10 Linda Chichelli, the occupant of this position, was permitted to vote under challenge because on the record before him the Regional Director was unable to determine her supervisory status.

11 The Union's contract draft also includes a seniority provision.
I. Volunteers

The Company submitted the following proposal (GC 17):

It is understood and agreed that the principle of using volunteers in connection with the non-profit and community related interests of the clinic shall be maintained. Employees shall cooperate fully with volunteers.

The Union was willing to accept the provision provided that language was added to the effect that volunteers would not be used to displace bargaining-unit employees. At this meeting and at subsequent meetings, this proposal was the subject of considerable discussion. While Leon Kowal insisted that it was not the intention of the Company to replace employees with volunteers and that the Company had not done so in the past, he was adamant in his refusal to consider the modification suggested by the Union. His objection was that conflicts of opinion could develop as to whether or not volunteers were used to displace bargaining unit members and that such disputes could lead to a plethora of arbitrations. It would not seem that the language proposed by the Union, namely, that volunteers would not be used to replace bargaining unit employees, would, in practice, be subject to misinterpretation or would prevent the Employer from expanding its use of volunteers as its activities increase.

At this meeting the Union again requested that the Company furnish it with job descriptions.

February 9: Elliott Small did not attend this meeting, and Organizer Deborah Megrian acted as the Union's spokesman. Leon Kowal complained about the fact that Mrs. Megrian was the third union representative with whom he had to negotiate since December 1, 1975, and also complained about what he considered to have been delays caused by the Union in the negotiations—particularly the hiatus between the certification and the first meeting on December 1, 1975.

There then was considerable discussion not about the inclusions or exclusions from the unit but about what procedure could be followed to resolve the so-called challenged positions. Leon Kowal explained that a unit clarification proceeding could be brought or the Company could refuse to bargain and the unit then would be resolved in an unfair labor practice proceeding but that either route could be brought or the Company could challenge positions. Leon Kowal explained that a unit clarification procedure could be followed to resolve the so-called challenged positions or inclusions or exclusions from the unit but about what procedure could be followed to resolve the so-called challenged positions. Leon Kowal explained that a unit clarification proceeding could be brought or the Company could refuse to bargain and the unit then would be resolved in an unfair labor practice proceeding but that either route would take a long time.

At this meeting the Company submitted a proposal regarding workweek. In its contract draft, the Union included the following:

The regular workweek for all full-time employees shall consist of 32 hours per week.

Employees get 1 2 hour out of every 4 hours scheduled work to be taken whenever and in however many installations employee wants, taking into consideration clinic needs. Employees are to be paid overtime if they are unable to take the full break.

The Company submitted the following proposal (GC 11):

ABORTION COUNSELORS AND GYN COUNSELORS WORK WEEK

(A) It is understood and agreed that the operations of the clinic are conducted six days per week, consisting of several different hourly working schedules each day within the hours of 7:00 a.m. to 10:30 p.m.

(B) The Clinic shall from time to time establish daily and weekly work schedules as required to meet its operating needs, providing however that no Employee shall be scheduled for more than 5 days per week with a daily schedule not to exceed 8 hours of work.

(C) There will be 45 minutes of off-duty time with pay during each full days work to be taken in 15 minute or longer segments at times directed or approved by the Employee's Supervisor.

Section A of the Company's proposal was agreed upon.

The Union requested that section B include language to the effect that schedule changes would not be made arbitrarily, capriciously, or in bad faith. No agreement was reached on this. Paragraph C represented a diminution of an existing benefit, because employees had been receiving 60 minutes' time off during each workday. Leon Kowal's explanation for this latter change was that many employees do not work their full shift but go home when their patient load is completed and that therefore breaktime should be reduced. The Union's position was that it wished to retain the present breaktime of 1 hour. The Union also objected to the proposal that breaks would be taken only at times directed or approved by the employee's supervisor, although it was willing that some language be included that breaks could be taken as long as it was conducive to running the clinic. Kowal ultimately ended discussion of this subject by saying that the question of whether the employees should have 45 minutes or 60 minutes for their breaks is an economic issue which should be deferred.

Also at this meeting, there was discussion about job descriptions. Leon Kowal stated that the Company would not provide the Union with job descriptions because the Company did not desire job descriptions to be included in the contract. Megrian responded that the Union did not wish to incorporate the job descriptions in the contract.

March 3: Kowal repeated for the benefit of Small, who had not attended the February 9 meeting, the Board proce-
The Company's recognition clause proposes to exclude from the unit part-time employees who work less than 20 hours per week. At this meeting the Company offered to reduce this figure to 16 hours per week. The Union indicated that it was willing to consider 12 hours per week as the cutoff figure.

There was discussion of the probationary period. The Union was willing to accept a 90-day probationary period provided that the probationary employees receive employee benefits after 30 days of employment and be subject to the union-security clause requiring membership in the Union within 30 days. This was not accepted. The Company's proposal regarding probationary employees was more complex than appears on the surface. The counselors, which were the only classifications included in the unit pursuant to Respondent's proposed recognition clause, had to serve a training period, and therefore as trainees they were excluded from the unit, as defined by the Company, while they were serving their probationary period. In the posture of the Company's recognition clause (GC-4), its probationary period clause (GC-5) (both of which were submitted at the same meeting on February 2) had little meaning and led to discussion which was without point until such time as Respondent was willing to agree to a broader unit than is reflected by its proposed recognition clause.

The Company offered to include in the unit full-time nurses aides and autoclave technicians if the Union would exclude all challenged positions and trainees who have worked less than 90 days. There was no agreement on this proposal.

There was discussion of the Company's workweek proposal, but neither party receded from the position taken at the February 9 meeting. The Company again suggested that discussion of paid breaktime be deferred because it was an economic issue.

The Union again asked for job descriptions.

Eileen Wachs, one of the Union's negotiating committee, complained about the fact that Leon Kowal referred to the Union's request for job descriptions and the challenged committee as girls instead of as women and said the committee felt that the use of the term "girls" was insulting and demeaning. Kowal apologized and explained that he did not intend anything uncomplimentary by the use of the term.

March 8: At the opening of the meeting, Betsy Neale read a statement relating to International Women's Day. The statement ended with a sentence admonishing Leon Kowal for using the word "girls" when referring to female members of the negotiating committee, because the committee considered the term diminutive and disrespectful. According to Richards, Leon Kowal became "very angry and said that [he] resented the fact they had formalized their request into a written document." A union newsletter described Leon Kowal as having "exploded in a characteristic temper tantrum." (GC-63.)

There followed discussion about the recognition clause, including an exchange of views regarding part-time employees and the challenged positions. Leon Kowal made the statement that the Company would make no economic proposals until it knew who was in the bargaining unit, that is, until an agreement was reached regarding the recognition clause.

There was further discussion of the Union's request for statistics as to the number of employees who had been terminated after having worked more than 30 days but less than 90 days. This was in connection with the Company's insistence on a 90-day probationary period. According to Leon Kowal, "I didn't see why we should give it (the requested information) to them." Also, Kowal informed the Union that they were not entitled to a job description for the position of receptionist because, as a challenged classification, "It was outside of the bargaining unit."

At this meeting Small requested the assistance of the Federal Mediation and Conciliation Service, because the negotiations were being interrupted by angry outbursts and very little progress had been made. He cited as an example that the parties had not even agreed upon a recognition clause. The Company rejected the suggestion.

On March 8, following the negotiating session, in a telephone conversation with Diane Richards, Small said that by continuing to use the word "girls" in referring to the negotiating committee Leon Kowal was creating hostility and was making it impossible to proceed with the negotiations, that both sides wanted a contract, that the Union was not seeking to destroy "your organization," and that "you might want to consider getting another lawyer."

On March 29, the Company filed a charge of unfair labor practices against the Union—Case 1-CB-3243—alleging that the Union had violated Section 8(b)(1)(B) and 8(b)(3) by restraining and coercing the Employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances and by refusing to meet and negotiate a collective-bargaining agreement with the Employer's designated representative. By letter dated May 11, 1976, the Employer was notified by the Regional Director that a complaint would not issue in the matter. The Employer

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14 The training period for AB and GYN counselors was 90 days. It was somewhat less for telephone counselors.

15 Although autoclave technicians are not referred to in the certification, the parties deemed them to be nurses aides.

Diane Richards testified that "we agreed at that meeting (March 1) that the bargaining unit was established, except for those people whose job fell within the challenged categories." I find this testimony incorrect. It is noted that the Company's practice during the negotiations was to submit its proposals and revised proposals in writing, but the only written proposal submitted by the Company with respect to the recognition clause was the one submitted on February 2.

16 Richards testified that the Union requested the job descriptions and the Company's response was that they would be furnished. Mergian testified that in response to the request for job descriptions Leon Kowal said that the employees could get them from their supervisors and "he knew that Betsy Neale had the job descriptions and that we had them. And that she had gotten them from her supervisor."

17 Small said that he had "unsigned documents" that the union had requested the job descriptions at the table. We would like you to provide them to us at the table."

18 Leon Kowal has a volatile temperament and during the negotiations frequently engaged in angry outbursts. Also, on occasion, he and Small exchanged results.
appealed this decision, which was denied by letter dated June 17, 1976.

While the charges were pending the Company refused to meet with the Union.

June 8, 1976: There was further discussion of the recognition clause. The union representatives informed Leon Kowal that they would no longer discuss any classifications specifically included in the unit certified by the Board. The discussion at this meeting then centered about the challenged positions. The parties also discussed the probationary period clause. To the Union's proposal that it would accept a 90-day probationary period provided the union-security clause would apply to probationary employees and benefits for probationary employees would begin after 30 days, Kowal responded that benefits for probationary employees was an economic issue and should not then be discussed. At this meeting, also, in connection with the parties' discussion of a recognition clause, Kowal stated that he was not going to submit any economic proposals until he knew who was in the unit for which he was bargaining. 20

At this meeting the Company submitted a proposed management-rights clause (GC 18), as follows:

Except where such rights, powers and authority are specifically relinquished, abridged, or limited by the provisions of this contract, the Employer has and will continue to retain, whether exercised or not, all of the rights, powers and authority heretofore had by it, and except where such rights, powers and authority are specifically relinquished, abridged or limited by the provisions of this contract, it shall have the sole and unquestioned right, responsibility and prerogative of management of the affairs of the Employer and direction of the working forces, including but not limited to the following:

A. To determine the care, maintenance and operation of the equipment and property used for and on behalf of the purposes of the Employer.
B. To establish or continue policies, practices and procedures for the conduct of the Employer business and, from time to time, to change, add, or abolish such policies, practices or procedures.
C. To discontinue processes or operations or to discontinue their performance by employees.
D. To select and to determine the number and types of employees required to perform the Employer's operations.
E. To employ, transfer, promote or demote employees, or to lay off, terminate or otherwise relieve employees from duty for lack of work, changes in type of service or other legitimate reasons when it shall be in the best interests of the Employer.

F. To prescribe, modify and enforce reasonable rules and regulations for the maintenance of discipline and for the performance of work in accordance with the requirements of the Employer, provided such rules and regulations are made known to the employees affected by them.
G. To ensure that related duties connected with clinic operations, whether enumerated in job descriptions or not, shall be performed by employees.
H. To establish contracts or subcontracts for clinic operations.
I. To provide such services to the community as prescribed by the Clinic to modify or withdraw said services at the discretion of the Clinic.
J. All work customarily performed by the employees of the bargaining unit shall be continued to be so performed unless in the sole judgment of the Employer, it can be done more economically or expeditiously otherwise.
K. The above rights, responsibilities and prerogatives are not subject to review or determination in any grievance or arbitration proceeding, but the manner of the exercise of such rights may be subject to the grievance procedure described in this contract.

In addition to assigning to the Company in general language the broad and unquestioned "prerogative of management of the affairs of the Employer and direction of the working forces," it also, among other things, assigns to the Employer the unrestricted and unlimited right to transfer, demote, or terminate employees when the Employer deems it in its best interest, the unilateral right to prescribe rules and regulations, and the unilateral right to subcontract unit work, all of which are not subject to review under the grievance and arbitration clauses. The net effect of the Company's management rights proposal would be to render almost meaningless the Union's status as representative of the Company's employees. For the Employer to present so extreme a management rights clause was knowingly to invite disagreement, and although later modified, it consciously served to impede and delay agreement.

The Union at this meeting submitted a maternity leave proposal. Among other things, it provided that a pregnant employee will be permitted to work until the expected date of delivery, provided her physician certifies that she is able to work. This proposal caused considerable discussion which was concentrated upon the question of whether abortion counselors should be permitted to work after they become visibly pregnant. The Union's position was that it would be discriminatory to deny an abortion counselor the right to work if she was physically able, even though visibly pregnant, although it suggested that the abortion counselor could be given the option of accepting another assignment.

June 14: At this meeting agreement was reached with respect to several clauses. The Company accepted the Union's visitation clause (art. V. GC 3). The Company also accepted the Union's proposed no-discrimination clause (art. IV. GC 3) in exchange for the Union's acceptance of the Company's bulletin board clause (GC 16). Also, some of the differences with respect to the Company's proposed seniority clause (GC 5) were resolved.
though the parties still were apart in regard to the probationary period provision. At this meeting the Union stated that probationary employees, after 30 days of employment, should have the benefit of a grievance procedure, but Kowal did not then wish to discuss any benefits for probationary employees on the grounds that such subject was an economic issue which should be deferred.

Other subjects discussed at this meeting included the maternity leave clause, the volunteers clause, and the workweek clause.

According to Leon Kowal, the subject of job descriptions again arose, and he told the Union's bargaining committee that a member of the committee had picked up the job descriptions from the desk of Personnel Director Cummings and "anybody who wants that job description just go to your supervisors, you can have all you want."

June 21: There was discussion of the Company's workweek proposal, volunteers clause, management rights clause, and challenged positions. When the union representatives suggested that the parties discuss economic issues, Leon Kowal responded that the Company would not give any economic proposals until it knew for whom it was bargaining.

June 28: No progress was made toward resolving any of the contract issues. Elliott Small threatened that he would serve a strike notice upon the Employer and would shut down the clinic.

July 12: Prior to this meeting, the Union had solicited employees to attend the negotiations. When Leon Kowal, Harold Kowal, Diane Richards, and Jane Levin entered the room where the negotiations were to take place, there were 11 employees present, plus Megrian and Small. Kowal asked who the people were, and Small responded that they were members of the negotiating committee. Leon Kowal replied that he would not negotiate with a mob, and the company representatives left.

On July 15, Leon Kowal wrote a letter to the Union protesting the Union's tactics in connection with the negotiations and efforts to embarrass Jane Levin (R 6). On July 27, Megrian telephoned Leon Kowal in order to discuss another meeting. In this conversation Kowal stated that the Union would have to limit the number of persons on its negotiating committee. When Megrian replied that she could not agree to that, Kowal said, "Hell with you."

After July 12, the Company received a 30 days' notice of the existence of a dispute, which was dated July 9. Thereafter Leon Kowal contacted the Federal Mediation and Conciliation Service, which arranged for the next bargaining session.

August 16: This meeting and all later meetings were held at the offices of the Federal Mediation and Conciliation Service. Present at the meeting, in addition to the representatives of the Company and the Union, were Federal Mediators John Martin and Gerry Gomez. One or both were present at all later meetings.

At the outset of the meeting, in response to the request of the mediators, Megrian listed the subjects which had already been agreed to and the areas of disagreement. The subjects of agreement as described to the mediators were (1) bulletin board and union visitation rights; (2) seniority in accordance with the Employer's proposal (GC 5), except that no agreement had been reached with regard to the probationary period, promotions, and the use of the word "attempt" in connection with the layoff proposal; (3) a non-discrimination clause; (4) the Company's proposed arbitration clause; and (5) paid meetings (GC 12). There were approximately 27 areas of disagreement listed.

The following agreements were reached at this meeting: (1) with minor modification, the Company accepted the Union's discharge and penalties clause (art. XXI, GC-3), which gives the Employer the right to discharge, suspend, or discipline any employee for cause; (2) with minor modification the Company accepted the Union's proposed no-strike and no-lockout clause (art. XXII, GC-3); and (3) the parties agreed that the Company would continue its present policies for life insurance and disability insurance for its employees.

The Union requested the Company to show it the policies for life and disability insurance and to provide information regarding the employees' required contributions to the Company's health insurance program, and again requested job descriptions. The Company promised to give the Union the requested information.

There also was discussion of the Company's workweek proposal, the probationary period, and union security. In regard to union security, the Union was asking for a full union shop. Leon Kowal responded that there would be no form of union security at the clinic. He also raised the question as to why the Union was insisting upon union security when in the contract it had recently negotiated with a similar institution in the area, Charles Circle, Inc., there was no provision for union security.

August 25: The Company presented a new version of a management rights clause, which was accepted by the Union. Agreement was reached with respect to paragraph B of the Company's workweek proposal (GC 11). The clause was amended to provide that changes in employees' work schedules would be for business reasons only. Thus, only paragraph C of the Company's workweek proposal was still in dispute.

There was further discussion of maternity leave. The Company submitted jury duty and bereavement pay clauses. (GC 25, 26) These clauses reflected current company practices. However, no agreement was reached, because under the terms of the Company's proposals part-time employees were excluded from participation in these benefits. In that connection Leon Kowal stated that the Company was in the process of revising its program of benefits for part-time employees and would discuss the subject with the Union at another time.
Elliott Small requested the Company to submit economic proposals, but Leon Kowal responded that the Company would not make any economic proposals until the Board issued its decision in the pending unit clarification proceeding.

September 8: Agreement was reached on a jury duty clause. The clause provides that the Company's existing practices would be continued for full-time employees and that part-time employees would receive no monetary benefits but would be guaranteed their jobs after completing jury duty. There was further discussion of bereavement pay, the probationary period, and maternity leave.

The Company gave the Union a booklet describing the Company's Blue Cross-Blue Shield coverage. The Union requested information regarding the respective company and employee contributions to the plan. Leon Kowal replied that it was half and half and that he did not have the exact figures but would obtain them. Megrian again asked for job descriptions, and Leon Kowal responded that the Union was playing games because they already had the job descriptions.

September 27, 1976: The Company presented a maternity leave proposal (GC 29), which was accepted by the Union. In effect, the Company acceded to the Union's demand that pregnant abortion counselors would be permitted to work as long as they were physically able.

The principal, and a heated, subject of discussion at this meeting was union security. In addition to comments by the union representatives, three employee members of the negotiating committee, Lucy Matson, Kathleen Kelly, and Jean Williams, spoke in strong terms about the subject, and one of the employees said that a majority of the bargaining unit believed that union security was the most important issue in the negotiations. Small suggested that perhaps a form of modified union shop would be more acceptable to the Company, but Leon Kowal's response was that any form of union security was a form of compulsion. Leon Kowal inquired whether there would be no contract unless the Company agreed to union security, to which Small replied that the Union is not frozen on the issue. The Union made a request for economic proposals, but Leon Kowal's reply was that the Company was not then prepared to discuss economics.

October 8: Harold Kowal informed the Union's negotiating committee that the Clinic had received the Union's 10-day strike notice and that in his opinion it was illegal. During a caucus the union committee prepared another strike notice setting 6 a.m. on October 19 as the time and date for the strike. The notice was telegraphed to the Clinic, and copies were delivered to the mediators and to Harold and Leon Kowal. Elliott Small inquired whether Preterm had any proposals to make. Harold Kowal responded by inquiring what was the purpose of further proposals and negotiations when there was going to be a strike anyway. Small responded that the Union was not frozen on any issue, that there were many issues open, and the parties should continue to negotiate. However, the meeting closed without any bargaining taking place. Leon Kowal informed the Union's negotiating committee that he and his associate had to return to the clinic in order to make plans for the strike.

October 14: The parties were kept apart at this meeting, mediator John Martin serving as the communications link with each side. The only subject considered during this session was union security. The union representatives suggested a form of modified union shop but were informed by the mediator that there would be no favorable response from Leon and Harold Kowal. According to Leon Kowal, before the meeting concluded, Elliott Small suggested that at the next session the parties discuss the following subjects: volunteers, wages, health benefits, and pro rata benefits for part-time workers; and Mediator Martin suggested, "Lee, when you come back for the next meeting will you see if you can reply to what he [Small] is talking about?"

October 15: The Company agreed to continue its current employees' life insurance program, although the Company had not directly advised the Union's negotiating committee what the program was. There was brief discussion of union security, with Small stating that the Union wanted a modified union shop and Harold Kowal responding that the Company's position had not changed. Small again requested the Company to make economic proposals. Harold Kowal answered that the Union should put its proposals on the table and the Company then would respond. Megrian pointed out that the Union's economic proposals had been submitted in December 1975. Then, at the request of the mediator, Megrian listed the issues still outstanding. Harold Kowal inquired if the parties had come to an impasse, and Elliott Small responded that the Union was not frozen on any issue. Before the meeting concluded, Mediator Martin suggested that at the next meeting, which was scheduled for October 18, the Company respond to as many of the outstanding union proposals as it could.

October 18: This was the last negotiating session prior to the strike, which commenced the next morning. Leon Kowal informed the Union's committee that the Company would not agree to submit the outstanding issues for arbitration as had been proposed by the Union at a prior meeting. Leon Kowal inquired if the Union would withdraw its request for a union-security provision and would accept the Company's volunteers clause. The Union declined.

The Company presented the following four proposals in writing:

1. A clause entitled "Discharge and Discipline" (GC 31). The Company withdrew this proposal after it was pointed out that a "discharge and penalties" clause had been agreed to at the August 16 meeting. The proposal...
submitted and withdrawn at this meeting would have given the Company greater latitude in regard to the discipline and discharge of employees than the clause which had been agreed to.

2. A holidays clause (GC-32). This clause provided for the same number of paid holidays as the Company was then giving its employees. The Union found the proposed clause objectionable for several reasons. First, it cut back on current employee benefits in that, contrary to existing practice, the proposed clause would deny employees holiday pay for holidays that fall during scheduled vacations. Second, it gave the Clinic the right, exercisable at the Clinic's sole discretion, to close on other than the named holidays or for any period of time with or without pay to the employees. This would preclude the Union's representing the employees in connection with any plan on the part of the Company temporarily to halt operations. Finally, the Company's proposal ignored the Union's request to exchange two of the current holidays for holidays to be celebrated on International Women's Day and Martin Luther King's birthday.

3. Overtime pay (GC-33). The provision submitted by the Company proposed premium pay at 1 1/2 times the employee's regular rate for work performed in excess of 40 hours in a scheduled workweek and that "an employee will be expected to (work overtime) unless she is excused for good cause." The Union objected because the clause did not treat the problem of GYN counselors who regularly were scheduled to work only 37 1/2 hours.

4. Abortion counselors' and GYN counselors' workweek (GC-34). At the February 9 meeting the Company had submitted an abortion counselors' and GYN counselors' workweek proposal (GC 11). That proposal contained three paragraphs. Paragraph A was agreed to at the February 9 meeting and paragraph B, after modification, was agreed to at the August 25 meeting. Paragraph C of the February 9 proposal, which reduced the employees' off-duty time with pay from 60 minutes per day to 45 minutes per day, had been the subject of discussion at several meetings. The workweek proposal submitted on October 18 contained seven paragraphs instead of the original three. The first paragraph in both proposals is identical. The second paragraph of the February 9 proposal, which, as modified, had been agreed to on August 25, was rewritten in the October 18 proposal in such fashion as to repudiate the agreement reached on August 25.22 The Union objected to the Company's workweek proposal as submitted on October 18 on a number of grounds: (a) Whereas under established company policy full-time employees are considered to be those who work 4 days or a minimum of 32 hours per week, the proposal states: "The work day for regular full-time employees shall consist of eight (8) hours. The work week for regular full-time employees shall consist of five work days within the period Monday through Saturday, of forty (40) hours' duration." The effect of this proposal was to eliminate from the definition of full-time employee those employees who had been working only 4 days per week. This change is of considerable significance, in that employees who continued working only 4 days per week would cease to be full-time employees and thus would lose various benefits which the Company granted its full-time employees but not its part-time employees. (b) Other sections of the Company's proposal gave the Company much greater latitude in connection with making schedule changes than the parties had previously agreed to at the August 25 meeting. (c) The Company's proposal gives employees 45 minutes of off-duty time with pay during each 8-hour day, which represents a cutback in existing practices, because employees who work an 8-hour day receive 1 hour of off-duty time with pay. (d) The October 18 proposal provides: "Part-time workers employed up to five (5) hours per day shall receive fifteen (15) minute rest break." This represents a cutback in current practices in that employees who work up to 4 hours per day presently receive a 15-minute rest break.

Elliott Small's response was to inform the Company's negotiators that the union bargaining committee was angry at these proposals. He explained that on the day before a proposed strike all the Company brought to the bargaining table were proposals which already had been agreed to, which reflected cutbacks in present benefits, and which demonstrated a complete lack of interest in responding to the Union's demands. He asked whether the Company had any further proposals to make, and Leon Kowal responded that it had not. During the meeting the Company proposed that it would continue its current practices in regard to personal days off.

22 Leon Kowal testified with respect to the Company's position at the October 18 meeting as follows: "[D]id I want to make ... a concession to increase the wages. The answer is no. I was not ready to make a concession on that day or wages by giving him an increased offer. But I did agree on that date to continue all of the major benefits that we had, because that's what Martin asked me to do. He said there was some question about whether we wanted to do that, and I said there's no question in my mind at all. And I will do that on the 15th and I did it. No, I wasn't prepared to make a concession on that day by giving him an offer increasing the wages." However, contrary to Kowal's testimony, proposals submitted by the Company on October 18 as well as proposals submitted by the Company at previous negotiating sessions represented cutbacks in existing employee benefits. No proposal made by the Company at any session up to and including October 18 represented an offer to increase wages or an improvement in any benefit of economic value such as holiday pay, vacation pay, bereavement pay, etc.
meeting that he questioned the purpose of further negotiations because the parties' disagreement with respect to union security would result in a strike anyhow.24

At one point during the meeting, Leon Kowal stated that the Clinic had the right to permanently replace employees who go on strike, that they would be replaced, that the Clinic was not going to close its doors because of a strike, and that the employees were grown women and should be ready to accept the consequences of their actions.

In accordance with the Union's notice to the Company, a strike commenced the next morning, October 19.

November 17: This was the first meeting after the beginning of the strike. A few understandings were reached. The subject of union security was discussed, but without any resolution of the question. Leon Kowal insisted that the Clinic wanted an open shop and that even an agency shop was unacceptable, as it constituted a form of compulsion because it compelled employees to pay for services not wanted. Kowal asked if the Union was prepared to withdraw its union-security demand. Small responded that in the context of an entire agreement the Union was not inflexible. However, agreement was reached on a union dues checkoff provision.

The Company offered a 5-percent across-the-board wage increase—not a particularly generous offer, as the cost of living had risen 9.6 percent since the representation petition was filed in April of the previous year, during which time the employees had received no general increase. The Union countered with a demand for a 10-percent wage increase. No agreement was reached on this issue.

The Company proposed that newly hired counselors receive an increase of $12.50 after 45 days and an additional increase of $12.50 after 90 days instead of a single $25 increase at the end of 90 days. This proposal was accepted, as was the Company's bereavement pay proposal for 1 day for part-time employees and 3 days for full-time employees.

The Company also offered to eliminate the 10-month waiting period before part-time employees would accrue credit toward vacations. This proposal was accepted.

There was discussion but no agreement with respect to a sick leave clause, although the Union accepted the Company's proposal that part-time employees would receive a prorata amount of sick leave. The Company also proposed to continue its present practices with respect to leaves of absence and to continue its present health and disability insurance programs.

The Union stated that it would withdraw its departmental demands if the changes instituted by Deborah Feinbloom, the newly hired coordinator of the abortion counseling program, were retained. There was no agreement on this proposal. Other subjects, including holidays, the term of the contract, and probationary employees, were discussed.

November 19: The parties agreed on a recognition clause which would define the bargaining unit to be the same as the unit certified by the Board. Several other subjects were discussed without any agreement being reached.

December 8: The meeting was brief and no agreements were reached.

January 24, 1977: This was the last meeting between the parties prior to the hearing in these proceedings. Agreement on one minor item was reached. According to Leon Kowal, "We agreed that if a holiday fell within a person's vacation time, they would have the extra day. Which, I think, was the practice anyway. But we weren't sure at the moment. We agreed to it anyway." No understandings were reached with respect to any of the other subjects that were discussed at this meeting.

3. Requests for information

The complaint in paragraph 13(d) alleges:

Respondent has refused to give information which the Union requested, regarding the job classifications of unit employees since April 14, 1976; the contributions made by employees and Respondent under the Blue Cross/Blue Shield health plan since September 8, 1976; and life and disability insurance policies since April 14, 1976; and the names of all employees and their wages and the base salary for job classifications since October 18, 1976.

The Union's requests for the foregoing information were made orally at various negotiating sessions.25 The information was furnished the Union in writing on November 26. However, there is an issue as to whether the Company had delayed unduly long in providing the information.

a. Job descriptions: There is no dispute that at negotiating sessions prior and subsequent to April 14 the Union requested the employees' job descriptions. The parties had discussions as to the use to which such job descriptions would be put. Leon Kowal objected to their inclusion in the contract. Megrian explained to him that "the members of the negotiating committee would like to review the job descriptions [in relation to the departmental demands]. That they were not to be part of the contract."

Respondent contends that the job descriptions were first given to the Union in March, while General Counsel's witnesses deny this. Jane Cummings, Respondent's personnel assistant, testified that sometime in February or March Betsy Neale asked her for the job descriptions for the employees in the bargaining unit. Cummings told Neale that they would be copied and would be left on Cummings' desk for Neale. After obtaining approval from Mrs. Richards, Cummings made copies of the job descriptions and left them on her desk for Neale. The next day she asked Betsy Neale whether Neale had taken the job descriptions and Neale replied that she had. Betsy Neale contradicted Cummings. According to Neale, she merely asked Cummings for the job description of her job, which was abortion counselor, and Cummings responded that "she would get back to me," but she never did. Neale ultimately ob-

24 Small responded to this remark that the Union was not frozen on any issue.

25 Megrian testified that a written request for job descriptions had been made and explained that she referred to the Union's demands mailed to the Clinic on December 5, 1976, which on the first page, headed "AB DI-
MANIPS", states: See item 11, read: "Job descriptions, duties, salaries, bene-
fits, all defined." I do not consider this item on a page purporting to list
16 collective-bargaining demands for a single department as an adequate or
understandable request for job descriptions of all employees in the unit.
tained the particular job description from her immediate supervisor, Lois Schiappa.

Jane Cummings testified only briefly at the hearing. Her testimony was not directly impeached. However, in a material respect her testimony differs from the testimony of Leon Kowal. Cummings testified that Kowal never asked her whether she had given Neale the job descriptions. Leon Kowal, on the other hand, testified in detail concerning a conversation with Jane Cummings about the job descriptions. According to Leon Kowal, at the June 14 meeting, the subject of delivery of the job descriptions was again raised. "So at that point I looked at them, realizing we had had three or four discussions about them. . . . I said, 'I want to go out and talk to Miss Cummings myself.' And I did. . . . I went out to see Jane Cummings, who I had been told had given this job description to think it was Betsy Neale. I said 'Jane, please tell me the story myself,' and she did. . . . Then I went back to the bargaining table and said, 'You people have them.' "

The record does not indicate any reason, tactical or otherwise, why the Union would continue to press the Company for copies of job descriptions after it already had them.27 As I find that Betsy Neale was a credible witness, that the collateral evidence tends to support Neale's testimony that she never received job descriptions for the entire unit, rather than Cummings' contradictory testimony, I find, contrary to Respondent, that it did not provide the Union with the requested job descriptions prior to November 26. As the job descriptions requested by the Union were relevant and reasonably necessary for the proper performance of its duties as representative, Respondent's delay, which I find was unreasonably long, in providing the Union with the job descriptions constituted a failure to discharge its collective-bargaining obligations and therefore a violation of Section 8(a)(5) and (1).28

b. Blue Cross/Blue Shield contributions: Megrian testified that at the September 8, 1976, bargaining session, when the Company provided the Union with booklets describing the Company's Blue Cross/Blue Shield plan, she "asked him what the Employer's contribution was and what the employee's contribution was. He said it was half and half and he didn't have the exact figures, but that he would get them." Megrian further testified that at the November 17 bargaining session the Company "gave us insurance figures on Blue Cross/Blue Shield."

The nature of the alleged violation is uncertain. On September 8, the Union was given copies of the Company's Blue Cross/Blue Shield plans and was informed that contributions were on a half-and-half basis. There is no evidence that on that date or thereafter, prior to November 17, the Union indicated to the Company that it wanted more information. The theory of the complaint is that the contributions were on a half-and-half basis. The evidence is that the Union wanted not only the relative contributions but the exact dollar-and-cents contributions by the employees and the Company. As prior to November 17 the Union did not clearly ask for such information, I find that General Counsel has not proved the allegation that Respondent unlawfully refused to give the Union information regarding "the contributions made by employees and Respondent under the Blue Cross/Blue Shield health plan since September 8, 1976."

c. Life and disability insurance policies: According to Megrian, the only time a request for such policies was made was at the December 29, 1975, negotiating session. That meeting was devoted to the review of the Union's contract proposals. The request for the insurance policies was haphazardly made during discussions of other subjects, and Megrian's testimony is less than she distinctly remembers the request having been made than that it's a standard procedure that we would request that information at a first bargaining session. The request for these policies was not renewed at any later session, and at the August 16 meeting the parties agreed that the Union's existing life insurance policies would continue. Thus, the failure of Respondent to provide the Union with these policies did not impede negotiations. In view of the fact that the request for these policies was casually made on December 29, 1975, that it was not thereafter renewed, and that the failure of the Company to provide the Union with copies of its life and disability insurance policies did not impede negotiations, I find that Respondent's failure to do so does not constitute a violation of the Act.

d. Wage information: At the October 18 bargaining session, which was the last meeting before the strike, the Union requested the names of the employees in the various job classifications and their wages and base salaries. This information was furnished on November 26. There is no evidence that this delay impeded negotiations or that the 5 or 6 weeks between the date on which the request was made and the date on which the information was furnished in the circumstances was an unreasonably long time. Accordingly, I find that Respondent has not violated the Act in regard to the alleged delay in furnishing this information.

4. Applicable principles

When, as here, "the employer engaged in a lengthy series of bargaining conferences, which got nowhere," the question is "whether it is to be inferred from the totality of the employer's conduct that he went through the motions of negotiation as an elaborate pretense with no sincere desire to reach an agreement if possible, or that it bargained in good faith but was unable to arrive at an acceptable agreement with the Union."29 In resolving this question, ac-

27 Leon Kowal testified that at one of the bargaining sessions, when Megrian again asked him for copies of the job descriptions, "I said you're just playing a game with me, so don't fool around. And at one point, she pointed her finger at me. She said you're going to give them to me on this table, just like that." According to Megrian, "I recall at one of the March meetings Leon Kowal, when we asked for job descriptions, again said that we were playing games and that they had been picked up by one of the negotiators. . . . That we already had them. . . . I remember Elliott Small telling Leon Kowal that we did not have them, that he did not know about any employee picking them up, and that we had requested them at the bargaining table and we did expect to receive them." I credit Megrian in regard to this incident.

28 Rhode Island Chevry Co., 144 NLRB 1304 (1964).
count must be taken of the obvious "tension between the principle that the parties need not contract on any specific terms and a practical enforcement of the principle that they are bound to deal with each other in a serious attempt to resolve differences and reach a common ground." \(^{30}\)

While the statutory collective-bargaining process does not guarantee "the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions," \(^{31}\) it does require that the parties to the negotiations "confer in good faith" with an intention of reaching an agreement, if agreement is possible. \(^{32}\) More than plodding mechanically through the forms of collective bargaining and "a willingness to enter upon a sterile discussion of union-management differences" are necessary to satisfy this stricture of the Act. The performance of the duty to bargain dictates that the parties negotiate in a manner which lends itself to the real possibility of reaching an accord. \(^{33}\) There is a duty on both sides to engage in negotiations with a "sincere purpose to find a basis of agreement . . . ." \(^{34}\) "[T]he employer is obliged to make some reasonable effort in some direction to compose his differences with the Union, if § 8(a)(5) is to be read as imposing any substantial obligation at all." \(^{35}\) As was observed in \textit{National Labor Relations Bd. v. Herman Sausage Co.}, \textit{supra}, "good faith is prohibited though done with sophistication and finesse. Consequently, to sit at a bargaining table, or to sit almost forever, or to make concessions here and there, could be the very means by which to conceal a purposeful strategy to make bargaining futile or fail." \(^{36}\)

Similarly, to employ negotiating tactics that will interfere with an agreement being reached within a reasonable period of time also evidences an absence of good faith. Prolonging negotiations generally serves to undermine a union's strength, as it leaves the employees frustrated by the union's lack of success and allows turnover to deprive the union of many of its initial supporters. By such strategy, an employer may hope not only to avoid entering into an agreement with his employees' collective-bargaining representative but also, through an erosion of its majority, to avoid having to deal with the union at all. Such employer may invite or even provoke a strike anticipating that the strike will be ineffective, that the union leaders among his employees will be replaced and removed from his work force, and that ultimately the union will be repudiated by the replacements and the nonstriking employees.

5. Recapitulation

Although Respondent's bargaining positions and proposals, individually considered, might not be unlawful, the totality of its dealings with the Union from the inception of negotiations on December 1, 1975, through the last bargaining session held on January 24, 1977, establishes that the Company refused to bargain collectively in good faith with the Union as its employees' certified representative. In particular, I rely upon the following:

a. Some of the proposals submitted by Respondent were unnecessarily complex, some were phrased to attenuate the employees' statutory rights, and some purported to diminish existing benefits. Because such proposals caused unproductive discussion, they impeded the progress of the negotiations even in the instances where they were redrafted, as in the case of the management-rights clause, or where they were withdrawn, as in the case of the recognition clause.

b. In several important instances, such as with its volunteers clause and with respect to union security, Respondent was inflexible and demonstrated no willingness to consider any compromise. \(^{37}\)

c. Respondent's bargaining methods served to reduce the probability that the parties would reach an agreement. Despite more than 1 year of negotiations, the Clinic at no time gave the Union a comprehensive contract draft. With only limited exceptions, it submitted its proposals usually in writing, one at a time, and in no particular order. There was no structure within which to contain the negotiations. Instead, the selection of subjects for discussion was haphazard, which prevented the negotiations from gathering direction and momentum. Excessive bargaining time was devoted to relatively minor topics, and because the subjects for discussion were raised by Respondent singly and not in context of an overall contract draft, the opportunity for compromise by trading off one proposal for another was severely limited. Even Respondent lost sight of where it was heading, because as the October 18 meeting, when presumably it was seeking to forestall an impending strike, it submitted as a new proposal a clause covering a subject which had been agreed upon months earlier. Respondent's unwillingness to use the contract draft submitted by the Union on December 5, 1975, as a working model from which to negotiate, its failure to prepare a contract draft of its own for such purpose, and its practice of submitting unassembled proposals one at a time were bound to and did cause confusion and delay in the negotiations.

d. While there is no requirement that collective-bargaining negotiators be cordial, Respondent's principal negotiator, Leon Kowal, was unduly bellicose. He engaged in frequent loud arguments with the Union's negotiators. Often instead of seeking to resolve a problem he expanded the scope of the dispute. As an example, despite the many requests by the Union for copies of the job descriptions, instead of arranging for them to be delivered (whether or not Leon Kowal himself may have believed that the Union already had obtained such copies), he engaged in several arguments with the union representatives about whether or not they already had the job descriptions and did not furnish them to the Union until November 26, months after they first were requested.

\(^{31}\) \textit{National Labor Relations Act}, Sec. 1.
\(^{32}\) Collective bargaining "presupposes a desire to reach ultimate agreement to enter into a collective bargaining contract." \textit{S. I. R. R. v. Insurance Agents' International Union, AFL-CIO}, \textit{supra} at 485.
\(^{35}\) \textit{Kaiser Roth House Co. v. N. I. R. R.}, 430 F.2d 701, 703 (1st Cir. 1970).
\(^{36}\) 275 F.2d 229, 232 (5th Cir. 1960).
e. Respondent grasped almost any excuse that presented itself to postpone negotiations. Thus, because the Company had filed unfair labor practice charges against the Union, it refused to bargain from March 8 through June 8, while the charges were pending and before they were dismissed. Also, on July 12, because 11 employees were in attendance at the negotiating session, Respondent's negotiators refused to meet. On October 8, Respondent's negotiators, Leon and Harold Kowal, terminated the meeting abruptly on the grounds that their client had received a strike notice and they had to depart to discuss the matter with their client.

f. Although a desire to resolve noneconomic issues before dealing with wages and costly fringe benefits is an acceptable collective-bargaining tactic, Respondent carried this approach to an extreme. During more than 10 months of negotiations between December 1, 1975, and the strike on October 19, 1976, Respondent refused to discuss wages or any other benefits having an economic cost—other than to agree to continue certain existing fringe benefits. Moreover, as of October 18, immediately prior to the strike, the only understandings that had been reached were with respect to less important contract clauses, and the parties were still far apart on material noneconomic issues—including the recognition clause, as the Company had not yet agreed to accept the Board's description of the appropriate unit, even after the decision in the unit clarification proceeding. Nevertheless, Respondent persisted in its refusal to discuss economics. By thus removing from the bargaining arena a fundamental term of employment, the Company limited the flexibility of the negotiations and narrowed the range of possible compromise.

g. Respondent's conduct on October 18, the last bargaining session before the strike, not only reflected an absence of any desire to arrive at an agreement with the Union but in effect challenged the Union to undertake the strike.

Although Respondent's obdurate negotiating tactics were somewhat ameliorated after the strike began and the unfair labor practice charges in these proceedings were filed, they did not change sufficiently to indicate any sincere interest in reaching an agreement or even in terminating the strike.

Illustrative of Respondent's bargaining intransigence and obstructive tactics, which served to prolong the negotiations and to impede a successful conclusion thereof, are the following:

a. Recognition and refusal to bargain about economic issues

On February 2, Respondent submitted a proposal defining the recognized unit as including only full-time AB. GYN, and telephone counselors and excluding all other classifications. By this proposal Respondent reasserted the position it had advanced in the representation proceeding but which was rejected by the Regional Director in the Decision issued in that case. The recognition clause in its various facets was a recurrent subject of discussion during the negotiations. Not until November 19—almost 1 year after negotiations had begun—did Respondent agree to accept the unit as certified by the Board. Respondent used the disagreement regarding the recognition clause as an excuse for refusing to discuss wages.

Part of the disagreement stemmed from Respondent's reluctance to accept the Board's decision that trainees and part-time employees are included in the bargaining unit. Part of the disagreement arose from the fact that the initial decision in the representation case left undetermined the inclusion or exclusion of four challenged classifications, a matter that was not resolved until the decision in the unit clarification proceeding on September 8. However, not more than eight employees were within the challenged classifications. Thus, Respondent's assertions at various times during the negotiations that it could not make a wage proposal until it knew for whom it was bargaining essentially were specious, because the challenged positions involved only a relatively small proportion of the unit—and after September 8, when the Board issued its unit clarification decision, even that excuse disappeared. A request to modify a unit certified by the Board, although not necessarily unlawful, is not a mandatory subject of bargaining. Therefore, the Company was not entitled to hold "negotiations hostage to a demand for a nonmandatory subject," to wit, modification of the certified collective-bargaining unit to exclude classifications objected to by Respondent.

As of November 17—almost 1 year after negotiations began—the Company had refused to discuss wages or any other subject involving a direct cost-related employee benefit (other than those few instances where it agreed to continue existing benefits) until all noneconomic issues had been resolved. Such fragmentation of negotiations limited the flexibility of the bargaining process, as it precluded trading economic proposals for noneconomic proposals, which is a customary avenue of compromise. While it was permissible for Respondent to place noneconomic items ahead of economic items on the bargaining agenda, to persist as Respondent did, for many months after the Union had requested discussion of wages in its refusal to talk about economic matters, particularly in the context of its rigid positions with respect to its proposed volunteers

29 No written proposal reflecting the parties' agreement regarding the recognition clause was drafted. According to Leon Kowal, on November 18, "I said that we had forgotten about the bargaining unit, why don't we agree to take the bargaining unit as it was certified in the clarification decision?" The Union's affirmative response constitutes the agreement. It is far from clear that by this exchange Respondent had abandoned its position steadfastly maintained throughout the negotiations to exclude trainees and part-time employees working less than a given number of hours per week from the recognized unit, which classifications are within the appropriate unit certified by the Board.

30 As of October 18, Respondent employed 33 abortion counselors, 8 GYN counselors, 16 telephone room counselors, 1 nurse aide, 2 automotive technicians, 2 admitting officers, 1 maintenance employee, 1 medical chart room employee, and 1 receptionist. Thus, as of that date, there were five employees in the challenged classifications.

31 As part-time employees and trainees were specifically included in the appropriate collective-bargaining unit covered by the Board's May 19, 1975, certification, the Board had no legal right to insist that the Union agree to their exclusion as a prerequisite to discussion of wages and other economic terms.

32 International Union of Operating Engineers, Local 1349, 542, 542-4-b, 542-4-6 (NLRB 1975). Although the Board may be entitled to construe a collective-bargaining unit more narrowly than does the Board, the Board's decision is not binding.

33 See also Local 124, United Automobile Workers, UAW (Stirling Motors, Inc.), 221 NLRB 656, 660, fn. 28 (1975).
clause and union security and of its haphazard, uncorrelated way of raising noneconomic issues for discussion, necessarily prolonged negotiations and interfered with the possibility of an agreement being reached. These factors suggest that Respondent's purpose was to delay or even to avoid reaching an agreement.

### b. Union security

The Union's initial contract draft proposed a union shop with the condition that new employees would be required to join the Union within 30 days. Although the Company was made aware of the fact that the members of the bargaining committee deemed union security important to the negotiations, it categorically refused to consider any such provision. Respondent's alleged reason was that the Clink believed in the principle of a woman's right to choose and a woman had the right to choose whether or not to join the Union. When the Union sought to accommodate Respondent's objections by suggesting that some form of modified union shop would be acceptable, such as an agency shop, Respondent would not discuss any such compromise, asserting that too was a form of compulsion. Respondent in its brief explains that "[the employer's refusal to accept Union shop proposal was based on philosophical opposition to placing any form of compulsion upon its employees."

Thus, the Company admits that it entered into negotiations with its mind sealed against any compromise in regard to union security, and it unwaveringly maintained this obdurate position throughout the entire course of the negotiations. While the Act "does not compel either party to agree to a proposal or require the making of a concession," it does impose an affirmative obligation to "confer in good faith." To engage in negotiations with a fixed, preconceived, and unshakable intention of refusing to bargain about a subject relating to wages, hours, or any other term or condition of employment is to reject, to that extent, the principle of collective bargaining as prescribed by the Act. Accordingly, Respondent's refusal to discuss union shop or any modified form thereof based upon its alleged "philosophical opposition" thereto constitutes evidence of a refusal to "confer in good faith" within the meaning of the Act.

41 In its brief the Company argues that "Respondent's rationale for not making a proposal for an increased wage was because of his concern about the forty (40) to fifty (50) departmental proposals still on the table 'many of which were economic in nature.' This argument is ill-founded. During the 10 months between the inception of negotiations and the strike there was almost no discussion about these subjects.

42 Federal Mogul Corporation, 212 NLRB 950 (1974); Oxid-Redok Chemical Co., 146 NLRB 1364, 1365 (1964) (cited NLRB v. Reed & Prince Mfg Co. supra.

43 See Queen Mary Restaurants Corp and Q M Foods, Inc. v NLRB, 560 F 2d 403 (9th Cir. 1977); Backer Manufacturing Company, 233 NLRB 1126 (1977); American Paint System, 212 NLRB 41 (1975). Respondent's alleged concern about "placing any form of compulsion upon its employees" would appear to be disingenuous in light of its conduct during the entire course of the negotiations. From the inception of the negotiations until the strike, more than 10 months later, Respondent made no meaningful concession towards satisfying any of its employees. Bargaining desires, nevertheless, it would have its believers that its philosophical concern about the welfare of its employees impelled it to refuse to discuss the subject of union shop. Apart from the insufficiency of its alleged justification for

### c. Management rights

On June 8, Respondent submitted an elaborate management-rights clause, which if accepted would have excluded the Union from participation in decisions affecting important conditions of employment. Some months later, on August 25, the Company submitted a more moderate clause, which was adopted. It was not unlawful for Respondent to propose an extremely broad management rights clause. However, an experienced industrial relations attorney like Leon Kowal knew that it was unlikely that such a clause would be accepted and probably anticipated that it would result in unproductive discussion, that is, unproductive from the point of view of reaching a complete agreement, which is another indicium that Respondent's bargaining approach was directed toward prolonging negotiations.

### d. Volunteers

At the February 2 meeting, Respondent submitted a clause granting the Clink the right to use volunteers. The Union had no objection to the proposal, provided that the right was limited so that volunteers would not be used to displace bargaining unit employees. Respondent maintained that volunteers had never been used to replace regular employees and that the Company had no intention of doing so in the future. While there appeared to be no disagreement in principle, nevertheless, despite lengthy and repeated discussions about the subject, Respondent would not agree to modify the language of the volunteers clause as originally drafted. The only objection advanced by Leon Kowal for the Company's refusal to incorporate language that would clarify the Union's fears was that disputes regarding the use of volunteers could lead to an excessive number of arbitrations. This explanation lacks credibility. An experienced labor relations attorney like Leon Kowal readily could have drafted a volunteers clause which would have satisfied the Union's fears about the use of volunteers refusing to negotiate about union security, the alleged "philosophical" basis for its position also is faulty. The structure of the Act contemplates that the representative chosen by the majority of the employees in an appropriate unit is the exclusive collective bargaining representative for all employees in the unit, including those employees who opposed the selection of the representative. By engaging in negotiations the Company abjured the law requires it to do, the compulsion upon the employer who opposed the Union to accept the representation of the Union and to work under the wages and other terms and conditions of employment which might be negotiated for them by the Union. To accede to an agency shop clause would impose only a slight additional "compulsion" upon such dissident employees. The true reason for Respondent's adamant refusal to consider any form of union-security provisions probably lay not in its concern for its employees but in its hope that without union security there would be an attenuation of the Union's support and ultimate loss of its majority. Although it is not unlawful for an employer to object to a contract provision because it might strengthen the Union's ability to organize, "it is impossible to advance 'plausible, improvable justifications for a bargaining position."' (Quinti's Restaurant Corp v NLRB, supra at 409. By so doing the employer prejudices meaningful negotiations with respect to the subject)

Subsequent to the strike, at the November 17 meeting, the Company agreed to accept the Union's dues checkoff proposal. While a provision for checkoff of union dues is of advantage to the Union, it is not of the same nature as a union-security clause and the fact that Respondent ultimately after 10 months of bargaining, agreed to the checkoff of union dues does not excuse its refusal to negotiate about union security in any form.
to replace bargaining unit employees and still have given to
the employer the necessary flexibility to expand its use of
volunteers as the volume of its work expanded. The refusal
of Respondent to consider phrasing some limitation upon
the language of its volunteers clause to achieve an objective
which was not in dispute is another indicium of Respond-
ent's reluctance to arrive at a mutually acceptable collec-
tive-bargaining agreement.

e. October 18 meeting

Of particular significance in this case is Respondent's
conduct at the October 18 meeting. A strike was scheduled
to begin the next morning. On October 15, the mediator
had suggested to Leon Kowal that at the next scheduled
meeting on October 18, the Company should respond to
any of the outstanding Union proposals as it could. The
object, of course, was to see whether the strike could be
averted. Up to this point in the negotiations, the Company
had made no wage offer. On October 18, it still made no
wage offer. Moreover, it made no offer to compromise on
any of the significant noneconomic subjects in dispute be-
tween the parties. This alone would indicate a lack of inter-
est on Respondent's part in forestalling the strike. How-

This record amply demonstrates, and I find, that the
strike which began on October 19 was, if not entirely, at
least in part the result of the employees' frustration at the
lack of progress in the negotiations, which I have found
due to Respondent's unlawful refusal to bargain in
good faith. I find further that as Respondent has continued
in its refusal to discharge its statutory obligations to bar-
gain collectively with the Union in good faith, it has been
prolonging the strike.

D. Interrogation and Threats

On October 7, after the Company had received its first
10-day strike notice from the Union, Diane Richards
instructed the supervisors to ask the employees whether they
would work during the strike. According to Deborah Fein-
bloom, Richard's instructions to the supervisors were not
to harass the employees and to assume that employees who
refused to answer were not going to work. Yvonne Sulli-
van, coordinator of medical records and telephone coun-
selors, testified that she separately questioned 11 employees
who worked under her supervision as to whether they were
planning to report for work on the first day of the strike
and whether they were planning to remain all day, and
explained to them that the reason for the questions was for
scheduling purposes. Nine of the employees answered
either yes or no. There is conflict between the testimony of
Yvonne Sullivan and that of employees Ann Wax and Joan
Levine as to what occurred during their respective conver-
sations with Sullivan on October 7. An affidavit fur-
ished to a Board investigator by Yvonne Sullivan on No-
vember 5 substantially corroborates the testimony of Ann

65 Although the Supreme Court held in [NLRB v. Insurance Agencies
Intl Union, AFL-CIO] 361 U.S. 477 (1960) that the Board was not empow-
ered to approve or disapprove of particular economic weapons, and al-
though the Court recognizes that the statute contemplates and protects eco-
omic warfare, nothing therein suggests that interdiction of conduct
deliberately calculated to promote a strike is beyond the Board's powers. It
would seem reasonable to infer that when one party to the bargaining takes
action which has a work stoppage as at least one of its objects, such conduct
last meeting before the strike was the very antithesis of its
statutory obligation to engage in negotiations with a "seri-
ous intent to adjust differences and reach an acceptable
common ground." 65

6. Conclusions

Respondent did not confer in good faith with the Union.
The Company's attendance at 25 bargaining sessions was a
diversion, a mere pretense at engaging in negotiations with
the Union. The Company's purpose was to make the nego-
tiations a fruitless waste of time, to discourage the employ-
ees in their expectations that they would achieve improve-
ments in the terms and conditions of their employment
through the representation of the Union, and ultimately to
free itself of the need to deal with the Union at all. I find,
as alleged in the complaint, that the Company has violated
Section 8(a)(1) and (3) of the Act.

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Wax and Joan Levine. Accordingly, I find that when Wax and Levine refused to respond directly to Sullivan's questions she told them, "If you refuse to answer the question, I'll have to assume you're not coming to work and are therefore putting your job in jeopardy."17

Five days later, on October 12, Respondent circulated a questionnaire among its employees to determine whether or not they would report for work during the strike and in the accompanying explanatory memorandum stated:

Mr. Small also charged Preterm with having committed an unfair labor practice by making inquiries concerning your intentions of reporting to work on October 19, 1976. We are assured we can inquire of our employees as to their intentions of coming to work at the beginning of the strike. Our purpose in asking you is to make it possible to schedule incoming patients and have employees available to take care of them. We want to assure you that you are free to make your own decision. No reprisals will be taken against you whatever your decision may be.

If you refuse to answer, we will not know whether you will be working and will therefore have to schedule a replacement.

The purpose of Section 8(b) is to give health care institutions sufficient advance notice of impending strikes to enable them to make arrangements for the continuity of patient care. "It was this sensitivity to the need for continuity of patient care that led the Committee to adopt amendments with regard to notice requirements and other procedures related to potential strikes and picketing."

In recognition of such congressional concern, I am of the opinion that the strict safeguards enunciated in Johnson's Poultry Co., and John Bishop Poultry Co., 140 NLRB 770, 775 (1964), should be relaxed in the case of a health care institution. I find that Yvonne Sullivan by asking Ann Wax and Joan Levine whether they planned to work during the threatened strike, in the circumstances described, did not engage in unlawful interrogation. However, I agree with General Counsel that Sullivan went beyond the needs of the situation by threatening the employees that if they didn't report for work they would be putting their jobs in jeopardy. Furthermore, these threats were repeated on October 18 when Leon Kowal informed the Union's negotiating committee that employees who go on strike will be permanently replaced. As the strike was an unfair labor practice strike, such communication was "a significant misrepresentation and constituted an unfair labor practice."18

Accordingly, I find that the threats made by Sullivan and Leon Kowal that employees who went on strike placed their jobs in jeopardy or would be permanently replaced constituted violations of the Act.19

In the Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Company has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

I have found that the Company has refused to bargain collectively in good faith with the Union as the representative, duly certified by the Board, of an appropriate collective-bargaining unit of its employees. In order to insure that these employees will have the opportunities to enjoy the full benefits that may be derived from their selection of a bargaining agent as contemplated by the Act, I recommend that the initial year of certification be deemed to begin on the date that the Company commences to bargain in good faith with the Union as the recognized representative of the employees in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

I also have found that the strike, which began on October 19 and which was still in progress on the dates of the hearing in these cases, was caused and has been prolonged by Respondent's unfair labor practices. Accordingly, I shall recommend that, upon application for reinstatement, Respondent shall reinstate to their former job or, if those jobs no longer exist, to substantially equivalent positions, without impairment of their seniority or other rights and privileges, all those employees who participated in the strike and who have not already been reinstated, dismissing, if necessary, any persons hired as replacements on or after October 19. If, after such dismissals, there are insufficient positions remaining for all the striking employees

In the event of a strike at Preterm we will do everything we can to serve our patients. Under the law we are permitted to hire permanent replacements and we will make every effort to do so. We will provide police protection for all employees who wish to work as well as all of our patients. And finally, we will notify the media so they will be aware of the situation.

The complaint alleges that this paragraph constitutes an unlawful threat to permanently replace unfair labor practice strikers. However, at the time the letter was written, a 30-day strike notice had not yet been served. The discussion as to what the Employer would do in the event of a strike was purely hypothetical. Similarly, the event that might trigger a strike was speculative. It was far from certain that there would be a strike, and if there were, it would be in response to the Union's unfair labor practices. It is noted that similar language appears in an earlier letter the Company wrote to its employees on April 8. Accordingly, I find that the statement in the October 1 letter that "we are permitted to hire permanent replacements and we will make every effort to do so" was not unlawful.

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17 St. John's Hospital and School of Nursing, Inc. v. NLRB, 555 F.2d 1368 (10th Cir. 1977).
19 On October 1, Diane Richards wrote a two-page letter to the employees in which, among other things, the Company's position in regard to union security and the possibility of a strike were discussed. One paragraph of the letter reads:

"The Company appreciates that this paragraph constitutes an unlawful threat to permanently replace unfair labor practice strikers. However, at the time the letter was written, a 30-day strike notice had not yet been served. The discussion as to what the Employer would do in the event of a strike was purely hypothetical. Similarly, the event that might trigger a strike was speculative. It was far from certain that there would be a strike, and if there were, it would be in response to the Union's unfair labor practices. It is noted that similar language appears in an earlier letter the Company wrote to its employees on April 8. Accordingly, I find that the statement in the October 1 letter that "we are permitted to hire permanent replacements and we will make every effort to do so" was not unlawful."
who desire reinstatement, the available positions shall be distributed among them without discrimination because of their union membership, activities, or participation in the strike, in accordance with seniority or other nondiscriminatory practices as theretofore were applied by the Company in the conduct of its business. Those strikers for whom no employment is immediately available after such distribution shall be placed on a preferential hiring list with priority determined among them by seniority or by such other nondiscriminatory practices as theretofore were applied by the Company in the conduct of its business, and thereafter, in accordance with such system, they shall be offered reinstatement as positions become available and before other persons are hired for such work. I shall also recommend that Respondent make the striking employees whole for any loss of earnings they may have suffered or may suffer by reason of Respondent's refusal, if any, to reinstate them, by payment to each of a sum of money equal to that which she normally would have earned during the period from 5 days after the date on which she applied, or shall apply, for reinstatement to the date of Respondent's offer of reinstatement to her, absent a lawful justification for Respondent's failure to make such offer. Backpay shall be computed on the basis of calendar quarters, in accordance with the method prescribed in F. W. Woolworth Company, 90 NLRB 289 (1950), with interest computed thereon in the manner prescribed in Florida Steel Corporation, 231 NLRB 651 (1977).60

For the reasons set forth in M.E.A. Milling Company, 170 NLRB 1079 (1968), enfd. 463 F.2d 953 (D.C. Cir. 1972), I shall recommend that the Respondent reimburse the employee-members of the union negotiating committee for the wages lost, if any, while attending past negotiating sessions, with interest thereon at the rate of 7 percent per annum.

Upon the basis of the foregoing findings of fact and upon the entire record in this case, I make the following:

Conclusions of Law

1. By failing and refusing to bargain in good faith with the Union as the collective-bargaining representative of the Company's employees in the appropriate unit described below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.61

2. By the foregoing conduct and by threats to permanently replace employees who engaged in a lawful strike in protest of Respondent's unfair labor practices, the Company also has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. The strike of Respondent's employees which began on October 19 was caused and has been prolonged by Respondent's unfair labor practices herein found.

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

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in these proceedings, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER 62

The Respondent, Preterm, Inc., Brookline, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with District 1199 Mass. National Union of Hospital and Health Care Employees, a Division of RWDSU/AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time counselors, telephone counselors, the abortion coordinator, nurses aides, supervisor of the telephone room, pap clinic coordinator, medical chart clerks, admitting officers, receptionists, including the first floor receptionist and medical center manager, maintenance employee, and trainees, employed at the Employer's Brookline, Massachusetts, location, but excluding bookkeeping employees, administrative assistant, administrative secretary, medical director's secretary, all other coordinators, counselor training assistants, and evaluators, student intern, registered nurses, licensed practical nurses, physicians, physicians' assistants, guards, and supervisors as defined in the Act.

(b) Failing or refusing to furnish the Union, with reasonable promptness, information duly requested by it concerning employees' wages, hours, terms, or conditions of employment that is relevant to the Union's collective-bargaining duties, including the administration of any subsisting contract.

(c) Threatening to replace permanently employees who engage in a strike in protest of Respondent's unfair labor practices.

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

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

(a) Upon their application, offer immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed, to all employees of Respondent who partici

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61 As the initial charge in these proceedings was filed on October 14, the unfair labor practices herein found date only from April 14. However, the conduct of Respondent described above antedating April 14 was relevant and was used to shed light upon and to explain the transactions occurring thereafter.

62 In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become the findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.
pated in the strike which began on October 19, 1976, and
who have not already been reinstated, dismissing, if neces-
sary, any persons hired as replacements by Respondent on
or after October 19, 1976. If sufficient jobs are not avail-
able for these employees, they shall be placed on a prefer-
tential hiring list in accordance with their seniority or other
nondiscriminatory practices theretofore utilized by the
Company, and they shall be offered employment before
any other persons are hired. Respondent shall also make
whole these employees for any loss of earnings they may
suffer by reason of Respondent's refusal, if any, to rein-
state them in accordance with the terms of this recom-
manded Order, in the manner set forth in the section of this
Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the
Board or its agents, for examination and copying, all pas-
roll records, social security payment records, timecards,
personnel records and reports, and all other records neces-
sary to analyze the amount of backpay due under the terms
of this recommended Order.

(c) Upon request, bargain collectively concerning rates
of pay, wages, hours of employment, and other terms and
conditions of employment with District 1199 Mass. Na-
tional Union of Hospital and Health Care Employees, a
Division of RWDSU/AFL-CIO, as the exclusive collec-
tive-bargaining representative of all the employees in the
appropriate unit described above and if an agreement is
reached, embody it in a signed contract. The certification
year shall extend 1 year from the date such new bargaining
negotiations begins.

(d) Make whole each employee-member of the negotiat-
ing committee of the Union for earnings lost while attend-
ing past bargaining sessions, with interest thereon at the
rate of 7 percent per annum.

(e) Post at its place of business in Brookline, Massachu-
setts, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional
Director for Region 1, after being duly signed by Respon-
dent's representative, shall be posted by Respondent imme-
diately upon receipt thereof, and be maintained by it for 60
consecutive days thereafter, in conspicuous places, includ-
ing all places where notices to employees are customarily
posted. Reasonable steps shall be taken by Respondent to
insure that said notices are not altered, defaced, or covered
by any other material.

(f) Notify the Regional Director for Region 1, in writ-
ing, within 20 days from the date of this Order, what steps
Respondent has taken to comply herewith.

"In the event that 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."