Winges Company, Inc. *and* Teamsters Local 651, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 9-CA-15440-1, -2, -3, 9-CA-16076, 9-CA-16479, and 9-CA-16840

August 5, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On February 22, 1982, Administrative Law Judge Bruce C. Nasdor issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 and hereby orders that the Respondent, Winges Company, Inc., Nicholasville, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[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 Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

APPENDIX

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

WE WILL NOT threaten employees with discharge for distributing union authorization cards.

WE WILL NOT threaten to discharge employees for their participation in any representation hearing.

WE WILL NOT threaten employees with stringent enforcement of our absenteeism policy because employees support the Union.

WE WILL NOT solicit employee complaints and grievances, or promise our employees increased benefits and improved terms and conditions of employment.

WE WILL NOT refuse to bargain in good faith with the Union by refusing to furnish information or to cease granting unilateral pay increases conditioned upon the Union's withdrawing previously filed unfair labor practice charges.

WE WILL NOT grant increases without prior notice to the Union and without affording the Union an opportunity to negotiate and bargain as the exclusive representative of our employees with respect to such acts of conduct. The bargaining unit is:

> All full-time and regular part-time concrete and blacktop employees at and out of our Nicholasville, Kentucky facility including truckdrivers, but excluding all office clerical employees, guards and all professional employees and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer to Aubrey Padgett immediate and full reinstatement to his former position or to a substantially equivalent position without prejudice to his seniority or other rights and privileges, and WE WILL compensate him for any loss of pay suffered by reason of his termination, with interest.

WE WILL furnish the Union a copy of our wage and benefit survey and we will also make available to the Union our financial and business records which we contend support our alleged inability to pay increases in wages and other economic benefits to our employees.

WE WILL recognize and bargain collectively with Teamsters Local 651, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the appropriate unit referred to above

and, if an understanding is reached, embody such agreement in a written signed contract.

WINGES COMPANY, INC.

DECISION

STATEMENT OF THE CASE

BRUCE C. NASDOR, Administrative Law Judge: This case was heard before me at Lexington, Kentucky, on September 14 and 15, 1981. The consolidated amended complaint alleges independent violations of Section 8(a)(1)[1] and (5), and a violation of Section 8(a)(3) of the Act, in the discharge of Aubrey Padgett. The allegations come within the purview of the National Labor Relations Act (herein called the Act).

Upon the entire record,[2] including my observation of the demeanor of the witnesses, and after due consideration of the briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

It is admitted, and I find, that Respondent is a Kentucky corporation with an office and place of business located at Nicholasville, Kentucky, where it is engaged in the building and construction industry as a paving contractor. During the past 12 months, a representative period, Respondent in the course and conduct of its business operations performed services valued in excess of $50,000, in States other than the State of Kentucky. Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

Teamsters Local 651, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE APPROPRIATE UNIT

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time concrete and blacktop employees at and out of Respondent's Nicholasville, Kentucky facility including truckdrivers, but excluding all office clerical employees, guards and all professional employees and supervisors as defined in the Act.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent is in the business of performing blacktop paving and concrete work.

Employees James Tate and Aubrey Padgett went to the Union's office on May 23, 1980,[3] where they met with Rick Silvers, the union organizer. They told him they were interested in organizing Respondent's employees. Silvers gave each of them a union authorization card, which they executed. Silvers supplied them with 30 additional cards with which they were to solicit their coworkers.

On the next regular workday, May 27, Padgett told the employees on his work crew that he had union cards in his automobile, and that they could sign them and leave them in his glove compartment. Tate advised his work crew of the same thing. Several of the employees signed union authorization cards and left them in Padgett's automobile.

Clarence Smith, one of Respondent's group leaders, testified that Padgett showed him the union cards, offered him a card, and told everyone that the cards were in Padgett's glove compartment. Blond Holt, Respondent's superintendent for 14 years, testified with respect to Smith's supervisory authority. Holt testified that he and Smith tell employees what work to perform. Moreover, according to Holt, Smith uses his own independent judgment for his own decision making when telling the people what work to perform. Furthermore, if a man wants to take off early and he asks Smith, Smith has the authority to release the individual. The following testimony by Holt reveals his concept of Smith's standing as a rank-and-file employee:

> Q. Did you ever talk to Smith about the Union?
>
> A. We talked a little bit, yes sir.
>
> Q. I thought you said Lodgston was the only one you ever talked about the Union with?
>
> A. Employees, you know, my workers. But Smith was different.

Ray Lodgston worked for Respondent as a truckdriver. He testified that sometime in May or June Holt approached him and asked him if he had any information about the Union with him. Lodgston responded that he did not, and Holt allegedly stated that Padgett or Tate would probably approach him, Lodgston, about the Union. Lodgston testified further that Holt stated that if he caught anyone passing out union cards he would fire them. Holt testified that he never saw union authorization cards, but, "I heard some of the men saying they were going to try to get a union but I never did see any union cards." Holt denied the conversation with Lodgston.

Padgett testified that on June 4, Holt arrived at the jobsite on Forbes Road where he, Lodgston, and Sparks were working. According to Padgett, Holt walked up to him (the employees had just been on their dinner break) and pointed a finger in his face stating, "the first that he caught giving out union cards would be fired and he said that goes for all men." Lodgston corroborated Padgett's testimony. Sparks was too far away to hear what Holt said, but he did see him point his finger at Padgett.

[1] At the hearing, counsel for the General Counsel made a motion to add another related 8(a)(1) allegation. I granted the motion.

[2] Counsel for the General Counsel's unopposed motion to correct the transcript is hereby granted.

[3] All dates are in 1980, unless otherwise indicated.

Holt denied the testimony of these witnesses and averred that neither Lodgston or Tate was on that jobsite on that day.

On June 6, at noon, Holt gave Padgett his paycheck and said that he was laying him off, but would call him back in 2 or 3 weeks. Padgett testified, and Respondent confirms that the job was only half completed. Holt testified that he let Padgett work the rest of the day because Padgett said he would not hit the curbs anymore. Holt assisted Padgett the rest of the day.

Respondent's employees are paid 2 weeks after a pay period ends. Therefore, on June 10, Padgett went to Respondent's office in an effort to get his paycheck. He was given a letter signed by Winges Company, Inc., which stated, "This is a letter of termination of employment with Winges Company, Inc., due to unexpected slowdown in business and your poor work performance." After Padgett's termination, Holt, Respondent's superintendent, and Holt's son, Billy Holt,[4] operated the roller which Padgett had operated during his employ. Three weeks after Padgett's discharge, a new employee, Sam Webb, was hired to operate the roller.

Holt testified that he discharged Padgett because of a slowdown in work, "lack of work," and poor workmanship. Although Holt did not set forth in the letter to Padgett what he meant by poor work performance, he stated that he meant Padgett had damaged curbs with the roller. Holt did not put anything on Padgett's unemployment compensation form with respect to Padgett's breaking curbs, nor did he direct his secretary to do so. He was at a loss to explain why. He did admit that he never fired anyone for breaking curbs and that he really did not discharge Padgett for damaging curbs. His response as to the reason for terminating Padgett was "I really didn't discharge Padgett on tearing the curbs up. It's the other things, too, you know." The "other things" were never delineated by Holt.

Lodgston testified that prior to Padgett's termination Holt spoke to him stating generally that Padgett was a good roller operator. Tate testified similarly that he heard Clarence Smith state that Padgett did a good job rolling. Holt testified further that the quality of Padgett's work was good, but it became worse immediately prior to his discharge. Padgett contends that Smith told him on one occasion to be careful with the curbs, but never gave him any kind of warning about rolling the curbs, or about anything else. Respondent's president, William B. Gess, Jr., testified that if Padgett ever got any kind of written warning, he, Gess, was not aware of it.

Lodgston testified that he talked to Holt on the day Holt returned to Respondent's facility after attending the representation hearing. According to Lodgston, he asked Holt in a joking way why he was not in jail. Lodgston testified "he [Holt] said you're Goddamn right I am not in jail I just got two more men fired." Holt named the men as Fox[5] and Tate. The representation hearing occurred sometime after the discharge of Padgett.

[4] Billy Holt had never operated the roller before.

[5] This may or may not be a typographical error, the reference could be to Sparks.

On or about August 12 or 13, Gess held an employee meeting under the office in the garage area. According to the testimony of Lodgston, approximately 35 employees were in attendance. Gess allegedly began the meeting by stating that it was a small company and he did not see why they needed a union there. Moreover, according to the testimony, Gess stated that he could not afford a union and if the employees had any complaints to come to him and he would try to help them. Gess allegedly stated that the employees had a right to come to him with anything they had to settle, and they did not need a union to solve their problems. Gess testified that some of the employees aired their gripes. For example, a driver, for some unknown reason, stated he had not gotten his raise and Gess responded that he would take care of that. Other employees stated that they had not gotten their group insurance after 6 months. He told the employees that they could have their own group insurance or union. Furthermore, according to Gess, he advised the employees that he had an open door policy and if the employees had any complaints they could bring them to him, and he would talk them over with the employees.

Lodgston testified that, when he received his paycheck on October 31, attached to it was a warning. He testified as follows:

> I had been out there that week and attached to my check there was a piece of paper signed by Mr. Gess stating that I had been absent so many days during a certain period and it would have to stop and when Mr. Holt handed my check to me he said this is what your fucking union got you and I said, what do you mean, and he said, well since the Union came in, before every call-in, what time you called in, why you weren't coming in to work and the policy is one time, warning, second time days off, and the third time discharge.

Lodgston and Holt testified that on the day after the representation election Holt tore the official National Labor Relations Board election signs off of the door where they were posted, crumbled them up and threw them away. While engaging in this, Holt allegedly stated, "I got some of the lyingest sons-of-bitches in this country."

The 8(a)(5) allegations

Richard W. Silvers, the Union's business agent and organizer, testified in support of the 8(a)(5) allegations. The parties had approximately 11 or 12 negotiating sessions. Representing Respondent were A. D. Spayth, a labor relations consultant, and Bob Rulge, vice president of Respondent. Silvers represented the Union and Donald Sparks was present as the employee representative.

According to Silvers, each time an economic item was discussed, Spayth took the position that the Company needed to remain competitive and that was his reason for offering a minimal wage increase. Spayth contended that Respondent had conducted a survey in the area and Respondent's wages were competitive with the other em-

ployers in the area.[6] Silvers requested a copy of the survey in order to verify the facts as set forth by Spayth. He was provided with the numerical results of the survey matched up with the names of the employers which were identified by letters of the alphabet, rather than the actual name of the employer. This document was received in evidence as General Counsel's Exhibit 3. Silvers testified that this information in this form was valueless. On April 3, 1981, Silvers wrote a letter to Spayth[7] requesting to review Respondent's financial records including the breakdown of overhead and payroll. This request was made as a result of Respondent's contention that economic concessions could not be granted. The information was never forthcoming. Neither Spayth nor Rulge testified at this proceeding.

On May 4, 1981, Spayth wrote to Silvers reaffirming what had been discussed at a meeting on April 28, 1981.[8] Respondent expressed, *inter alia*, a willingness to contact the Union before any future wage changes were made for the employees and to give the Union a chance to voice an opinion. Furthermore, Spayth offered to allow Silvers to survey Respondent's financial records, and make the wage survey available. The *caveat* was that Silvers was to withdraw the unfair labor practice charges upon which complaints had issued, prior to Respondent's meeting with the Union on April 28, 1981.

Upon motion by the General Counsel, the complaint was amended at the hearing to allege this conduct as being violative of Section 8(a)(1) of the Act.

Gess testified that the wage survey was not furnished because Respondent was only able to get the information by promising its competitors that the results would be held confidential.

During the course of the negotiations Silvers found that wage increases had been granted. General Counsel's Exhibit 6 reflects that some employees received wage increases. It does not contend that it bargained with the Union before granting these increases.

V. ANALYSIS AND CONCLUSIONS

A. *The 8(a)(1) Allegations*

A short time after Padgett and Tate distributed union cards, Holt told Lodgston that he would probably be approached by them regarding the Union. He went further and stated that if he caught anyone passing out union cards he would fire them. I find this to be a threat and violative of Section 8(a)(1) of the Act.

Several days later, at the jobsite, Holt approached Padgett, pointed his finger in Padgett's face, and stated that he would fire anyone caught passing out union cards. This is also a violation of Section 8(a)(1) of the Act, and I so conclude.[9]

I credit Lodgston's testimony that he was told by Holt that Sparks and Tate would also be fired. This comment was made after the termination of Padgett and on the day of the representation hearing. Holt contended that he did not attend the representation hearing. In my view, whether or not he attended the representation hearing is irrelevant, and I conclude that the statement was made and as such violates Section 8(a)(1) of the Act.

The record reflects that some time after the commencement of the Union's organizational campaign Respondent required its employees to adhere to a stricter policy of discipline.[10] Therefore I find and conclude that on October 30 when Holt gave Lodgston a warning letter he stated that was what the Union had gotten him. Accordingly, this comment violates Section 8(a)(1) of the Act, as it informs an employee that he is being penalized for selecting the Union as his collective-bargaining representative.

Suffice it to say Holt impressed me as an unreliable witness. His substantive testimony and demeanor on the witness stand convince me that he is a witness unworthy of belief.

I find Padgett and the other witnesses called to testify by counsel for the General Counsel to be credible.[11] They each provided minor factual twists and variations. This demonstrates to me that they were telling the truth and lends support to my conclusion that they had not rehearsed prefabricated testimony. Where there is any conflict between their testimony and the testimony of Holt I accept their versions as the true and accurate versions.

With respect to the allegation involving Gess, he expressly admitted soliciting grievances, and he told the employees he could solve their problems if they approached him, promised to resolve their problems, and he suggested forming a "company" union. Accordingly, I find that his conduct violates Section 8(a)(1) of the Act.

Respondent both orally and in writing offered to provide previously requested information which it was obligated to furnish under the law. The *quid pro quo* for furnishing this information was that the Union withdraw the pending unfair labor charges upon which complaints had issued. Such conduct is a clear violation of Section 8(a)(1) of the Act. See *John C. Mandel Security Bureau, Inc.*, 202 NLRB 117 (1973).

B. *The 8(a)(5) Allegations*

Respondent's defense with respect to its failure to furnish the wage survey and the names of the employers surveyed is confidentiality. In my view, the Union needed and was entitled to the information to check the accuracy of the data secured by Respondent. The Board in *General Electric Company*, 192 NLRB 68 (1971), found that confidentiality was not a defense in a similar set of circumstances. The Board was later affirmed by the Sixth Circuit Court of Appeals in *N.L.R.B.* v. *General Electric Co.* [*IBEW*], 466 F.2d 1177 (1972). Accordingly,

[6] With reference to the geographical area.

[7] This document is in evidence as G.C. Exh. 4.

[8] See the document received in evidence G.C. Exh. 7

[9] In Lodgston's testimony he used the characterization "son-of-bitch," who was passing out union cards. Padgett on the other hand made no reference to that characterization. It is of no consequence because the threat clearly violates Sec. 8(a) (1) of the Act.

[10] The absenteeism policy.

[11] Although no sequestration rule was in effect, all of the witnesses with the exception of Gess chose to remain out of the hearing room during the course of the hearing.

I find that Respondent violated Section 8(a)(5) of the Act, when it refused to furnish the Union all of the information compiled in the wage survey and by refusing to allow the Union to review its financial records. Unrefuted testimony reflects that during the course of the negotiations Respondent, on several occasions, raised remaining competitive as the reason it could only grant a minimal wage increase. As counsel for the General Counsel points out, Respondent was willing to furnish the information if the Union withdrew its unfair labor practice charges.[12] How concerned then was Respondent about the confidentiality of the information?

Uncontradicted record evidence, both oral and documentary, reveals that Respondent granted certain employees unilateral wage increases. Accordingly, I find and conclude that, by this conduct, Respondent violated Section 8(a)(5) of the Act.

As an appropriate remedy for Respondent's violating Section 8(a)(5) of the Act, I will recommend that the Board order an extension of the Union's certification year for 6 months from the time Respondent makes the information available to the Union.[13] See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962), and *Big Three Industries, Inc.*, 227 NLRB 1617 (1977).

C. *The Discharge of Padgett*

The uncontroverted evidence is that Padgett and Tate went to the Union's office, obtained union authorization cards, and distributed them at work. Clarence Smith, who, in my opinion, is a supervisor, and this is supported by the evidence, had knowledge that Padgett had union authorization cards in the glove compartment of his automobile. Moreover, Smith initially was the individual who recommended to Holt that Padgett be discharged. This, as it turned out, was an effective recommendation. This case is rare in that the evidence that Padgett was terminated because of his union activity is so direct. Holt heard the men discussing union solicitation and the distribution of cards, pointed his finger in Padgett's face, and threatened to discharge any man who distributed union cards.

In my opinion, the "small plant" doctrine referred to by counsel for the General Counsel in their brief need not be relied upon under the facts and circumstances of this case, in view of the fact that the evidence preponderates for finding Smith to be a supervisor within the meaning of the Act.

There is no lack of union animus in this case. It is furnished by the overall conduct, including the 8(a)(1) violations engaged in by Holt and Gess.

Respondent attempted to shift defenses or reasons for the discharge of Padgett. At the hearing it raised for the first time the reason Padgett was discharged was for taking gasoline. Moreover, curb damage was never mentioned in Padgett's termination letter nor was it set forth in his unemployment form. Board law teaches that when a respondent shifts defenses for the discharge of union activists it is reasonable and justifiable to conclude that neither reason is the real reason but that the termination was as a result of an employee's union activity. See *Pilgrim Life Insurance Company*, 249 NLRB 1228 (1980). In my view Respondent did not have a dual motive for the discharge, but simply seized upon a pretext. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

Padgett was allegedly discharged for scratching curb with a roller on a job for James E. Humphrey, Jr. Respondent attempted to prove that the damage to the box curb which Padgett allegedly scratched was extensive. Holt acknowledged that it is easier to damage box curb than what is known as lip curb. Moreover, his testimony reveals that a grater machine does more damage than a roller because it has a sharper edge. Russell Harris, a construction superintendent and one of Respondent's witnesses, testified that curbs are scratched on every blacktop job, the kind of job Padgett was working on. Moreover, he testified that breaks caused by a grater are abnormal damage and considered to be of a major dimension, whereas skinning or scratching the curb which is caused by a roller is not major and is less expensive to repair. Furthermore, Smith testified that there were numerous breaks in the curb from a grater which as there before Padgett's blacktop crew even arrived at the job. Respondent's Exhibit 1 is a letter from Humphrey[14] to Respondent dated September 10, more than 3 months after Padgett's discharge and 2 months after the complaint issued. It is obvious that this letter was an amateurish attempt to document the discharge of Padgett after the fact—way after the fact. The humor in the letter is its reference to broken curbs. Evidence reflects that curbs are broken by a grater. Padgett operated a roller which may or may not cause scratches. Ergo, the letter does not even refer to Padgett. Respondent fired the wrong man!

The record is replete with evidence that curbs are damaged by rank-and-file employees, and managerial employees upon occasion. Moreover, an employee, Mike Coffey, damaged curbs according to Holt's testimony but he was not terminated.

Respondent's weak contention that there was a sudden reduction in business was never supported by any substantial evidence. Indeed at least one employee was hired shortly after Padgett's termination, and the evidence reflects that Billy Holt had never operated the roller in the past. Furthermore, the evidence reflects that the job had not been completed at the time Padgett was terminated.

Accordingly, based on the credited testimony and the totality of the evidence, I conclude that Padgett was fired in violation of Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

1. Winges Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters Local 651, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen

[12] I find this to be a separate, independent violation of Sec. 8(a)(1) of the Act.

[13] See the section entitled "Remedy."

[14] Humphrey is the individual who contracted the job in question with Respondent. He was president of Unity Structures, Inc.

and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. Clarence Smith, characterized by Respondent as a group leader, is a supervisor within the meaning of Section 2(11) of the Act.

4. All full-time and regular part-time concrete and blacktop employees at and out of Respondent's Nicholasville, Kentucky facility including truckdrivers, but excluding all office clerical employees, guards and all professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. By threatening employees with discharge for distributing union authorization cards, Respondent violated Section 8(a)(1) of the Act.

6. By threatening to discharge employees for their participation in the representation hearing, Respondent violated Section 8(a)(1) of the Act.

7. By threatening employees with a more stringent absenteeism policy as a result of their union support and activities, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

8. By soliciting employee complaints and grievances, and promising its employees improved terms and working conditions as well as increased benefits, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

9. By refusing to furnish the Union all of the information compiled in the wage survey and by refusing to allow the Union to review its financial records, Respondent has engaged in conduct violative of Section 8(a)(5) of the Act.

10. By granting unilateral wage increases, Respondent has engaged in conduct violative of Section 8(a)(5) of the Act.

11. By laying off and then discharging its employee Aubrey Padgett because he engaged in union and concerted activities, Respondent violated Section 8(a)(1) and (3) of the Act.

12. By offering the Union the information it requested, and offering to cease unilateral wage increases if the Union withdraws its unfair labor practice charges, Respondent violated Section 8(a)(1) of the Act.

13. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having concluded and found that Respondent discriminatorily discharged Aubrey Padgett, I recommend that it offer him immediate and full reinstatement to his former, or a substantially equivalent position, without prejudice to his seniority or other rights and privileges. In addition, I recommend that Respondent make Padgett whole for any loss he may have suffered by reason of the discrimination against him, by payment to him, the sum of money equal to that which he would normally have earned from the date of his discharge, less net earnings during said period. Backpay shall be computed according to *F. W. Woolworth Company*, 90 NLRB 289 (1950), and with interest computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). (See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).)

As an appropriate remedy for Respondent's 8(a)(5) conduct, I shall recommend that it be ordered to furnish the Union with its entire wage survey and allow the Union to review its financial records.

In *Big Three Industries, supra*, 1619, the Board stated:

> In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit.

In the case herein, the facts demonstrate that the parties bargained for approximately 6 months. I recommend that the Board order that the Union's certification year be extended for 6 months from the time Respondent makes the information referred to heretofore available to the Union.

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

ORDER[15]

The Respondent, Winges Company, Inc., Nicholasville, Kentucky, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge for distributing union authorization cards.

(b) Threatening to discharge employees who participate in representation hearings.

(c) Threatening employees with more stringent absenteeism policies because they support the Union.

(d) Soliciting employee complaints and grievances, and promising employees increased benefits and improved terms and conditions of employment.

(e) Failing and refusing to furnish the Union with financial and business information and a copy of the wage survey.

(f) Granting unilateral wage increases to discourage union interest and/or affiliation.

(g) Offering the Union information and offering to cease unilateral wage increases if the Union withdraws its unfair labor practice charges.

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[15] 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 its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(h) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

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

(a) Offer Aubrey Padgett immediate and full reinstatement to his former position or, if such position no longer exists, to a position which is substantially equivalent thereto, without prejudice to any seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, with interest, as provided in the section herein entitled "The Remedy."

(b) Furnish the Union with a copy of the wage and benefit survey and make available financial and business records.

(c) Post at its premises at Nicholasville, Kentucky, copies of the notice marked "Appendix."[16] Copies of said notice, on forms provided by the Regional Director for Region 9, shall, after being duly signed by an authorized representative of Respondent, be posted immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Respondent shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by other material.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records and reports and all other records necessary to ascertain and compute the amount, if any, of backpay due under the terms of this Order.

(e) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[16] 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."