

**Service Master All Cleaning Services, Incorporated  
and Laborers' International Union of North  
America, Local #86. Case 27-CA-6604**

**DECISION AND ORDER**

BY MEMBERS JENKINS, ZIMMERMAN, AND  
HUNTER

On 7 December 1981 Administrative Law Judge James S. Jenson issued the attached Decision in this proceeding. Thereafter, counsel for the General Counsel filed exceptions and a supporting brief, and the Respondent, Service Master All Cleaning Services, Incorporated, filed a memorandum brief in response to the General Counsel's exceptions.

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 briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, as modified below.

The Administrative Law Judge dismissed an allegation that the Respondent violated Section 8(a)(1) of the Act by interrogating Elizabeth Blair about her union sympathies during a job interview. Blair applied for a job and was interviewed by the Respondent's vice president and general manager, James Gray. During the course of the interview, Blair credibly testified, ". . . he [Gray] asked me what I thought of the Union and I told him I wasn't in the union long enough." Blair was eventually hired.

The Administrative Law Judge found that Gray's remark could not be expected to and did not induce fear of reprisal. He therefore recommended dismissal of the relevant allegation in the complaint. We find merit in the General Counsel's exception to this finding.

The test to determine a violation of Section 8(a)(1) of the Act by interrogating an employee about his or her union sympathies is whether, under all the circumstances, the interrogation reasonably tends to restrain or interfere with employees in the exercise of their statutory rights. *Lippincott Industries*, 251 NLRB 262 (1980), enfd. 661 F.2d 112 (9th Cir. 1981). The Board has long rec-

<sup>1</sup> In adopting the Administrative Law Judge's findings that the Respondent violated Sec. 8(a)(3) and (1) of the Act by unlawfully refusing to hire applicants because of their union activities, Member Jenkins does not rely on *Wright Line*, 251 NLRB 1083 (1980). That Decision concerns identifying the cause of an employer's actions where a genuine lawful and a genuine unlawful reason exist. Where, as here, no lawful reason has been found for the Respondent's refusal to hire, Member Jenkins finds the *Wright Line* analysis inappropriate.

ognized that questions involving union membership and union sympathies in the context of a job interview are inherently coercive and thus interfere with Section 7 rights. See *Bendix-Westinghouse Automotive Air Brake Co.*, 161 NLRB 789 (1966); *McCain Foods*, 236 NLRB 447 (1978), enfd. sub nom. *NLRB v. Eastern Smelting Corp.*, 598 F.2d 666 (1st Cir. 1979). We therefore find that the Respondent violated Section 8(a)(1) of the Act in this regard, and shall amend the Administrative Law Judge's Conclusions of Law, recommended Order, and notice to reflect our finding.<sup>2</sup>

We also agree with the General Counsel that Elizabeth Blair, Margaret McElroy, and Katherine Gamron should be included in the list of discriminatees and in the remedial order. Although these individuals were hired by the Respondent in early March 1980, they were among the 11 applicants whom the Respondent unlawfully refused to hire on 1 March 1980. We shall amend the Administrative Law Judge's remedy, Conclusions of Law, recommended Order, and notice to reflect our finding.

**AMENDED CONCLUSIONS OF LAW**

Substitute the following for Conclusions of Law 3 and 5:

"3. By questioning applicants for employment about their union membership and union sympathies, the Respondent violated Section 8(a)(1) of the Act."

"5. By refusing to hire Dena L. Rainwater, Donna Galusha, Berlinda Vigil, Manuel Crockett, Gloria Crockett, Terry Maksin, John Nicholas, Melinda Ruth, Elizabeth Blair, Margaret McElroy, and Katherine Gamron because of their membership in the Union, the Respondent violated Section 8(a)(3) and (1) of the Act."

**AMENDED REMEDY**

Modify the remedy to include the following:

The Respondent having unlawfully refused to offer employment to Elizabeth Blair, Katherine Gamron, and Margaret McElroy on 1 March 1980, the Respondent shall be required to make each discriminatee whole for any loss of earnings she may have suffered by reason of such discrimination, by payment, with interest, of a sum of money equal to that which she normally would have earned as

<sup>2</sup> Member Hunter agrees with the Administrative Law Judge that questioning of employees concerning union matters is not *per se* violative of the Act. Accordingly, again in agreement with the Administrative Law Judge and in light of all the circumstances connected with the Respondent's casual inquiry to Elizabeth Blair concerning her opinion of the Union, particularly the fact that eventually the Respondent hired Blair, Member Hunter would dismiss that 8(a)(1) allegation of the complaint.

wages from 1 March 1980 to the date said individual was offered employment, matters which may best be determined at the compliance stage.

### 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, Service Master All Cleaning Services, Incorporated, Colorado Springs, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified.

1. Substitute the following for paragraph 1(a):

“(a) Questioning applicants for employment about their union membership and union sympathies.”

2. Substitute the following for paragraph 2(a):

“(a) Make Dena L. Rainwater, Donna Galusha, Berlinda Vigil, Manuel Crockett, Gloria Crockett, Terry Maksin, John Nicholas, Melinda Ruth, Elizabeth Blair, Margaret McElroy, and Katherine Gamron whole for any loss of earnings suffered by reason of the discrimination against them in the manner set forth in the section entitled ‘The Remedy.’”

3. 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 at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board has found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

**WE WILL NOT** question applicants for employment about their union membership and union sympathies.

**WE WILL NOT** tell applicants for employment that they will not be hired because of their membership in a union or because they are entitled to receive union benefits.

**WE WILL NOT** refuse to hire applicants for employment because of their membership in Laborers' International Union of North America, Local #86, or any other labor organization.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce employees or applicants for employment in the exercise of rights guaranteed them by Section 7 of the Act.

**WE WILL** make Dena L. Rainwater, Donna Galusha, Berlinda Vigil, Manuel Crockett, Gloria Crockett, Terry Maksin, John Nicholas, Melinda Ruth, Elizabeth Blair, Margaret McElroy, and Katherine Gamron whole for any loss of earnings suffered by reason of the discrimination against them, together with interest.

All our employees are free to become or remain or refrain from becoming or remaining members of the above-named labor organization, or any other labor organization.

**SERVICE MASTER ALL CLEANING  
SERVICES, INCORPORATED**

### DECISION

#### STATEMENT OF THE CASE

**JAMES S. JENSON**, Administrative Law Judge: This case was tried before me on January 22, 1981, in Colorado Springs, Colorado. The complaint issued on May 30, 1980, pursuant to a charge filed on March 3, 1980, and contains nine allegations of 8(a)(1) conduct, and the allegation that Respondent refused to hire 24 applicants for employment because of their union membership in violation of Section 8(a)(3). Respondent denies it engaged in any unlawful conduct. All parties were afforded a full opportunity to appear, to introduce evidence, and to examine and cross-examine witnesses. Briefs were filed by both the General Counsel and Respondent and have been carefully considered.

Upon the entire record in the case, including the demeanor of the witnesses, and having considered the posthearing briefs, I make the following:

#### FINDINGS OF FACT

##### I. JURISDICTION

Respondent is engaged in providing janitorial and maintenance work for, *inter alia*, the Air Force Academy and Fort Carson, both located in Colorado, and annually derives gross revenues in excess of \$500,000. The gross receipts from the services performed for the Air Force Academy and Fort Carson annually exceeds \$100,000. It is admitted and found that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

It is clear from the record that Laborers' International Union of North America, Local #86, is a labor organization within the meaning of Section 2(5) of the Act.

### III. ISSUES

1. Whether Respondent's agents interrogated applicants for employment regarding their union sympathies or interests.

2. Whether Respondent's agents told applicants for employment that it was not hiring them because of their union membership.

3. Whether Respondent's agents coerced applicants, as a condition of employment, to sign a waiver of certain benefits set forth in a contract between the Union and their prior employer.

4. Whether Respondent refused to hire 24 applicants for employment because of their membership in the Union.

### IV. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Setting*

Respondent is engaged in contract janitorial and maintenance work. In addition to a number of nongovernment contracts, it has contracts to provide custodial services for two branches of the Armed Forces, the Air Force Academy and Fort Carson, Colorado. The Fort Carson facility is the only one involved in this proceeding. Immediately prior to March 1, 1980,<sup>1</sup> the janitorial and maintenance work at Fort Carson was performed by two companies, J & J Maintenance, Inc., and C & E Maintenance. C & E was a nonunion employer and J & J had a nationwide contract with the Laborers' International Union of North America, AFL-CIO, covering "all Federal Government Service contracts" acquired by J & J. Pursuant to that agreement, local area wages, and benefits covering Fort Carson were negotiated with Local #86, the Charging Party herein. The most recent agreement was from October 1, 1979, until September 30, 1982. In early February, pursuant to competitive bidding, Respondent was awarded the contract to replace both J & J and C & E at Fort Carson, commencing March 1. While Respondent was aware of the fact that J & J had a collective-bargaining agreement with the Union, it neither had a copy of the agreement nor knew whether it had an obligation to hire the employees of the prior contractors or to assume the collective-bargaining obligation of J & J. Accordingly, on February 21, Respondent's attorney wrote the Department of the Army regarding Respondent's obligations. On February 25, Francis Liston, Respondent's president, informed James Gray, Respondent's vice president and general manager, that the contracting officer for the Army had informed Respondent's attorney that Respondent was not obligated to hire J & J employees or to assume the collective-bargaining agreement between J & J and the Union. This information was reiterated by letter dated February 28 to Respondent's then attorney. Also on February 25, Ted Doxtater, the union business manager, met with Gray, stated he represented the Fort Carson service employees, and asked if Respondent would honor the contract between J & J and the Union.<sup>2</sup> Gray declined to honor the collective-bar-

gaining agreement between J & J and the Union. In response to Doxtater's question whether Respondent would retain the J & J managers, Gray responded in the negative "because most of the time they sit on their butts and were lazy and were watching TV."

Prior to submitting its bid for the Fort Carson contract, Gray made three visits to Fort Carson and inspected 35 of the 78 buildings covered by the bid. With the exception of the library and post office which he found to be acceptable, Gray was dissatisfied with the conditions of the other buildings. He testified that he observed a 3- to 5-year wax buildup on floors, smoke and dirt on venetian blinds, which indicated they had not been cleaned for a considerable amount of time, cobwebs in the corners of ceilings, and dust in various other places. Gray discussed each of his visits with Liston. According to Gray, since poor job performance reflects on management, it was decided that if Respondent was awarded the contract, it "definitely would not keep the manager," and the possibility of not hiring any of the J & J employees was discussed.

Don Wiley and Barbara Hancock were the manager and assistant manager respectively for J & J at Fort Carson. Following the bid opening on February 8, Gray and Liston talked to both Wiley and Hancock concerning their salaries and how much time was spent on servicing the various buildings. According to Hancock, the morning of February 13 or 14, Gray went out to the J & J office at Fort Carson along with Joe Williams and Bragg who had been hired as the manager and assistant manager respectively for the Fort Carson contract. Hancock acknowledged that she and Wiley were sitting in the office watching television when the three men arrived. Later that day she and Wiley talked to Gray again in his office about the work at Fort Carson. At that time Gray gave them employment applications to take back to the J & J employees with the warning that they would have to be returned by February 25, and that they would be considered along with other applicants. Accordingly, Wiley and Hancock informed all J & J employees that there was no guarantee of a job with Respondent, and that they would have to submit applications for employment and be interviewed. On February 24, 25, and 26, Respondent ran an employment ad in a Colorado Springs newspaper. Approximately 175 individuals filed applications as a result of the ad and were interviewed by Williams and Bragg. At least 24 of the 27 J & J employees were interviewed by Gray between February 15 and 25. He compiled a list of 11 he felt were the best qualified, which he gave to Williams for his consideration.<sup>3</sup> Since Williams was the project manager, and as such was in charge of the work, he was instructed to hire people "compatible with him." With the exception of former J & J employees Elizabeth Blair, Katherine Gamron, and Margaret McElroy, whose employment was approved by Gray, all employees were hired by Williams from those applications who has responded to the newspaper ad.

Respondent was a franchisee and independent of Service Master International.

<sup>3</sup> While Gray testified there were 12 qualified employees, only 11 are identified. I conclude, therefore, that there were 11.

<sup>1</sup> All dates herein are in 1980 unless otherwise stated.

<sup>2</sup> Doxtater had assumed Respondent would honor the J & J contract since Service Master International "was union." Gray explained that Re-

Liston testified, however, that following the advice from the contract officer that there was no obligation to hire employees from J & J or C & E or to assume J & J collective-bargaining agreement, he advised Gray that he had decided to start with a clean slate and not hire any former employees of either J & J or C & E. He testified he told Gray his decision was based on the following factors: (1) the poor performance of J & J; (2) economic consideration involved, including Respondent's liability for vacation pay benefits for employees hired from previous contractor;<sup>4</sup> (3) information from the Army contracting officer that Respondent had no obligation to hire either J & J or C & E employees. In addition, following the bid opening in early February, Johnny Voudouris, J & J's vice president, called Respondent's office and left a message for Gray and Liston wishing them "good luck" and that J & J "had been losing a couple of thousand dollars a month in fines." While the fact of a loss per month of that amount was not definitively established, both Wiley and Hancock admitted they had been told by Voudouris that J & J had suffered a "deduction" for December 1979. Wiley placed the amount at \$2,000.

The morning of February 27, Gray and Liston informed Wiley and Hancock that a decision had been made not to hire any J & J employees. According to Hancock, Gray gave as reasons that Respondent could not afford "their vacations"; that the vice president of J & J had reported a "\$2,000 deduction" due to "poor labor"; that someone had reported that Wiley and Hancock did not do anything but watch TV; and that, if any J & J employees were hired and then laid off within a couple of weeks, Respondent would have to pay them 2 weeks' severance pay. According to Hancock, she asked if "one of the reasons also be that we are union members?" and that Gray "said that was secondary." Gray acknowledged the above conversation. Williams was told on the same date to hire employees, but not anyone from J & J or C & E.

As noted earlier herein, three former J & J employees were hired in early March under circumstances to be discussed hereafter. In April, following the filing of the charge initiating the complaint, Respondent offered employment to 11 former J & J employees, most of whom had been on the list Gray initially felt were qualified for employment by Respondent. The offers were made on advice of counsel to cut off any backpay liability that might be found to exist.

#### B. Positions of the Parties

The General Counsel apparently contends that Respondent, through Gray, unlawfully interrogated Donald Wiley, Debra Wiley, Walter Blair, Elizabeth Blair, Terry Maksin, Augusta Jordan, and Katherine Gamron in violation of Section 8(a)(1); unlawfully refused to hire all the J & J employees because of their union membership,

<sup>4</sup> Liston testified that in 1979, when Respondent took over the Air Force Academy contract, and hired employees of the former contractor, it was necessary to retrain some of the people; and there was one individual who worked about 2 weeks, took his accrued vacation, and then quit after returning for only a few days. He was concerned Respondent might have the same problems at Fort Carson. There was also a question in his mind regarding Respondent's liability for severance pay.

thereby violating Section 8(a)(3); and illegally required Katherine Gamron and Elizabeth Blair to waive their previous union benefits before they began work for Respondent, in violation of Section 8(a)(1). The General Counsel points out that Respondent had knowledge of the union status of J & J employees at the time it bid on the Fort Carson contract; that union animus was established through Gray's conversations with union representative Doxtater and the J & J applicants; and that the reasons Gray gave for not hiring the former J & J employees were "unconvincing or invalid." The General Counsel seeks an order requiring Respondent to offer immediate employment with backpay to all 25 persons named in General Counsel Exhibit 9.

Respondent contends that the evidence indicates a lack of union animus and that the statements and alleged unlawful questions attributable to Gray were not coercive, but were isolated and merely opinions which are not substantial evidence of a violation of Section 8(a)(1) of the Act; that the General Counsel has failed to show that Respondent was unlawfully motivated when it failed to offer employment to the J & J employees and, to the contrary, the evidence shows that Respondent declined to hire the J & J employees for legitimate business reasons which outweighs any union animus that might be found. Alternatively, it is contended that any employment and backpay remedy should be limited to those 11 employees originally considered qualified by Gray. Respondent also contends that the purpose of the waivers which it required be executed by two employees was to establish a break in service so that accrued benefits would not have to be paid by Respondent since those benefits had not been calculated into its bid for the Fort Carson job.

#### C. Interviews With Alleged Discriminatees

Conduct alleged to have violated Section 8(a)(1) occurred, for the most part, during Gray's job application interviews of employees of J & J. Employees interviewed fall into three categories: (1) those recommended by Gray and/or offered jobs in April; (2) those not offered employment; and (3) those hired initially.

*Suzanne Crump*, also referred to as Suzanne Cormier, started working for J & J September 24, 1979. She filed an application with Gray on February 20 but contended she was not interviewed by him. Nevertheless, she testified she told Gray that she thought she would be automatically hired, and Gray responded that the new manager would do the hiring and that J & J employees had as much chance of getting a job as anyone off the streets. Crump was one of those to whom Gray sent an offer of employment in April. While she accepted, she is now employed by J & J. Gray testified that Crump was not one of the original 11 employees that he recommended Williams consider for hire because her father was the quality assurance evaluator at Fort Carson and he was fearful that the father might show favoritism toward her. However, she was offered employment in April because she had been impressive during the February 20 interview.

Dean L. Rainwater and Donna Galusha were interviewed by Gray on February 19. Rainwater testified she worked for J & J 13 months.<sup>5</sup> She testified that Gray asked what buildings that had cleaned, told them what they would do "when" they went to work for him "on the first," and how he scheduled work. She acknowledged he did not say that they either would or would not be hired by Respondent. Gray's version of the conversation was that he told the two women what they would be doing "if" they went to work on the first of the month. Gray's version, which I credit, is consistent with the testimony of all the other witnesses, none of whom claim they were told they would start working March 1. Further, her testimony was susceptible to corroboration, but was not. Gray characterized Rainwater as mature, polite, with experience, and placed both her and Galusha on the list of 11 recommended for hire. Rainwater received a letter from Gray in April offering her a job with Respondent which she declined since she had another job. Galusha was also offered a job in April.

Carolina Allen, who did not testify, was not 1 of the 11 originally recommended by Gray because she had not been as impressive as the others. She was, however, sent a letter in April and responded by calling Gray and asking what her job would be. According to Gray, she responded with "okay" after she was told how the job was run but that she did not show up for work. She was, however, employed by Respondent on January 12, 1981.

Berlinda Vigil worked at Fort Carson 4 years and was interviewed on February 22 by Gray who told her she would have to be interviewed by Williams and that she would be notified of the time. Her next contract with Respondent was the April letter offering her a job, which she accepted after being interviewed by Williams. About 3 weeks later she was terminated for refusing to go to a building alone after the individual with whom she usually worked did not show up.<sup>6</sup> Gray characterized Vigil as "very impressive, very outspoken, had been there for several years and could well fit into our type of program," and listed her among the 11 recommended for hire.

Sergeant First Class Manuel Crockett and Gloria Crockett, his wife, neither of whom testified, were interviewed by Gray who found them to be impressive, very polite, knowledgeable, and with quite a bit of experience. They were among the 11 recommended to Williams for consideration for hire.<sup>7</sup>

Terry Maksin worked for J & J from April 11, 1979. She was interviewed by Gray on February 22. She testified that Gray stated there would be a meeting on March 1 to show new employees around the buildings, but she would not have to stay and work. She testified further "then after that he had thrown in and said that because of the union I was going to lose a week of vacation. . . . Then he asked me how long I was a union member, a member of the union. And I told him since January 1, 1980. Then after that he'd ask me what buildings I

cleaned out there and how long it took . . . . Then when I was leaving, he said that the new manager would be out the 25th and 26th of February to see us while we were working . . . ." Her next contact was the April 14 letter offering her a job. On April 17 she talked to Gray again. As Maksin attended college Tuesday, Thursday, and Friday evenings, she was available only during the daytime on those days. She was available during the evenings on the other days. She stated that Gray told her that he would try to work out a schedule to accommodate her school schedule and that he would call her the following day. Gray testified that he sent her to see the manager at Fort Carson who was unable to fit her desired hours into the schedule but was to call her later if he could. He testified further that there was little turnover in the day crew, and that, with one or two exceptions, the original day crew was still employed as of the hearing. During the April 17 meeting, Maksin was photographed for an ID card and signed a Form W-4. Thereafter, she obtained another job through an employment agency.

Gray testified that, following the February 22 interview, he placed Maksin's name on the list he recommended for hiring consideration to Williams because she was enthusiastic, and "you want to help" students trying to pay their way through college. He did not deny asking Maksin how long she had been a union member. He denied, however, that he told her on February 22 that she would lose a week of vacation because of the Union. Instead, he testified, he thought she had asked about vacation and that he responded she would get only 1 week "because your union agreement cost you a week." He went on to testify that, prior to the Union at Fort Carson, the employees "had 2 weeks' paid vacation and under the union agreement, they were only going to get one. So, the wage determination survey which is what we go by which the Government uses to determine the wages and benefits that an employer will have, stated that they would have one week paid vacation so, therefore, they had lost one week of vacation." The wage determination survey was not made an exhibit. Further, the collective-bargaining agreement between J & J and the Union provided for 1 week vacation after 1 year of service and 2 weeks after 2 years. The Service Contract Act, 41 U.S.C. par. 353(c) provides, in substance, that Respondent was required to pay no less wages and fringe benefits than provided for in the collective-bargaining agreement between J & J and the Union. Thus, I find Gray's explanation of this matter unconvincing. In any event, he did tell Maksin, albeit inaccurately, that the union contract had caused her to lose a week of vacation. Whether the statement was made through error or was deliberate, it can hardly be questioned but that it would tend to discourage employees in the exercise of their Section 7 rights. Coupled with the fact that Gray had just asked and learned through Maksin that she had been a member of the Union since January 1980, I find that Respondent violated the Act substantially as alleged in paragraph V(c) of the complaint.

John Nichols, who did not testify, was interviewed by Gray along with Maksin. He was among the group

<sup>5</sup> Galusha did not testify.

<sup>6</sup> The General Counsel does not claim that the discharge was unlawfully motivated.

<sup>7</sup> Gloria Crockett is not listed on G.C. Exh. 9 as a former J & J employee.

whom Gray recommended Williams consider hiring since he had done the cyclic tasks such as washing windows, light fixtures, venetian blinds, etc., which required some expertise.

Melinda Ruth was interviewed and recommended to Williams because of her experience. She did not testify.

Walter R. Blair and Elizabeth Blair, his wife, had worked for J & J and filed applications with Respondent on February 20. Elizabeth was interviewed by Gray that day, but Walter was not.<sup>8</sup> Elizabeth testified that at the end of the interview Gray "asked about the union . . . . He said he understood that some of us were forced to join the union. I said that wasn't true . . . . He said he was not union but he would still be paying us at the union rate. And he asked me what I thought of the union. And I told him I was not in the union long enough."<sup>9</sup>

Interrogation of employees about union matters is not *per se* a violation of the Act. In determining whether interrogation tends to interfere with, restrain, or coerce employees in violation of Section 8(a)(1), the Board and the courts have delineated certain factors: (1) the history of employer hostility and discrimination; (2) the nature of the information sought (e.g., was the interrogator seeking information from which he could take action against the individual employees); (3) the identity of the questioner (i.e., what was his position in the company); (4) the place and method of interrogation (e.g., was the employee called from work to the boss' office? Was there an atmosphere of "unnatural formality"?); and (5) the truthfulness of the reply (e.g., did the interrogation inspire fear leading to evasive answers). *NLRB v. Midwest Hanger Co.*, 474 F.2d 1155 (8th Cir. 1973), cert. denied 414 U.S. 823; *NLRB v. Ritchie Mfg. Co.*, 354 F.2d 90 (8th Cir. 1965); *NLRB v. Camco, Inc.*, 340 F.2d 803 (5th Cir. 1965), cert. denied 382 U.S. 926; *Bourne Co. v. NLRB*, 332 F.2d 47 (2d Cir. 1964). The issue is whether the questioning could reasonably be expected to induce fear of reprisal in the minds of the employees. Evaluating the question, "what I thought of the union," in light of the above factors and the additional fact that Elizabeth Blair was hired, leads me to conclude that, in the context in which it was asked, it could not be expected, nor did it, induce fear of reprisal. Accordingly, I recommend dismissal of paragraph V(a) of the complaint.

On February 28 or 29, Walter talked to Gray and inquired whether Respondent was hiring any J & J employees. He stated:

So I called him up, and he said right now he was not planning on hiring nobody from J and J because of the union and also because a Mr. Voudouris called him and told him that he was losing approximately \$2,000 a month under J and J's contract because of gigs or I guess you'd call it incomplete work. I continued on and explained to him, I said, "My wife lost her job which was a full-time job.

My son lost his job. He was working for J and J. And I lost my part-time job." And I told him, "Right now we're hurting financially, moneywise," and that I was going to Korea and that I felt my wife needed a job, you know, before I left.

So I talked to him some more, and I explained the situation and said it's a good possibility that at least if my wife didn't get a job, we might have to file bankruptcy before I left. And he told me that there was 12 people that he was considering on hiring from J and J, but he wanted to wait until all this union stuff blew over before he hired anybody.

So I talked to him some more, and I explained that my wife needed a job. He said, well, that he would do, he would go ahead and get in touch with his lawyer and see if he could go ahead and hire my wife without any repercussions. He said that he was in touch with JAG that was the Army lawyer and through procurement which was in charge of the contract. And they told him he didn't have to worry about no service benefits or anything else going with the contract.

The substance of the call was not denied by Gray. Thus, it stands unrefuted that Gray told him Respondent was not hiring anybody from J & J because of the Union, and considering hiring 12 J & J employees, but wanted to wait until the "union stuff" below over. Such statements interfere with, restrain, and coerce employees in violation of Section 8(a)(1) substantially as alleged in paragraph V(e) of the complaint.

Following that call, Walter and Elizabeth went in and talked to Gray in person. She was apparently told to report for work on March 4. On that day she reported to Williams at Fort Carson. She testified that when she reported "he [Williams] had a piece of paper on the desk, and he told me I had to sign that paper. And I asked him what it was. He said that I was not going to hold Service Master responsible for any sick, leave, severance pay, seniority, or vacation that I had done. I asked him why not. He just said that I had to sign it. I asked him, 'if I don't?' He said 'you won't have a job.' So I signed it." The document which bears her signature reads:

I, Elizabeth Charlene Blair, am a new employee of Servicemaster All Clean, Inc. and hereby relinquish all claim to my previous employer regarding sick leave, vacation pay and severance pay per union contract. I will abide by the Wage Determination Survey currently being employed by Servicemaster All Clean, Inc. under government contract DAKFO6-80-C-0046.

On the day she reported for work, Elizabeth told Sigafos, a government inspector, and Tom—a supervisor for Respondent—that the buildings "were a mess, which they were. They didn't look like they had been cleaned."

In *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), the Court held that a successor employer is not required to adhere to its predecessor's collective-bargaining agreement and, in most instances, unilaterally may set initial terms of employment. The Court further held that

<sup>8</sup> Walter, an Army NCO stationed at Fort Carson, had worked part time for J & J. In November 1979, he had requested transfer to Korea, and in January was informed his request had been granted. On March 18, he learned he would be leaving for Korea at the end of April. His April 15 deposition was received in lieu of oral testimony.

<sup>9</sup> Gray denied he asked anyone what they thought about the Union.

a successor employer has "a duty to bargain" when, and after, it has "selected as its work force the employees of the previous employer to perform the same tasks at the same place they had worked in the past," or, prior thereto, if it was "perfectly clear [that the successor employer] plans to retain all of the employees in the unit." In the instant case the complaint does not alleged that Respondent is the "successor" to J & J in the sense that it is required to bargain with the Union, and is clear from the record that Respondent at no time intended to retain all the J & J unit employees. Thus, as of March 1, when Respondent assumed the Fort Carson work, the labor contract between J & J and the Union was no longer viable and Respondent was free, ostensibly, to set its initial terms and conditions of employment. On by reason of the provision of the Services Contract Act might the wages and benefits under that nonviable contract be applicable to Respondent. Therefore, while Respondent may or may not be required under the Services Contract Act to follow the wage and benefit provisions of the nonviable labor agreement, and whether it has or has not done so, is matter over which I have no jurisdiction.<sup>10</sup>

Accordingly, I conclude that, while Respondent's conduct may have violated the provisions of the Service Contract Act, it cannot be found to have violated Section 8(a)(1) of the Act as alleged in paragraph V(g) of the complaint.

The same day, Walter advised Williams that he too was available for only daytime work since he wanted to spend the nights with his children before leaving for Korea. Williams stated he should be able to employ Walter after he went on leave about March 18. On March 17, Williams advised Walter that he could not hire him "because he was laying some people off days and putting them on at night and he didn't need anybody else."

Gray testified that, a few days after interviewing Elizabeth Blair, her husband came back and stated that he did not care about the Union or about a job for himself since he was leaving for Korea, but that if his wife did not have a job, they would have to declare bankruptcy.

Gray testified that Elizabeth Blair was impressive and that he indicated in the initial interview that he might consider her for a housekeeping position. She was 1 of the 11 employees he recommended Williams consider hiring. He denied he told her that he understood some of the employees were forced to join the Union. Such a statement, in any event, would not be coercive. He testified that "most of the employees that I talked to would

ask me about the union, and I would tell them that we are not a union company, and that if you work for us you will not be a union employee."<sup>11</sup>

George, George Jr., and Augusta Jordan, all J & J employees, were interviewed by Gray about February 22. George testified that Gray did not say whether he or his wife would have jobs with Respondent, but that he would contact them later and let them know. Gray told them that George Jr., age 16, would not be hired because no one under 18 would be employed. In late May or early June, George talked to the night manager, Lynn Foster, filed an application, and was called 2 days later to come to work. Augusta testified that, a couple of weeks after the initial interview, she called Gray and asked if they would get their jobs back and that he responded not right then "because he wouldn't take us back because of the union, and he would not pay our vacation pay, and he would call me back in maybe two weeks. He'd call maybe 12 people back."<sup>12</sup> She did not receive a call from Gray after that. While Gray did not deny the substance of the call, her version is ambiguous in that on the one hand she claimed he said "he would not take us back because of the union" but goes on to contradict that by stating he would call "maybe 12 people back." While the General Counsel did not inform me either at the trial or in her brief what specific conversations she relied on to support the specific complaint allegations, I conclude Augusta Jordan's testimony was meant to support paragraph V(d) of the complaint. As with his statement to Walter Blair, Gray clearly related the declination to hire at least a part of the former J & J employees to their union membership which is clearly coercive. The General Counsel has proven a violation of Section 8(a)(1) substantially as alleged in paragraph V(d) of the complaint.

About March 12, Augusta Jordan obtained an application for her daughter, who was subsequently hired, and talked to Williams about a job for herself. He said he would call her in about 2 weeks, which he failed to do. Sometime later, after her daughter had told her that Williams said Augusta and some of the others had not been hired because they had too many "write-ups," she talked to Williams again, denied having any "write-ups," and gave him a letter of recommendation from the former Army Chief of Staff. Apparently offended at Williams' reaction to the letter, she told him she would not work for Respondent even if a job were handed to her on a silver platter and that he could "take your job and shove it up your ass." Contrary to her statement to Williams about no writeups, her husband testified they had told Gray at the initial interview that they had "maybe five deficiency sheets . . . in four years."

Gray testified that, when they worked for J & J, the Jordan family had cleaned post headquarters which he had inspected and found unsatisfactory; that the Jordans told how much people liked them because they did a lot

<sup>10</sup> The Services Contract Act, Title 41, Sec. 353(c) provides:

(c) No contractor or subcontractor under a contract, which succeeds a contract subject to this chapter and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: *Provided*, That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality.

<sup>11</sup> The Blairs' son also filed a job application but was never interviewed. G.C. Exh. 9 lists Robert Blair as a former J & J employee, but does not list Walter Blair, Elizabeth's husband.

<sup>12</sup> Augusta was obviously wrong about the date of the call since J & J was still the contractor on the job.

of extra things for them which, according to Gray, is not Respondent's policy. He testified, "Mrs. Jordan was a belligerent person, rude," and that he was not impressed with either of them and decided not hire either. He told them that George Jr. would not be hired because he was under 18. According to Gray, Respondent's bonding insurance does not cover individuals under 18 years of age, and he tries to stay away from hiring "high school kids" because they "like to run around; they don't like to work." George was hired in June without Gray's knowledge. Gray testified they were constantly getting "gig sheets" on the buildings he did, that George was counseled several times about his job performance, and that he quit after 3 or 4 months.

*Barbara Hancock* was J & J assistant manager, a supervisor within the meaning of the Act. She contended she had not applied "only" for a management job, but had left it open. She testified that, during her interview with Gray on February 22, the following conversation took place: "I said, 'If I am hired by you, will I be able to retain my union membership?' And I recall Mr. Gray saying, 'No ma'am, as far as I'm concerned, there is no union, and if I had my choice, I would do away with all unions.'" <sup>13</sup> Gray denied making the above statement. His version of the conversation was to the effect that she asked if she could still belong to the Union if she went to work for Respondent, and that he responded "'well, I suppose you could if you wanted to, but why would you want to?' I said that we're not a union company so, therefore, they wouldn't be able to do anything for you." Darlene Nyquist, the secretary in Gray's office, was present during Hancock's job interview. She denied Gray made the statements attributed to him by Hancock and corroborates his version of the conversation. Gray's version is credited over that of Hancock. <sup>14</sup> I therefore recommend dismissal of paragraph V(b) of the complaint.

*Donald Lee Wiley*, J & J contract manager at Fort Carson, had worked for J & J 4 years, and at the time of the hearing occupied the same position with J & J at the Air Force Academy. As stated earlier herein, Gray had visited the J & J office at Fort Carson and found Wiley and Hancock watching television. On February 22, Wiley was interviewed for "any job." <sup>15</sup> Wiley testified he thought Gray had brought up the subject of the Union and had asked if he were a member of the Union, and why, since he was a supervisor. On February 27, when Gray and Williams went out to the J & J office at Fort Carson, there was a discussion with Wiley and Hancock regarding the J & J employees. Wiley testified that Gray said that "all we did was sit around and watch TV in the office there," which Wiley denied. Wiley testified that Gray stated "he was thinking about hiring 11 or 12

of our people that we had presently under contract and that he later changed his mind because he couldn't afford the vacation time and he couldn't afford the severance pay that would be involved in it and because we were involved with the union. He didn't want nothing to do with the union." The subject of severance pay had been brought upon and Wiley commented that "the union calls for two months severance pay," which he assumed Respondent would have to pay. In response, he testified, Gray said he would have to have his attorney look at the contract between J & J and the Union again.

Gray testified he had eliminated Wiley as a potential manager after his second visit to Fort Carson because of the conditions in which he found the buildings. Further, he considered Wiley as J & J management and anticipated that he would leave as soon as J & J found another job for him. <sup>16</sup> Gray did not deny having stated that at least part of the reason for deciding not to hire the 11 employees was because of their involvement with the Union. The statement is coercive and violates Section 8(a)(1) of the Act substantially as alleged in paragraph V(f) of the Act.

*Debra Wiley*, Donald's daughter, worked for J & J approximately 10 months. She testified she made application and was interviewed on either February 21 or 22 by "some man" who did not identify himself. She testified: "I gave him the application. He asked me if I was union. He asked me if I worked for J & J Maintenance. I said yes to both questions. He said he would call me later." Gray denied he interviewed Debra, but that her application was rejected because she was Donald Wiley's daughter and, as with Barbara Hancock's sons, he felt there was a conflict of interest and "he didn't want anybody relating back to J & J what we were doing." The General Counsel having failed to inform me which conversation she relied on to support the specific complaint allegations, I conclude that Debra's testimony was directed at paragraph V(b). Gray denied having interviewed Debra and she did not identify the questioner as Gray or an agent of Respondent. I therefore again recommend dismissal of paragraph V(b).

*Michael Burton* and *Mario Allen* both completed applications on February 15. <sup>17</sup> Gray testified that both were in the Army stationed at Fort Carson, but that he did not interview either and eliminated them from consideration for hire since their military duties conflicted with the work Respondent does. Whoever interviewed Burton made the following notation on his application: "Did [building] 740 and 741 in 4-5 hours—too long jail house lawyer." Exhibits show that both men were granted leaves from employment by J & J on February 15 until March 30 because of temporary military duty (TDY).

*John Aubrey* was also in the Army. When interviewed by Gray, he had just returned from 30 days TDY and was going "down range," which he did about twice a month for 2 or 3 days each time, which meant he would not be available to work during those periods. Gray testified that he had to be able to rely on employees being

<sup>13</sup> Her son, Dean, age 18, filed an application later but was not hired. Another son, Charles, younger than Dean, also applied and was not hired. Neither testified. Gray testified he considered Barbara Hancock as a J & J "company person" and did not want any of them knowing how Respondent worked for fear they would report it to J & J, with whom it completed for jobs.

<sup>14</sup> It is noted in this regard that Gray admitted he asked Wiley, another J & J supervisor, if he was a union member.

<sup>15</sup> Gray had already told Wiley and Hancock that Respondent would bring in its own managers.

<sup>16</sup> Wiley was J & J's contract manager at the Air Force Academy at the time of the hearing.

<sup>17</sup> Neither testified.

regular employees. While not hired initially, he was hired around May and worked about 3 months and quit. He was rehired in October and quit again in November.

*Katherine Gamron* had worked at Fort Carson 2 years. She was interviewed by Gray on February 18. She testified that Gray was pleased with the way she had taken care of the library; that they talked about the Union, which she thought she had brought up; that she told Gray "that the union man told us that the next contractor that took over had to go union, and he [Gray] said they didn't, that the union just wants our money"; that 2 days later Gray called and asked if she wanted to work, to which she replied affirmatively; that "he asked me did I know that they're not union and I said yes. He asked me if that was all right. I said yes"; that the following day she reported to Williams who said she had to sign the following if she wanted to work, which she did:

I, Katherine Gamron, am a new employee of Servicemasters All Cleaning, Inc. and hereby relinquish all claims against said company perprutrated [sic] by a union contract with my previous employer regarding sick leave, vacation pay and severance pay. I will abide by the Wage Determination Survey being followed by Servicemaster All Cleaning, Inc. under government contract DAKF06-80-C-0046.

She testified she also told Williams "that the union said that the next contractor that came in could go union," and that Williams replied "that wasn't true, that they just wanted our money."

Gray testified that Gamron was probably the most impressive applicant he talked to; that he was impressed with the condition of the library, and that the librarian had called him and stated they were pleased with the work she did and asked that she be kept; that she was one of the individuals he recommended be hired; and that when she was hired, he asked if she knew Respondent was not a union company and whether it was all right with her. The rationale with respect to Elizabeth Blair's having been required to sign the waiver is equally applicable to Gamron. I therefore recommend dismissal of paragraph V(h) of the complaint.

*Margaret McElroy* has worked at Fort Carson since 1972. She was not interviewed when she turned in her application for employment. A couple of weeks later she received a telephone call asking her to come in the next day. The following day she talked to Williams who said they had been trying without success to contact her and asking if she would like to work and that Respondent "would not be union." Williams told her that he had received a number of calls from the deputy post commander's office asking what had happened to her. She testified that Williams said she would have to sign a paper, which he did not have, and which she never signed. On cross-examination she acknowledged that Williams told her "that everything would be pretty much the same as it had been before"; that the only thing different was that there was not going to be a union contract; that one thing different was that she was going to be hired as a new employee and that she would be getting a 1-week vacation. Gray testified he never interviewed McElroy,

and that she had been hired at the request of the chief of staff at post headquarters because she had done "minor things" that pleased him. Again I must guess which paragraph of the complaint McElroy's testimony purportedly supports. I have concluded it was meant to support paragraph V(i). If so, it fails to prove the allegation and dismissal is recommended.

#### D. Failure To Hire All J & J Employees

It is clear from the foregoing that Gray recommended the hire of the following 11 J & J employees; Rainwater, Galusha, Vigil, Manuel and Gloria Crockett, Maksin, Nichols, Ruth, Elizabeth Blair, Gamron, and McElroy. Elizabeth Blair and Gamron were hired with the commencement of work by Respondent and McElroy started the second week. On April 14, following the filing of the charge herein, Respondent mailed letters to 11 employees offering them employment. In addition to Rainwater, Galusha, Virgil, Manuel and Gloria Crockett, Maksin, Nichols, and Ruth (all of whom were on Gray's recommended list for hire), offers were made to Crump, Caroline Allen, and Goodwin. The offers were made pursuant to advice of counsel to alleviate any backpay liability that may be found due as a result of the charge filed with the Board. There is nothing to indicate that the offers were made other than in good faith. None of the other J & J employees were offered employment in March or April for a variety of reasons testified to by Gray. However, Aubrey was hired in May and George Jordan in June under circumstances previously discussed.

Respondent cites four reasons for refusing to hire initially 24 of the 27 J & J employees: (1) that it was economically motivated because it did not want to pay for the accrued benefits of the former J & J employees which it would have to pay if they were retained; (2) poor work performance as observed by Gray; (3) its prior experience with retaining employees of a prior contractor; and (4) the telephone call from the prior contractor relating he had been losing \$2,000 per month in fines for poor performances.

The General Counsel argues that Respondent had knowledge of the "union activity" of the J & J applicants, that Respondent was hostile to the Union, that the reasons given for failing to hire all the J & J employees were invalid, and therefore the evidence supports the complaint allegation that all 24 applicants were refused employment because of their membership in the Union.

Analyzing the facts in accordance with *Wright Line*, 251 NLRB 1083 (1980), I conclude that the General Counsel has made a *prima facie* showing sufficient to support the inference that union membership was a motivating factor in Respondent's decision not to hire at least a part of the former J & J employees. It cannot be questioned that Respondent knew that the J & J employees were unionized and that the subject of the Union was discussed in employment interviews. In the case of Maksin, Gray related her loss of a week of vacation to the Union and asked how long she had belonged to the Union; and in the cases of Augusta Jordan, Walter Blair, and Don Wiley, stated that the hiring of J & J employees was related to the Union. Further, Gray admitted he

stated that union membership was a "secondary" reason for not hiring the the J & J employees, thus indicating it played some role in the decision. This evidence effectively shifted the burden to Respondent to demonstrate that it would have taken the same action even in the absence of the J & J employees' membership in the Union. Respondent was not legally obligated to hire any of the J & J employees. It interviewed them for employment, however, and Gray evaluated each for potential employment, concluding that, of 27, Respondent was interested in hiring 11. The number Gray recommended for hire was communicated to some of the employees who had already been informed that all would be considered for hire on an equal basis with all other applicants. This does not appear to be the fact, however, since on February 27 it was determined that none would in fact be hired. However, 3 of the 11 recommended by Gray were hired hereafter. Respondent has established that it had valid reasons for not offering employment to those employees not contained on Gray's recommended list of 11, and has, in my view, met its burden of demonstrating that it would have rejected them even in the absence of their union membership. I have no doubt that, in rejecting those applicants, it had weeded out the former J & J employees who it thought were the poor performers and were responsible for the losses suffered by its predecessor. Respondent had a service contract with the Air Force Academy, which was subject to the requirement of the Service Contract Act, and knew its obligations thereunder. In fact, one of the reasons it advances for refusing to hire more J & J employees is that it had been required to make payments to an employee who had quit pursuant to its provisions. Why then did Respondent proceed to interview employees who it knew were unionized? I conclude that it intended to select and hire the best as its own employees, and when it later learned that it was not required either to hire the former J & J employees or "become a union shop," although obligated to follow the economic terms of the collective-bargaining agreement pursuant to the Services Contract Act, it decided not to hire the 11 former J & J employees who had been recommended by Gray because they were union members. I have no doubt that, but for their union membership, Respondent would have hired Rainwater, Galusha, Virgil, Manuel and Gloria Crockett, Maksin, Nichols, and Ruth at the commencement of its service contract. Accordingly, I conclude Respondent has not met its burden of demonstrating that it would have rejected the eight former J & J employees in the absence of their union membership, and that it thereby violated Section 8(a)(3) and (1) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Laborers' International Union of North America, Local #86, is a labor organization within the meaning of Section 2(5) of the Act.
3. By questioning applicants for employment about their union membership, Respondent violated Section 8(a)(1) of the Act.

4. By telling applicants for employment that it would not hire them because of the Union or union benefits, Respondent violated Section 8(a)(1) of the Act.

5. By refusing to hire Dena L. Rainwater, Donna Galusha, Berlinda Vigil, Manuel Crockett, Gloria Crockett, Terry Maksin, John Nicholas, and Melinda Ruth because of their membership in the Union, Respondent violated Section 8(a)(3) and (1) of the Act.

6. The above-described unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Respondent having unlawfully refused to offer employment to Dena L. Rainwater, Donna Galusha, Berlinda Vigil, Manuel Crockett, Gloria Crockett, Terry Maksin, John Nicholas, and Melinda Ruth on or about March 1, 1980, but it having been shown that said individuals were offered employment by letters dated April 14, 1980; it is recommended that Respondent be required to make each of said discriminatees whole for any loss of earnings he or she may have suffered by reason of such discrimination, by payment of a sum of money equal to that which he or she normally would have earned as wages from March 1, 1980, to the date said individual employee accepted employment, or declined employment either by specific refusal or by failure to respond to Respondent's offer, all matters which may best be determined at the compliance stage. Any backpay found to be due shall be computed in accordance with the formula set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and shall include interest in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).<sup>18</sup>

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

#### ORDER<sup>19</sup>

The Respondent, Service Master All Cleaning Services, Incorporated, Colorado Springs, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
  - (a) Questioning applicants for employment about their union membership.
  - (b) Telling applicants for employment that they will not be hired because of their membership in the Union of because they are entitled to receive union benefits.
  - (c) Refusing to hire applicants for employment because of their membership in a union.

<sup>18</sup> See, generally, *Isis Plumbing & Co.*, 138 NLRB 716 (1962).

<sup>19</sup> 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.

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

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

(a) Make Dena L. Rainwater, Donna Galusha, Berlinda Vigil, Manuel Crockett, Gloria Crockett, Terry Maksin, John Nicholas, and Melinda Ruth whole for any loss of earnings suffered by reason of the discrimination against them in the manner set forth above in the section entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its premises in Fort Carson and Colorado Springs, Colorado, copies of the attached notice marked "Appendix."<sup>20</sup> Copies of said notice, on forms provided

by the Regional Director for Region 27, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous place, including all places where notices to employees and applicants for employment are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges unfair labor practices other than those specially found herein.

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<sup>20</sup> 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."