

Cooke-Wilson Electric Supply Company and Teamsters Local Union No. 110 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.¹ Cases 6-CA-15344 and 6-RC-9215

15 September 1983

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 14 January 1983 Administrative Law Judge Peter E. Donnelly issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the General Counsel filed a limited cross-exceptions and an answering brief in opposition to Respondent'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,² 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,³ as modified below, and hereby orders that the Respondent, Cooke-Wilson Electric Supply Company, Ebensburg, Pennsylvania, its officers, agents, successors,

¹ The General Counsel has excepted to the Administrative Law Judge's reference to the Union as International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 110. The record shows that the name of the Union is that which is set forth in the case caption above. We hereby correct this error by the Administrative Law Judge and will make this correction in the accompanying Order and notice.

² 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*, 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. In the sixth paragraph of sec. III.A, of the Administrative Law Judge's Decision the date "January of 1981" should read "January 1982."

³ Chairman Dotson would not find Respondent's statement that if the employees at Respondent's Ebensburg facility obtained a collective-bargaining agreement similar to that at its Beckley, West Virginia, facility it would close the Ebensburg facility to be a threat in violation of Sec. 8(a)(1) of the Act. Rather, the Chairman would find such statement to be a prediction of the reasonably foreseeable economic consequences which would befall the Ebensburg facility if employees there obtained a contract comparable to that between the employees at the Beckley, West Virginia, facility and Respondent.

and assigns, shall take the action set forth in the said recommended Order, as so modified:

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

"(d) Discharging employees, thereby discriminating in regard to their hire and tenure of employment in order to discourage membership in Teamsters Local Union No. 110 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America."

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

DIRECTION

It is hereby directed that the Regional Director for Region 6 shall, within 10 days from the date of this Direction, open and count the ballots of Clement DeLattre and Thomas Shero. Thereafter the Regional Director shall prepare and cause to be served on the parties a revised tally of ballots, including therein the count of the above-mentioned ballots, upon the basis of which he shall issue the appropriate certification.

APPENDIX

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

WE WILL NOT discharge our employees thereby discriminating in regard to their hire and tenure of employment in order to discourage membership in Teamsters Local Union No. 110 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT interrogate employees concerning their union activities and the union activities of other employees.

WE WILL NOT threaten to close the Ebensburg, Pennsylvania, facility if the employees select union representation.

WE WILL NOT threaten to close the Ebensburg, Pennsylvania, facility if those employees obtain a collective-bargaining agreement like the Beckley, West Virginia, facility's collective-bargaining agreement.

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

WE WILL make Clement DeLattre and Thomas Shero whole for any loss of pay, with interest, which they may have suffered as a

result of our discrimination against them and WE WILL reinstate them.

WE WILL expunge from our files any reference to the discharges of Clement DeLattre and Thomas Shero on 22 February 1982 and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel action against them.

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

**COOKE-WILSON ELECTRIC SUPPLY
COMPANY**

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge: The representation petition herein was filed on February 23, 1982, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 110, herein called the Union, the Charging Party, or the Petitioner. After a hearing, the Regional Director for Region 6 issued a Decision and Direction of Election on March 25, 1982, directing an election in a unit of "all warehouse employees" employed at the Ebensburg, Pennsylvania, facility of Cooke-Wilson Electric Supply Company, herein called the Employer or the Respondent. The election was held on April 20, 1982, in a unit consisting of three voters. One vote was cast for the Union and two votes were challenged by the Board agent. The challenged ballots were those of Clement J. DeLattre and Thomas D. Shero, Jr. Both had been terminated by the Employer on February 22, 1982. In a charge filed by the Union on March 9, 1982, those terminations were alleged to be discriminatory. On April 29, 1982, a complaint was issued alleging that the Respondent violated Section 8(a)(3) of the Act by discharging DeLattre and Shero.

Inasmuch as the challenged ballots in the representation case are included in the issues raised in the unfair labor practice complaint, the representation case (Case 6-RC-9215) and the unfair labor practice case (Case 6-CA-15344) were consolidated for hearing by order dated May 12, 1982. An answer to the complaint was timely filed by the Respondent. Pursuant to notice a hearing was held before me at Ebensburg, Pennsylvania, on October 7, 1982. Briefs have been timely filed by the Respondent and the General Counsel which have been duly considered.

FINDINGS OF FACT¹

I. THE EMPLOYER'S BUSINESS

The Employer is engaged in the retail and nonretail sale and distribution of electric mine supply equipment and related products at several locations, including a facility located at Ebensburg, Pennsylvania. During the 12-month period ending March 31, 1982, the Employer in the course and conduct of its business operations derived gross revenues in excess of \$500,000. During that same period the Respondent purchased and received at its Ebensburg, Pennsylvania, facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. The complaint alleges, the Respondent admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the Respondent stipulated at the hearing, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts²

As noted above, the Respondent is engaged in the sale and distribution of electrical mine supply equipment with warehouse and distribution operations in several locations. The Ebensburg, Pennsylvania, facility is supervised by Gerald Stickler, sales manager, with Roy McAllister as warehouse manager. At the time of the United Mine Workers strike in March 1981, the Ebensburg facility employed a driver, Rodney Westrick, a warehouseman, DeLattre, and a secretary who worked in the office with McAllister. McAllister supervised the activities of the employees and was also responsible for purchasing and customer quotes for merchandise. DeLattre worked during the strike. When the strike ended in late June 1981 the secretary was not recalled. Stickler asked DeLattre if he would like to work in the office with the possibility that he would later be asked to train for McAllister's job, in contemplation of McAllister's retirement, with the understanding that if it did not work out he could return to his warehouse position.

DeLattre accepted the office job and performed work which had previously been done by the secretary. He also continued to spend about one-third of his time working in the warehouse.

About the same time Thomas Shero was hired as the driver in the warehouse, and Westrick moved to the duties of the warehouseman.

Shero's duties included making trips to the Respondent's Beckley, West Virginia, facility. Shortly before Christmas 1981 Shero made a trip to Beckley where he

¹ No opposition thereto having been filed, the General Counsel's motion to correct the transcript is hereby granted. In addition, joint motion dated November 12, 1982, to reopen the record to receive the Decision and Direction of Election as Jt. Exh. 1 is hereby granted and the exhibit is hereby received.

² All dates refer to 1982 unless otherwise indicated.

discovered that the employees at that location were being organized by a Teamsters local union and he was told by the Beckley employees that the contract called for a wage rate of \$6 per hour for truckdrivers. On several occasions thereafter in January and February 1982 DeLattre, Westrick, and Shero raised the issue of wages with Stickler to inquire what was going to be done for them in view of the higher hourly rate at Beckley.³ Stickler's usual response was that he did not know too much about the Beckley situation, but, "Don't worry, we will take care of you guys up here."

The three Ebensburg employees continued to receive these assurances, but, unsatisfied, they decided to contact the Union. This was done on February 16. On that day the three met with Terry Hunter, secretary/treasurer and business agent of the Union, and James A. Bertolino, president of the Union, at a restaurant in Ebensburg, with the view towards organizing the Ebensburg facility. All three signed union authorization cards at the time.

About the end of January 1981, apparently satisfied with DeLattre's performance, Stickler asked him to consider taking a permanent position in the office of a manager-trainee. This job would involve learning expanded duties, including those being done by McAllister, including customer quotes, with the view towards replacing McAllister upon his retirement. He would be salaried at \$875-per-month. Stickler told DeLattre that he was not asking him for an answer at that time, and that he should discuss it with his wife and they would discuss it again later. On February 4, according to Stickler, the manager-trainee position was offered to DeLattre and he accepted it. However, it appears that, while DeLattre may have accepted the position, the matter was not finalized because the approval of Harry J. Young, president of the Respondent, has not yet been obtained. Stickler testified that he cleared the matter with Young on February 4, but conceded that notice of Young's approval was not made known to DeLattre until February 22 during another discussion when he was discharged. DeLattre never worked in the manager-trainee position, and was never placed on the payroll at the \$875-per-month salary rate.

On the morning of February 22 about 9:30 a.m., Stickler called DeLattre into his office to discuss his move to the position of manager-trainee. At this time DeLattre declined the position. DeLattre told Stickler that the proposition was not bad, but at the rate of \$5.47 per hour (the salaried monthly wage translated into a hourly rate) a truckdriver under the Beckley contract, at \$6 per hour, would still be making more than he was. He added that he also had heard that the health insurance under the Beckley contract was better than the health insurance at Ebensburg. DeLattre also mentioned having been told that a 12-year employee had been fired at Beckley and he was concerned about his job security. This was followed by a discussion of union representation at the Beckley facility and the problem that it was creating at the Ebensburg facility. DeLattre testified:

³ At this time DeLattre was making \$4.35 per hour and Westrick \$3.75 per hour.

I said: "You should have known when you let the Union in at Beckley you were going to have trouble." He says: "Yeah, we expected trouble." I go: "Well, this is the result of it." He goes: "Am I going to be getting a letter or some call from the Union?" I said: "Yeah, they are going to be sending you a letter either today or tomorrow." And he said: "Did you meet with the Union guy?" I said: "Yeah we met with him." He goes: "'Who met with them, Tom [Shero]?" I go: "No. All three of us meet with them. We met with them down at the Candlelight [restaurant]." He said: "What did he promise you." I said: "He didn't promise anything. He said he would have to talk to you first—Cook—Wilson."

Stickler also indicated that the Respondent was opposed to organization at the Ebensburg facility. DeLattre testified, "He said: 'Well, you know, we don't want a Union up here. If we have to, we'll close down Ebensburg and make deliveries out of Pittsburg.' He said: 'We did that before we ever opened an office in Ebensburg and if we have to, we will do it again.'" While Stickler denied having made these remarks, I conclude that DeLattre's testimony concerning this conversation was more specific and detailed, and, having reviewed the entire record, I credit him. Stickler told him that if he refused the manager-trainee job he would have to go back to the warehouse and would never get another chance to be in the office. Stickler also told him that there was not enough work for three men in the warehouse and that one would have to be laid off. DeLattre responded, "Well, I don't want that to happen, but, you know, if that's what its going to have to be." Stickler had told him that the basic hourly rate was being raised to \$4 per hour and DeLattre asked if he would be reduced to \$4 from his present rate of \$4.35 per hour. Stickler responded that he would keep the \$4.35 rate. DeLattre asked if he should start at that time in the warehouse, and, after first responding affirmatively, Stickler told him to finish out the week in the office and start Monday in the warehouse because otherwise it would be difficult for McAllister.

Shortly after this discussion with DeLattre, Sticker called Young to report that DeLattre had refused the job as manager-trainee and wanted to go back to the warehouse. Young testified:

Jerry called me in Pittsburgh a little before noon and said that Clem did not want the job. I immediately blew up. I was mad. I said: "Well, you are going to have to get rid of somebody up there because you cannot have three people in that warehouse, no way. You cannot even have two." He said: "I'll get back to you." I called him back approximately a hour and a half later and I said discharge Clem, and while you're at it, you might as well discharge Shero too, for economic reasons.⁴

⁴ While Sticker at one point testified that Young said to "fire his ass" in the first conversation, I credit Young's version that it was said in the second conversation, particularly in view of the following exchange:

Continued

Stickler testified that he told Young that DeLattre had refused the job and wanted to go back to the warehouse. Young asked why, and Stickler replied, "Well, he says that the Union is coming. And he says: 'Well, I'll call you back.' So he called me back and he says, 'Let his ass go.'"

With respect to Shero, Young testified that he had suggested discharging him to Stickler some months previous, as early as December 1981, because business had not improved as anticipated. However, Stickler remained optimistic about an upturn in sales and did not act on this suggestion and he was never directed to discharge Shero. Young testified that it might have been poor management to let Stickler talk him into keeping Shero, but that is what happened until he decided on February 22 to discharge him.

In response to questions as to what had prompted Young to make the decision to discharge Shero on February 22, Young replied, "Over madness, I guess, because of Clement [DeLattre] refusing the other job. I had been talking to him about only having one man in Ebsburg, and I said: 'While you at it'—and I gave him a direct order to discharge Shero."

On the afternoon of February 22 both Shero and DeLattre were discharged by Stickler in that order. Stickler called Shero to his office and told him that he was going to be laid off because of economic conditions.⁵ Shero had just loaded a truck with a shipment for a trip to Pittsburgh the following day, and he asked Stickler about that. Stickler replied that they would get someone else to take it.

About 4:30 p.m. on February 22 Stickler called DeLattre to his office. McAllister was also present. Stickler told DeLattre that Shero had been laid off and that he was also being laid off because he had not accepted the manager-trainee position offered to him that morning. DeLattre asked why he was being laid off rather than Westrick, who had less seniority, and Stickler replied that Westrick was more efficient because he had put a light on the forklift for better vision when loading inside the trucks.

With respect to prior layoffs, DeLattre testified that he had been laid off because of a coal miner strike in December 1977 and had been given 2 weeks' notice at that time. Westrick testified that he had received 1 week's notice when he was laid off because of the coal miner strike in 1981.

After Shero and DeLattre were laid off, Westrick alone, working some overtime, performed all the warehouse and driver duties with the help of the salesman, Gene Farabough, who assumed some additional customer delivery work which he had not done previously.

With respect to the office work, it appears that on March 15 the Respondent hired a secretary who worked

Q. With respect to the situation involving Mr. DeLattre. Mr. Stickler called you on Monday, February 22, 1982 and said that he had talked with Clem and Clem heard that the Union was coming in up there and that he did not want to take the job, his on the job training in the office, and you said: In that case, get rid of him.

A. I did not tell him that of the initial phone call. I told him I would get back to him in an hour or so which I did.

⁵ Upon the discharge of DeLattre and Shero there remained a single employee, Westrick, in the bargaining unit.

part time and full time for some weeks until June 15 at which time she was terminated, according to Stickler, because there was not enough business to warrant retaining her.

With respect to the economic condition of the Respondent at the Ebsburg facility, DeLattre's undisputed testimony was that sales between December 1981 and February 1982 were always in excess of \$100,000. Stickler testified that monthly sales prior to the miner strike were about \$100,000. The Respondent introduced into evidence portions of its yearly annual reports for the year ending May 31, 1982, and prior years captioned "Statement of Earnings and Retained Earnings." The net loss figured for the year ending May 31, 1982, was \$178,553.11.

With respect to sales at the Ebsburg facility, Stickler testified that in the months from September 1981 through February 1982 sales were up and down on a monthly basis and that January and February were better months than December, which Stickler testified was a "traditionally slow month."

Westrick testified that on several occasions after DeLattre and Shero were terminated, until the end of March 1982, Stickler approached him to ask him what he thought about the Union. Westrick replied that the employees needed something to get a better wage. Stickler told him that if they got a contract like the one at Beckley they would have to close the Ebsburg warehouse. Stickler, while he did not testify specifically with respect to any conversations with Westrick, testified that he had not made such remarks to any employees. However, I credit the more specific testimony of Westrick over the general denial of Stickler, particularly in view of the fact that Westrick is still employed by the Respondent with little to gain by fabricating a conversation with his employer.

B. Discussion and Analysis

1. Discharges of DeLattre and Shero

It is the position of the General Counsel that the Respondent discharged DeLattre, in anger, because of DeLattre's desire to remain in the bargaining unit as a warehouseman rather than accept a nonunion salaried managerial position. The Respondent's contention is that Young's decision to discharge DeLattre was prompted by DeLattre's rejecting the position of manager-trainee.

In order to establish that a discharge is discriminatory within the meaning of Section 8(a)(3) of the Act, these elements must be present: First, the employees must have been engaged in some type of union activity; second, the employer must have been aware of it; and third, the facts must show that the employees were discharged for having engaged in such activity.

In the instant case it is clear that the employees were engaged in both union activity and protected concerted activity and that the Respondent was aware of it. Thus, even prior to their meeting with union representatives on February 16, they had on several occasions asked Stickler for assurances that they would receive improved ben-

efits commensurate with those obtained by the recently organized Beckley employees.

Their contacts with the union representatives were made known to Stickler on the morning of February 22, and relayed by Stickler to Young in a telephone conversation shortly thereafter. There can be no doubt that the unit employees at Ebensburg were engaged in both union and protected concerted activity, and that the Respondent was aware of it.

There remains for consideration whether or not the discharges were motivated by discriminatory considerations. In this regard it is necessary as to DeLattre to analyze the Respondent's position that his discharge was an angry reaction by Young to having wasted 6 months in training DeLattre rather than a display of anger prompted by DeLattre's desire to remain in the bargaining unit so he could receive the benefits of union organization, notably the \$6-per-hour wage that DeLattre felt would be paid because this was the rate being paid in Beckley.

First, it is significant to bear in mind that DeLattre was not working in the manager-trainee position when he was discharged. After the coal miner strike he was assigned primarily office work, replacing a secretary, but still spent about a third of his time in the warehouse. When DeLattre rejected the salaried manager-trainee job on February 22, he was still an hourly paid employee performing normal and necessary production work, not simply a "trainee." I cannot conclude that there was time spent exclusively in the training of DeLattre so as to justify Young's anger on the grounds that the Respondent had wasted 6 months in training DeLattre.

It is also odd that Young decided to discharge DeLattre rather than retain him in the warehouse. After all, DeLattre was admittedly a competent employee fully qualified for the warehouse work and was the most senior employee with 8 years of experience. More than that, he had taken the post-strike office job with the understanding that if things did not work he could return to the warehouse, and this assurance was given to him again on February 22 in his initial conversation with Stickler when he turned down the manager-trainee job. DeLattre was summarily discharged, never having been given an opportunity to choose between the manager-trainee position and discharge.

It is also significant to note that the secretary's functions that had been performed by DeLattre were not abandoned. The Respondent found it necessary to fill the job by hiring a secretary after DeLattre's departure, at least until mid-June.

In summary, it seems to me that Young's so-called angry reaction was suspiciously unbusiness like and defied normal business practice. While conceding that Young may have been angry, it is my conclusion that his anger was prompted by DeLattre's decision to retain his employee status and thus obtain the advantages he perceived would flow from union representation, basically a wage increase to \$6 per hour.

With respect to Shero, the Respondent contends that his discharge was for economic reasons and introduced excerpts taken from the Respondent's annual reports showing net losses of \$261,513 for the year ending May

31, 1981, and \$178,533 for the year ending May 31, 1982. Young also testified that certain economic measures were taken by the Respondent in 1982 such as layoffs and shorter workweeks. However, I am not persuaded that the Respondent has shown that Shero's discharge was motivated by economic considerations, particularly because the figures produced are companywide figures with no breakdown as to the Ebensburg operations, and even the figures in evidence do not show the Respondent's overall financial condition and represent only a portion of the Respondent's annual reports. In addition, DeLattre's testimony, which I credit, discloses that sales at the Ebensburg facility remained fairly consistent running in excess of \$100,000 per month.

Thus, I conclude that the Respondent's economic condition did not account for the precipitous decision to discharge Shero on February 22. In this regard, the testimony discloses that in the past when economic conditions warranted a reduction in personnel some notice had been provided by the Respondent. The facts herein show not only that Shero was discharged without notice, but that the discharge came simultaneously with Young's discriminatory discharge of DeLattre caused by Young's irritation at DeLattre's rejecting the manager-trainee position in order to remain in the bargaining unit.

The Respondent contends that Young had been urging Stickler to lay off Shero for months and the obvious question is why the decision was suddenly made on February 22. Young testified that it was done, as noted above, "Over madness, I guess, because of Clement [DeLattre] refusing the other job." But this explanation only supports a finding of discrimination as to Shero inasmuch as I have concluded that DeLattre's discharge was discriminatory.

Finally, it does not appear that there was any diminution in the warehouse workload, and it became necessary for Westrick to work overtime and for the salesman to perform additional delivery functions in order to fill the gap.

In summary, I am persuaded that the economic justification advanced by the Respondent for Shero's discharge on February 22 was a pretext and that his discharge was prompted by the same unlawful considerations that caused the Respondent to discharge DeLattre.

2. Allegations of coercion by interrogation and threat

As noted above, I concluded that Stickler had a conversation with DeLattre on the morning of February 22 in which they discussed the unionization of the Beckley facility, asked if he would be getting a letter or call from the Union; asked if DeLattre had met with the Union; asked who had met with the Union; asked what had been promised; told DeLattre that they did not want a union at Ebensburg; and threatened to close down the Ebensburg facility and operate out of Pittsburgh. Similarly, during the period from February 22 until the end of March on five occasions Stickler asked Westrick what he thought about the Union, and told Westrick that if the Ebensburg facility obtained a contract like the one at the Beckley facility they would have to close the Ebensburg

facility. Clearly this interrogation, including interrogation by Stickler about the union activity of other employees and the threat to close the facility, goes beyond any lawful inquiry and constitutes interference with the rights of employees under the Act to engage in union activity without infringement by the employer. This violates Section 8(a)(1) of the Act.

In his conversations with DeLattre and Westrick it also appears that Stickler made unlawful threats to close the Ebensburg facility rather than see it organized or with a contract like the one at Beckley. These threats also constitute unlawful infringement on the Section 7 right of the employees to union representation and violate Section 8(a)(1) of the Act.

IV. CHALLENGED BALLOTS

With respect to the challenged ballots of DeLattre and Shero, I have concluded that they were discharged on February 22 for reasons which violate Section 8(a)(3) of the Act. Having thus been unlawfully terminated, they retained their employee status for the purposes of the election held on April 20, 1982, and were entitled to vote.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

VI. THE REMEDY

Having found that the Respondent has engaged in and is engaging in 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. I have found that the Respondent discharged Clement DeLattre and Thomas Shero for reasons which offended the provisions of Section 8(a)(3) and (1) of the Act. I shall therefore recommend that the Employer make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them. The backpay provided herein, with interest thereon, is to be computed in the manner prescribed in *F. W. Woolworth, Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).⁶

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, the Respondent has engaged in and

is engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By discharging Clement DeLattre and Thomas Shero, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

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

ORDER⁷

The Respondent, Cooke-Wilson Electric Supply Company, Ebensburg, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union activities and the union activities of other employees.

(b) Threatening to close the Ebensburg, Pennsylvania, facility if the employees selected union representation.

(c) Threatening to close the Ebensburg, Pennsylvania, facility if those employees obtained a collective-bargaining agreement like the Beckley, West Virginia, facility's collective-bargaining agreement.

(d) Discharging employees, thereby discriminating in regard to their hire and tenure of employment, in order to discourage membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 110.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.⁸

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

(a) Offer to Clement DeLattre and Thomas Shero immediate and full reinstatement to their former jobs or, if they no longer exist, to substantially equivalent employment, and make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Expunge from its files any reference to the discharges of Clement DeLattre and Thomas Shero on February 22, 1982, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel action against them.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records and reports, and

⁷ 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.

⁸ The General Counsel contends, and I agree, that a broad cease-and-desist order is appropriate under the criteria set out in *Hickmott Foods*, 242 NLRB 1357 (1979), particularly where, as in the instant case, the Respondent has unlawfully discharged two of the three unit employees, thus reducing the union to a one-man unit which the Board will not certify.

⁶ See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

all other records necessary to analyze the amount of backpay due herein.

(d) Post at its Ebensburg, Pennsylvania, facility copies of the attached notice marked "Appendix."⁹ Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to

⁹ 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."

employees are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER RECOMMENDED that the challenges to the ballots of Clement DeLattre and Thomas Shero be overruled and the Regional Director be directed to open and count those challenged ballots and issue a revised tally of ballots. In the event that the revised tally of ballots shows that the Union has received a majority of the valid votes counted, it is hereby recommended that the Union be certified as the collective-bargaining representative of the unit employees.