

Montag Oil, Inc. and Steamfitters Union Local No. 235, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, CLC. Case 36-CA-4362

31 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

On 23 January 1984 Administrative Law Judge Russell L. Stevens issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed answering briefs.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.

We agree with the judge's finding that the Respondent violated Section 8(a)(1) of the Act by soliciting employee Marshall Cayce to file a decertification petition with the Board and, after the petition was filed by Cayce, later threatening him with discharge if he were to disclose this fact to the Board. We disagree, however, with the judge's further finding that the Respondent's discharge of Cayce violated Section 8(a)(4) of the Act and, accordingly, we shall dismiss that portion of the complaint. For the reasons set forth below we shall also dismiss the 8(a)(5) allegation that the Respondent unlawfully refused to bargain with the Union claiming to represent a majority of its employees.

The Respondent sells heating oil and services oil burning furnaces. The most recent of a series of collective-bargaining agreements with the Union representing its furnace repairmen expired in October 1982. Although the Union presented a proposal for a new contract, no negotiations were thereafter conducted. Cayce was hired as a repairman on 17 January 1983. On 3 February Cayce filed a statement with the Board's office in Portland, Oregon, indicating that in a work force of three employees he and Bill Rea did not wish to join the Union and that he wished to have a decertification election.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they 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 the findings.

The decertification petition itself was filed on 10 February and amended 1 week later. Upon receiving a copy of the petition, Union Business Representative William McNicholas contacted the Respondent's three employees and obtained confirmation from Cayce and Rea that they did not wish to have the Union represent them.

Thereafter on 25 February the Union informed the Respondent that it no longer claimed to represent a majority of the unit employees. A Board agent sent Cayce a withdrawal request form pertaining to the decertification petition. Cayce signed the withdrawal request and it was approved by the Board's office on 8 March. The following day Cayce was involved in a traffic accident which damaged Respondent's truck. On 10 March Cayce was discharged. The reasons given were that customer complaints about his work had required too many "call back" trips to adjust his repairs and that Cayce had made unauthorized purchases of supplies and tools.

Shortly after his discharge Cayce returned to the Board office and reported that he had lied by stating on 3 February that no supervisor had asked him to file the petition. After informing McNicholas and the union attorney about this development, Cayce signed a union authorization card. Since employee Ron Parmer had signed a card on 11 March, McNicholas then went to the Respondent on 15 March, asked that Cayce be reinstated and on the basis of the two cards reversed the Union's abandonment of representative status, and requested bargaining on a new contract. The Respondent refused either to reinstate Cayce or to bargain.

As found by the judge, based on a credibility resolution in favor of Cayce's testimony over that of the Respondent's dispatcher Gary Males, the Respondent violated Section 8(a)(1) by instigating the filing of the decertification petition by Cayce. Shortly after Cayce was hired, Males told him that the Respondent could not make a profit because of the Union. After admitting the illegality of what he was about to ask, Males stated that he wanted Cayce to file a decertification petition because the Respondent did not want to sign a contract with the Union. Males further told Cayce that if he did so he would have a job with the Respondent as long as he wanted one. Cayce agreed and Males then gave him the address of the Board's office and scheduled Cayce's route so that he would be near the office during his working hours.

Approximately 2 weeks after filing the petition, Cayce had second thoughts and told Males that he did not "feel good" about lying to the Board agent when he stated that no supervisor had asked him to file the petition. Males replied that Cayce should

not go to the Board about this if he wished to continue working for the Respondent. Cayce again told Males that he might go to the Board. This was at a time after Cayce signed the withdrawal notice but before it was approved by the Board's Officer in Charge. Apparently without yet knowing the status of the petition Males again threatened Cayce with discharge if he revealed Male's involvement to the Board. Again based on credibility resolutions the judge found, correctly in our view, that these threats of discharge violated Section 8(a)(1).

We agree with the judge that the General Counsel presented a prima facie case that Cayce's discharge was violative of Section 8(a)(4). The discharge followed within a few days of Cayce's telling Males for the second time that he planned to go to the Board, confess that he lied in support of the petition, and thereby reveal the Respondent's 8(a)(1) violation. On both occasions Males threatened Cayce with discharge if he were to carry out his intention. Thus under *Wright Line*² we infer that Cayce's stated intention to engage in activity protected by Section 8(a)(4) was a motivating factor in the Respondent's decision to discharge him. The burden of proof thus shifts to the Respondent to show that it would have discharged Cayce even in the absence of such activity.

Contrary to the judge's conclusion we find that the very evidence of Cayce's poor work record cited by the judge fully supports the Respondent's contention that the discharge was in fact based on Cayce's work performance. The judge credited Males' testimony that there were only minor problems with Cayce's work during the first 3 weeks of his approximately 1-1/2 months of employment. Thereafter, however, deficiencies in Cayce's performance began to occur with increasing frequency and severity. Without any credible contradiction Males further testified that the approximately 30 callbacks required to satisfy customers for whom Cayce had performed repairs was excessive during such a short time period. Rea answered some of Cayce's callbacks and reported to Males that in his opinion Cayce did not seem to know what he was doing. Similarly, employee Parmer told Males that Cayce's work was so bad that it appeared to be sabotage. Males began speaking to Cayce about these minor and later major problems almost from the beginning of Cayce's employment, and Cayce's testimony that he only received complaints from Males after he spoke out about returning to the Board was discredited. In the absence of any credible evidence rebutting that relied on by Cayce the Respondent, we find that the discharge was for

cause. In particular we note that the General Counsel failed to come forward with any evidence that Cayce was evaluated or disciplined more harshly than other employees or in any other way was subjected to disparate treatment. We therefore find that the Respondent has met its *Wright Line* burden and, accordingly, we shall dismiss the 8(a)(4) allegation.

Since Cayce was therefore not an employee within the meaning of Section 2(3) of the Act at the time he signed an authorization card following his discharge, we find that the Union represented only one of the two remaining employees in the unit. Because the Union could not claim to represent a "majority" of the unit, the Respondent was privileged to withhold recognition on 15 March. Therefore we shall reverse the judge's refusal-to-bargain finding which was premised on his conclusion that Cayce remained a statutory employee because of his status as an 8(a)(4) discriminatee. We shall therefore dismiss the 8(a)(5) allegation.

AMENDED CONCLUSIONS OF LAW

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

2. Steamfitters Union Local No. 235, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of the Act:

All furnace repairmen, oil tank installation and oil burner installation employees of the employer at its Portland, Oregon facility, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

4. The Respondent violated Section 8(a)(1) of the Act by soliciting an employee to initiate a decertification proceeding with the Board and threatening him with discharge if he later went to the Board and disclosed Respondent's participation in the decertification proceeding.

5. The Respondent has not in any other way violated the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Montag Oil, Inc., Portland, Oregon, its officers, agents, successors, and assigns, shall

² *Wright Line*, 251 NLRB 1083 (1980).

1. Cease and desist from

(a) Violating Section 8(a)(1) of the Act by soliciting an employee to initiate a decertification proceeding with the Board and by threatening him with discharge if he were to go to the Board and disclose the Respondent's participation in the decertification proceeding.

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

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

(a) Post at its place of business in Portland, Oregon, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 36, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT violate Section 8(a)(1) of the Act by soliciting employees to initiate a decertification proceeding with National Labor Relations Board; or by threatening employees with discharge if they go to National Labor Relations Board and disclose our participation in decertification proceedings.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the Act.

MONTAG OIL, INC.

DECISION

STATEMENT OF THE CASE

RUSSELL L. STEVENS, Administrative Law Judge: This case was tried in Portland, Oregon, on October 13, 1983.¹ The complaint, which was issued May 13, is based on a charge filed March 18 and an amended charge filed May 2 by Steamfitters Union Local No. 235, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, CLC (the Union). The complaint alleges that Montag Oil, Inc. (Respondent) violated Section 8(a)(4) and (5) and Section 8 (d) of the National Labor Relations Act (the Act).

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, the Charging Party, and Respondent.

On the entire record, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is, and at all times material herein has been, an Oregon corporation with a place of business in Portland, Oregon, where it is engaged in the retail sale of heating oil and in the repair of oil furnaces. During the past year Respondent, in the course and conduct of its business, derived gross revenues in excess of \$500,000, and purchased and received at its Portland facility goods and materials valued in excess of \$50,000 which originated at points outside Oregon.

I find that Respondent is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Steamfitters Union Local No. 235, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, CLC is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background 2

Respondent's² business primarily consists of two operations—one is the sale and delivery of oil and related products, and one is the service and repair of oil burning furnaces. Much of the business is conducted with residential customers. Respondent owns and maintains a fleet of trucks used in daily deliveries and services. The trucks

¹ All dates hereinafter are within 1983, unless otherwise stated.

² This background summary is based on stipulations of counsel, and uncredited testimony and evidence not in dispute.

are operated by Respondent's employees, and are based at Respondent's place of business in Portland.

Respondent and the Union have had a bargaining relationship since approximately 1959, their last contract, a 3-year one, having expired in October 1982. The unit consists of three employees—Marshall Cayce, Ron Parmer, and William Rea, all of whom are furnace repairmen. About the time the 1979–1982 contract expired, the Union presented to Respondent a proposed new contract, which was a pattern contract for the area. Respondent declined to sign the contract that was offered. Thereafter, Respondent did not engage in individual negotiations with the Union for a new contract.

Cayce filed an application for employment with Respondent on January 17, and subsequently was interviewed by Gary Males, who is Respondent's personnel and truck dispatcher, and by Virginia and Nancy Montag, Respondent's president and vice president, respectively.³ He was hired after the interview. Cayce had training and had worked as a mechanic in the field of heating and air conditioning prior to his employment by Respondent, and was given no special training or instruction after he was hired by Respondent. He was assigned by Respondent to the job of furnace repair, and was instructed by Males that he could purchase supplies and tools needed for jobs he was sent to, but only after first receiving authorization by telephone, with instructions concerning the places where purchases could be made. His jobs principally were in residential areas of Portland, to which he was dispatched in person from the office each morning, or by truck radio while he was away from the office.

On February 3 Cayce visited the office of the National Labor Relations Board (NLRB or the Board) in Portland, and filed the following statement:

To whom it may concern. I work for Montag Oil Inc. in Portland and do not wish to join the Union. At this time there is no union contract between the Company and the Union. There are only three service men at Montag Oil. Bill and myself do not wish to join the Union. I am requesting a vote to see if we can go non union.

Yours truly
/s/ Marshall C. Cayce

Montag Oil
528 S.E. Holgate
Portland, Oregon 97202
234-4301

A formal decertification petition was filed by Cayce with the Board on its standard form on February 10. The petition was amended February 18. A copy of the petition was received by William McNicholas, one of the Union's business representatives, about February 10. McNicholas got in touch with Cayce, and asked him to join the Union and withdraw the decertification petition, but Cayce declined to do so. McNicholas asked Cayce if he had been requested by anyone in Respondent's manage-

³ The supervisory status of Males and the two Montags is admitted by Respondent.

ment to file the decertification petition, and Cayce replied no. Neither Cayce nor anyone else talked with Rea or Parmer about the petition prior to or at the time it was filed, and Rea first learned of it when he saw a copy of it on Respondent's bulletin board. Parmer first learned of the petition approximately February 20, when McNicholas told him it had been filed.

After McNicholas talked with Cayce on February 10 or thereabout, he talked with Rea and Parmer concerning their desire for union representation, or lack thereof. Rea spent some time thinking about the matter, and on February 24 told McNicholas that he did not want the Union to represent him. The record is not conclusive as to whether or not Parmer indicated to McNicholas his desire for union representation, but on March 11 Parmer signed a statement that he authorized the Union to be his collective-bargaining representative.

On February 25, after he had talked with Cayce, Rea, and Parmer, McNicholas talked with the Union's attorney, who wrote a letter to Respondent and stated that "the Union does not claim to represent a majority of employees in the unit."

Approximately on February 25 Cayce talked with a Board agent and later that day the agent sent to Cayce a withdrawal request form relating to the decertification petition. On March 2 Cayce signed the withdrawal request form, and the request was approved by a Board representative on March 8.

On March 9 Cayce was involved in an accident that resulted in damage to Respondent's truck, and the truck of a third party. Cayce reported the accident to Males.⁴

On March 10 Males discharged Cayce in the morning, as the latter was preparing to go to work. Reasons given for the discharge were too many "call backs,"⁵ and unauthorized purchases of supplies and tools. Cayce went to the Board to report that he had lied when he filed the decertification petition and said Respondent's management had nothing to do with the petition, and a Board agent referred him to the Union. Cayce reported the same thing to McNicholas, and the two of them talked with the Union's attorney. During the talk with the attorney, Cayce signed a document stating, "I hereby authorize Steamfitters Union, Local No. 235 to represent me in collective bargaining with my employer."

On March 15 McNicholas and another union representative met with Males and the two Montags, asked that Cayce be reinstated in his job effective March 10, and asked that Respondent sign a collective-bargaining agreement. Respondent declined to accede to the Union's requests, and there has been no subsequent bargaining or negotiating between Respondent and the Union. During the meeting McNicholas reversed his earlier abandonment of representative status for Respondent's employ-

⁴ Cayce and Males gave contradictory versions of the accident and the damage. Cayce's version appeared strained and unlikely, and is given no credence. However, the details of the incident are irrelevant, and do not control any issue herein.

⁵ Callbacks are repeat calls on customers necessitated by improper or inadequate adjustments or repairs made by a serviceman on his original response to a customer complaint. Callbacks are common in Respondent's business.

ees, in view of his having obtained a majority status in the unit.

B. Discussion

1. Cayce's work performance

The fact that Cayce had defects as an employee clearly is shown by the record. Those defects are apparent from the date of Cayce's application.

In his application, Cayce failed to state his educational background properly, and he listed his former employers in a manner different from his testimony. Some of his testimony relative to his past work was confusing, doubtful in part, and unreliable.

Males testified relative to a large number of work mistakes and inadequacies attributable to Cayce, and further stated that Cayce had made unauthorized purchases of supplies and tools. Males contended that Cayce did not appear to know what he was doing on the job. Males stated that Cayce's work appeared satisfactory at first, but that as time passed, it was clear that he was not knowledgeable about his job, contrary to his claim to proficiency. Males said he frequently talked with Cayce concerning the latter's unsatisfactory work, both specifically and generally, commencing a week or so after Cayce was hired. Males said he discussed Cayce's poor work performance with the two Montags, and that the three of them decided to discharge Cayce because of poor work, unauthorized purchases, and the accident of March 9.

Cayce denied most of Males' testimony concerning unauthorized purchases and poor work, and counseling by Males, and gave excuses for some of the specific instances discussed by Males.

Rea testified that he had to answer callbacks on Cayce's work on several occasions in the middle or latter part of February, and he described in detail Cayce's improper work on two occasions. Rea said that, in his opinion, Cayce did not seem to know what he was doing.

Parmer testified that, on two occasions, he was assigned callback work on Cayce's jobs, and that Cayce's work was so bad that it appeared to be sabotage. Parmer stated that, in his opinion, Cayce did not know what he was doing on the job.

Rea and Parmer were very credible witnesses, and clearly Parmer had no reason to testify inaccurately since he already had asked that the Union represent him. Males was a credible witness on this subject, albeit he was not credible in all his testimony. Cayce was a singularly unimpressive witness. He appeared to be confused, defensive, and unreliable. His rebuttal of the testimony given by Males, Rea, and Parmer relative to his work was not convincing. His testimony often was self-contradictory and uncertain.

It is found that Cayce was not an entirely satisfactory employee, and that he was not completely truthful at the time he was hired. It is noted that Cayce worked for Respondent less than 2 months. However, this finding does not settle the matter. The basic question is whether or not Cayce was discharged because of his poor work performance or for an unlawful reason.

2. The decertification petition

Cayce testified that, both at the time he was interviewed for hire and a week or so later, he talked with Males about the Union and the cost to join, and Cayce said he was not sure, but he believed the cost to join was approximately \$1500. Cayce said he did not care about the Union one way or another, but would join if he had to. Cayce testified that Males told him during their conversation approximately in late January (a week or so after Cayce was hired by Respondent) that Respondent could not make a profit because of the Union, and:

But, anyhow, he then told me what he was going to talk to me about was basically, you know, illegal. He wanted me to file for a decertification with the N.L.R.B., because he did not want to sign a contract with the union, and he told me if I'd do this for him that I'd have a job for Montag so long as I wanted one. So, I told him I'd do it.

The following day, Cayce testified, Males gave him the address for the NLRB, asked that Cayce go there "as quickly as possible," and made arrangements for a work assignment that would afford Cayce an opportunity to go to the NLRB. The arrangements were made the following day, Cayce said, and he filed the decertification petition. Cayce testified that when he filed the petition, he was asked several times if any supervisor requested that he file the petition, and each time he replied no. Cayce further testified that after he filed the petition he told Males about it and soon thereafter was off work a week to get married. After he returned to work he was called on the telephone by McNicholas, who wanted to know why he had not joined the Union. Cayce replied that the dues of \$1500 were too high, and McNicholas said that figure was wrong; the dues were \$250. Cayce still refused to join the Union. The following day Cayce told Males about his conversation with McNicholas. Approximately a week after his return to work, Cayce told Males that he "did not feel good . . . about lying to the NLRB," and Males replied, "If I wished to continue work not to go to the NLRB . . . and not to worry about it and that I'd get over it." Cayce did not pursue the matter. Until that time there had been no complaints about his work, but thereafter, commencing the day after he talked with Males, he began receiving complaints about his work from Males. Cayce credibly testified that later he again told Males he was going to NLRB to straighten things out, and that Males again threatened him with discharge if he did so. When he was fired, nothing was said about the truck accident, although Males did talk about work complaints and unauthorized purchases. Just after the discharge, Males told Cayce, "Now you can go to the NLRB."

Males categorically denied Cayce's testimony concerning the decertification petition, and intimated that Cayce's objection to the Union centered on his belief that the dues were too high, and that he would have difficulty paying them.

Cayce's testimony on this point is inconsistent and somewhat confusing. His recall of dates and events was

incomplete and, at times, of doubtful validity. However, his testimony that Males asked him to file a decertification petition and later threatened to discharge him if he went to NLRB to straighten the matter out is credited. Males' denial that he ever said anything to Cayce about a decertification petition was not convincing. A question is presented in that, if Males wanted to keep Cayce from going to NLRB or from withdrawing his petition, it hardly seems that he would immediately start to harass Cayce, as the latter testified. It seems likely that Males' complaints about Cayce's work were justified, as discussed above. Although the record is not entirely clear, it appears that Cayce withdrew the petition, then talked with Males and merely told him he was not content with having lied to NLRB, without telling Males that the petition was withdrawn. It is not clear as to when, or how, Males learned of the withdrawal, but it seems apparent that he did learn of it. It is further noted that both Rea and Parmer testified that Cayce said nothing to them about a decertification petition prior to its having been filed. It seems unlikely that Cayce would have filed the petition without consulting the other two unit employees, unless he was blindly following Males' request, depending on Males to get the support of others.

Males asked Cayce to file the decertification petition, and assisted him in filing it. Thereafter, Males twice threatened Cayce with discharge if he went to NLRB. Such solicitation is a violation of the Act.⁶ Such threats violated the Act, since they sought to perpetuate an illegal status created by Respondent. Cayce was protected in his proposed action to set straight his earlier improper action.⁷ Cayce was not a completely satisfactory employee, but Respondent had put up with him for some time, without threatening to fire him for poor work performance. *Prima facie*, Cayce's discharge was based on his planning to go to NLRB in the face of Males' threat of discharge if he did so. It was Respondent's burden to establish that Cayce's discharge was based on poor work performance, or some other lawful factor, but that burden was not met.⁸ Although Cayce was a poor employee, Respondent did not show that he was fired, solely or principally, for that reason. So far as the record shows, Cayce still would be employed by Respondent, had not the matter of the decertification petition arisen. Cayce's discharge was a violation of the Act. *General Services*, 229 NLRB 940 (1977); *General Nutrition Center*, 221 NLRB 850 (1975).

So far as the Union is concerned, Cayce, who still is an employee under the Act since he was unlawfully discharged, and Parmer constitute a unit majority. Both have signed union authorization statements. It is incumbent on Respondent to bargain with the Union, but it has failed on request to do so. When McNicholas met with Males and the Montags on March 15, McNicholas stated

that Respondent had violated the Act by asking Cayce to sign a decertification petition, claimed representation rights, asked for negotiations, and asked that Cayce be reinstated. Respondent did not deny the Union's majority status, and merely stated that Respondent could not afford to sign a contract with the Union. As noted above, Respondent refused to reinstate Cayce, and has failed and refused to bargain as requested. That failure and refusal to bargain constitute violations of Section 8(a)(5) and (1) of the Act, as alleged.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

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

CONCLUSIONS OF LAW

1. Montag Oil, Inc. is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Steamfitters Union Local No. 235, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, CLC is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of the Act:

All furnace repairmen, oil tank installation and oil burner installation employees of the employer at its Portland, Oregon facility, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

4. The Union is the exclusive collective-bargaining representative of Respondent's employees in the unit described above for the purpose of collective bargaining with regard to wages, hours, and other terms and conditions of employment.

5. By failing and refusing to meet at reasonable times and bargain on request of the Union on and after March 15, 1983, Respondent violated Section 8(a)(5) and (1) of the Act.

6. Respondent violated Section 8(a)(1) of the Act by soliciting an employee to initiate a decertification proceeding with NLRB; and by threatening an employee with discharge if the employee went to NLRB and disclosed Respondent's participation in decertification proceedings in Case 36-RD-923.

7. Respondent violated Section 8(a)(4) and (1) of the Act by discharging employee Marshall Cayce.

⁶ *Rockland Lake Manor*, 263 NLRB 1062 (1982); *Campo Slacks*, 250 NLRB 420 (1980).

⁷ *Shirt Shed, Inc.*, 252 NLRB 292 (1980); *Bill Johnson's Restaurants*, 249 NLRB 155 (1980).

⁸ The reasoning of *Wright Line*, 251 NLRB 1083 (1980), which involved an 8(a)(3) discharge, is applicable to the 8(a)(4) situation involved herein. Respondent here argues that Cayce was discharged because of his poor work performance.

THE REMEDY

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

It is recommended that Respondent be ordered to offer immediate and full reinstatement of Marshall Cayce to his former job or, if that job no longer exists, to a sub-

stantially equivalent job, without loss of seniority or other rights or privileges, and make him whole for any loss of earnings he may have suffered, with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977).

[Recommended Order omitted from publication]