

Kingswood Services, Inc. and Norma Shane and Service Employees International Union, Local 551, AFL-CIO/CLC. Cases 25-CA-20128 and 25-CA-20141

March 29, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On August 17, 1990, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the judge's decision.

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 exceptions¹ and briefs and has decided to affirm the judge's rulings, findings, and conclusions² and to adopt the recommended Order as modified.

¹The 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.

²In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) by failing to hire the five discriminatees, we note that the Respondent's allegations here of employee deficiencies were belatedly made at trial and in its exceptions and thus only strengthen the inference of unlawful motivation. See *Shattuck Denn Mining Corp.*, 151 NLRB 1328, 1336 (1965), enfd. 362 F.2d 466, 470 (9th Cir. 1966). The reasons asserted by the Respondent for not hiring the discriminatees are mere afterthoughts. Indeed, the Respondent's president, Howard, in his testimony, admitted that he did not even learn of the alleged employee shortcomings until after the charge was filed. When asked by the judge if he knew anything about the discriminatees' alleged past job deficiencies before September 1, 1989, when he made his hiring decisions, Howard stated, "No . . . didn't know anything . . . I wasn't even interested in it." In adopting the judge, we do not, however, rely on the judge's statement that the predecessor did not find the employee's alleged shortcomings sufficient to warrant discipline.

The judge further found, and we agree, that the Respondent was a successor employer and that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing the Union's demand for recognition and bargaining. In so finding, we have adopted the judge's finding that the Respondent had a substantial and representative complement of employees, a majority of whom had been employed in unit positions by the predecessor employer. Accordingly, our finding of successorship need not be premised on the judge's discussion of the situation, not present here, where an employer, who does not draw a majority of its employees from its predecessor, may be found to be a successor by virtue of the fact that it refused, in violation of Sec. 8(a)(3) of the Act, to hire certain of the predecessor's employees in order to avoid being obligated to bargain with a union.

The judge found that the Respondent was under an obligation to seek out the Union and to discuss with it the initial terms and conditions of employment for the predecessor's work force, in light of the Respondent's determination, even before beginning to operate, that a majority of its employees would be drawn from the predecessor's work force. We do not adopt the judge's finding that the Respondent was obligated to seek out the Union and to discuss with it the initial terms of the employees' employment. This issue was not raised in the complaint or litigated at trial.

In adopting the judge's finding that a valid demand for bargaining was made no later than September 1, 1989, we need not rely on the request-

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Kingswood Services, Inc., Fort Benjamin Harrison, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

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

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

2. Insert the following as paragraph 2(d) and reletter the subsequent paragraphs.

"(d) Remove from its files any reference to the unlawful discharge of Larry Larsuel and notify the employee in writing that this has been done and that the discharge will not be used against him in any way."

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

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 discourage membership in or activities on behalf of Service Employees International Union, Local 551, AFL-CIO/CLC, or any other labor organization by discharging employees, refusing to hire job applicants, or otherwise discriminating against them in their hire or tenure of employment.

WE WILL NOT refuse to recognize and bargain collectively in good faith with Service Employees International Union, Local 551, AFL-CIO/CLC, as the exclusive collective-bargaining representative of all of our janitorial and service employees employed at Fort Benjamin Harrison, Indiana, exclusive of office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT refuse to furnish the Union, on request, with any information which is relevant to its responsibility to act as bargaining representative for our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

bargain letter from the Union to the Respondent, dated August 29, 1989, which was returned unopened to the Union marked "Refused."

Finally, in Conclusion of Law 3, we substitute the word "unit" for "union" in line 3. We shall conform the Order and notice to the language normally used by the Board.

WE WILL offer full and immediate reinstatement to Wanda Gaston, Robert M. Taylor, Norma Shane, Patsy Porter, and Larry Larsuel to their former or substantially equivalent employment, without prejudice to their seniority or to their rights which they previously enjoyed, and

WE WILL make them whole for any loss of pay or benefits which they may have suffered by reason of the discriminations practiced against them, with interest.

WE WILL notify Larry Larsuel that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

WE WILL recognize and bargain collectively in good faith with Service Employees International Union, Local 551, AFL-CIO/CLC, as the exclusive collective-bargaining representative of all of our janitorial and service employees employed at Fort Benjamin Harrison, Indiana, exclusive of office clerical employees, guards, and supervisors as defined in the Act.

WE WILL furnish to the Union a list of all the names and assignments of nonsupervisory unit employees employed by us at Fort Benjamin Harrison, Indiana.

KINGSWOOD SERVICES, INC.

Walter Steele, Esq., for the General Counsel.

Richard L. Darst, Esq., of Indianapolis, Indiana, for the Respondent.

Rhonda D. Glover, President, and *Roger Williams*, Financial Secretary-Treasurer, of Indianapolis, Indiana, for the Charging Union.

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me upon a consolidated unfair labor practice complaint,¹ amended at the hearing, which alleges that Respondent Kingswood Services, Inc.,² violated Section 8(a)(1), (3), and (5) of the Act. More particularly, the

¹ The principal docket entries in this case are as follows:

Charge filed herein by Norma Shane, an individual, on September 6, 1989, against the Respondent in Case 25-CA-20128, and amended on October 30, 1989; charge filed herein by Service Employees International Union, Local 551, AFL-CIO/CLC (the Union), on September 15, 1989, in Case 25-CA-20141, and amended on October 27, 1989; consolidated complaint issued against the Respondent by the Regional Director, Region 25, on October 31, 1989; Respondent's answer filed on November 13, 1989; hearing held in Indianapolis, Indiana, on May 16, 1990; briefs filed with me by the General Counsel and the Respondent on or before July 30, 1990.

² Respondent admits, and I find, that it is a North Carolina corporation which maintains its principal office at Kingswood, Texas. Both at Ft. Benjamin Harrison, Indiana, and at other military and air force installations in the United States, the Respondent has been engaged in performing janitorial and related services for agencies of the United States Government. In the performance of these duties during calendar year 1989, the Respondent derived gross revenues in excess of \$500,000 and performed services valued in excess of \$50,000 in States other than North Carolina and Texas. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

consolidated complaint alleges that the Respondent, upon taking over the performance of janitorial and maintenance duties at Ft. Benjamin Harrison, Indiana, refused to recognize and bargain collectively with the exclusive collective-bargaining representative of its employees, refused to employ five named individuals who had been employed by the predecessor employer who had performed these functions because said employees had been union members and shop stewards, and refused to supply the Union with information which was relevant to the performance by the Union of its collective-bargaining responsibilities. The Respondent denies that it is the legal successor of the Company from whom it took over the janitorial and maintenance responsibilities at Ft. Benjamin Harrison, asserts a good-faith doubt as to the Union's majority status based, at least in part, on a petition presented to it by certain employees disclaiming any interest in union representation, and asserts further that it discharged or refused to hire the five individuals named in the consolidated complaint for economic or other reasons. Upon these contentions the issues herein were drawn.

A. *The Unfair Labor Practices Alleged*

For 25 years, and possibly more, the Department of the Army has performed janitorial and related services at Ft. Benjamin Harrison through private contractors. The post is the site of the Army Finance Center and a military school. For 12 years prior to August 31, 1989, contracts for these services were issued to Housekeepers Maintenance Service and Supply, Inc. (Housekeepers), an Indianapolis concern which specializes in cleaning military and naval installations and other government buildings. Beginning in 1981, the Army, acting in conjunction with the Small Business Administration, directly negotiated the janitorial contract at Ft. Harrison under a minority set-aside program. In 1989, in response to a cost-cutting program dictated by the Gramm-Rudman-Hollings Act, the Army opened up this contract to limited competitive bidding. About 31 companies submitted bids for a cleaning contract to begin September 1, 1989. In addition to reinstating competitive bidding, the Army cut back on the scope of the new contract in its specifications. The cleaning of certain buildings was excluded and cleaning operations at other buildings were reduced in frequency and scale. In terms of coverage, the difference between the Housekeepers' contract which expired on August 31, 1989, and the one which replaced it beginning September 1, 1989, was the difference between 3.2 million square feet and 2.5 to 2.7 million square feet. In monetary terms, the successful bid went for about 75 percent of the amount of the most recent Housekeepers' contract.

The successful bidder on the new contract was the Respondent, which is owned and operated by Reuben J. Howard Jr. The Respondent had previously performed small janitorial contracts at other military installations in various parts of the United States but principally in and about Houston, Texas. Until this contract was awarded, Howard maintained his headquarters in Kingswood, Texas, near Houston, but when he obtained the contract at Ft. Harrison, he moved to Indianapolis and began to perform the contract as project manager, giving it daily personal supervision. At the time the Respondent received the Ft. Harrison contract, the contract was the largest the Respondent had been called upon to perform.

The Charging Union had a collective-bargaining agreement with Housekeepers, effective April 1, 1989, and running for a period of 3 years. It was the latest of several contracts the Union had concluded with Housekeepers during the 12 years that this Company had provided janitorial services at Ft. Harrison. The Union had also concluded contracts with other janitorial and maintenance contractors at Ft. Harrison who had preceded Housekeepers. It should be observed that several significant items governing the compensation of persons employed by contractors at Ft. Harrison are set by the Department of Labor under the provisions of the Service Contract Act. Specifically, any contractor engaged in such activities must pay stated minimum wage rates which are established by regulation and changed from time to time, and must also pay certain stated fringe benefits, such as vacations, that are also prescribed by the Labor Department. All bids submitted necessarily take these requirements into consideration. Information concerning mandatory wages and fringe benefits are a part of the bid package furnished to any prospective bidder. These wage and fringe benefit requirements form a part of the contract which is ultimately signed by the successful bidder with the Small Business Administration and the Department of the Army.

The Respondent received its first bid package from the Army contracting office sometime in February 1989. Revisions followed. The Respondent was notified sometime in late July 1989, that it had been awarded the contract. After the Respondent underwent a routine investigation by the Army to determine that it was capable of performing the contract, Howard was notified to come to Indianapolis to sign the agreement. He did so on or about August 22. During this trip, he inspected the post premises and reviewed the work to be done. He met the Housekeepers project manager, James Schaffer, and offered him a job as supervisor. This amounted to a downgrading of Schaffer's existing position and salary. Howard explained to Schaffer that, since he would personally be overseeing the operation, he could not afford to pay Schaffer what the latter had been receiving from Housekeepers as the principal onsite manager. Schaffer said he would think about the offer and let Howard know his answer. Schaffer also told Howard at this time that he had a night job. He did offer to work for the Respondent for at least 2 months during the transition period. Howard then instructed Schaffer to sign for certain equipment which would be delivered.

When Howard walked about the buildings, he spoke with several Housekeepers' employees who were then at work. He gave them job application forms and informed them that other employees could pick up application forms at the Housekeepers' office in Building One. He asked the employees to whom he gave applications to mail them to his Texas office, but they left them at the Housekeepers' office. Howard discussed purchasing some trash barrels and cleaning equipment from Housekeepers. He asked Army procurement officials for the number of the Housekeepers' main office, stating that he wanted to obtain from Housekeepers a list of their employees. He was informed that he would have to deal with Housekeepers through the Army procurement office because of government regulations aimed at preventing collu-

sion between bidders.³ The Army did obtain a list of Housekeepers' employees which it mailed to Howard at his office in Texas.⁴

In addition to soliciting job applications from Housekeepers' employees, the Respondent placed an ad in an Indianapolis newspaper seeking additional applicants. The ad gave a local Indianapolis number to call. That phone number had an answering device attached and a recorded message asking callers to leave their names and phone numbers. About 30 persons did so and, from those callers, the Respondent made about 20 long-distance return calls during which it conducted telephonic job interviews. In some instances, Respondent checked out references of job applicants after speaking with the applicants. From this pool of callers Howard and his wife, who assisted him in the initial job selection process, determined to offer employment to about four individuals who had no previous experience with Housekeepers. They also determined to offer employment to 23 individuals who were working for Housekeepers and whose names were on the list which the Army had furnished. The names of 29 individuals were placed on a handwritten list, entitled "Kingswood Sev. (employees)" which Howard furnished to the chief of security at Ft. Harrison before the commencement of business on September 1. (This handwritten list, in cursive script, should not be confused with the handprinted list on Housekeepers' stationery which the Army had mailed to Howard.)

The list of prospective employees contained the names of 23 Housekeepers' employees. Of those 23 Housekeepers' employees, only 13 were regular shift employees. Ten were standby employees. All Housekeepers' employees who worked in secured portions of the post had to surrender their military identifications at the conclusion of their workday on August 31. Only those whose names appeared on Howard's list were admitted to those areas by the gate guard when they arrived on September 1. Wanda Gaston's name was among the 29 individuals on the list. The names of the other four discriminatees did not appear.

I credit the testimony of Schaffer that the list of employees which Howard had in his possession on and before September 1, 1989, was a handprinted list of Housekeepers' employees written on a Housekeepers letterhead and entitled "Listing of Housekeepers' Maint. Employees" (G.C. Exh. 13).⁵ The list contained three columns of names. The first column and a half were names of 39 full-time employees. Midway in the second column was a list of admitted supervisors, entitled "Staff," and in the third column was a list of 24 "stand-by" employees. A full-time employee was, under the agreement between Housekeepers and the Union, an individual who normally worked a 35-hour shift. Standby employees, as their name suggests, had no regular assignment but were on call to fill in for full-time employees who might be absent from work for any one of several reasons. Standby

³ Howard had phoned Roger Williams, the financial secretary-treasurer of the Union, to get a list of Housekeepers' employees, but Williams did not have such a list and could not provide one.

⁴ The copy of this list in evidence contains small notations next to the names of each individual denoting whether the individual worked days, nights, or standby and, in some instances, which building the individual worked (G.C. Exh. 2).

⁵ This original unmarked part of this list is identical in format and appearance to G.C. Exh. 2, except that it does not contain the notation of shift, building, and job assignment noted on G.C. Exh. 2.

employees worked regularly each week but normally not a full 35-hour shift. Testimony in the record indicates that a standby employee might work as few as 10 or as many as 20 or 30 hours in a given week. Some employees had worked as standbys for years. The union-security clause of the contract provided that full-time employees had to join the Union after 30 days of employment. Standby employees were only under this obligation if they worked 65 or more hours in any month. However, the contract specified that standby employees would be covered by its terms and conditions and the Union acknowledged its obligation to represent them and to bargain on their behalf.⁶

On September 1, Howard gave Schaffer the above-described list of employees, handprinted on Housekeepers' stationery, which he had been furnished by the Department of the Army. Yellow highlight marks had been drawn through the names of 15 regular employees and 2 standby employees. Howard told Schaffer that the yellow highlighted names were the only union employees he was going to hire and that the rest of the employees to be hired would be either nonunion employees on the list or applicants who had not worked for Housekeepers. He also told Schaffer that he did not want to hire any more union employees because he did not want to recognize the Union. None of the names of the five discriminatees had been highlighted in yellow.⁷

Schaffer explained in his testimony that Howard was unaware, at the time he made his initial selections, that many, if not all, of the standby employees listed on the far right-hand column on the page (including Wanda Gaston) were also union members. Howard was under the erroneous impression that only regular full-time employees of Housekeepers were union members. He and Howard went down the list name by name as Schaffer told Howard who, in his opinion, was and who was not in the Union. In at least one instance—that of Wanda Gaston—Schaffer was misinformed concerning union affiliation of a standby employee. During this discussion, Schaffer recommended to Howard that the name of Mardine Cruthard, which had been highlighted in yellow as a possible hire, should be removed from the list because she had been an unsatisfactory employee for various reasons, including drinking on the job. Howard crossed off her name and she was not hired. Schaffer also testified credibly that Cruthard was the only Housekeepers employee that he did not recommend for hire. He told Howard that every other employee on the list was a qualified employee. The Respondent's employee roster, dated September 15, had 45 names on it, including the names of 11 standby employees. Of this overall number, some 25 had worked for Housekeepers.

The Union followed the bidding process with considerable interest. Chief Steward Norma Shane attended the meeting conducted by the Army contracting office at which bids were

⁶ Art. 2, sec. 5, of the contract provided:

It is understood that on-call, casual employees of the company shall not be required to be Union members unless they have been on the payroll of the Company thirty-one (31) days and work at least sixty-five (65) hours in any month. However, all such employees shall be covered by other terms of this agreement.

⁷ Howard did not deny this testimony by Schaffer when he took the stand. The testimony of Schaffer is borne out by the fact that the list of employees to be admitted to the premises which Howard furnished to the gate guards contained the names of only 13 regular shift employees who had worked for Housekeepers.

opened and the contract tentatively awarded. Upon learning that the Respondent was the successful bidder, she and steward Patsy Porter wrote Howard a certified letter, addressed to his Texas office, dated August 23. The letter read:

According to the Office of Procurement, Fort Harrison, Ind., Kingswood Service, Inc., was awarded the janitorial contract at Fort Harrison.

This letter serves an official request for you to meet with official representatives of the Collective Bargaining Unit, Local 551, AFL-CIO, at Ft. Harrison.

We the union stewards represent the majority of the employees of Housekeepers Maintenance Service & Supply Company, Inc. We would like to meet with you and/or your staff to discuss the current contract. We would like to insure that Kingswood Service, Inc., and the Local Union bargain in good faith.

A meeting with your company is very important and is requested prior to the start of the contract on September 1, 1989. If you have any notices or requirements for further negotiations reference the contract, we can meet and discuss this and other concerns of ours (The Union) before the start of the contract.

We the representatives of the union are looking forward to meeting with you and are willing to cooperate with you in the successful outcome of their contract. [sic]

The letter was sent certified mail. The envelope bears a notation that the first notice of attempted delivery was September 5 because the letter bore an incorrect zip code on the envelope. Howard admits that he eventually received the letter when it was sent to him from Texas but this was sometime after the September 1 startup date at Ft. Harrison.

On the evening of August 31, Shane received a call from Patsy Porter, another steward, who informed Shane that she had just seen a list of janitorial employees in the possession of the guards at Ft. Harrison which apparently had been given to the guards by Howard. A lot of names of Housekeepers' employees were not on this list so they would not be allowed to enter the premises the following day. Shane called recently-appointed shop steward Wanda Gaston and arranged that Shane, Gaston, Porter, and shop steward Robert M. Taylor⁸ be present at Ft. Harrison the following morning to discuss hiring of employees and other matters with Howard. Shane arrived at the post just before 7 a.m. the following morning and the other stewards arrived at or about the same time. In addition to the stewards, several of Housekeepers' employees had reported for work. Those whose names were on the employee list in the possession of the gate guard were admitted to the premises and had gone downstairs to the area near the office reserved for the janitorial contractor, where they were sitting at tables filling out applications for jobs or for Army security badges and awaiting interviews by Howard and Schaffer.

The four stewards saw Schaffer come into the building and asked Schaffer if he would sign them in. Schaffer refused.⁹ They asked Schaffer if he would tell Howard they were at

⁸ He should not be confused with another Housekeepers' employee, Robert P. Taylor.

⁹ As noted elsewhere, Gaston's name was on the list of prospective employees to be admitted to the post but she was unaware of this fact.

the gate and wished to speak with him. Schaffer agreed to do so. A few minutes later, they were admitted and went downstairs to the Respondent's office. After waiting a few minutes, they spoke with Howard. Shane introduced herself and the other stewards¹⁰ and then asked him rhetorically how he felt about coming to Ft. Harrison and putting a lot of people out of work. She told Howard that everyone was really upset and inquired whether he was going to hire the Housekeepers' employees. Howard simply replied that he had not thought about it.

Shane went on to ask Howard if he had received a copy of the contract between Local 551 and Housekeepers in the Army bid package. Howard admitted that he did but added that he had not had time to read it. She also asked Howard how he felt about unions, saying that she had heard a rumor that Kingswood was trying to get rid of the Union. Howard replied by pointing to Gaston and saying that she was in the Union and he had hired her. Shane then asked Howard how he had decided whom he was going to select for hire. Howard replied that he had gotten a list of Housekeepers' employees while he was in Texas. He also said that he had called Housekeepers to ask what "TR" meant next to the names of certain employees.¹¹ Shane said that the Union had tried to bargain in good faith with Howard before the new janitorial contract took effect. She showed him a copy of the letter of August 23 which she and Porter had sent to Howard in Texas on behalf of the Union. He said he had not received it. When she asked Howard for a list of the persons who had been hired, he said he would get a list for her but he never did.

Shane asked Howard to meet with the Union. Howard replied by saying that there had been a change of command at Ft. Harrison, implying that he was totally absorbed with the details of setting up the new janitorial operation, but promised that he would contact the union stewards after the first week to have a meeting. He took the names and addresses of Shane and Porter.

Gaston remained after the other stewards had left. She was irritated that Schaffer had put her name on the hiring list for a job which called for day work on Mondays, Wednesdays, and Fridays and night work on the other two days. She complained that Schaffer knew that she was going to school and could not work day shifts. Howard did not think that her schedule posed any problem. He wrote next to her name Monday, Wednesday, and Friday nights, and Tuesday and Thursday during the day, telling her that she could work full time on that basis. He told her to come back the following Tuesday to see what could be worked out. Before she left, she filled out the forms that were necessary to obtain an Army identification badge.

When Gaston arrived at the post on Tuesday morning, Howard told her that he did not know of the limitations on her availability and also did not know that she was a union steward. Gaston replied that Schaffer knew that she could not work day shift 3 days a week. Howard told her to wait a day or two while the Company got organized and said that she would be the first person on his standby list.¹² Gaston also

¹⁰ Gaston had only recently been named a shop steward. She exhibited to Howard a letter from the Union making the appointment and Howard seemed surprised.

¹¹ It stood for "truck route."

¹² As noted elsewhere, Gaston had worked standby for Housekeepers.

asked Schaffer for the list of employees which Howard had promised to give to Shane, spelling out that what she wanted was a list of persons who had agreed to accept job offers from Kingswood. Schaffer walked away and did not return. Gaston returned the following day but did not receive a job offer. The Respondent has never called her.

The Union made other efforts to contact Howard in writing. On August 29, Henry Franklin, president of the Union, wrote a certified letter to Howard at his Kingswood address. The letter stated:

Please be advised that Service Employees International Union AFL-CIO-CLC, Local #551, is the authorized representative of the employees of Housekeepers Maintenance Service and Supply, Inc., at the Finance Center at Fort Benjamin Harrison, Indiana.

We further advise you that SEIU Local #551, as of September 1, 1989, will continue to be the authorized representative of the employees at the Finance Center at Fort Benjamin Harrison, Indiana.

We feel that it would be beneficial for both parties, the Union and the Company, to meet to discuss our current contract. I feel that an early meeting is imperative.

The Respondent never replied to this letter.

On September 11, Franklin sent a telegram to Howard, in care of James Schaffer, which was addressed to Building One at Ft. Benjamin Harrison. The telegram stated:

We have made several attempts in contacting you by mail in Texas and in Indianapolis. We have been notified that several of our bargaining unit members have been discharged upon your award of service contract. We would like a meeting with you to discuss this situation with you as soon as possible. Please contact one of our officers as to when a meeting can be scheduled.

The telegram then gave the phone numbers of the union office. A Western Union confirmation letter sent to the Union on September 12 stated that the telegram went undelivered because an attempted delivery, made on September 12 at 2:27 p.m., was refused by a guard. Since the initial contact made by Shane on September 1, Howard has refused to communicate with the Union or any of its stewards.

Larry Larsuel worked at Building 710, a day care center located outside the security perimeter of the post. He did not need specific clearance to enter that building. He simply obtained the keys to the building from a Mrs. Thompson and went to work. He performed his cleaning chores on the second shift which ran from 4:30 p.m. to midnight. His supervisor was Cliff Stevenson, who was carried over in a supervisory position from Housekeepers by the Respondent. Stevenson checked on Larsuel once or twice each night. On September 1, the first night of the new operation, Larsuel simply went to work as usual. The following Monday was a holiday but he continued to clean the building on the following Tuesday. Stevenson, then in the employ of the Respondent, saw him once or twice during this period of time and told him to keep on working. Stevenson reported Larsuel's presence on the job to Howard. Larsuel had no other contact with the Respondent until Wednesday, September 6.

According to Howard, he had assigned this job to Wanda Bennett, but Bennett could not get to work during the first part of September until 10:30 p.m. because she had baby-sitting problems. When she arrived on Friday evening, September 1, she found that the day care center had been cleaned. She found the same thing when she arrived at work at 10:30 p.m. on September 5 and left a note to that effect which Howard received on Wednesday morning. On Wednesday afternoon when Larsuel reported for work, Stevenson told him to come to the office. When he arrived, Howard told him that he had not been permanently hired but that the Company might possibly send him back to the day care center or elsewhere to work. Larsuel asked Howard if the Union had contacted him about getting jobs for the displaced Housekeepers' employees. Howard replied that it had not done so but added that he was pretty sure that he would either contact the Union or the Union would get in contact with him about it. They also discussed the fact that Larsuel was also working at another job in order to make support payments. Larsuel gave Howard his daytime phone number because Howard said he would contact him. He told Larsuel that he was shorthanded that evening and asked him to remove trash from Building One. Larsuel finished out the shift on this assignment.

Katina Brown, one of the Respondent's supervisors, called Larsuel the following day to tell him not to come to work. Larsuel asked her if he was going to be hired. She said that she did not know. Thereafter, the Respondent never contacted Larsuel. He was paid for the time he worked and, after lodging a protest, received from the Respondent holiday pay for the Labor Day holiday.

Cheryl Meyers was a former Housekeepers' employee who was hired by the Respondent to operate a truck route on the day shift. She testified that she had discussed with other employees whether they wanted to continue to have union representation. The reported response was that they did not want to have \$14 in dues deducted monthly from their paychecks. She obtained a sheet of yellow lined paper from the company office at the post and assertedly drafted a heading, dated 9-6-89, which read:

To Kingwood Ser. Inc. [sic]

We the following employers [sic] request that no union dues of \$14.00 be deducted from our earning. We are not represented by union (Local #55) or no individual.

Thank you

She circulated the document at the noon lunchbreak on September 6 and obtained signatures from 14 individuals. As a group they went to the office and gave the petition to Howard. She told Howard that the employees did not want any dues deducted from their pay. His response was that no one had given him any authorizations to deduct union dues and none would be deducted. He also told them that he had not signed any agreement with the Union and that there was nothing in his contract with the Government which required him to do so. He added that they would receive the same wage rate and fringe benefits regardless of whether there was a union contract.

Meyers left the petition with Howard so that the signatures of night-shift employees could be added. Three more signa-

tures appear on the document which were not there when Meyers parted with it. Presumably they are night-shift employees who signed at Howard's suggestion. Meyers denied that Howard said anything to the employees about the Union and testified that the idea for circulating the petition came exclusively from the employees. I credit the testimony of Norma Shane to the effect that, in the course of one of several phone conversations that she had with Meyers, she told Meyers that she had heard that the latter had written up a letter concerning the Union. Meyers' reply was that she did not write the petition, but that Howard had done so and she had merely signed it. Meyers professed that she did not know what was on the paper.

A charge was filed against the Respondent on September 6 by Shane alleging that the Respondent violated Section 8(a)(1) and (3) of the Act. There are no individual names mentioned on the charge sheet other than that of Shane. The first charge was received by the Respondent at its Texas office on September 12. A second charge was filed by the Union against the Respondent on September 15 alleging a violation of Section 8(a)(1) and (5) of the Act. No names of any individual employees appear on that charge sheet. It was received by Schaffer at Ft. Harrison on September 19. After receiving the charge filed by Shane, Howard inquired of Schaffer what kind of an employee she was. Shane is Schaffer's sister-in-law. He told Howard that she was an average employee who had lost some time during the year because of illness.

Howard also made inquiry, about that same point in time, into the performance of other Housekeepers' employees who are now named in the complaint. I credit Schaffer's testimony that he made no adverse comments concerning any employee other than Cruthard, that he specifically recommended the hiring of Gaston and Larsuel, and that he told Howard that the other alleged discriminatees were fair, average employees. The Respondent discovered a desk calendar at the office which Housekeepers had left behind. The calendar contained daily entries relating to the attendance of Housekeepers' employees. Howard went through the calendar and determined that some of the discriminatees had what, in his judgment, were poor attendance records as Housekeepers' employees. On this basis, as well as other factors discussed supra, he reaffirmed his original decision not to hire them.

B. Analysis and Conclusions

1. The successorship question

Respondent asserts that it is not the legal successor in interest to Housekeepers and thus is under no obligation either to adhere to the contract concluded by Housekeepers with the Union or to recognize the Union as the bargaining agent of its own employees. The General Counsel makes no contention concerning the obligation of the Respondent to adhere to the previous contract. He does contend that the Respondent is the successor in interest to the janitorial and maintenance contractor who provided these services at Ft. Harrison on and before August 31, 1989, and, as such, is obligated to recognize the Union and negotiate the terms and conditions of a new contract covering its own employees.

In *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), the Supreme Court held that mere change in ownership is not such an unusual circumstance that a new owner of a continu-

ing enterprise is entitled to deny recognition to a recently certified bargaining agent of the employees of the former owner of the enterprise. The facts in *Burns* are remarkably similar to those presented by the record in this case. In *Burns*, an incumbent plant guard service, whose employees had recently voted for union representation, lost the contract to perform those services at the aircraft manufacturing plant where the employees in question had worked. The replacement guard service hired a majority of the employees of its predecessor to perform essentially the same guard and patrol duties which they had performed at the plant for their former employer. The Supreme Court held that the new employer was obligated to honor the certification given to the union to represent the employees of the former employer, although it did not find that there was any obligation to abide by the terms and conditions of the contract which had been previously concluded.¹³

Recently, the Supreme Court held that the same obligation exists whether the union's status is predicated on a Board certification or on some other basis which entitles an incumbent union to a presumption of majority support. *Fall River Dyeing Co. v. NLRB*, 482 U.S. 27 (1987). As the Court noted:

Thus, to a substantial extent the applicability of *Burns* rests in the hands of the successor. If the new employer makes a conscious decision to maintain generally the same business and to hire a majority of its employees from the predecessor, then the bargaining obligation of § 8(a)(5) is activated. This makes sense when one considers that the employer *intends* to take advantage of the trained work force of its predecessor. [Emphasis in the original.] [*Fall River Dyeing*, supra at 41.]

The Court went on to hold that the bargaining obligation arises when the successor employer has hired a substantial and representative complement of its own employees. It further held that the Board's continuing demand principle, obviating any necessity on the part of an incumbent union to make constant and repeated bargaining demands to preserve its status, was a valid and reasonable interpretation of Section 8(a)(5) of the Act.

In determining the existence of a successor employer who is obligated to recognize and bargain with the incumbent union which its predecessor had recognized, the Board has fashioned and utilized a seven-point test. It looks to see if there is substantial continuity in business operations, the plant, the work force, the jobs and working conditions, the supervisors, the machinery, equipment, and methods of production, and the product or service. *Band-Age, Inc.*, 217 NLRB 449 (1975), enfd. 534 F.2d 1 (1st Cir. 1976); *Western Distributing Co.*, 236 NLRB 1224 (1978); *Aircraft Magnesium*, 265 NLRB 1334 (1982); *Pinkerton's, Inc.*, 295 NLRB 538 (1989); *Vermont Foundry Co.*, 292 NLRB 1003 (1989). Controlling weight is not accorded to any single factor. *Premium Foods*, 260 NLRB 708 (1982). A successorship situation may exist where the work force of the new employer does not contain as many as 50 percent of the employees of

the predecessor and has a majority complement of new employees. As the Board stated in *Lincoln Private Police*, 189 NLRB 717 at 720 (1971):

We do not mean to imply that successorship can never be found where the new employer hires less than a majority of its predecessor's work force—indeed, the Board has held otherwise in prior cases.

Where successorship factors exist, the fact that the successor enterprise is quantitatively smaller or less productive than its predecessor is immaterial. *J-P Mfg.*, 194 NLRB 965 (1972).

In light of the evidence found in the record in this case, it should be emphasized that the existence of a successorship situation does not depend on whether a majority of employees an employer carries over from its predecessor are union members. The facts concerning which carryover employees are or are not union members are often difficult, if not, impossible for an employer to ascertain legitimately. They are also of no consequence as far as an ongoing bargaining obligation is concerned. Indeed, if an employer attempts to arrange its new work force so that the new bargaining unit will not contain a majority of union members and does so by refusing to hire members of a predecessor work force whom it believes to harbor union sympathies, the new employer is guilty of a violation of Section 8(a)(1) and (3) of the Act for which a bargaining order may be issued as a remedy, even in the absence of a violation of Section 8(a)(5) of the Act. *Piasecki Aircraft Corp. v. NLRB*, 280 F.2d 575 (3d Cir. 1961). Once a new employer is determined to be a successor of a unionized employer under the criteria set forth above, the Board will presume that the majority status of the incumbent union continues, unless, as discussed more in detail infra, that presumption is later overcome by objective evidence adduced in a noncoercive context.

In the present case, the Respondent was carrying on the same activity in which its predecessor was engaged, namely, janitorial and maintenance activities. Because its contract was smaller and the work to be performed was less, the Respondent did not do as much for the Army as Housekeepers did but this difference was only quantitative. The kinds of jobs it did and the kind of service it rendered were the same. If there was any difference between the way Respondent's employees swept floors, emptied waste baskets, and cleaned toilets and the way that Housekeepers performed these functions, this difference in technique is not apparent from this record. The same skills were employed. The situs of the work was the same and the prime contractor was identical. Respondent purchased some equipment and materials from Housekeepers with which to begin its operation, but this factor is of little importance in an ongoing enterprise which is labor intensive. Respondent carried over two former supervisors into supervisory positions, namely, Schaffer and Stevenson, and hired Housekeepers' quality control inspector as a third supervisor. Twenty-three of the twenty-nine persons to whom Howard was willing to offer jobs on the first day of the Respondent's operation were former Housekeepers' employees. In 2 weeks, Howard had hired a work force of 45 of whom 25 had been Housekeepers' employees. Some of these individuals continued to work at the identical jobs they had been performing for the former contractor.

¹³The Board had held that the successor was also obligated to honor the terms and conditions of the contract between the union and the predecessor employer, but this portion of the Board's Order was not enforced.

There was no hiatus between the end of the Housekeepers' operation and the beginning of Respondent's contract. Respondent was seeking to "hit the ground running." It was making every effort on September 1 to begin its cleaning contract on that day, albeit on a reduced schedule mandated by the revised Army specifications. To a casual observer there may very well have been no break in the janitorial and maintenance effort at Ft. Harrison. In light of these factors, it is clear that the Respondent was the successor in interest to Housekeepers. The Union, which had represented Housekeepers' employees for many years (and in fact had represented the employees of Housekeepers' predecessors), had a contract with Housekeepers which was in effect on August 31, 1989, a fact which Howard well knew since he had in his possession a copy of that contract. Accordingly, the Union was entitled to a presumption of continuing majority status when Respondent hired a representative complement of its employees.

Respondent was willing and able to make 29 job offers on September 1 to specified individuals whose names appeared on the list which Howard furnished the post security. This was the list which enabled applicants to gain access to his office. In 2 weeks Respondent's work force had reached a total of 45. As noted previously, former Housekeepers' employees made up a majority of both totals. From these figures I conclude that a substantial and representative complement of employees had been decided upon, if not actually hired, by the Respondent even before it commenced its operations at Ft. Harrison. In *Stewart Granite Enterprises*, Judge Nelson said, with Board approval:

It does not automatically follow from the conclusion that an employer owed a successor's duty to recognize and bargain with the incumbent union that the successor employer must bargain with the union before setting "initial terms" affecting the traditional conditions of employment in the unit. Under *Burns*, an employer may unilaterally establish and implement such terms unless it is "perfectly clear" even before the successor has hired his "full complement" that his new operation will employ mostly employees of the predecessor. In the latter instance, the successor-employer's general duty to recognize and bargain with the incumbent union includes the duty to "initially consult" with the union before implementing such changes. [255 NLRB 569 at 575.]

Howard testified that the Respondent's normal method of starting up a new contract is to hire mostly new employees and retain only a few people who have already been working at the location. Notwithstanding that general operating policy, in the instant case Howard decided, even before beginning to operate, that the new unit would include, if possible, a vast majority of employees drawn from its predecessor's work force. In light of this determination, the Respondent was under an obligation to seek out the Union and discuss with it the initial terms of their employment. Since both Housekeepers and the Respondent were under an obligation stemming from various Federal statutes and regulations to provide the same basic wage and fringe benefit package to their employees, the differences with regard to such items might be minimal but a collective-bargaining agreement nor-

mally goes far beyond basic economic items. Since the Respondent's duty to bargain with the Union arose on the first day of its Ft. Harrison operation, if not before, the existence of that duty removes any quibble about whether union officials made timely and clear cut demands for recognition and bargaining. In fact they did. By letters dated August 23 and 29, by Shane's verbal exchange with Howard on the morning of September 1 at Howard's office during which she exhibited to him a copy of the August 23 demand letter, and by a telegram sent to Howard on September 11, the Union demanded recognition and bargaining. Regardless of those efforts, the Respondent was already under a bargaining obligation. When, on September 1 and thereafter, it refused to honor that obligation, it violated Section 8(a)(1) and (5) of the Act.¹⁴

2. The refusal of the Respondent to hire Wanda Gaston, Robert M. Taylor, Norma Shane, Patsy Porter, and Larry Larsuel

The five discriminatees named in the complaint had all been employees of Housekeepers. Wanda Gaston went to work for Housekeepers in March 1982. She was a standby employee on the night shift and, as such, filled in at various jobs within the bargaining unit. Robert M. Taylor had worked for Housekeepers for 12 years. At first he did ordinary janitorial work. During the last 9 years of his employment by Housekeepers he operated an elevator which carried both passengers and freight. Norma Shane went to work for Housekeepers in 1980. At various times she worked on both shifts and did various jobs in Building 101 (the enlisted men's club) and in Building One (the finance center). From time to time she also operated the elevator and drove a truck route. Patsy Porter had been employed doing janitorial work for 23 years at Ft. Harrison. She worked for Housekeepers throughout its contracts and also for its predecessors. During this period of time she performed various cleaning functions at Building One. Larry Larsuel first came to work at Ft. Harrison in 1975. He was a supervisor for EC Professional, a predecessor of Housekeepers, was employed by Best Way, another predecessor, and then worked for Housekeepers throughout the period of its contracts. He has performed virtually every janitorial function at the post. Of these five individuals, only Gaston was on Howard's initial list of people to whom jobs would be offered. The others were formally never offered positions. Larsuel was, in fact, hired and worked 3 days, after which he was discharged.

All five discriminatees were members of Local 551 and all were stewards. James Jimmerson, president of Housekeepers, received a letter, dated August 21, 1989, from Rhonda Glover, vice president of Local 551, informing Jimmerson that Taylor, Gaston, and Larsuel had been appointed stewards. Larsuel had been informally appointed to this post a month

¹⁴ Respondent has taken several ambivalent positions concerning its willingness to bargain with the Union. On the one hand it claims that, by virtue of Howard's statement to Shane in his office on September 1 to the effect that he would get back to her after a week or so, he agreed to bargain and thereby fulfilled his obligation, even though he never contacted her and never discussed anything with her or any other union official. On the other hand, he testified that he did not want to bargain with the Union because he felt its filing of a charge on September 6 meant that he should present his position to the Board, not to the Union. A refusal to bargain because a charge has been filed is, in and of itself, a violation of the Act. Respondent's other defense to the 8(a)(5) allegation is discussed *infra* in the text of this decision.

or so before the letter was sent. Shane and Porter had been stewards for a long time. Shane had also served as sergeant-at-arms for the Union and was a member of its executive board. She became a steward in 1988 and later was appointed chief steward. Porter had been a union steward at Ft. Harrison for over 20 years and, in this capacity, had processed grievances on behalf of employees with various janitorial contractors. The names and signatures of Shane and Porter appear on the contract between the Union and Housekeepers which was furnished to Howard by the Army as part of the bid package.

Having had possession of the Housekeepers' contract for an extended period of time, Howard surely was aware that the signatures of Shane and Porter were affixed to that contract and thus had actual knowledge of their status. Schaffer was well aware of the identity of the shop stewards under the Housekeepers' contract, although he professes that he did not know that Gaston had been appointed. Having hired Schaffer as a supervisor, the Respondent was chargeable with Schaffer's knowledge. *Pinkerton's, Inc.*, supra. When all of the discriminatees except Larsuel came to Ft. Harrison on the morning of September 1, the Respondent became apprised beyond peradventure of doubt as to who the leading union spokesmen were. This knowledge then indisputably extended to Gaston. Howard later expressed surprise concerning the extent of her union involvement. His surprise corresponded with his revised feeling about offering her employment. At this time the hiring process was still fluid and jobs were still available on the Respondent's payroll, but none of the discriminatees were hired.

While the General Counsel argues that Howard singled out union leaders as individuals whom he would not hire, the finding of a violation need not rest on this premise. It is enough if the General Counsel establishes that the five discriminatees were not hired or were discharged because of their union membership, sympathies, or inclinations. I have credited the testimony of Schaffer that Howard deliberately restricted the hiring of former Housekeepers' employees to 13 or so because he did not want to have a union majority among the members of his work force. Since this is so, it follows that any Housekeepers' employees who were not hired—up to the number which Howard needed to complete his reduced personnel roster—were discriminatees.¹⁵ Of this number allegations were made in the complaint concerning only five¹⁶ so a finding will only be made relative to those persons.

The pretextual reasons given by the Respondent for not hiring or for discharging these five need give us only scant pause. Long after the decision was made to keep them off the Respondent's payroll and sometime after a charge had been filed, Howard cast about for reasons designed to justify and support his original determination. Some discriminatees were faulted for playing cards during their break times although, as Schaffer pointed out, everyone played cards. Two or three had minor attendance problems, one as the result of illness. None of these problems were bad enough to prompt

Housekeepers to take any disciplinary action. The rationale behind keeping a group of standby employees in reserve is to meet the problem of absenteeism as it regularly arises. The Respondent adopted and followed this practice much as its predecessors did. In none of these instances were any cited individual shortcomings relied upon to arrive at initial decisions not to hire. Since it is motive, not abstract justification, which determines the existence of a discrimination under the Act, any afterthoughts advanced by the Respondent in defense of its position are essentially immaterial to the issue at hand.¹⁷

Larsuel was actually hired by the Respondent although the hiring took place without Howard's knowledge. Supervisor Stevenson saw Larsuel at his regular job on the first evening of the Respondent's contract and told him to keep on working. The Respondent ratified this action by paying Larsuel for the days he worked. When Larsuel's presence was discovered, Howard told him that he might have something for him and took Larsuel's daytime phone number so that the Respondent could contact him. The following day Supervisor Brown phoned Larsuel and told him not to come to work that day. No one ever contacted Larsuel thereafter to offer him employment, even though hiring was still in progress and jobs were available. The reasons advanced at the trial for failing to retain Larsuel were also pretextual. Howard said that he did not want to hire Larsuel because Larsuel was working elsewhere and he did not want to employ someone who had another job. However, several of his employees, including Schaffer and DeCicco, had others jobs and Howard knew it. Yet he continued to use them. Howard also claimed that Larsuel left the job before the midnight quitting hour on the days that he worked for the Respondent. This information came to Howard from the employee to whom the job had been given but who could not arrive at work until 10:30 p.m. In short, Howard was saying that he found Larsuel an unsatisfactory employee because he went home early from a job he was not supposed to be filling in the first place. These afterthoughts are no more convincing than the ones used to justify the exclusion of the other stewards from the Respondent's payroll.

Gaston was offered a position which she could not accept because she went to school during the daytime. She complained aloud that Schaffer was well aware of the limitations on her availability. Interestingly enough, Gaston, a standby employee, worked at different jobs on different evenings for Housekeepers and did not work at all when every job was filled. However, she was offered a regular fixed assignment by the Respondent rather than a more flexible standby position. She was told to come back the following week and the Company would work out something to accommodate her educational program. The Respondent never worked out anything for her, although Schaffer testified credibly that positions were available which she could have filled. In light of these considerations, I conclude that she and Larsuel, Porter, and Shane were denied employment by the Respondent because of their membership in and activities on behalf of the Union and that Larsuel was discharged for the same reasons.

¹⁵ An exception might exist in the case of Spencer Lewis and two other Housekeepers' employees. Their names were on the initial list of persons to whom job offers would be made but they either did not show up for an interview or declined an offer which was made.

¹⁶ In his brief the General Counsel persisted in referring to the six discriminatees in this case. I count only five.

¹⁷ One justification advanced by the Respondent was that the names of the people not hired were placed on the list furnished to Howard by the Army in such a position that he had filled all available jobs before reaching them on the roster. The contention is too silly to warrant extended discussion.

These actions constitute a violation of Section 8(a)(1) and (3) by the Respondent.

3. The Respondent's good-faith doubt of the Union's majority status

It is well settled that an employer who wishes to assert a good-faith doubt of the continuing majority status of a labor organization must do so in a context free and clear of unfair labor practices. *Abbey Medical/Abbey Rents, Inc.*, 264 NLRB 969 (1982), enfd. 709 F.2d 1514 (9th Cir. 1983); *Bolton-Emerson, Inc.*, 293 NLRB 1124 (1989), enfd. 899 F.2d 104 (1st Cir. 1990). In this case, the unfair labor practices committed by the Respondent occurred even before the commencement of its operation at Ft. Harrison on September 1, 1989. It failed to negotiate with the Union about initial terms and conditions of employment of its employees and it attempted to arrange the composition of its work force so that union adherents would constitute only a minority of the bargaining unit. These unfair labor practices make it impossible for the Respondent to assert a good-faith position on any labor issue, including the status of the Union as the bargaining representative of its employees. Accordingly, it may not challenge the Union's presumption of continuing majority status by asserting a good-faith doubt of such status.

4. The refusal to furnish information to the Union

At their brief and confrontational meeting on September 1, Shane asked Howard for a list of the employees hired by the Respondent. Howard said he would furnish the list but he did not do so. Gaston asked Schaffer for the list of the Respondent's employees on the following Tuesday when she visited the office, whereupon Schaffer simply disappeared. The Respondent has never furnished this information. The identity of bargaining unit members is the kind of information which the Board has routinely required employers to provide to collective-bargaining representatives so that they can fulfill their responsibilities as bargaining agents. *American Oil Co.*, 164 NLRB 29 (1967); *Brooklyn Union Gas Co.*, 220 NLRB 189 (1975). By failing and refusing to furnish the Union with a requested list of employees, the Respondent herein violated Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

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

2. Service Employees International Union, Local 551, AFL-CIO/CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. All janitorial and service employees of the Respondent employed at Ft. Benjamin Harrison, Indiana, but excluding all office clerical employees, guards, and supervisors as defined in the Act, constitute a union appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein the Union has been the exclusive collective-bargaining representative of all the employees in the unit found appropriate in Conclusion of Law 3 for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to recognize and bargain collectively with Service Employees International Union, Local 551, AFL-

CIO/CLC as the exclusive collective-bargaining representative of its employees employed in the unit found appropriate in Conclusion of Law 3, the Respondent has violated Section 8(a)(5) of the Act.

6. By refusing to furnish the Union with a list of employees employed in the appropriate collective-bargaining unit, the Respondent herein has violated Section 8(a)(5) of the Act.

7. By discharging Larry Larsuel and by refusing to employ Wanda Gaston, Robert M. Taylor, Norma Shane, and Patsy Porter because of their membership in and activities on behalf of the Union, the Respondent has violated Section 8(a)(3) of the Act.

8. The aforesaid unfair labor practices have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Since the unfair labor practices committed by the Respondent indicate an attitude on its part to behave in total disregard of its statutory obligations, I will recommend to the Board a so-called broad 8(a)(1) order designed to suppress any and all violations of that section of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). The proposed Order will also recommend that the Respondent be required to offer to Wanda Gaston, Robert M. Taylor, Norma Shane, Patsy Porter, and Larry Larsuel reinstatement to their former or substantially equivalent employment and to make them whole for any loss of earnings which they may have sustained by reason of the discriminations practiced against them, in accordance with the *Woolworth* formula,¹⁸ with interest thereon at the rate prescribed by the Tax Reform Act of 1986 for the overpayment and underpayment of federal income taxes. *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I will also recommend that the Respondent be required to post the usual notice, advising its employees of their rights and of the results in this case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁹

ORDER

The Respondent, Kingswood Services, Inc., Fort Benjamin Harrison, Indianapolis, Indiana, and its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in or activities on behalf of Service Employees International Union, Local 551, AFL-CIO/CLC, or any other labor organization by discharging employees, refusing to hire job applicants, or otherwise discriminating against them in their hire or tenure.

(b) Refusing to recognize and bargain collectively in good faith with Service Employees International Union, Local 551,

¹⁸ *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

¹⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

AFL-CIO/CLC as the exclusive collective-bargaining representative of all of the Respondent's janitorial and service employees employed at Ft. Benjamin Harrison, Indiana, exclusive of office clerical employees, guards, and supervisors as defined in the Act.

(c) Refusing to furnish the Union, on request, any information which is relevant to the Union's responsibility to act as bargaining representative for the Respondent's employees.

(d) By any other means or in any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the purposes and policies of the Act.

(a) Offer to Wanda Gaston, Robert M. Taylor, Norma Shane, Patsy Porter, and Larry Larsuel full and immediate reinstatement to their former or substantially equivalent employment, without prejudice to their seniority or to other rights previously enjoyed, and make them whole for any loss of pay or benefits suffered by them by reason of the discriminations found herein, in the manner described in the remedy section of this decision.

(b) Recognize and bargain collectively in good faith with Service Employees International Union, Local 551, AFL-CIO/CLC as the exclusive collective-bargaining representative of all of its janitorial and service employees employed at Ft. Benjamin Harrison, Indiana, exclusive of office clerical employees, guards, and supervisors as defined in the Act.

(c) Furnish to the Union a list of the names and assignments of all of the nonsupervisory employees employed by the Respondent at Ft. Benjamin Harrison, Indiana.

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

(e) Post at the Respondent's Ft. Benjamin Harrison, Indiana place of business copies of the attached notice marked "Appendix."²⁰ Copies of the notice, on forms provided by the Regional Director for Region 25, 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.

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

²⁰If 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."