

D. J. Electrical Contracting, Inc. and International Brotherhood of Electrical Workers Local Union 141. Cases 8-CA-21970 and 8-CA-22158

July 22, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On October 18, 1990, Administrative Law Judge William F. Jacobs issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondent's exceptions. The Charging Party filed cross-exceptions, a supporting brief, and an answering brief to the Respondent's exceptions, and the Respondent filed an answering brief to the Charging Party's cross-exceptions.

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 and to adopt the judge's recommended Order as modified.²

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.

In adopting the judge's finding that the Respondent is required to furnish the Union with the information requested in its October 3, 1989 letter regarding Ohio Valley Home Monitoring, we note that the Union demonstrated that the information was relevant to the parties' collective-bargaining negotiations. See *George Koch & Sons, Inc.*, 295 NLRB 695 (1989); *Blue Diamond Co.*, 295 NLRB 1007 (1989). Thus, the record establishes that the Union had been informed by the Respondent's employees that the Respondent's president, David Jingle, had another company doing primarily residential electrical work and that Jingle stated during negotiations that the Respondent and Ohio Valley Home Monitoring were owned by the same people. In that context, the Union requested information concerning Ohio Valley in an attempt to understand the Respondent's work rules proposals as they related to employees' recall rights.

In its exceptions, the Respondent contends, inter alia, that it has furnished to the Union the time records requested in its letter of October 3, 1989, which enable the Union to estimate the amount of time spent by employees traveling from the Respondent's facility to the first jobsite each day and from the last jobsite back to the Respondent's facility. Because, however, this information was not furnished to the Union until the commencement of the hearing and because the Respondent failed to offer any explanation for this delay in furnishing this information to the Union, we find that the delay constitutes a violation of Sec. 8(a)(5). *Colonial Press*, 204 NLRB 852, 861 (1973); *International Powder Metallurgy Co.*, 134 NLRB 1605, 1606 (1961).

²The Charging Party has excepted to the judge's failure to include in his recommended Order a provision extending the Union's certification year for a 1-year period. We find merit in this exception. The Respondent's violations in failing to provide the Union with the information it requested commenced just 1 month into the collective-bargaining process. In these circumstances we find that the bargaining process never had a chance to get seriously and fairly underway. See *Colfor, Inc.*, 282 NLRB 1173, 1174 (1987), enfd. 838 F.2d 164 (6th Cir. 1988); *Glomac Plastics v. NLRB*, 592 F.2d 94, 100-101 (2d Cir. 1979), enfg. in pertinent part 234 NLRB 1309 fn. 4 (1978). We therefore find it appropriate to extend the certification year for a 1-year period running from the date that the Respondent begins to bargain in good faith. We shall modify the judge's recommended Order accordingly.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders the Respondent, D. J. Electrical Contracting, Inc., Neffs, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(c).

“(c) On request, furnish the Union the information requested in its letters of September 15 and October 3, 1989, and resume bargaining in good faith and for 12 months thereafter as if the initial certification year had not expired.”

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

“(d) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them 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 interrogate you, in violation of the Act, concerning your union activities.

WE WILL NOT threaten you with termination or loss of working time in retaliation for your union activities.

WE WILL NOT create the impression that we are keeping your union activities under surveillance.

WE WILL NOT compel you to execute letters of resignation for reasons violative of the Act.

WE WILL NOT terminate you or deny you steady employment because of your union activities.

WE WILL NOT refuse to furnish the Union with information concerning the terms and conditions of employment of employees in the unit which it represents.

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

WE WILL offer to Jay LaRoche, Dana Brent Bonar, John Welshans Jr., John Blacker, and Paul Kartman immediate and full reinstatement to their former positions, displacing, if necessary, any replacement or, if not available, to a substantially equivalent position without loss of seniority or other privileges.

WE WILL make Jay LaRoche, Dana Brent Bonar, John Welshans Jr., John Blacker, and Paul Kartman

whole for lost earnings resulting from the discrimination against them by payment of a sum of money equal to that which they would have earned from the initial date of termination and, in Blacker's case, from the initial date of denial of steady employment, to the date of a bona fide offer of reinstatement, with interest.

WE WILL, on request, furnish the Union the information requested in its letters of September 15 and October 3, 1989, and resume bargaining in good faith and for 12 months thereafter as if the initial certification year had not expired.

WE WILL notify the above-named employees that we have removed from our files any reference to their discharges and that the discharges will not be used against them in any way.

D. J. ELECTRICAL CONTRACTING, INC.

Richard R. Mack, Esq., for the General Counsel.
Gerald P. Duff, Esq. (Hanton, Duff & Paleudis), of St. Clairsville, Ohio, for the Respondent.
Randall Vehar, Esq., of Canton, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge. This case was tried before me on December 18 and 19, 1989,¹ at Bellaire, Ohio. The original charge in Case 8-CA-21970 was filed by the Union on July 18 and amended on August 21. The charge in Case 8-CA-22158 was filed by the Union on October 16. The complaint in Case 8-CA-21970 issued August 25 and an order consolidating cases, amended consolidated complaint and notice of hearing issued December 1. The amended consolidated complaint was further amended at the hearing.

The amended consolidated complaint alleges violations of Section 8(a)(1), (3), and (5). The 8(a)(1) allegations consist of alleged acts of unlawful interrogation, the unlawful delay of implementation of an employee health insurance program, numerous unlawful promises and threats, the unlawfully motivated recall of an employee to work for the sole purpose of having him vote in an NLRB election, the creation of the impression of unlawful surveillance, and several unlawful attempts to compel the resignation of certain employees. The 8(a)(3) allegations consist of the discriminatorily motivated separation of employees and the unlawful termination, layoff, and discharge of five employees. The 8(a)(5) allegations consist of the unlawful refusal to provide² with information necessary for it to perform its function as the collective-bargaining representative of Respondent's employees. The answer, duly filed, denies the commission of any unfair labor practices.

All parties appeared at the hearing and were afforded full opportunity to be heard and to present evidence and argument. All parties filed briefs. On the entire record, my obser-

vation of the demeanor of the witnesses and after giving due consideration to the briefs, I make the following

FINDINGS OF FACT³

D. J. Electrical Contracting, Inc.⁴ is an electrical contractor performing services primarily in the construction industry in Ohio, West Virginia, and nearby States. David Jingle is Respondent's president and is solely in charge of all labor relations.

In October 1988,⁵ James Stubenrod, the Union's business manager, approached Jingle at a jobsite and asked him if he would consider establishing a contractual relationship with the Union. Subsequently, the two men had a second meeting during which Stubenrod suggested that a meeting be scheduled at which he would speak to Respondent's assembled employees, explain to them the benefits of unionization and let them decide, for themselves, if they wanted representation.

Following his second meeting with Stubenrod, Jingle spoke to several of his employees, including one Jay LaRoche, about the fact that he was considering going union. He warned that if he did so, wages would be drastically cut. He then asked the opinion of his employees about his going union. After discussing the matter with his employees, Jingle decided against inviting Stubenrod to address them.

LaRoche, fearing loss of employment if Respondent went union, contacted Stubenrod in order to get more information. Stubenrod, not having had any success obtaining Jingle's cooperation in scheduling a meeting with Respondent's employees, decided to use LaRoche as his primary contact with them. Through LaRoche he scheduled a meeting with them at the union hall for November 10.

On November 10, LaRoche, accompanied by fellow employee John Blacker, met with Stubenrod and other members of the Union's organizing committee. The union representatives gave LaRoche and Blacker pamphlets and explained to them the benefits of belonging to the Union. After a general discussion the meeting concluded.

Following the November 10 meeting, Blacker and LaRoche spoke in favor of the Union with Respondent's other employees. LaRoche also distributed pamphlets to them. He mentioned to Jingle's secretary his interest in the Union. Her response was that a union was not necessary.

About November 21, Jingle decided that he would not go union. He announced his decision to his employees. In early December, Jingle called several employees together including Blacker, LaRoche, and one Oscar Lunsford. He announced again that he was not going to turn union; that he did not want to go union; and that if the men "wanted to quit and go cut their own deal with the union, they could."

In late December, a day or two after employee Dana Bonar first came to work for Respondent, Jingle asked him how he felt about the Union. Bonar admitted that when he first moved into the area, he tried to join the Union but could not get in. Jingle retorted that he had once considered joining the Union himself, but that the Union started doing things behind his back and if he could not trust the Union before

³The complaint alleges and the answer admits that the Board has jurisdiction and the Union is a labor organization within the meaning of the Act.

⁴Respondent, Employer, or Company.

⁵Hereafter all dates are in 1988 unless noted otherwise.

¹ Hereafter all dates are in 1989 unless noted otherwise.

²The Union.

signing a contract, he was not going to trust them afterwards. He added that he was having union trouble at the time.

Employee Paul Kartman was working with Jingle on a job in Frederick, Maryland, at times during the months of December 1988 through February 1989. On one occasion, while working there, Jingle mentioned that the employees were having a union meeting and he was wondering how it was going. When they returned to Ohio from Maryland, which was in early February 1989,⁶ Jingle asked Kartman if he had been contacted by the Union.

On February 23, a second union meeting was held at the union hall. This meeting was attended by LaRoche and Kartman. Discussions at the meeting concerned, among other things, if and when a representation election should be held. The following day Jingle asked Blacker how the meeting went the night before. Blacker replied that he did not go.⁷

None of the above incidents are alleged as violative in the complaint. Those discussed below are so alleged. Thus, on March 7, while Blacker was working on a job on Wheeling Island, Jingle visited the jobsite to check on its progress and to bring supplies. About 15 or 20 minutes before quitting time, as Blacker was walking off the jobsite, Jingle asked him if he had signed a union card. Blacker did not reply but acted as though he had not heard the question and kept on going. Jingle testified that he did, in fact, have a discussion about the Union with Blacker at the time and place described by Blacker in his testimony. Jingle admitted that it occurred after the petition was filed and had to do with procedure following the election, if the Union should win. Jingle specifically denied asking Blacker if he had signed a union card.

I credit Blacker that Jingle asked him if he had signed a union card, probably as a reaction to having received notice of the petition. I find that the interrogation was in violation of Section 8(a)(1) of the Act⁸ as alleged in the complaint.⁹

The complaint alleges¹⁰ that Respondent, through Jingle, separated Blacker and LaRoche, at work, although they had previously always worked together and that the separation was discriminatorily motivated. Respondent denies that the two employees were separated at all, much less because of their union activity.

With regard to this allegation Blacker testified that during the 2-1/2 years working for Respondent, he rarely worked alone but usually worked with LaRoche. LaRoche had been teaching Blacker, training him in electrical work. LaRoche testified, in support of Blacker's testimony, that Jingle talked with him about making Blacker his protege so that he would be a benefit to the company in future years. Following this discussion, Blacker worked one-on-one with LaRoche in order "to do things 100% right." This went on for 2 years, at one job after another, and Blacker turned into "a real good worker." Jingle testified concerning the relationship at work between Blacker and LaRoche and did not dispute their testimony.

⁶ Hereafter all dates are in 1989 unless noted otherwise.

⁷ The February 23 meeting was the only meeting of the three that Blacker did not attend. However, he testified that Jingle asked him about the November 10 meeting which he had attended. In any case, Jingle's question is evidence of Jingle's interest and knowledge concerning union activities, though it is not alleged as a violation.

⁸ *Allied Lettercraft Co.*, 272 NLRB 612 (1984).

⁹ Par. 9(a).

¹⁰ Par. 10(a) and (b).

Blacker testified that at one point, presumably during the organizational campaign, while both he and LaRoche were working together, an old job in Barnesville, where they previously had been working together, started up again. Instead of both being assigned to Barnesville, they were separated and LaRoche was sent to Barnesville to work with other people while Blacker remained behind. Blacker was given no explanation for the alleged change in practice.

LaRoche testified that he could not recall when he was separated from Blacker relative to his layoff on March 28. He recalled Blacker working at Saint Luke's in Wheeling while he worked alone at New Philadelphia. LaRoche testified that he was not advised why he and Blacker had been separated but admitted that Blacker had been doing well and that if he were doing well, he would be taken away from him, because LaRoche did not work with anyone who was already well trained. LaRoche also admitted that Blacker and he had previously worked apart on occasion. In explanation, he stated that he would do the most difficult work at a job site, then leave, permitting the less qualified employees to complete the less demanding tasks.

Jingle testified that until shortly before LaRoche's layoff, Blacker and LaRoche had not been permanently separated for any reason. They worked together up to just a few days before the layoff, according to Jingle's testimony.

Personnel records¹¹ reveal that Blacker and LaRoche worked together for 15-1/2 hours and at different worksites for 24-1/2 hours during the second week in January; that through the remainder of January they rarely worked together, Blacker remaining on the St. Luke's job while LaRoche moved on to projects in New Philadelphia and Barnesville; that in February Blacker continued to work at St. Luke's while LaRoche worked primarily at other sites until mid-February at which time he returned to St. Luke's where he worked together with Blacker on a virtually constant basis until his layoff on March 24.

I find that LaRoche and Blacker worked together as master and apprentice and that when it appeared that Blacker could adequately perform on his own and perhaps complete a job without LaRoche's help, LaRoche would move on to more difficult jobs. In my opinion, the work assignments had nothing to do with these two employees' union activity. The fact that they were assigned to work together for the last month of LaRoche's employment convinces me that the allegation should be dismissed and I shall so recommend.

On the morning of March 24, as Blacker was getting ready to go to work, he received a phone call from Jingle. It was raining and Jingle suggested that they hold off going to work until 8 a.m. to watch the weather and see what happened. Blacker did not work that day.

Blacker testified that, before March 24, he had never lost work because of bad weather, that when the weather was bad, Jingle would make provisions for the employees to work on an inside project. Personnel records covering the period December 1988 through November 1989 reveal that no employee, except for this one instance, had ever been laid off for just 1 or 2 days. If it had been the practice for Respondent to lay off its employees because of bad weather, the records would have so reflected. Moreover, personnel records reflect that all the other employees worked March

¹¹ Limited to the time period January through March.

24, except for LaRoche and Blacker, two of them at St. Luke's, the same jobsite where LaRoche and Blacker had worked the first 4 days of that week. Three other employees worked a full 8-hour day on March 24, either all day, or part of the day, in the shop.

As for LaRoche, according to a notation on his timecard, he was called at 7:45 a.m. on March 24 and told to take the day off. LaRoche testified that in his 2-1/2 years of employment with Respondent, he had never before been laid off. Blacker credibly testified that he had not been laid off since the previous winter. Personnel records¹² support their testimony.

Both Blacker and LaRoche worked on Monday and Tuesday, March 27 and 28, then both were told there was no work and neither worked regularly thereafter. At the time of his layoff Blacker had worked for Respondent for 2-1/2 years. He had worked various jobs and was acquainted with projects which were still ongoing as of the time of his layoff including the church on the Island, Barnesville, a sewage plant, Barcamp, and Kent State. LaRoche had worked at all these projects plus others. Moreover, LaRoche was more than just another electrician. From 1983 to 1985 he had been part owner of Respondent. When he came back to work for Jingle in 1986, he not only did service calls but also made estimates, sent bills out and worked in the office. As noted, LaRoche was relied on to train and teach new and less experienced employees. He was Respondent's highest paid and most valuable employee.¹³ Until the advent of the Union LaRoche had a key to the office and was entrusted with the combination to the burglar alarm systems which guards Respondent's office.

As noted, Blacker and LaRoche had been working on the Barnesville job for 2 days and at St. Luke's a month or more before that, when laid off. Though they were senior employees they were laid off while relatively new employees were kept working: Bonar at St. Luke's, Welshans, and Kartman at the shop. Whereas LaRoche testified that he had not ever been laid off in his 2-1/2 years with the Company and Blacker stated that he had not been laid off since the previous winter (1988), both Kartman and Welshans admitted to frequent layoffs. Thus, it is evident that Respondent drastically changed its practice with regard to layoffs to the detriment of the two union activists, during the union campaign, immediately preceding the election.

Immediately after his layoff, Blacker would call Respondent to see if there was work scheduled for the following day but was told, each time, that there was none. Finally, Jingle told Blacker that he would call Blacker if there was work, implying that Blacker's phone calls were no longer welcome. Blacker complied and stopped calling.

LaRoche went home from the Barnesville job on March 28 expecting to go to work the following day at 6:45 a.m. That evening, however, Jingle called LaRoche at his home and told him not to report until 8 a.m. The following morning at 7:40 a.m. Jingle called LaRoche and told him not to report

to work at all. LaRoche asked whether there would be work during the rest of the week. Jingle replied that there might be work the following Monday but that LaRoche was laid off and Jingle would call him when there was work. Jingle never called LaRoche back to work.

LaRoche credibly testified that in the 2-1/2 years that he worked for Respondent, there had been times when there was not enough work to keep all the employees busy in the field. On these occasions, Jingle would keep LaRoche in the office and give whatever field work there was to the other employees. In the office, LaRoche would study plans and specifications, determine supply needs, call suppliers, make estimates, and price invoices and work orders. My findings with regard to the alleged discriminatory actions taken against Blacker and LaRoche will be further discussed infra.

Between the time that LaRoche worked his last day for Respondent, March 28, and the date of the election, April 6, an employee, John Welshans, overheard a conversation which took place between employee Angelo "Doc" Graham and Jingle during which Jingle stated that neither Blacker nor LaRoche would be working for the Company "even if the Union didn't come in." The complaint¹⁴ alleges this statement to be in violation of Section 8(a)(1). In the context of the surrounding circumstances, I find that it is.¹⁵

On March 30 the Union held its third meeting. The meeting was attended by all but one of Respondent's employees. Thus, the employees who attended the meeting included, as it later turned out, the five who voted for the Union plus Graham, an individual who, as revealed above, was Jingle's confidant. At this meeting Stubenrod described how he had initially approached, Jingle and requested voluntary recognition, then decided to organize from the bottom up. Benefits of union membership, testing, and placement were also discussed.

On April 3, LaRoche dropped his timecard off at the office and had a brief conversation with Jingle's secretary. Because he had not received any recent assignments, he suggested that he should just stay home until he heard from her or from Jingle. The secretary stated that he should, indeed, follow that course.

I find that the evidence is sufficient to warrant the conclusion that LaRoche was involved initially in the organizing campaign, that Jingle was aware of that fact and laid off LaRoche because of his union activity. Because Jingle stated that he would not call LaRoche back after the election even if the Union did not win the election, LaRoche's layoff was permanent and was, in fact, a termination in violation of Section 8(a)(1) and (3) as alleged in the complaint.¹⁶

On April 3, Jingle called several employees into a small room to speak to them individually about the Union. He called Blacker's home and asked his wife to have him come in for this purpose. When Blacker arrived, Jingle presented him with an envelope containing campaign literature, Jingle's position. He told Blacker that he wanted to talk to him, that he could read the literature later. He then informed Blacker that his employees enjoyed a better medical plan than the Union offered. He pointed out that Blacker had worked year

¹²Limited to the period of December 1988 to April 1989. Respondent offered neither records nor testimony to discredit the testimony of Blacker and LaRoche. I therefore credit their testimony with regard to these matters.

¹³LaRoche has a master electrician's license for West Virginia. He also has a fire alarm license for Ohio. Thus, only he and Jingle are licensed to install fire alarms. Finally, LaRoche has an associate degree in electromechanical engineering which no one else, not even Jingle has.

¹⁴Par. 9(j).

¹⁵*Hecks, Inc.*, 273 NLRB 202 (1984); *California Dental Care*, 272 NLRB 1153 (1984).

¹⁶Par. 11(a) and (b). *Baker Mfg. Co.*, 269 NLRB 794 (1984); *Superior Pontiac*, 271 NLRB 1066 (1984).

round for Respondent and probably that would not happen with the Union. This statement is alleged in the complaint to be a violation of Section 8(a)(1) of the Act.¹⁷ I find that it is.¹⁸

Jingle continued his conversation with Blacker by stating that he did not want the Union in because it had lied to him and he did not want liars in his shop. He did not explain the basis for this accusation.

When Jingle next stated that if the Union got in, there would be only two journeyman cards handed out, Blacker became angry and stated that he thought that all the employees were to be tested equally and that he had just as much a chance of getting into the Union as anybody else. Jingle's statement concerning the limited number of journeyman cards is alleged in the complaint as violative of the Act.¹⁹ I find that it is, because the implication is that Blacker would lose his job to employees holding journeyman cards and there is no evidence in the record that Jingle's dire prediction was based on fact.²⁰

The conversation continued with Jingle advising Blacker that he had treated him better than the other employees by paying him at a higher rate. Blacker testified that this was true. Jingle added, in connection with his treatment of Blacker, that he had taken a lot of heartache, a lot of flack over him because other employees knew more than Blacker and were better electricians than Blacker, yet Blacker was still employed on the better, prevailing wage jobs²¹ when he did not deserve these assignments. Jingle also mentioned the fact that Blacker had worked steady over the years, implying that others had not and payroll records bear this out. The importance of this discussion is that it proves that Blacker, until he became involved with the Union, was treated especially well, better than other rank-and-file employees.

Jingle also spoke individually to employees Kartman and Bonar on April 3. Jingle asked Bonar how he felt about the Union. Bonar, in turn, asked Jingle how he felt about the Union, to which Jingle replied that he was not allowed to tell him. Bonar then stated that he would have to do what was best for him and his family and did not see how he could turn down a chance to get into the Union. Jingle argued that he did not know how Bonar could make the statements he had or what the Union could be offering him. He then informed Bonar that he just wanted to tell him that he liked Bonar's work and the responsibility that he had been taking. He assured him that he had a future with D. J. Electric, but then informed him that regardless of how the vote went, he would probably be laid off for a week, though no longer.

The two discussed the forthcoming election to some degree thereafter. Jingle stated that he did not think that it would be fair for Bonar's vote to be the deciding factor in the election because he had been with him for such a short time. He added that he thought that Bonar was taking a ride on Jingle's bootlaces and Bonar agreed. Before the meeting ended, Jingle assured Bonar that it was not his intention to sign an agreement with the Union. This last statement is al-

leged in the complaint²² as a violation of the Act inasmuch as it expressed the futility of selecting the Union as representative. I so find.²³

When Jingle met with Kartman, he gave him a copy of the same letter that he had given the other employees with whom he had met. At the time, which was probably on April 3, but in any event a few days before the election, he advised Kartman that he was not going to go union.

After meeting individually with certain employees, Jingle called all of them, except LaRoche, to a general meeting on April 4. At this meeting Jingle told his employees that although work was slow at the time and had been slow throughout 1988, "there was work out there." He told them, however, that even though there was work out there, he was not going to pursue it "until after the union thing; until after the election." He said that he had work but "just wasn't signing nothing" until he "seen what was going to happen." Jingle added that he did not know how many people he was going to have working for him.²⁴ The complaint alleges²⁵ these statements to be violative of the Act. I find that what Jingle was saying was that if the Union won, he would cut his work force and if it lost, he would keep his work force or expand it. Indeed, Jingle's own testimony reveals that this was his thinking. I find, therefore, these statements to be coercive and in violation of the Act.²⁶

According to Jingle's own testimony he advised those present, as he had earlier done in his individual discussion with Blacker, that if they accepted the Union as their bargaining representative, they would all be tested, that in his opinion, only two of them would be able to pass the test with grades sufficiently high to permit them to obtain a journeyman's card and that he would only be allowed to keep one apprentice employed, the others having to sign up for work at the union hall. As found supra, this statement is violative of the Act inasmuch as it is tantamount to a threat of termination.²⁷

Finally, Jingle, at this meeting, reiterated his earlier statement to Blacker that the employees had been working for Respondent year round and that if they stayed with him, they would continue to work year round, but that it would not happen with the Union. The complaint alleges²⁸ this statement as violative of the Act and I so find.²⁹

On April 4 Jingle engaged employee John Welshans Jr. in several conversations about the Union. In one, after Jingle handed Welshans a copy of his campaign literature concerning his views on the Union, the latter gave some indication that he had changed his mind about the Union which he had initially opposed. Jingle commented that this didn't look good, that it didn't look like Welshans was against the Union anymore. Welshans said:

²² Par. 9(f).

²³ *Hotel Roanoke*, 293 NLRB 182 (1989).

²⁴ Jingle testified to having made statements, on this occasion, somewhat different from those attributed to him. However, I credit the account as testified to by the employees.

²⁵ Par. 9(d) and (v).

²⁶ *Harvard Folding Box Co.*, 273 NLRB 1031 (1984); *Harrison Steel Castings Co.*, 293 NLRB 1158 (1989).

²⁷ *NLRB v. Hasbro*, supra.

²⁸ Par. 9(i).

²⁹ *Harrison Steel*, supra.

¹⁷ Par. 9(i).

¹⁸ *Baton Rouge General Hospital*, 283 NLRB 192 (1987).

¹⁹ Par. 9(e).

²⁰ *NLRB v. Hasbro Industries*, 672 F.2d 978 (1st Cir. 1982).

²¹ Prevailing rate wages were at least double that ordinarily paid and included vacation pay and benefits as well.

Well Dave, to tell you the truth, I've got to look out for my family, and I have to look into this because of the benefits that I'm going to be getting from it in the long term. I don't want to hurt you in any way, but I have to look out for myself and my family.

This conversation clearly established company knowledge of Welshans' prouion sympathies immediately prior to the election.

In a second conversation between Jingle and Welshans, while the two were alone, a few days before the election, Jingle said that "things were going to change." He added that that was all he could say, that he could not say anymore, that he did not want to get into any trouble about it. The complaint alleges³⁰ that on April 5 Jingle promised an employee unspecified benefits by making this statement. I find, however, that Jingle's statement was too vague to rise to the level of an unlawful promise of benefits.³¹

In a third conversation between Jingle and Welshans, which took place on April 4, Jingle apologized to Welshans for not having provided health insurance to him. Jingle had promised Welshans when he first started working for Respondent, that he was going to be provided with health insurance. During the April 4 conversation, he explained that it had been an oversight on Jingle's part. The complaint alleges³² that in mid-March, Respondent unlawfully delayed the implementation of an employee health insurance program because of their union activities. I find insufficient evidence in the record to support this allegation and recommend its dismissal.

In still a fourth conversation, a day or two before the election, Welshans advised Jingle that he was in favor of the Union because it could provide him with schooling. Jingle argued that he had told Welshans a long time ago that Respondent would reimburse him for any work-related schooling but Welshans denied that Jingle had ever made such an offer. Welshans thus, once again, made clear his position on union representation.

Prior to the election, scheduled for April 6, Jingle confided his knowledge of, and displeasure with, LaRoche's and Blacker's union activities to other employees. He told Kartman that he wished that if LaRoche was going to go union, he would cut his own deal and go to the Union, in other words, to leave Respondent's employ.

On another occasion Jingle told Welshans that he could not understand why LaRoche and Blacker were bringing the Union in or organizing for the Union because he felt that he had been treating them fair enough so that they did not have to do anything of that nature. Welshans agreed, but this, of course, was prior to Welshans change of heart.

The election took place as scheduled on April 6 at 7 or 7:30 a.m.. The tally of ballots indicates that Respondent's employees cast five votes for the Union and two votes against the Union. The five votes cast in favor of the Union were by LaRoche, Blacker, Bonar, Kartman, and Welshans.

After the election, the employees waited around to find out the results. Bonar had been scheduled to work in the shop after the election, just as he had done the day before and part

of the day before that. Welshans was with him and had also worked at the shop earlier in the week. As the two prepared to go to work, Jingle came out and said to them, "I don't have any work for you." Both turned around and left. Neither of them worked that day or ever again for Respondent. They were never recalled. Their impressions at the time were that they were finished as employees of Respondent because of the union victory.

Bonar had worked in the shop on April 5 for 7-1/2 hours and on April 4 for 2-1/2 hours, transferring materials from one building to another after the second building had been remodeled. There was a lot of inventory to transfer to the remodeled building and as of the morning of April 6, the transfer of material had not yet been completed. Most of the material had been transferred but was lying around on the floor and still had to be stocked. Bonar was prepared, at the time he was abruptly sent home, to continue restocking the inventory. According to Bonar, at the time he was sent home, there was still 2 or 3 weeks work left to be done, transferring material, stocking, and building shelves. Records support Bonar's testimony to the extent that they show that employees Lunsford and Graham each worked 8 hours in the shop on April 6 and together in the shop an additional 37 hours over the next 3 weeks.

Bonar credibly testified, and records support his testimony, that he had worked numerous times at the Kent State project, which was still in its beginning stages, and still had 3 or 4 months' work to be done. Records also indicate that Bonar had worked on the St. Luke's project and that at the time of his layoff there was still work to be performed there.

The record indicates that Jingle was aware of Bonar's union sympathies, that he was strongly opposed to the Union, and that he laid off Bonar immediately after the Union's victory at the polls despite the fact that Bonar was scheduled to work that very day. Because there was still work available, during the next few weeks and months, at projects with which Bonar was familiar, but Jingle did not recall him to work, I find that Bonar's layoff was meant to be permanent and was, in fact, a termination which was discriminatorily motivated by the results of the Union victory. By terminating Bonar because of his prouion sympathies, Respondent violated Section 8(a)(1) and (3) of the Act as alleged in the complaint.³³

Welshans' last actual days of work for Respondent, were Wednesday through Friday, March 29-31, and Monday and part of Tuesday, April 3 and 4. After a couple of hours on the job on April 4, Welshans asked and was granted permission to take the rest of the day off, as well as April 5. Although Jingle and Welshans had had several conversations on April 4 concerning the Union as well as working conditions at Respondent's place of business, and Jingle therefore had plenty of opportunity to advise Welshans that there would be no work for him on Friday, he made no mention of it, and Welshans reported to work on April 6 fully expecting to continue working.

As in the case of Bonar, there was still work available for Welshans in the shop, at the time of Welshans' layoff, immediately after the tally of ballots, which Welshans' had already been scheduled to perform. His continued performance was interrupted by the layoff. Further, Welshans had, according

³⁰ Par. 9 (k).

³¹ *Middletown Hospital Assn.*, 282 NLRB 541 (1986); *National Micronetics*, 277 NLRB 993 (1985).

³² Par. 9(d).

³³ Par. 13(a) and (b). *Harvard Folding Box*, supra.

to the records, worked on the Kent State and St. Luke's jobs just as Bonar had, but was not recalled despite the fact that work was still available at those sites.

The record clearly indicates that Jingle was well aware of Welshans' prounion sympathies and discussed these sympathies on several occasions with him, trying to dissuade him from supporting the Union. The record also indicates that Jingle considered Welshans a good worker. Therefore, when Jingle laid off Welshans immediately after the election, despite the fact that there was work available for him to perform, the conclusion is unavoidable that the layoff was in retaliation for his union support. Because additional work subsequently became available after Welshans' layoff and Jingle failed to recall Welshans to perform this work, it becomes evident that the layoff of Welshans was meant to be permanent and, in fact, a termination. I therefore find that Respondent, by terminating Welshans because of his union activities, violated Section 8(a)(1) and (3) as alleged in the complaint.³⁴

LaRoche showed up at the polls on April 6 to cast his ballot. After the count, LaRoche and the other employees were waiting around for their paychecks. LaRoche went to the company truck and got his personal handtools. When he returned to the group, Jingle was also present. He asked LaRoche for his set of keys to the truck and shop. LaRoche gave the keys to Jingle. This was the first meeting between the two since March 28 and would be the last communication between them until over a month later.

On the morning of April 6, Blacker reported to the polling area to cast his ballot. He also reported for work for the first time since March 28. After he cast his ballot, he waited around for the count. He was then sent to work with Paul Kartman on a job at BCI, otherwise known as Belot Concrete.

Inasmuch as Blacker had not worked since March 28, there is a question as to why he was called to work suddenly on April 6. The complaint³⁵ alleges that Respondent recalled an employee to work on the day of the election solely for the purpose of having the employee vote in the election. The allegation is not supported by the evidence. Blacker was a known union adherent who had been laid off because of his union sympathies. It was obviously against Respondent's demonstrated antiunion interests to have Blacker cast his ballot and ridiculous to conclude that Jingle called him back solely for that purpose. I recommend dismissal of this allegation.

The record reveals that Blacker's father was responsible for Respondent getting the BCI job and, for this reason, Jingle evidently felt an obligation to employ the elder Blacker's son. Therefore, immediately after the election, Jingle sent Blacker and Kartman to the BCI job which, by company records, was begun that very day.³⁶

After Kartman and Blacker arrived at the BCI jobsite, they found that they would not be permitted, by contractors on the site, to follow the plans that they had been given by Respondent. Jingle was summoned to iron out the difficulty. When Jingle arrived on the site, between 1 and 1:30 p.m., to take care of the installation problem, he asked Blacker

how he had voted in the election that morning. Blacker replied that he was not going to tell Jingle a lie and said that he had voted, "yes." Jingle then stated that the reason that he wanted to know, was that he wanted to know who he was keeping, and who he was sending down the road. Blacker then asked Jingle why anything had to change, adding that he understood that employees could continue to work for Respondent, even though members of the Union, under their regular rate of pay, until negotiations were completed, for at least a year. Jingle just laughed, got into his truck, and drove away. This was the last day Blacker worked for Respondent.

The complaint alleges³⁷ that Respondent, on April 6, unlawfully interrogated employees by asking them how they voted in the election. I find that the violation occurred as alleged.³⁸ The complaint further alleges³⁹ that Respondent violated the Act by telling employees that those who had voted, "no" in the election, would be retained as employees and those who had voted, "yes" in the election would be terminated. From the above described statement of Jingle, I find the allegation meritorious.⁴⁰

The complaint also alleges⁴¹ that on April 6, Respondent violated Section 8(a)(1) and (3) of the Act by terminating its employee, John Blacker. Inasmuch as Blacker never worked for Respondent thereafter, I find that it did. Further, the record supports the complaint that Blacker was denied steady employment during his last several days with Respondent for reasons violative of Section 8(a)(1) and (3) of the Act.⁴²

After Jingle left the worksite, Blacker went over to Kartman and told him that he had just been advised by Jingle that he, Blacker, no longer worked for Respondent and that he would therefore not be riding home in the truck with Kartman, but rather would ride home with his father. Kartman drove back to the shop alone that evening.

When Kartman arrived at the shop, Jingle asked him how he voted. Kartman admitted that he had voted, "yes." Jingle said that he was disappointed in Kartman. Kartman then left and went home, expecting to report to the shop in the morning and to go from there to the worksite at BCI, to finish the job that he and Blacker had started. I find Jingle's interrogation of Kartman concerning his vote to be violative of Section 8(a)(1) as alleged in the complaint.⁴³

About half an hour after the election, Stubenrod arrived at the union hall and was informed by his secretary that certain of Respondent's employees, presumably Bonar and Welshans, had called to advise him that they had been told that there was no work for them that day. Subsequently, Stubenrod attempted to find interim employment for them.

Both Blacker and Kartman were scheduled to continue their work at BCI on the morning of April 7. There was a death in Blacker's family, however, and he did not report to work on April 7. Kartman, on the other hand, reported to the shop, as usual at 6:30 a.m., to go to work at BCI. When he arrived he found the gate padlocked. He waited until after 8 a.m., but no one ever showed up.

Company records reflect that Graham and Lunsford, the two employees who had voted "no" in the election, had

³⁴ Pars. 13(a) and 9(b). *Harvard*, supra.

³⁵ Par. 9(m).

³⁶ The work had apparently been started by another contractor.

³⁷ Par. 9(1).

³⁸ *Aircraft Ornamental Iron Co.*, 271 NLRB 829 (1984).

³⁹ Par. 9(n).

⁴⁰ *Harvard*, supra.

⁴¹ Pars. 13(a) and 9(b).

⁴² Par. 12(a) and (b). *Kime Plus, Inc.*, 295 NLRB 127 (1989).

⁴³ Par. 9(1). *Aircraft Ornamental Iron Co.*, supra.

been assigned to work at BCI on April 7 in place of Blacker and Kartman. They worked that day a full 8 hours each, then 5 hours each the following day, a Saturday, to finish up the job. Saturday overtime was a rarity and the fact that it was required in this instance indicates no lack of available work.

On the evening of April 7 Kartman, unaware that he had been replaced at the BCI job, called Jingle to ask him why the gate had been locked that morning and why nobody worked. He asked Jingle if he wanted him to work for him. Jingle replied that Kartman was not allowed to work for Respondent anymore because he was Union and the Union would not allow Kartman to work for Respondent. The complaint alleges this statement to be violative of Section 8(a)(1)⁴⁴ and I so find. Kartman argued that the way he understood it, the Union would let Jingle's employees finish up the contracts that were in process under the wages and other working conditions then in effect. Jingle did not reply, so Kartman said that if Jingle could not make up his mind just then, he should call Kartman Sunday night and let him know. Jingle, however, did not contact Kartman on Sunday or ever again. I find that Respondent terminated Kartman because of his union activities, in violation of Section 8(a)(1) and (3) of the Act, as alleged in the complaint.⁴⁵

Though Welshans had been laid off the day before, Jingle, on April 7, telephoned him and asked him to come to his office. When Welshans arrived, Jingle asked him how he had voted in the election.⁴⁶ When Welshans admitted that he had voted for the Union, Jingle stated that he was not sure whether Welshans was one of the "no" votes or not, and he wanted to be fair to the people who voted for him because those people, he felt, he should keep working.

The complaint alleges that both the interrogation⁴⁷ and the statement⁴⁸ were unlawful. I agree and find Respondent to be in violation of Section 8(a)(1) in both respects.⁴⁹

In the second or third week in April, Jingle's secretary called Blacker and informed him that Jingle wanted him to turn in the key to Respondent's gate. Blacker did so the following day. The requirement manifested Respondent's continued intention not to use Blacker's services again. Nevertheless, on April 27, Blacker called Respondent⁵⁰ and made an appointment through Jingle's secretary to meet with him at 4 p.m. that day.

When Blacker arrived, Jingle asked him why he had come. Blacker replied that he had come to talk about his job. Jingle asked, "Well, where's your Union?" Blacker replied that the Union had not yet called him, then asked Jingle if he was "ever going to sign union." Jingle replied that he was not sure, that he did not know if he was going to sign with the Union. Apparently prompted by Blacker's question, Jingle accused Blacker of being a union spy and told him that he had to be careful of him.⁵¹ When Blacker insisted that he was interested in a job, that Jingle had his number and knew where he lived, Jingle asked if Blacker would cross a picket

line if Respondent hired him back,⁵² thus implying that his continued employment depended on the proper answer. Blacker replied that he did not know, that if he crossed a picket line, he would be out in the cold because the Union would not want him, even if Jingle did sign a union contract. Jingle countered that if Blacker stuck with him and did cross a picket line, and Jingle then signed a union agreement, he could make the Union take Blacker.

The complaint alleges that Respondent violated Section 8(a)(1) of the Act on April 27 by telling an employee that his continued employment depended on his willingness to forego union activities and membership,⁵³ by creating the impression of surveillance by telling an employee that he thought the employee was a union informant,⁵⁴ and by interrogating an employee as to whether he would cross a picket line.⁵⁵

I find the facts, as reflected by the record, prove the allegations and that Respondent violated Section 8(a)(1) in each of the instances as described in the complaint.⁵⁶

Jingle testified that in their discussion on April 27, Blacker agreed that if faced with a picket line at a jobsite, he would go through and work. Therefore according to Jingle, at the end of their conversation, he offered Blacker employment, starting 6 a.m., Monday, May 1. According to Blacker, Jingle made his offer in a separate telephone conversation which took place on Friday, the day after their conversation. In any case, Blacker who had not worked since April 6, received a call from the Union that weekend wherein Stubenrod offered him work. He therefore called Jingle on Sunday April 30 and left a message on the recording machine stating that he would not be returning to work for Respondent, that Stubenrod had called him and was putting him to work, and that he was no longer allowed to work for Respondent until he signed a contract with the Union. According to Blacker he decided not to return to work for Respondent because he did not appreciate being called a union spy and because he would have had to go back as a nonunion employee. For these reasons Blacker decided to accept the Union's offer.

On the morning of May 1 Jingle, who was unaware of Blacker's telephone message, waited with two other employees for Blacker to arrive. They waited 15 minutes but Blacker did not show up. Jingle called Blacker at his home, in case he had overslept, but no one answered the phone. He drove to Blacker's home, a block away from the shop, but Blacker's truck was not in the driveway. Jingle returned to the shop, then the three went to work. That afternoon Jingle's secretary advised him of Blacker's telephone message.

On or about May 4 Welshans called Respondent in order to get his vacation pay and pension money. He spoke with Jingle's secretary who told him that he probably could get his vacation pay but did not know about the pension money.

⁵² Jingle admitted asking this question.

⁵³ Par. 9(p).

⁵⁴ Par. 9(q).

⁵⁵ Par. 9(w), by amendment at the hearing. Following the General Counsel's motion to amend, Respondent was afforded opportunity to adduce further testimony on the allegation. Respondent declined the opportunity. Ruling on the motion, having been deferred, is granted.

⁵⁶ Continued employment dependent on abandonment of union support: *Spartan Equipment Co.*, 297 NLRB 19 (1989); impression of surveillance: *Jumbo Produce*, 294 NLRB 998 (1989). When an employer accuses an employee of specific union activity, these accusations constitute interrogation about such activities and creates the impression of surveillance of such activities; interrogation: *International Metal Co.*, 286 NLRB 1106 (1987).

⁴⁴ Par. 9(o). *California Dental Care*, 272 NLRB 1153 (1984).

⁴⁵ Par. 14(a) and (b). *Harvard*, supra.

⁴⁶ Jingle denied asking anyone how he voted. I credit Welshans.

⁴⁷ Par. 9(l).

⁴⁸ Par. 9(n).

⁴⁹ Interrogation: *Aircraft Ornamental Iron*, supra; statement: *Harvard*, supra.

⁵⁰ Jingle testified that it was he who called Blacker. I credit Blacker.

⁵¹ Jingle denied making this statement. I credit Blacker.

Later, Jingle called Welshans and told him that he could give him his vacation pay with no problem but could not release his pension fund to him because it was still in the 401(k) account and would stay there until Welshans was no longer employed by Respondent. When Welshans asked how he could get his money, Jingle told him that he would have to resign his employment with Respondent. Welshans then asked how to go about doing this. Jingle replied that Welshans should just send him a letter and when he received it he, in turn, would send a letter to the bank. Welshans asked if he could bring the letter down to Jingle's office. Jingle replied that Welshans could do that but, if he preferred, Jingle could have his secretary type something up and Welshans could come down and sign it. Welshans, apparently anxious to get his money, asked if he could hand carry the letter to the bank to get his money. Jingle replied that he did not know but did not think so because there was paperwork involved.

When Welshans arrived at Jingle's office, Jingle handed him the following letter:

Dear Dave,

I, John Welshans am resigning my position with D. J. Electrical Contracting, Inc. effective _____ and request that all monies held in trust for me at the Belmont County National Bank in the D. J. Electrical Contracting, Inc. Pension Fund be distributed to me.

Signed

Date

Jingle told Welshans that the letter was just for the bank, to sign it, and he would send it to the bank. He advised Welshans that the bank would take care of everything else from there. Welshans asked Jingle what date he should put in and Jingle suggested he enter in the body of the letter, the last day he worked. Welshans then entered "4-6-89" in the space provided, then signed and dated the letter "5-4-89."

According to Jingle, Welshans read the letter through before signing it. According to Welshans, he is a poor reader, so he trusted Jingle and signed the letter without first reading it. He testified that he sometimes signs documents without reading them because of his reading deficiencies. He also testified that he never quit or resigned his job with Respondent but, on the contrary, took every opportunity to work for and keep working for Respondent. Welshans stated that had he known what he signed was a resignation, he would never have signed it.

As noted earlier, I have found that Welshans was terminated by Respondent in violation of Section 8(a)(3) of the Act, long before he signed the document on May 1. Therefore, I find further that when he signed the May 4 document which purports to be a resignation, he did so for the sole purpose of obtaining his pension moneys.

The complaint⁵⁷ alleges that Respondent violated Section 8(a)(1) by compelling Welshans to execute a letter of resignation. I find that whether this incident is violative of the Act depends on Jingle's reason for using the term "resignation" when, in fact, he knew full well that Welshans had been terminated because of his union sympathies and his "yes" vote in the recent election. If the term "resignation"

was innocently and fortuitously used merely to obtain Welshans' pension money for him, I would find no violation. On the other hand, if Jingle inserted the term in the letter to disguise the fact that Welshans' termination was discriminatorily motivated, I would find a violation. In light of subsequent events, described infra, wherein Respondent refused to release Blacker's pension moneys to him unless he agreed to sign a similar letter, necessarily containing the term "resignation," I find this incident to be calculated attempt by Jingle to disguise the real reason for Welshans' termination. His requirement that Welshans sign the resignation letter before having his pension monies released is clearly interference with Welshans' Section 7 rights, and is violative of Section 8(a)(1) of the Act. Moreover, it is akin to paying an employee money to influence his testimony in an unfair labor practice hearing, because it, like influenced testimony, falsifies the record, an act which has been found to be obstructive of Board proceedings and violative of Section 8(a)(1) of the Act.⁵⁸ Finally, compelling an employee, who has been terminated for reason violative of the Act, to sign a resignation clearly interferes with his access to Board processes and is violative for that reason as well.

Respondent argues that its prounion employees were laid off because of a lack of work. Yet while Jingle, on May 4, was convincing Welshans to sign a resignation letter in order to secure his pension benefits, he was hiring or rehiring replacements. Thus, Respondent, on May 2, rehired Mark McKeever, an employee who had been laid off the previous February 2, in favor of retaining Kartman, Welshans, Bonar, Blacker, and LaRoche past that date. It also hired new employees Annett on May 2 and Ramsey on May 5. Eventually, it hired new employees Barnes, Smith, and Hubbard on June 7. If the prounion employees were laid off for lack of work, there is no satisfactory explanation for Respondent's failure to recall them in May and June rather than hire new employees.

In late April, LaRoche received a letter from his health plan insurer, dated April 26, stating that it had been informed by Respondent that LaRoche's group membership in the plan would be terminated as of April 30. Receipt of this letter, in light of the circumstances, was a clear indication to LaRoche, that he never would work for Jingle again. After all, he had been told not to call in for assignments, and had received no calls to report for work. Obviously, LaRoche understood, when he received this letter, that Respondent had terminated him. Inasmuch as he was aware that he had accrued pension benefits while employed by Respondent, he determined to have these moneys returned to him. In order to do so, he sent the following letter to Respondent on May 8:

Dear Mr. Jingle:

Due to personal reasons and lack of work with your company I am resigning from employment, effective immediately.

Please send the pension money due me for working on Federal Prevailing Rate jobs as soon as possible.

⁵⁷ Par. 9(t).

⁵⁸ *Atlantic Foundry & Pattern Corp.*, 192 NLRB 745 (1971), *affd.* 83 LRRM 2024 (2d Cir. 1973).

If you have any questions, please call me at home in the evening.

Sincerely,
Jay C. LaRoche

LaRoche testified that “it was kind of common knowledge that if you ever wanted that [pension] money you had to resign to get it. There wasn’t any other way.”⁵⁹ He also testified that he and his wife composed the letter and his wife typed it.

The complaint alleges⁶⁰ that Respondent violated Section 8(a)(1) of the Act “by unlawfully compelling employee Jay LaRoche to execute a letter of resignation.”

I find that the letter was not a letter of resignation at all, but rather an attempt on LaRoche’s part to obtain money in his pension fund. He had been terminated over a month before. He knew it and Jingle knew it, so there clearly was no purpose to the letter except to obtain the pension money by use of the letter. On the other hand, there is no evidence that Jingle or any other agent of Respondent compelled LaRoche to write the letter and I recommend dismissal of the allegation.

As of June 7, Blacker still had money in his pension fund, earned while an employee of Respondent. In order to be able to get this money, he had Stubenrod write a letter to Jingle requesting same. The letter states:

Dear Mr. Jingle:

Please be advised that I have taken a job with an employer signatory to a contract with the International Brotherhood of Electrical Workers Local Union 141, Wheeling, West Virginia.

Therefore, I am requesting the pension monies, with interest, that have been put into my account during the time that I was employed by D. J. Electrical Contracting, Inc.

Very truly yours,
John E. Blacker

Unlike the letters previously submitted by Welshans and LaRoche to obtain their pension money, Blacker’s letter did not use the term “resignation” but nevertheless did get across the message that Blacker was entitled to his pension money because he was no longer employed by Respondent.

On Sunday, June 11, Jingle called Blacker and told him that he could not accept the way Blacker’s letter was written, that he needed another letter signed. He asked Blacker to come to his office for that purpose. Blacker agreed to visit Jingle’s office the following day to sign a letter to be left with Jingle’s secretary.

The following day Blacker reported to Jingle’s office and asked his secretary for the letter or form which Jingle had left for him to sign. She then presented Blacker with a letter which she said Blacker would have to sign if he wanted his pension money. Blacker, after reading the letter, told her that he preferred not to sign it there, but to take it home with him, study it and “get it looked at.” Blacker refused to sign the letter, then and there, because it literally stated that he

had resigned his job with Respondent when, in fact, he had not. The secretary adamantly refused to permit Blacker to take the letter out of the office. Blacker, just as adamantly, refused to sign the letter unless he were first permitted to take it home with him. Blacker then asked if he could at least take a copy of the letter with him. The secretary agreed and gave him a copy. Blacker never signed the letter because it incorrectly stated that he had resigned his job.

The complaint⁶¹ alleges that Respondent violated Section 8(a)(1) of the Act by attempting to compel employee John Blacker to execute a letter of resignation.

The facts reflect that Respondent refused to cooperate in the release of Blacker’s pension money unless he signed a resignation letter. I find, that Jingle, through his secretary, took the described action in an effort to disguise Blacker’s discriminatorily motivated termination, and that this action, so taken, was therefore in violation of Section 8(a)(1) of the Act.⁶²

On June 12, Respondent sent to Paul Kartman a resignation letter for his signature, ostensibly to enable Kartman to obtain his pension fund money. I find, however, that the resignation letter was sent to Kartman for the same reasons that the other discriminatees were requested to sign their resignations, and that the motive behind Respondent’s action was violative of the Act, just as alleged in the complaint.⁶³ Kartman did not sign the letter. Rather, on June 16, he had the Union prepare a letter for his signature similar to the one which Stubenrod composed for Blacker on June 7 and sent it to Jingle. Respondent ignored Kartman’s request and he never received any money from the pension fund. Respondent’s refusal to cooperate in obtaining Kartman’s pension money for him without his signing a resignation letter is further evidence of discriminatory motivation.

In mid-June, Welshans visited Jingle at his home. He asked Jingle to rehire him. Jingle refused stating that it would not be fair to rehire Welshans because he would then have to fire the employees whom he had hired since Welshans’ termination.

On July 18, the Union filed the charge in Case 8-CA-21970 alleging the 8(a)(3) violations contained in the complaint issued in the instant case. The charge was served on Respondent on July 20. On July 26, obviously prompted by the unfair labor practice charge, Jingle suddenly decided to respond to Blacker’s letter of June 7 three weeks after its receipt. Inasmuch as the June Letter had not used the magic word “resignation,” Jingle supplied it in his July 26 confirmation letter: “You have taken another job and resigned from D. J. Electrical Contracting, Inc.” This self-serving statement is further evidence of ulterior motivation and its timing, occurring 3 weeks after the letter it purports to answer and just 1 week after the charge was filed, reflects a transparent attempt to provide a bogus defense to the violations charged. Jingle’s letter did, however, promise to inform the pension trust plan trustee that Blacker’s money should be released.

⁵⁹ Record evidence does not, in any way, reflect that Respondent was the source of LaRoche’s “common knowledge.”

⁶⁰ Par. 9(s).

⁶¹ Par. 9(r).

⁶² *Atlantic Foundry*, supra.

⁶³ Par. 9(u).

The Union had been certified as representative of Respondent's employees on June 1. On August 3, Respondent filed a motion to revoke certification,⁶⁴ the grounds cited:

The reason for the [motion] is that the individuals who voted for the Union have either quit or resigned from the Employer subsequent to the election. Not only does the Union not have a majority, it appears that no one who voted for it is presently employed.

Because the tally of ballots revealed that seven ballots were cast in the election, five in favor of the Union and two against the Union; and because Lunsford and Graham were still employed as of the date the motion was filed, it is patently clear that the language contained in the motion, cited above, is an admission that Respondent knew at the time, which of its employees voted for the Union, namely, the five alleged discriminatees. Respondent, throughout the hearing, denied knowledge of prounion sympathies. I reject this denial as incredible.

Following the certification of the Union on June 1 and the Region's denial of Respondent's motion to revoke certification on August 9, the parties held their first bargaining session on August 10. At this meeting, Stubenrod, the Union's chief negotiator, at the time, requested copies of the Respondent's group medical and hospital agreement and pension plan and a list of current employees. On August 14, Respondent provided a copy of its medical plan and promised that a copy of the pension plan would follow. This was sent on August 16.

The second bargaining session was held on August 24 and the third on September 12. The third bargaining session was attended by the attorneys for the parties as well as their principals. At this meeting, Randall Vehar, the Union's attorney asked for certain information. Respondent's attorney, Gerald Duff, requested that Vehar put his request in writing and Vehar agreed to do so.

Various subjects were discussed at the September 12 bargaining session. The Respondent took the position that certain employees who had voted in the April 6 election and were no longer employed by Respondent had quit. Vehar asked if these employees had received all of their vacation money. The Respondent was unable to answer this question.

Respondents' 401(k) trust account was discussed. The Respondent stated that when employees worked on Davis-Bacon jobs, money was put in their 401(k) accounts but not when they worked on non-Davis-Bacon jobs. However, the copy of the pension plan, also referred to as the profit-sharing plan, supplied to the Union on August 16, did not indicate how much money was placed in the 401(k) plan per employee, even on Davis-Bacon jobs, so Vehar asked how that was determined. Vehar was aware that on prevailing rate jobs under Davis-Bacon, the employer was obligated to pay a certain total wage but was free to determine how much would be in actual wages and how much in pension and other benefits. When Vehar asked what mix Respondent had put into the Davis-Bacon formula, Respondent's negotiators could not answer his question.

Vacation was another subject discussed at this meeting. Vehar stated that in order to be certain that Respondent's employees had received their proper vacation payments after

being terminated, he would have to see Respondent's records for 2 years. He argued that 2 years' records would be necessary because the longer an employee's service, the more he would be entitled to, and this was also the pension payments. Two years of records would permit Vehar to see how these plans were administered over a full year.

One question Stubenrod posed at the third meeting was why Respondent would not pay prevailing rates on all jobs instead of just Davis-Bacon jobs. Duff replied that to do this would bankrupt the company. Duff, according to Vehar, expanded on this statement by stating that he had already discussed the possibility of paying prevailing wages on all jobs with some of his customers and that they had told him that if they went with the Union's pattern agreement, it would cost them several hundred thousand dollars, and that on some of their projects, they would lose money. Vehar testified that if what Duff had told him were true, then maybe the Union should look at its overall economic package. But, Vehar testified, he had been told the same thing by a lot of employers and sometimes it was true and sometimes it was not. So, to test Duff's statement, he told him that if that was his position, then prove it.

Gerald Duff took the stand and testified concerning the September 12 bargaining session. He stated that when asked why Respondent did not pay prevailing wage rates on all jobs and he mentioned bankruptcy, he was merely jesting. He added that he did not know if doing so really would result in bankruptcy. He further testified that when discussing the payment of prevailing wages on all jobs, Vehar had apparently misunderstood him. Duff explained that what he had said was that Respondent would lose hundreds of thousands of dollars under these circumstances, not that his customers would lose these amounts. According to Duff, Jingle would lose money by paying prevailing rates on all jobs because he would lose contracts. Expanding on this statement, Duff testified that Jingle had had a discussion with one of his customers who had told him that he had no objection to dealing with a union company and having union employees do the work, but that costs would have to remain stable, within budgetary figures and competitive with other bids, based on nonprevailing wages. Duff testified further, that if Respondent's association with the Union caused its labor costs to go up and rates to customers to go up, so that Respondent was no longer competitive with other bidders, then customers could not guarantee that Respondent would have any work. Duff said that there was no documentation to support the described Jingle/customer conversation and admitted that he could not recall whether he had told Vehar and Stubenrod about it at the September 12 meeting.

On September 15 Vehar sent a letter to Duff in which he described fully all the information which he had requested verbally at the bargaining session of September 12. Only the vacation trust was eventually provided. In his September 15 letter Vehar made the following requests for information with explanations included as to why the information requested was necessary:

Please provide me as soon as possible with the following documents: (1) the annual reports for each fringe benefit plan—maintained by or on behalf of the employer and/or its employees, including any employee who was eligible to vote in the NLRB election—for the

⁶⁴The motion was denied August 9.

past two (2) years; (2) for the past two (2) years, any and all summary plan descriptions, or modifications thereof, for said fringe benefit plans; (3) a copy of the vacation trust identified to us at the negotiating session as well as any documents describing the benefits under that trust, the manner in which the trust is administered, the manner in which benefits are accrued, distributed, and/or any other eligibility requirements, and financial reports for the past two (2) years for said trust; and (4) any documents reflecting the work rules (referred to in your negotiating proposal) presently in effect, or any prior such work rules that have been in effect at any time during the past year. According to Mr. Jingle at the negotiating session, these work rules address such matters as dress codes, reporting off, specific duties, absences, etc. The employer, however, was unable to discuss the specifics of those rules on Tuesday, even though they were part of your proposal. At Our session, you agreed to mail copies of those rules to me as soon as possible.

We also discussed the amount of contributions that the employer has made to the 401 (k) plan, when performing work on a Davis-Bacon project. The employer at the negotiating session was unaware of the amounts of retirement contributions that he made on such projects. The 401(k) plan document provided to us does not sufficiently describe the amount of contributions made on behalf of employees by the employer to this plan. As I indicated to you at our negotiating session, Davis-Bacon, as I understand it, requires that the employer's total compensation package, including wages and benefits, be equal to the prevailing wage. The Act does not require that the particular *mix* of wages and benefits be of any particular ratio. Consequently, it is unclear on what basis, if any, that the employer makes decisions as to the amount of contributions it makes to the 401(k) plan. Consequently, we hereby request documents from the employer that will show each Davis-Bacon project worked on by any employee, who was eligible to vote in the NLRB election, during the past two (2) years, that tend to establish the identity of the project, the amount of wages, as well as benefits, paid to, or on behalf of, said employees, and the amount of benefits paid by the employer into the 401(k) plan. This information is necessary for several reasons. We need this information in order to ascertain whether we should demand in bargaining more specific requirements by which the employer shall make contributions to the 401(k) plan (if the continued application of that plan to unit employees becomes acceptable to the Union). In order to assess the potential acceptability of this plan, the Union must know how it has been administered in the past (whether appropriately or inappropriately), the de facto basis for making contributions to that plan, and whether modifications in the plan and/or the contribution requirements thereto should be proposed in negotiations. The information requested will assist the union in establishing a position on these items. Additionally, this information will help to determine whether unit employees have properly been paid their Davis-Bacon wages and benefits during the recent past. We believe this information is necessary in order for us to ascertain

whether additional enforcement requirements in a collective bargaining contract should be proposed. If the employer has consistently, regularly and fully complied with its statutory obligations, then it may not be as necessary for the Union to consider stronger language in a contract. On the other hand, if there had been consistent and regular disregard for its statutory obligations, then the Union may need to consider stronger contractual language in order to protect unit members' statutory rights.

During negotiations, the employer's president, David Jingle, stated that he has already discussed the union's proposal with his customers and that acceptance of this proposal would cost his customers an additional several hundred thousand dollars, if the proposal were agreed to by him. We hereby request any and all documents and/or verbal information to justify Jingle's assertions. Additionally, David Jingle stated at the negotiating session that one of the reasons he did not want to pay into a retirement plan for non-Davis-Bacon jobs was that he did not make money on all of his jobs. Consequently, for the past two years (2), please provide us with any and all documents that identify each non-Davis-Bacon job on which present employees, or on which employees eligible to vote in the NLRB election, worked, wherein the employer lost money. Further, provide any and all documentation to establish the claim that the employer lost money on those jobs. We believe this information necessary in order for the Union to adequately access [sic] the employer's position and to assess whether the Union should insist that the employer provide retirement benefits on all jobs, not just Davis-Bacon jobs. We believe that this information, while justified solely on Jingle's statements, should also be produced based upon your statement that the reason that the employer did not want to pay the same wages on non-Davis-Bacon jobs, as it does on Davis-Bacon jobs, was to avoid bankruptcy.

If the employer can provide some, but not all, of this information in an expeditious fashion, we request that you provide the information in installments as soon as you can.

Jingle testified that his secretary keeps a balance sheet indicating what amounts are paid into the various funds for each employee. These records also indicate the number of hours worked, when the contribution is made and the check number for each transaction. Jingle also testified that the bank would customarily send to Respondent a semiannual report on the status of each of the plans. Thus, information which the Union requested verbally on September 12 and in writing on September 15, concerning the pension or 401(k) plan and vacation trust fund, was readily available.

Vehar credibly testified that during the September 12 bargaining session, Respondent's representatives took the position that they wanted to incorporate the existing fringe benefit program into the ultimate collective-bargaining agreement and for that reason the Union needed the information concerning the benefits in order to assess how the existing plans had been administered in the past and thus determine whether to consider maintaining those plans or to propose changes.

With regard to the vacation plan, Vehar credibly testified that he had been told at the September 12 bargaining session that under the existing plan, different amounts of money were contributed and different formulas were used to determine the amount of contribution to the vacation trust, depending on whether the employees worked at a Davis-Bacon prevailing wage project as opposed to a non-Davis-Bacon nonprevailing wage project. However, when, at the September 12 meeting, he asked the Respondent's representatives whether all the employees who had voted at the April 6 election and who were no longer employed by Respondent, had been paid their vacation pay, they were unable to answer his question. For this reason Vehar asked for the vacation trust information in order to see that the employees had been properly paid and to determine whether or not the vacation trust plan had been properly administered. This information, Vehar credibly testified, was necessary to determine whether the existing vacation plan should be included in the final agreement.

With regard to the failure of Respondent to supply the 101(k) information, Vehar credibly testified that the Union, without the requested information, was prevented from entering into any serious discussion about pensions because it could not assess the plan which Respondent then had in place.

Vehar testified that the request for financial reports concerning the pension plan, the 401(k) plan, and the vacation trust plan was necessary to determine if the money placed in these funds had been properly invested, and whether the money had been collected and appropriately attributed to the employees.

With regard to the Union's request for a list of Respondent's Davis-Bacon jobs, the wage rate paid to employees on these jobs and the fringe benefits paid to each employee in each plan, Vehar testified that this information was necessary because at the September 12 meeting, Respondent's representatives stated that Respondent would continue to pay Davis-Bacon rates on Davis-Bacon jobs and their own rates on non-Davis-Bacon jobs. Inasmuch as Respondent's employees would customarily travel between projects, sometimes several in a single day, some Davis-Bacon, some not, that meant that an administrative process had to be in place to ensure that employees were properly paid. Vehar wanted sufficient information, 2 years' worth, to be able to determine if time had been properly allocated in the past or if new enforcement mechanisms or timekeeping methods would have to be proposed.

The Union also needed this information to see if the employees were due additional fringe benefit payments and whether they had been paid the prevailing rate. Vehar testified that some employees knew nothing about money being paid into a retirement plan for them. Therefore, if they were not being paid the prevailing wage rate entirely in cash and they were not receiving any additional payments in their 401(k) or other plans, then Respondent was not in compliance and the Union could force compliance once it had the requested information. Two years of records would be necessary, Vehar testified, to permit the Union to see if employees had been properly paid.

With regard to the Union's request for a list of Respondent's non-Davis-Bacon jobs, the wage rate paid to employees on these jobs and the fringe benefits paid to each employee

in each plan, Vehar testified that the reasons the Union wanted this information were the same reasons that he gave for needing the same information for the Davis-Bacon jobs.

With regard to the Union's request for time records or Respondent's estimate of the amount of time spent by each employee in the unit traveling from Respondent's facility to the first jobsite and from the last jobsite to Respondent's facility, on a daily basis, Vehar testified that through discussion with employees, then through inquiries and responses to those inquiries, he became aware that the Respondent's practice was not to pay employees for loading up and driving to the first job in the morning or from the last job in the evening. During negotiations, Respondent took the position that it wanted this practice to carry on into any new contract.

Vehar testified that under the Fair Labor Standards Act Respondent's employees should have been paid for the travel hours in question as well as for loading time. He stated that he needed the information requested because Respondent wanted to continue its practice of not paying for this travel and loading time under any new contract and Vehar wanted to determine how much employees would lose if Vehar agreed with Respondent's position. Vehar also stated that he was not sure that if the Union agreed to permit Respondent to continue its practice, that it would not be failing to represent the employees properly. Second, Vehar stated that he wanted the requested information to determine the cost to the Respondent of paying this travel and loading time and if it cost very much, the Union might ask for a lesser wage.

Eventually, Respondent advised the Union that it did not maintain the type of records requested and Vehar told Respondent's representative to start maintaining records from that time forward. Jingle replied that he could maintain such records on his timecards but would not force his employees to keep them. No estimates were furnished to the Union as it had requested in case no records were available.

According to Vehar, timecards were subpoenaed for the hearing and from these Vehar could estimate the traveltime. He stated that if the Union were supplied with the information contained on the timecards, the Union would be willing to make its own estimates.

With regard to the Union's request for information as to whether Respondent had provided insurance coverage for employees in the unit, whether certain employees had not received coverage, and if not, why not, Vehar testified that at the September 12 meeting, Respondent proposed that the existing health insurance plan be made part of any new contract. He further testified that when he requested to see a copy of the plan, he was told that there was none available. Arrangements were then made, however, for Vehar to receive a copy of the rules governing hospitalization coverage, and eventually, on September 26, a copy of the rules was sent. After reading the rules, Vehar concluded that unit employees, as of April 6, should have been covered but when he asked some of them, these employees denied having received coverage. Having heard different reports from management than from certain employees, Vehar requested from the Respondent the information described, the purpose being to determine how the rules covering health insurance were applied and whether such rules were being properly followed. He wished to determine who was covered and who was not. Apparently, Vehar felt that the rules alone were not adequate to his purpose.

On September 29, the parties held their fourth bargaining session. Then, in contemplation of the next bargaining session, Vehar sent a letter dated October 3, requesting additional information. Some of the information was similar to that requested earlier but some was quite different. Thus, for the first time, Vehar requested information concerning the firm, Ohio Valley Monitoring or Home Monitoring.

With regard to this request, Vehar testified that the basis for his request was his suspicion that Jingle was doing unit work through Ohio Valley Monitoring, a company which he also owned and managed. Vehar admitted receiving a small amount of the information requested and Jingle admitted refusing to give the Union the details it had requested on grounds that the two companies were entirely separate and that Respondent's employees do not and will not perform services for Ohio Valley Monitoring.

During the various bargaining sessions which took place prior to October 3, Respondent referred to the existence of certain work rules, over and above the ones pertaining to insurance which it had already supplied. When the Union requested copies of these work rules and none were forthcoming, Respondent was finally forced to admit that they simply did not exist.

At the fifth bargaining session, on October 12, Vehar again asked about Respondent's 401(k) contributions. The requested information, however, was not forthcoming and on October 16 the Union filed the 8(a)(5) charge in the instant proceeding.

On November 21 the parties held their sixth bargaining session. At this meeting Respondent provided the Union with a copy of its vacation trust agreement with the Belmont County National Bank. It did not, however, provide any of the information requested by the Union on September 15 and thereafter. Vehar was told at this meeting, with regard to the 401(k) information requested, that the Respondent maintained a sheet that reflected a breakdown of the employees' prevailing wage rates which Jingle used as a guideline. Vehar was not, however, shown a copy of this sheet although he requested one. He wanted to determine if any money had been placed in employees' accounts and, if so, whether the amount was correct. He wanted also to determine whether tighter administrative mechanisms were necessary to keep the records straight. In reply to his request for information, the Respondent offered to supply the Union with the annual 401(k) report if the Union would withdraw the unfair labor practice charge. The charge was not withdrawn and the Union did not receive the 401(k) annual report.

Concerning the refusal to bargain allegation of the complaint,⁶⁵ I find that the Union, by written demand, requested Respondent to furnish it with information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of an appropriate unit of Respondent's employees. I further find that Respondent failed and refused to furnish the Union with the information requested and thereby is in violation of Section 8(a)(5) and (1) of the Act.⁶⁶

⁶⁵ Par. 15.

⁶⁶ *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truit Mfg. Co.*, 351 U.S. 149 (1956); *Eskimo Radiator Mfg. Co.*, 255 NLRB 304 (1981), *enfd.* 688 F.2d 1315 (9th Cir. 1982); *M. Scher & Son*, 286 NLRB 688 (1987); *Pence Construction Corp.*, 281 NLRB 322 (1986); *Western Electric*, 225 NLRB 1374 (1976).

CONCLUSIONS OF LAW

1. The Respondent, D. J. Electrical Contracting, Inc., is an employer engaged in commerce in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. Respondent, through its president, David Jingle violated Section 8(a)(1) of the Act by the following actions and conduct undertaken in response to its employees' union activities: interrogating an employee as to whether he had signed a union card and several employees as to how they voted in the representation election; telling an employee that two other employees, who had been terminated because of their union activities, would not be working for the company even if the Union did not come in; telling employees that they would no longer work year round if the Union obtained recognition; stating to an employee that if the Union got in, there would only be two journeyman cards handed out; telling an employee that the company had no intention of signing an agreement with the Union; threatening employees that if the Union won the election, the company would cut its work force, but if the Union lost the election, the company would keep its work force or expand it; threatening employees with termination if the Union were to win the election; threatening employees by telling them that those who voted "no" in the election would be retained as employees and those who voted "yes" in the election would be terminated; telling an employee that he was not allowed to work for the company because he was union and that the Union would not allow him to work for the company; telling an employee that his continued employment depended on his willingness to forego union activities and membership; creating the impression of surveillance by telling an employee that he thought the employee was a union spy; interrogating an employee as to whether he would cross a picket line; and attempting to compel and compelling employees to execute letters of resignation for reasons violative of the Act.

4. Respondent violated Section 8(a)(1) and (3) of the Act by terminating Jay LaRoche, Dana Brent Bonar, John Welshans Jr., John E. Blacker, and Paul Kartman and by denying John Blacker steady employment during the last several days preceding his termination, all because of the union activities of these employees.

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

All journeymen, wiremen, apprentices, helpers and truck drivers employed by the Employer out of its 54099 Pike Street, Neffs, Ohio facility, but excluding all office clerical employees, estimators, superintendents, and all professional employees, guards and supervisors as defined in the Act.

6. On June 1, the Union was certified as the exclusive collective-bargaining representative of the employees in the above-described unit.

7. At all times since June 1, 1989, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the above-described unit for the purposes of collective bargaining with respect to rates

of pay, wages, hours of employment, and other terms and conditions of employment.

8. Since September 15 and October 3, 1989, and at all times material thereafter, the Respondent has refused to furnish the Union with information concerning the present and immediate past terms and conditions of employment of employees in the above-described unit, which information is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the employees, in violation of Section 8(a)(5) and (1) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

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

Having found that Respondent discriminatorily terminated Jay LaRoche, Dana Brent Bonar, John Welshans Jr., John E. Blacker, and Paul Kartman and denied Blacker steady employment during the last several days preceding his termination in violation of Section 8(a)(3) and (1) of the Act, it shall be ordered that these terminated employees be offered immediate and full reinstatement to their former positions, displacing, if necessary, any replacement or, if not available, to substantially equivalent positions without loss of seniority or other privileges. It shall be further ordered that these employees be made whole for lost earnings resulting from the discrimination against them by payment of a sum of money equal to that which they would have earned from the initial date of termination, and in Blacker's case from the initial date of denial of steady employment, to the date of a bona fide offer of reinstatement or to the date the above-described discriminatory activity ceased or ceases, less net interim earnings during that period. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

It shall be further ordered that Respondent, on request, furnish the Union the information requested in its letters of September 15 and October 3, 1989.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶⁷

ORDER

The Respondent, D. J. Electrical Contracting, Inc., Neffs, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees concerning their union activities.

(b) Threatening employees with termination or loss of working time in retaliation for their union activities.

(c) Creating the impression of surveillance of employees' union activities.

(d) Compelling employees to execute letters of resignation for reasons violative of the Act.

(e) Terminating employees or denying them steady employment because of their union activities.

(f) Refusing to furnish the Union with information concerning the terms and conditions of employment of employees in the unit which it represents.

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

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

(a) Offer to Jay LaRoche, Dana Brent Bonar, John Welshans Jr., John Blacker, and Paul Kartman immediate and full reinstatement to their former positions, displacing, if necessary, any replacement, or, if not available, to a substantially equivalent position without loss of seniority or other privileges.

(b) Make Jay LaRoche, Dana Brent Bonar, John Welshans Jr., John Blacker, and Paul Kartman whole for lost earnings resulting from the discrimination against them by payment of a sum of money equal to that which they would have earned from the initial date of termination, and in Blacker's case from the initial date of denial of steady employment, to the date of a bona fide offer of reinstatement or to the date the above-described discriminatory activity ceased or ceases, less net interim earnings during that period. Backpay is to be computed in the manner set forth in the remedy section of the decision.

(c) On request, furnish the Union the information requested in its letters of September 15 and October 3, 1989.

(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, financial data, and memoranda necessary or helpful to determine the amount of backpay due under the terms of this Order.

(e) Post at its facilities in Neffs, Ohio, copies of the attached notice marked "Appendix."⁶⁸ Copies of the notice on forms provided by the Regional Director for Region 8, 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 Respondent customarily posts notices to its employees. Respondent shall take reasonable steps 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.

⁶⁷ 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.

⁶⁸ 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."