

Laidlaw Waste Systems (Michigan), Inc. and Local 324, International Union of Operating Engineers, AFL-CIO. Cases 7-CA-30118, 7-CA-30118(2), 7-CA-30118(3), 7-CA-30118(4), and 7-CA-30489

September 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On July 2, 1991, Administrative Law Judge Robert T. Wallace issued the attached decision. The General Counsel filed an exception with a supporting brief.

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 exception and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Laidlaw Waste Systems (Michigan), Inc., Adrian, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Tinamarie Pappas and Mary Beth Onacki, Esqs., for the General Counsel.

Raymond M. Deeny and Susan K. Grebeldinger, Esqs. (Sherman & Howard), of Colorado Springs, Colorado, for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge. The charges in Cases 7-CA-30118 and subnumbers 1 through 4 were filed between January 17 and April 25, 1990, and an amended complaint consolidating those cases for hearing issued on April 30. The charge in Case 7-CA-30489 was filed April 25 and a complaint issued on May 17. The cases were heard on a common record at Adrian, Michigan, on June 26-28 and August 8-10.

At issue is whether Respondent maintained an overly broad work rule, coercively interrogated employees regarding their union activities, created the impression among its employees that their union activities were under surveillance, threatened employees with unspecified reprisals because of their union activities, harassed employee David Seegert and threatened him with discharge because of his union activities, and informed its employees that they need not honor a National Labor Relations Board subpoena, all in violation of Section 8(a)(1) of the National Labor Relations Act. Also at

issue is whether it discharged 6 employees,¹ issued employee Joe Medina a 3-day suspension, and refused to rehire 10 employees,² all in violation of Section 8(a)(1), (3), and (4) of the Act. The complaint in Case 7-CA-30489 alleges that Respondent failed to hire employee David Mecum because of his union activities in violation of Section 8(a)(1) and (3) of the Act.

On July 30, pursuant to Section 10(j) of the Act, the United States District Court for the Eastern District of Michigan granted interim injunctive relief under which, among other things, the employees named in footnote 1 were restored to their jobs. That decision was affirmed in pertinent part by the United States Court of Appeals for the Sixth Circuit on March 7, 1991.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent,³ I make the following

FINDINGS OF FACT/ANALYSIS

I. JURISDICTION

The Respondent, a Delaware corporation, is engaged in the business of refuse disposal at numerous sites in the United States and Canada. As pertinent, it operates a landfill facility at Adrian, Michigan, where it realized annual gross revenues in excess of \$500,000 and purchased and caused to be transported and delivered there annually goods and materials valued in excess of \$50,000 directly from points located outside the State of Michigan. It admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 324 is a labor organization within the meaning of Section 2(5) of the Act.

At all material times Respondent's landfill division at the Adrian site was managed by Bobby Lee Willis, its operations manager was Glen Sliker, and Rick Jernigan served as site technician. All three are admitted to be supervisors within the meaning of Section 2(11) of the Act.

II. PRELIMINARY MATTER—MOTION

Respondent moves to strike the testimony of its Supervisor Sliker as an appropriate remedy for the Board's bypassing counsel for Respondent and dealing directly with him in violation of Rule 4.2 of the Michigan Rules of Professional Conduct.

Respondent cites no case authority for the proposition that ethical standards of the type reflected in the Michigan Rules are binding in Board proceedings. Indeed, the Board has no particular expertise with which to interpret and apply such

¹Delbert Baldwin, Kent Cannon, Manuel Cruz, Michael Miller, Scott Myers, and Christopher Stacey.

²John Arnold, Patrick Blaine, Paul Cook, Gomer DeCocker, Garry Jones, David Mecum, Allen Pangburn, Todd Southward, David Swift, and David Vasquez.

³Subsequent to its brief Respondent filed a document entitled "Supplementary Authority" calling my attention to an advice memorandum dealing with subpoenas issued on July 16, 1990, by an Associate General Counsel of the Board. Counsel for the General Counsel moves to strike pointing out that the advice memorandum was issued well before Respondent filed its brief and that the document constitutes an unauthorized reply brief. At best there is harmless error. The motion is denied.

rules. Compare, *Fountain Sand & Gravel Co.*, 210 NLRB 129 (1974); *Airport Service Lines*, 231 NLRB 1272, 1279 (1977); see also *Storer Communications v. NLRB*, 118 LRRM 2412, 2414 (1984). It does, however, have its own longstanding policy proscribing contacts with supervisors or agents of a charged party who is represented by counsel or other agent (see NLRB Casehandling Manual, Sec. 10056), which contains the following exception:

This policy does not preclude the Board agent from receiving information from a supervisor or agent of the charged party where the individual comes forward voluntarily, and where it is specifically indicated that the individual does not wish to have the charged party's counsel or representative present.

I find the exception applicable here. The record discloses that Sliker initiated contact with the Board's investigator, specifically declined to have a representative of Respondent present while he gave an affidavit, and maintained that stance in subsequent contacts with counsel for the General Counsel. Compare *Singer Co.*, 176 NLRB 1089 (1969).

As an alternative basis for its motion, Respondent cites a number of alleged inconsistencies in his testimony as well as "questionable" past practices on his part. These matters have been considered in my credibility resolutions. There is no adequate basis for disregarding the testimony in its entirety.

The motion is denied.

III. ALLEGED INDEPENDENT VIOLATIONS OF SECTION 8(A)(1)⁴

On November 14, 1989, 18 of 22 hourly employees then working for the landfill division signed authorization cards the pertinent portion of which reads as follows:

I hereby designate the INTERNATIONAL UNION OF OPERATING ENGINEERS and its subordinate Local Union No. 324 . . . to represent me for the purpose of collective bargaining and in any and all situations that may arise under the operation of the National Labor Relations Act

Within a few days three other hourly employees signed cards. Of the signers, 11 (including the 6 named in fn. 1) were in a 12-man unit stipulated as eligible to vote had an election been held on November 14; and 10 (all named in fn. 2) held temporary status. On November 17, the Union sent a letter to Respondent demanding recognition based on a card majority.

Shortly after November 14, Manager Willis was advised by a subcontractor working on the site (Bob Humphrey) that he had seen a large number of landfill employees attending a union meeting at a local restaurant (the Red Barn), and he named most of them, including Swift, Seegert, Cannon, and Stacey. Then on 4 or 5 days in succession, Willis asked Operations Manager Sliker about the union drive and who start-

⁴Matters relating to the work rule, harassment and threat to fire Seegert, and subpoenas will be considered at a later point.

ed it. Willis states: "He just said he didn't know anything about anything⁵ . . . so, I just didn't ask [him any more.]"⁶

There followed a series of one-on-one interviews at the landfill wherein Willis talked with employees, none of which had worn union insignia or otherwise indicated support for the Union. David Seegert, who had worked for Respondent for 3 years as a heavy equipment operator, had three such interviews between November 15 to 26; and on each occasion Willis invited him for what turned out to be 40-minute rides in a company pickup truck. The subject matter was always the same: Who started the union drive? Who was going to meetings? Why were the guys unhappy? When Seegert professed no knowledge regarding the first two topics, Willis said he thought he knew but had just wanted to be sure. As to the third question, Seegert volunteered that the employees were upset about a company rule that required them to presign termination papers and about loss of their afternoon break. During at least one of these rides, Willis explained that he had built up his credibility over the years with his bosses, that he didn't want to lose it and that the Union's coming in would hurt his credibility; and he went on to opine that if he went down he'd take others down with him.

Another heavy equipment operator (Kent Cannon, with 4 years' service) had 25-minute interviews in the pickup truck on November 27 and again on January 3. On the earlier day, Willis opened by saying: "You probably heard about these pick-up rides . . . and [that] I've been asking everybody what the Union can do for you that I can't or Laidlaw can't." Wary, Cannon replied: "I don't know." Willis inquired if his problem was money. Cannon said, "No," adding that he was more concerned about job security. Willis replied that it was "unthinkable you could have job security at a landfill," and he went on to ask if Cannon wanted the Union. When Cannon again answered, "I don't know," Willis asked whether the rest of the people wanted one. Once more Cannon replied, "I don't know."

On January 3, Willis was sitting in his parked truck as Cannon was leaving the breakroom. He again accepted Willis' offer of a ride. There ensued a monologue in which Willis told him

that people higher up than me are very angry at what's going on. They're angry at you guys. They're angry at me. They're calling the shots . . . [I] don't have control over what was going to be said or done . . . that nasty things were going to start happening

Cannon told him: "I don't think it matters whether we vote no or yes. I've got a feeling everybody is going to lose their jobs." Willis replied: "That won't happen if you vote no," and he went on to complain that the employees had not given him a chance to fix the problems.

On January 16, a mechanic (Scott Myers, with 1 year's service) went into the site office to obtain copies of paperwork. Willis invited him into the office and closed the door.

⁵The hourly employees in fact had told Sliker that they were attending union meetings at the Red Barn.

⁶On cross-examination Willis denied that he had ever asked Sliker about union activity. When reminded of his earlier testimony he replied: "Yeah, okay . . . [I asked him] just what's going on, and why I don't know anything . . . [about] these [morale] problems being out there, and no one's talking to me about them."

There followed a 45-minute session during which Willis asked if he liked his job. Myers told him that he liked it and had no “big problems.” Willis then asked why doesn’t anyone come to me with their problems? To which Myers candidly replied: “[that’s because] there’s not too many people here that like you.” Willis went on to another subject, inquiring as to what Myers felt the Union could do that he could not. There ensued a discussion of whether the Union’s coming in would result in better wages and benefits during which Willis told Myers that he knew that “we” (Myers and other employees) were attending union meetings about once a week at the Red Barn Restaurant, that he would hate to see employees lose jobs because of the Union, and that if he fell there would be others that follow. The meeting ended with Myers stating that he did not care whether the Union came in or not. He explains: “I didn’t want him to know whether I was for the Union or not.”

Credibility. In the fact determinations above I have credited the employees, finding their testimony candid and consistent. In contrast, Willis’ explanation for the sessions is unpersuasive. He claims they were part of an evaluation process preparatory for recommending annual raise increases on January 1. But this does not explain the multiple talks with Seegert and Myers and the January 16 conversation with Myers; and his account of the sessions is virtually bereft of any indication that he talked to them about past and expected work performance. Instead, in testifying he came across as having been principally concerned with forestalling the union drive by attempting to persuade employees that the Company could better address and remedy any perceived problems. Thus, when asked if he had initiated a statement as to what the Union could do that Laidlaw could not, the following colloquy occurred (Tr. 1152):

A. Yeah.

Q. When was that?

A. I can’t specifically remember. A few times I did say that to employees.

Q. How did that come up?

A. By just—by talking, and the—again, the security issues came up, and that I’d throw in, well, you know, what can these people [the Union] do for you that we can’t. You know, I’m here to help. Let me work with you and help.

Q. How did these security issues come up?

A. Everyone seemed to have that problem, and . . . I would even sometimes say, well, how do you feel about things And then, they would come back with . . . [we] don’t feel too secure about this, and our jobs may be threatened, and all this stuff. And . . . [I told them] they’re not threatened.

And in a number of instances he was suspiciously hesitant, evasive, or self-contradictory. All three characteristics are illustrated in the following excerpt (Tr. 1150–1151):

Q. Did you tell Mr. Myers that if you fall, there will be others that follow?

A. No. If—I was preaching the team thing again. I mean, I preach that to—to everybody just about, trying to get a team concept out there. And I—I probably said

that, but I do that to everybody, talk about the team, and what we need to do and where we’re going.⁷

In light of the findings above, I conclude that Respondent engaged in several forms of unlawful interference with employee rights.

Coercive Interrogations. The general rule regarding employer interrogation of employees is contained in *Blue Flash Express*, 109 NLRB 591 (1954). The Board there (supra at 593–594) stated:

In our view, the test is whether, under all the circumstances, the interrogation reasonably tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act. The fact that the employees gave false answers when questioned, although relevant, is not controlling. The Respondent communicated its purpose in questioning the employees—a purpose which was legitimate in nature—to the employees and assured them that no reprisal would take place. Moreover, the questioning occurred in a background free of employer hostility to union organization. These circumstances convince us that the Respondent’s interrogation did not reasonably lead the employees to believe that economic reprisal might be visited upon them by Respondent.

The Board, in *Blue Flash*, referred to *Syracuse Color Press*, 103 NLRB 377 (1953), enfd. 209 F.2d 596 (2d Cir. 1954), where the employer made known its antiunion sentiments, and questioned employees concerning their union membership and activities, as well as the membership and activities of other employees, without giving any assurance against reprisal. *Syracuse*, supra at 594. Finally, the Board adopted the test set forth in *Syracuse* with respect to employer interrogation, to wit:

The time, the place, and the personnel involved, the information sought and the employer’s preference must be considered [Id.]

The facts of the instant case closely resemble those in *Syracuse*. As in that case, the employees here were given no assurances against reprisals, nor were they given any legitimate explanation for their interrogations. Instead, Respondent made known its antiunion sentiments through threats of job loss if the Union were elected by the employees. Its representative, Willis, promised employee Cannon that he would not lose his job if he voted “no.” He also told employees Seegert, Cannon, and Myers things such as “people higher

⁷When asked at an earlier point whether he told Seegert that if he (Willis) went down, he would take some people down with him the transcript (1145–1146) reads as follows:

A. No.

Q. Anything like that?

A. You know, when you work with a small group like that, in a town like this . . . you need to broadcast as good an image as you possibly can. And if—if there’s one employee out there that’s having trouble somewhere, the whole site is going to sink . . . as a whole, and not just that one . . . as a team, you rise and fall together. And as a team we were on the rise, and this is where we’re wanting to go. And the procedures, and the philosophies of Laidlaw hadn’t been implemented, and with those this is what we can do.

up than me are very angry [at the Union activity],” that the Union’s coming in would hurt his credibility with his bosses, and that if he were to lose his job because of it, he would take other employees down as well. Thereby, he made it clear to the interrogated employees that the Union was an unacceptable economic threat to him as well as the company. *Syracuse*, supra at 380.

In *Rossmore House*, 269 NLRB 1176 (1984), the Board reaffirmed the test set forth in *Blue Flash*. And in several cases decided subsequent to *Rossmore House*, it has found unlawful interrogation in cases similar to the present one. In *Hunter Douglas, Inc.*, 277 NLRB 1179 (1985), the employer questioned an employee regarding the employee’s union activities. According to the Board, the questioning “had no legitimate purpose and the questions . . . were designed to determine [the employee’s] involvement in protected activities.” *Hunter Douglas*, supra at 1181. As such, the Board found the interrogation unlawful stating:

[Where] the interrogation was engaged in by the plant manager, in a calculated fashion, such interrogation reasonably tends to interfere with the exercise of employees’ protected rights.

In *New Process Co.*, 290 NLRB 704 fn. 6 (1988), the Board found unlawful interrogations where employees questioned were not open union supporters and where the questions concerned employees’ union activities rather than union sentiments. Here, none of the interrogated employees had previously displayed support for the Union. Employees Seegert and Myers were questioned regarding their and other employees’ attendance at union meetings; and Seegert was repeatedly questioned regarding who initiated the union drive.

For the reasons stated, I find the interrogations intimidating and coercive in violation of Section 8(a)(1) of the Act.

Threats of Reprisal. It is well settled that an employer is free to communicate to employees any general views about unionism or any specific views about a particular union so long as the communications do not contain a threat of reprisal or force or a promise of benefit. *Midland-Ross Corp.*, 239 NLRB 323, 331 (1978). The Board has further stated that an employer is free to tell only what he reasonably believes will be the likely economic consequences of unionization that are outside his control and not threats of economic reprisal to be taken solely on his own volition. *Midland-Ross Corp.*, supra at 331 [citing *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618–619 (1969)].

In the instant case, Respondent threatened unspecified reprisal when manager Willis told Seegert that the Union’s coming in would hurt his credibility with his bosses, and that if he went down he would take others down with him; and also when Willis said essentially the same thing to employee Myers. Likewise, a threat of unspecified reprisal occurred when Willis told employee Cannon

that people higher up than me are very angry at what’s going on. They’re angry at you guys. They’re angry at me. They’re calling the shots . . . [I] don’t have control over what was going to be said or done . . . that nasty things were going to start happening . . .

Compare *Honeycomb Plastics Corp.*, 288 NLRB 413, 419 (1988); *Eagle Headers*, 273 NLRB 1486, 1488–1490 (1985);

Frito-Lay, Inc., 232 NLRB 753 (1977), enfd. 585 F.2d 62 (3d Cir. 1978).

Impression of Surveillance. Since the earliest days of the Act, surveillance of employees by an employer has consistently been held to violate Section 8(a)(1). *Consolidated Edison Co. of New York*, 4 NLRB 71, 94 (1937), affd. 305 U.S. 197 (1938). It is equally clear that an employer violates Section 8(a)(1) if it creates the impression among its employees that it is engaged in surveillance. *J. P. Stevens & Co.*, 245 NLRB 198 (1979).

Here, after Willis’ repeated inquiries to Seegert as to who started the union drive and who attended union meetings elicited no information, he told Seegert that he thought he knew but just wanted to be sure; and he advised Myers that he knew “we” (Myers and other employees) were attending union meetings about once a week at the Red Barn Restaurant.

These statements meet the criteria under which an employer is deemed to have created the impression of surveillance. See *Eagle Headers*, supra at 1490, and *Honeycomb Plastics Corp.*, supra at 419–420. Whether or not there was a coercive effect which resulted from the statements is unimportant as it is well settled that it is not the actual effect that determines an 8(a)(1) violation, but rather the tendency of such conduct to interfere with the free exercise of employee rights under the Act. *Amason, Inc.*, 269 NLRB 750 fn. 2 (1984) (citing *A. A. Superior Ambulance Service*, 263 NLRB 499 (1982), and *American Freightways Co.*, 124 NLRB 146 (1959).) Willis’ statements conveyed a positive impression that he had knowledge of union activities. *Maxwell’s Plum*, 256 NLRB 211 (1981); *Clements Wire & Mfg. Co.*, 257 NLRB 206 (1981). Furthermore, Willis’ statements were not vague and general, nor did they merely allude to rumors that were circulating. *Palby Lingerie, Inc.*, 252 NLRB 176 (1980). Rather, Willis’ statement to employee Myers that he knew where the union meetings were being held and that Myers and other employees were attending conveyed the impression that Willis had specific information as to the employees union activities, as did his comment to employee Seegert that he thought he knew who started the union drive and who attended meetings. Under these circumstances, the employees reasonably could have believed that surveillance was being conducted.

I conclude that Respondent on at least two occasions created an impression of surveillance in violation of Section 8(a)(1).

IV. ALLEGED UNLAWFUL DISCHARGES

On the same day (November 17) the Union sent the letter to Respondent demanding recognition, it also filed a petition with the Board asking for a representation election; and in due course the Board notified the parties that a hearing to clarify representation case issues would be held at a site in Adrian on December 12. That hearing was postponed to January 9, 1990, at 10 a.m.

In anticipation of the hearing on January 9, Union Business Agent Gary Powell duly obtained from the Board’s office in Detroit a quantity of blank subpoenas bearing the printed signature of a Board member. Then, in accordance with Board practice, he proceeded to fill in the time and place of hearing and the names of individuals called to appear. These included virtually all of Respondent’s landfill

hourly employees (including the temporary employees named in fn. 2, all of whom had been laid off on December 29⁸) as well as Operations Manager Sliker.

At about 6:30 p.m. on May 8, Powell served Sliker with the subpoena at his home and told him that the hourly employees would be similarly served at a union meeting to be held in the Red Barn that night. The meeting took place as scheduled. At least 17 employees were in attendance and were given subpoenas. These included 9 of the temporaries and 8 regulars. About midway through the meeting Sliker arrived, met privately with Powell, and expressed his concern about operations if, following the direction in their subpoenas, all of the regular employees left the landfill to attend the hearing next morning at 10 a.m. He asked Powell if something could be worked out. The latter told him he had no problem as long as everyone had an opportunity to testify. Sliker then said he would arrange to send the employees in two groups, one to arrive at the hearing site at 10 a.m. and the other promptly after the first returned to the landfill. Powell agreed.

In accord with prior practice the employees assembled at 6:30 a.m. in the breakroom at the landfill facility preparatory to receiving their assignments for the day from Sliker. After seeing their subpoenas, Sliker told them that all except two named heavy equipment operators should plan to leave for the Board "meeting" at 9:45 a.m., and that the two operators would "run the trash"⁹ until relieved by returning operators, at which time they would be free to attend. With that the men dispersed to perform their assigned jobs.

Sliker then went to the adjoining office and informed Site Manager Willis that he and all the hourly employees had subpoenas to attend the Board hearing at 10 a.m. Willis, who was under the impression that the hearing had been canceled, told Sliker nobody was to leave until he contacted corporate headquarters. He asked for Sliker's subpoena and proceeded to forward a copy via "fax" to his superiors. On being told by them that the hearing had indeed been canceled, he communicated that information to the employees and they remained at the landfill.

In fact, the hearing had been postponed to January 18 at Respondent's request. On January 11, at an evening union meeting in the Red Barn, Powell retrieved all of the hourly employees' subpoenas, substituted January "18" for "9" on each, initialed the change, and returned the subpoenas to them. He also changed the date on Sliker's subpoena, having had Seegert retrieve it from Sliker at his home and return it there all on that same evening.¹⁰

On January 16 in a telephone conversation, Respondent's counsel Raymond M. Deeny told the Union's counsel Jay Korney that a stipulation prepared by the latter and intended to obviate need for the hearing was unacceptable. Deeny then asked if the Union intended to use all the 20 subpoenas. Korney replied that he hoped not, adding that he had a very hardnosed business agent as a client. Deeny interpreted that answer as meaning that no employees would be subpoenaed and so informed Respondent's officials.

⁸There is no allegation in the complaint that the layoffs were unlawful.

⁹Sliker explains that two operators were a minimum necessary to take care of incoming trash in the morning.

¹⁰Sliker testified (and told Respondent on January 19) that he did not receive the altered subpoena until 6:30 a.m. on January 18.

Early in the morning of January 18, rain had complicated operations at the landfill. Increased pumping operations were necessary to prevent surface water from becoming contaminated and trucks had difficulty reaching the dumping face. Willis had left the site around 8 a.m. to meet with his supervisor (District Manager Rick McEwin) and Attorney Grebeldinger to prepare for the hearing. Sliker was working in the shop¹¹ and many of his duties had been transferred to Site Technician Rick Jernigan. At about 8:30 a.m., Sliker went to the office and told Jernigan that "the guys had subpoenas [and intended] to go to a hearing." Jernigan communicated that information by telephone to Willis. After telling Jernigan that he would call back, Willis hung up and consulted with McEwin and Grebeldinger. No one attempted to contact the Union or its attorney. Instead, a short time later Willis called Jernigan and gave him instructions as to what to tell the employees.¹²

Jernigan, accompanied by Sliker, then went out to see the employees. In the shop they met Myers and Medina.¹³ Addressing both of them, Jernigan said, "I hear you have a subpoena for a hearing today" (Tr. 310). Myers said, "Yes" and Medina tendered his. After reading it, Jernigan opined that it was not valid because of the changed date. When Myers responded: "I have to honor it. It's a Federal subpoena. I'll go to jail." Jernigan told them that Laidlaw wishes you gave more notice, that you not go, but you can go if you feel its necessary, and Laidlaw cannot stop you.

On leaving the shop, Jernigan and Sliker spotted Miller and Cruz nearby. Jernigan addressed them saying he had received instructions from Willis to tell them Laidlaw did not feel it was necessary that they attend the meeting but, if they felt it necessary, they could go. Both said they were going, Miller adding that he had to comply with a Federal subpoena. Jernigan and Sliker then went out to the landfill face where Baldwin and Kent Cannon were operating bulldozers. Jernigan told them he understood they had subpoenas for "a meeting between Laidlaw and the Union . . . it's Laidlaw's wishes that you don't go, but if you feel you have to go you can go." Cannon inquired: "Is everyone going?" Jernigan reiterated, "It's Laidlaw's wishes . . ." Cannon asked the question again. Jernigan said nothing and, when Sliker nodded, Cannon said, "Let's go," and he and Baldwin pro-

¹¹Sliker had chatted with employees Seegert and Swift at 6:30 a.m. that day in the breakroom. Both were on medical leave for work-related injuries. They told Sliker they had subpoenas and would attend the hearing.

¹²Willis claims that Jernigan did not mention subpoenas and, when asked to relate what instructions he had given Jernigan, his answer was as follows:

I'd say Laidlaw does not want you to go, but I'm physically not going to stop you. I mean, he didn't have to say that. I don't even know if he said that. But Laidlaw does not want you to go. But I told him not to try to physically restrain them.

The latter instruction, he explains, was "to make sure that Jernigan didn't do anything that would provoke or involve him in any kind of altercation." For his part, Jernigan denies that Sliker said anything about subpoenas and he states his exact wording to the employees was: "It's Laidlaw's desire that you not leave, but I can't physically stop you."

¹³Although shop manager Jeff Vogt was present during the ensuing conversation he did not testify.

ceeded to the breakroom to prepare to leave for the hearing.¹⁴

A few minutes later Jernigan entered the breakroom looking for Stacey. It was about 9:30 a.m. and all of the hourly employees were there, including Stacey. Jernigan noticed that Stacey was taking off his workshoes and the following dialogue ensued between the two:

A. You aren't going too, are you?

Q. Yeah, I have to [holding up a document]. It's a federal subpoena and it's the law that you honor . . . [it]

A. Well you don't have to do anything.

Q. What are you talking about?

A. Your subpoena isn't legit.

Q. What do you mean . . .

A. Well someone went and took the typewritten date and crossed it out and wrote in a new date with ink.

Q. Well the Union gave us the subpoena and the date is initialed . . . I'm sorry . . . I have to honor it. I have to go.

A. Well I have something to tell you . . . Laidlaw wishes that you not go but I can't keep you from going.

Addressing the group, Jernigan told them: "I really appreciate you guys letting us know . . . giving us advance warning and . . . leaving us in a bind on a day like today."

The employees left for the hearing at about 9:45 a.m. With the exception of Myers, none of them paused to punch out; and with the exception of Medina, none had presented his subpoena to Jernigan or Willis.

At 10 a.m. the parties were present in the hearing room, including counsel for both sides, Willis, McEwin, Union Representative Powell, and (slightly later) the Board's hearing officer. Virtually all the employees, including the laid-off temporaries, were outside in the anteroom and visible through glass partitions to those in the room. None of Respondent's representatives inquired of Powell, the union counsel, or the hearing officer as to whether some or all of the employees could return to the landfill. By 10:50 a.m. the parties resolved a language dispute and agreed upon what constituted an appropriate unit for an election, thereby obviating need for an evidentiary hearing; and everyone left at that time, none of the employees having been called to testify.

The employees returned to the landfill between 11:15 and 11:30 a.m. Between 3 and 4:40 p.m. Baldwin, Cannon, Cruz, Medina, Miller, Myers, and Stacey successively were called into the office. With the exception of Medina, Willis told them they were suspended "pending investigation" for not punching out and for walking off the job without permission in violation of Employee Handbook "mandatory" rules 13 and 14;¹⁵ and also for failing to give adequate notice of their departure in violation of a rule to which the Company's 4-

step disciplinary procedure applied.¹⁶ Medina, who had presented a subpoena to Jernigan, was cited only for not punching out; and when Myers protested that he had indeed punched out, Willis replied that he was nevertheless suspended for lack of notice and for leaving without permission. Cannon, echoing others, argued unavailingly that Jernigan had given permission; and when he offered to show his subpoena Willis told him not to bother because "That's after the fact." Prior to that time there were numerous occasions when employees through inadvertence failed to punch in or out at proper times, and when promptly brought to the attention of a supervisor the error was corrected without disciplinary action.¹⁷

Within the next 3 days, Willis contacted the six employees named in footnote 1 and announced that he had been instructed to terminate them as of January 19; and he gave Medina a 3-day suspension.

Credibility. The key disparity in testimony concerns the question of whether Respondent knew that the employees had been subpoenaed to attend the hearing on the morning of January 18. I find it did. Admittedly, it was aware that the hearing was to be held on that date, that the Union had obtained as many as 20 subpoenas, and that all the hourly employees intended to go; and Supervisor Jernigan concedes that during his early morning talks with them, one (Medina) showed him his subpoena and another (Stacey) told him, "I have a federal subpoena and I'm going to go or they're going to arrest me." As to whether it specifically knew that other employees had subpoenas, I have accepted Operations Manager Sliker's statement that he knew and so advised Jernigan; and in this respect his testimony is corroborated by Seegert and Swift who claim to have told him they had subpoenas and by Myers who quotes Jernigan as telling him and Medina that he knew each had a subpoena.

Also, I have accepted employee accounts that Jernigan told them "Laidlaw wishes that you not go [to the hearing] but I can't keep you from going" as consistent with Respondent's awareness that they had subpoenas and, for that reason, could not prevent them from going. In this regard, I view as a disingenuous rationalization Jernigan's claim that he said he could not "physically" stop them. There is not the slightest indication that absent use of that word there was any danger of an altercation.

Discharges. Citing *Ohmite Mfg. Co.*, 290 NLRB 1036, 1038 (1988), Respondent contends that the terminations and suspension are not shown to have been improperly motivated or in disregard of a demonstrated "real need" for employee attendance at the hearing. Those requirements, however, are not applicable to a situation where, as here, the employees had subpoenas and the employer was aware of that circumstance. *Southern Foods*, 289 NLRB 152 (1988). As in that case, the employees in this proceeding were not volunteers seeking to leave work without authority to attend a

¹⁴ Sliker remained at the face operating a bulldozer. He had not mentioned his subpoena to Willis or Jernigan. He did not plan to attend the hearing in the belief that it would be canceled again.

¹⁵ Rule 13 specifies as a dischargeable offense: "Dishonesty of any kind such as falsification of employment records, company records, and time cards if prohibited. This includes punching in or out another employee's time card or falsifying ones own time card." Rule 14 provides that "walking off the job without permission shall be considered a resignation."

¹⁶ The pertinent rule reads as follows: "Failure to notify the company at least one (1) hour prior to the start of . . . scheduled work when . . . [employees] find it necessary to be absent from work."

¹⁷ In his testimony Willis acknowledged that employees "occasionally" asked him to validate timecards where they had forgotten to punch in or out, but he observes that on January 18 the employees "had ample time to recognize that they had made a mistake, and to get that mistake corrected . . . [but none of them made any effort in that regard]."

Board hearing, as to whom there must be a balancing of their personal desires on the one hand, and, on the other, the damage to the employer's business. Rather, they understood that they were *required* by the Federal Government to be at a certain place at a certain time; and, in punishing them for complying with their subpoenas, Respondent violated Section 8(a)(4) of the Act.¹⁸ And this result applies even in the absence of a showing of improper motive, *Southern Foods*, supra at 155.

This does not mean that Respondent was without means of protecting itself from an en masse departure of its work force and consequent curtailment of normal operations. On learning at 8:30 a.m. on January 18 that the employees intended to go to the 10 a.m. hearing it had opportunity to contact the individual (Union Representative Powell) known by it to have requested and served the subpoenas and asked for a reasonable accommodation to its business needs, perhaps a staggered schedule of attendance. The initiative in this matter was clearly Respondent's responsibility because it uniquely knew its own requirements; and if its efforts were rebuffed it had opportunity to seek relief from Board officials or court injunction. It made no move in that direction. *Newland Knitting Mills*, 165 NLRB 788, 793-794 (1967).

Respondent, however, argues that the rationale in *Southern Foods* does not apply because the subpoenas were invalid, citing the handwritten substitution of the January 18 date for that of January 9 and employees' testimony that they did not receive the required witness and mileage fees.

The fact that the dates were altered by Powell in response to a postponement of the hearing in no way renders the subpoenas invalid. In *U.S. v. Bryan*, 339 U.S. 323, 331 (1950), the Court observed that "a subpoena has never been treated as an invitation to a game of hares and hounds in which the witness must testify only if cornered at the end of the chase." That "guiding philosophy" on the duty to comply in good faith with Board subpoenas was applied in *NLRB v. Strickland*, 321 F.2d 811, 813 (6th Cir. 1963). And in *U.S. v. Snyder*, 413 F.2d 288, 288-289 (9th Cir. 1969), cert. denied 396 U.S. 907, a subpoena was found to create a "continuing duty" to remain in attendance, and the fact that it contained a date different from that on which the individual actually was called to testify did not excuse the duty to honor the subpoena.

In the instant case, the hearing set for January 9 was postponed to January 18 at Respondent's request. The union agent (Powell) who had obtained, completed and served the subpoenas retrieved them and changed the date to January 18 after receiving advice from an official of the Board. Since the same proceeding was involved, that advice was consistent with the Board's rules and regulations and longstanding practice. Further, Respondent knew of the initialed handwritten change shortly after 8:30 a.m. on January 18 and made no effort that morning or at any time thereafter to seek Board intervention regarding the validity of the subpoenas.

As to the fact that the subpoenaed employees were not tendered witness and mileage fees, the Board stated in

¹⁸That section reads: "It shall be an unfair labor practice for an employer . . . to discharge or otherwise discriminate against an employee because he has . . . given testimony under the Act." The fact that no one actually testified is irrelevant by virtue of the Court's broad interpretation of that language. *NLRB v. Scrivener*, 405 U.S. 117 (1972).

Rolligon Corp., 254 NLRB 22 fn. 4 (1981), that "[t]he issue of money owed for witness and mileage fees is a matter between the Union and the employees . . ." In that case the Board, in finding that the employer did not violate Section 8(a)(1) in advising employees that they did not have to comply with subpoenas because they had not been tendered required fees, emphasized that the advice was noncoercive because the employer also told them that they were free to honor the subpoenas.

Finally, Respondent contends that it had adequate reason to discipline the 7 employees wholly apart from their complying with subpoenas. In this respect, it claims they were punished for violating company rules by not giving adequate notice, for walking off the job without permission and, with one exception, for "falsifying" their timecards by not punching out. As found above, however, the operational difficulties attendant upon the en masse departure were matters which could and properly should have been raised, and hopefully resolved, with the Union or the Board; and the employees were required to comply with their subpoenas regardless of whether they obtained Respondent's permission. And while all except Myers failed to punch out prior to leaving to attend the hearing, this omission hardly amounted to an attempt to deceive since Respondent knew when the employees left, where they were going and when they returned; and on numerous occasions in the past failure to punch out at proper times was treated as a minor matter when management had knowledge that no deception was intended. And the spurious nature of this omission as a "mandatory" reason for the discharges is further manifested by the fact that the one employee who did punch out (Myers) was discharged anyway.

I further find that the discharges and suspension were in violation of Section 8(a)(3) as well. Respondent, through Manager Willis, knew or at least suspected that virtually all of its work force had sided with the Union in its organizational drive; and as found above it reacted to that drive with a series of coercive interrogations, threats of reprisal, and intimations of covert surveillance. Indeed, Willis gave eloquent expression to the degree of animus harbored by Respondent when he told one of the discharged employees (Cannon)

that people higher up than me are very angry at what's going on. They're angry at you guys. They're angry at me. They're calling the shots . . . [I] don't have control over what was going to be said or done . . . that nasty things were going to start happening . . .

That threat cuts to the heart of and belies the successive layers of justifications urged as reasons for Respondent's actions. The reality which emerges is that it simply availed itself of what appeared to be an excellent opportunity to prevent unionization by getting rid of union supporters in one fell swoop. The threat had become reality with a vengeance.

The allegation in the complaint that Respondent also violated Section 8(a)(1) by telling its employees, through Supervisor Jernigan, that they need not honor a Board subpoena is not supported by credible evidence. Jernigan is shown merely to have expressed an opinion that the subpoenas were invalid; and on the question of honoring them I have found that his comment was: "Laidlaw can't stop you [from

going].” As to the further allegation that its work rule 14 (“walking off the job without permission shall be considered a resignation”) violates Section 8(a)(1), I agree that as phrased, interpreted and applied by Respondent it is unduly restrictive of the right and duty of an employee to respond to Board subpoenas even in the face of employer prohibitions.

V. ALLEGED UNLAWFUL REFUSAL TO REHIRE LAID-OFF EMPLOYEES

On the day after it terminated the six employees (Friday, January 19), Respondent accomplished normal landfill operations utilizing the services of a subcontractor already on site; and in the late afternoon Willis began to search for replacement employees. In his words: “I started calling everybody that I used to work with, people that I knew, anybody, to see if there was anybody out there looking for work.” However, he made no attempt to contact the 10 employees who had been laid off on December 29, all of whom had passed a screening program prior to being hired. This included a physical examination, testing for drug use, and a security check. There is no indication that their on job performance had been deficient in any way.

During the course of his telephone calls, Willis succeeded in hiring five replacement employees “pending the outcome” of screening procedures. Of those, four began working early the next morning, and one began on Monday, January 22.

In view of the relative recency of their layoffs, the absence of any evidence that their job performance had been deficient in any way, the animus harbored by Respondent to unionization, and the probability that it knew or suspected they were union supporters,¹⁹ an inference is warranted and taken that its failure to contact and recall some of the laid-off employees was due to their perceived prouion proclivities and its desire to remain union free; and, consequently, constituted violation of Section 8(a)(3) and (4) of the Act.

In this circumstance, Respondent’s burden is to come forward with evidence that it had a lawful reason for not recalling any of them and would have relied upon it even absent their union involvement. *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

In an effort to meet this burden, Manager Willis suggested that one reason he did not call the laid-off employees on January 19 was because they had not filed employment applications and because he was not sure their addresses and telephone numbers were current. I find this assertion incredible in light of his claimed urgent need for replacement workers. Doubts about the accuracy of data in Respondent’s personnel files could have been resolved simply by attempting to contact them. He made no move in that direction. In any event, he proceeded to undermine that reason by stating that he could not have recalled any of them even if they had filed

¹⁹ Respondent claimed knowledge of union involvement of employees; and I have found that it knew that most of its work force had attended at least one union meeting. Also, it was aware that a large number of the then laid-off employees were at the hearing scheduled for January 18; and as with workers terminated that afternoon, it perceived that all attendees were there not just because of subpoenas, but because they sided with the Union.

applications prior to January 19 because on that date he had been instructed not to by his supervisor, District Manager Rick McEwin.

Assertedly, McEwin told him they were not to be rehired because they were under investigation by the Secret Service for the reported discovery of counterfeit money at the landfill on or about December 29. But, according to Willis, all employees at the landfill, including himself, were subject to the same investigation and no one was ever named as a possible suspect.²⁰ He further states:

There just wasn’t enough evidence or grounds . . . [for the company] to actually directly discipline anybody for that [i.e. involvement in counterfeit activities]. But we felt that there was enough not to recall [the laid off employees] in case that did happen [they were later implicated] and [we] have the problem [of having rehired them].²¹

In the circumstances of this case, I regard this explanation as highly improbable and pretextual. See *Wright Line*, supra.

VI. ALLEGED UNLAWFUL FAILURE TO HIRE MECUM

David Mecum was one of the 10 employees laid off on December 29. At that time he was working in the maintenance shop at the landfill as a mechanic. He had attended union meetings beginning in November, signed a union authorization card, and appeared at the hearing facility on January 18.

Several weeks before the layoff Mecum had a conversation at the landfill with the maintenance manager (Kenneth Southwell) of Respondent’s hauling division. Southwell told that he might have an opening on the second shift and would like to hire him because of his experience as a mechanic. Mecum declined because the job paid less than what he was then earning at the landfill division.

Not having been recalled after the layoff, on February 7, Mecum again visited Southwell and this time asked for a job. When Southwell told him he had an opening and would urge his boss (David Cannon) to hire him, Mecum completed and filed an application.

Upon seeing the application, Cannon called Willis who, admittedly, recommended against hiring Mecum telling Cannon that: “I wasn’t overly thrilled with his performance . . . [a]nd in conjunction with the counterfeit issue, I just wouldn’t hire him.”

Cannon states that no position was open at the time and that, if one had been open, he would not have hired Mecum because of the counterfeiting incident.

In contrast, Southwell testified that when Mecum applied there was an opening, that he submitted his application along with some other ones to Cannon, and that Cannon later told

²⁰ Willis states that a Secret Service investigator told him the Supervisor Sliker appeared uncooperative. As noted, Sliker continues to work for Laidlaw at the landfill. He has never been arrested or charged regarding counterfeit money.

²¹ Despite a search by Willis and others, no counterfeit money was found at the Adrian landfill during a 3-month period from December 29. Willis claims, however, that a laid-off employee (Blaine) told him he had taken “one \$10.00 bill to play a joke on somebody or something.” Blaine did not testify. There is no indication that the Secret Service pursued that matter or that Willis even told the investigator about it. Here too, I decline to accept Willis’ testimony.

him, without explanation, that he would decided not to hire "this one," meaning Mecum.

A mechanic position in the hauling division was filled by someone other than Mecum on or about February 12.

In these circumstances, and essentially for the reasons expressed in the preceding section, I find that Mecum would have been hired by Cannon but for his perceived involvement with the Union and that failure to hire him was discriminatory in violation of Section 8(a)(1) and (3) of the Act, as alleged in the complaint in Case 7-CA-30489.

VII. ALLEGED UNLAWFUL HARASSMENT OF SEEGERT

David Seegert had operated heavy equipment at the landfill for over 3 years and was second in seniority only to Kent Cannon among Respondent's hourly employees. According to manager Willis:

He was a good employee. He makes good, sound decisions. I'd worked with him before in '88. In fact, we worked real close together, and he was somebody you can count on to get the job done.

Seegert signed a union authorization card on November 14, and he attended a number of union meetings thereafter and was present at the hearing site on January 18. As found, Seegert was the subject of three extended "pick-up truck" rides with Willis between November 15 and 26; and on the latter date he was severely burned on the job, and went on medical leave until February 4. He had visited the landfill early in the morning of January 18 in order to go with other employees to the hearing scheduled for that day.

On March 14 Seeger was at the working face of the landfill operating a bulldozer. The machine began to overheat, a common occurrence. In accord with past practice, he "half-idled" it and waited for the dial indicator to enter the green (safe) area. Summoned from the office by lead operator Steven Snyder, who reported he had observed Seegert sitting on the idled bulldozer for 5 to 8 minutes, Willis went out and asked Seegert what he was doing. Seegert explained the situation and Willis left. Meanwhile the vehicle had cooled and Seegert resumed operation. About 20 minutes later the machine once more overheated and Seegert resorted to the same waiting procedure. Snyder again went to see Willis, telling him that Seegert had stopped operating for 10 to 15 minutes. By the time Willis drove out the machine had cooled down. This time Willis looked at the dial and, seeing that it was in the green area, told Seegert that he would fire him if he was idle again.²² On prior occasions when Willis drove by and saw Seegert on idled machines, he would just wave and go on his way.

In these circumstances, and in light of the numerous findings of unlawful conduct above, I find that Seegert was being harassed because he was perceived as having sided with the Union and that such conduct was coercive in violation of Section 8(a)(1) of the Act.

Bargaining Order

Because of the egregious and widespread nature of Respondent's unfair labor practices, the possibility of con-

ducting a fair election is slight. Accordingly, I conclude that an appropriate remedy must include a bargaining order.

In the *Gissel* case, supra, the Court established the appropriateness of a bargaining order remedy in situations where the employer has engaged in conduct which has a tendency to undermine the union's status and precludes the holding of a fair election and where the union, at some point, represented a majority of the employees. Moreover, a bargaining order remedy does not turn on the finding of an 8(a)(5) violation. A *Gissel* bargaining order is appropriate to remedy violations of Section 8(a)(1), (3), and (4) such as those found in the instant case; and in similar situations, a bargaining demand by the union is not necessary to sustain issuance of a bargaining order. *Peaker Run Coal Co.*, 228 NLRB 93 (1977); *Benjamin Coal Co.*, 294 NLRB 572 (1989).

The evidence adduced at the trial establishes that the Union enjoyed majority status as of November 14, 1989. The Board has long held that majority status can be proven through cards which unambiguously authorize a union to represent employees for purposes of collective bargaining, unless it is shown that the employees were told to disregard the language on the card and that the card would be used solely to obtain an NLRB election. *Cumberland Shoe Corp.*, 144 NLRB 1268 (1963), enfd. 351 F.2d 917 (6th Cir. 1965). In the instant case, the authorization cards signed by employees explicitly authorize the Union to represent them in collective bargaining; and none of the employees were told that the cards would be used only to obtain an election. And no one was told to disregard the language on the cards.

The facts of the instant case are thus distinguishable from those in *Nissan Research & Development*, 296 NLRB 598 (1989), in which the Board found a card ambiguous because the language on the front authorized the union to represent the signer for purposes of collective-bargaining while the language on the back said it was to "have the United States Government [the National Labor Relations Board] conduct a Secret Ballot Election for all eligible employees"; and further, the card contained language stating that it was not an "application for membership" in the union. Further, the Board noted that since the card solicitors advised employees that they would be used to obtain an NLRB election, the ambiguity was not cured.

While it is not necessary to establish that employees read the cards they signed, here the evidence shows that nearly all of them did indeed read them; and this fact militates against a conclusion that any misrepresentation occurred. *Keystone Pretzel Bakery*, 242 NLRB 492 (1979), enfd. 696 F.2d 257 (3d Cir. 1982); *Walgreen Co.*, 221 NLRB 1096 (1975).

It is clear that union authorization cards may be authenticated by the card solicitor or another individual who witnessed the signing of the card. *Koons Ford of Annapolis*, 282 NLRB 506, 514 (1986). Moreover, the fact that an individual other than the one whose name appears on the card completed it or added certain information does not destroy its validity. *Koons Ford*, supra at 515; *Limpert Bros.*, 276 NLRB 364 (1985). Thus the fact that employee Joseph Medina's wife completed the information on his authorization card, which he then signed, does not render the card invalid. The date of signing on an undated card may be established by extrinsic evidence through, as here, testimony of the signer or

²² Willis denies uttering the threat.

from an individual who witnessed the signing. *Reeves Bros.*, 277 NLRB 1568 fn. 1 (1986).

Finally, an authorization card, if otherwise complete, is not rendered invalid merely because the employee neglected to sign. *Accurate Dye & Mfg. Corp.*, 242 NLRB 280, 284 (1979), citing *I. Taitel & Sons*, 119 NLRB 910, 912 (1957); *Pilgrim Life Insurance Co.*, 249 NLRB 1228, 1241 (1980). Therefore, the fact that employee Delbert Baldwin neglected to sign is cured by his testimony that he completed all other portions of the card, including printing his name, and by his testimony that his intent in completing the card was to "join the Union."

In these circumstances, I find that 8 of the 12-man unit stipulated on this record as eligible to vote as of November 14 did on that date execute cards shown to be authentic and valid; and that the Union enjoyed majority status as of that date. Assuming, arguendo, that the validity of any two of those cards are in question, the fact that three more members of the stipulated unit signed authenticated and valid cards between November 20 and 22 establishes for remedial purposes that at the very latest the Union enjoyed majority status as of November 22.

Entry of a bargaining order is appropriate and necessary in this case. From the very onset of the employees' organizational activities, Respondent engaged in a widespread and hostile antiunion campaign to chill their effort to achieve unionization. Of the 12-unit employees, 3 were subject to coercive interrogation and threats of retaliation and were led to believe that their union activities were under surveillance. One of these (Seegert) was subject to such intimidation on three separate occasions. Such interrogation and threats beginning at the advent of a union campaign increase their already coercive effect. *Quality Aluminum Products*, 278 NLRB 338 (1986).

Furthermore, the illegal activity did not end at that point. Rather, Respondent carried out its threats of reprisal by unlawfully discharging 6 out of the 12-unit employees and suspending another in retaliation for perceived support of the Union and for honoring NLRB subpoenas. The discharges of union adherents has long been held to constitute one of the most egregious types of violations, with particularly long lasting and chilling effects on remaining and replacement employees. *Hitchiner Mfg. Co.*, 243 NLRB 927, 928 (1979); *Well-Bred Loaf, Inc.*, 280 NLRB 306 (1986).

Finally, Respondent demonstrated an intent to continue engaging in unlawful conduct after the mass discharge by harassing and threatening employee Seegert because of his siding with the Union, refused to recall to employment any of the 10 employees laid off in December because of their perceived prounion proclivities, and refused to hire employee Mecum for the same reason. Even if the employees are reinstated, the memory of Respondent's pervasive illegal conduct will linger on; and the possibility of conducting a fair election under such circumstances is remote. Respondent's swift, extensive and severe retaliatory acts struck to the very core of the employees' right to organize; and to withhold a bargaining order would reward Respondent for its wrongdoing. *Impact Industries*, 285 NLRB 5 (1987).

CONCLUSIONS OF LAW

I find that Respondent violated the Act in the particulars and for the reasons stated above. I further find that those un-

fair labor practices and each of them have affected, are affecting, and unless permanently enjoined will continue to affect commerce within the meaning of Section 2(6) and (7) of the Act. And I further find: (1) that the following employees of Respondent (the unit) constitute an appropriate unit for collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time equipment operators, laborers, mechanics and dock workers employed by the Employer and engaged in construction, heavy equipment maintenance, and operation of its landfill facility (Adrian landfill) located at 1983 Ogden Highway, Adrian, Michigan; but excluding employees represented by any other labor organization, office clerical employees and guards and supervisors as defined in the Act and all other employees.

(2) that on or about November 14, 1989, a majority of employees in the Unit selected Local 324, International Union of Operating Engineers, AFL-CIO (the Union) as their representative for purposes of collective bargaining; (3) that since then the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of the unit for purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment; and (4) that the unfair labor practices found to have been committed herein are so serious and substantial in character that the possibility of erasing their effects and of conducting a fair election by the use of traditional remedies is slight, and the employees' sentiments regarding representation, having been expressed through authorization cards, would, on balance, be protected better by issuance of a bargaining order than by recourse to traditional remedies.

REMEDY

In addition to the customary cease-and-desist order and requirement for notice posting, my Order will require Respondent: (1) to offer permanent, immediate and unconditional reinstatement to the 6 employees (named in fn. 1) found to have been unlawfully discharged; (2) to make them, as well as another employee (Joe Medina) found to have been unlawfully suspended for 3 days, whole for any loss of earnings and other benefits, computed on a quarterly basis, from date of discharge to date of a proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); (3) to place on a preferential hiring list the 10 former employees (named in fn. 2) found not to have been considered for rehiring due to unlawful reasons; (4) offer David Mecum the option of remaining on that list or of obtaining immediate employment as a mechanic in its hauling division and, in any event, make him whole from February 7, 1990, for all wages and benefits lost as a result of its unlawful failure to hire him on that date, computed in the manner specified above; and (5) to recognize and, on request, bargain with the Union as the exclusive representative of its employees in the unit in regard to terms and conditions of employment and, if understanding is reached, embody the understanding in a signed agreement.

Because the serious and egregious misconduct shown here demonstrates a general disregard for the employees' fundamental rights, I find it necessary to issue a broad order requiring Respondent to cease and desist from infringing in any manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

Except to the extent found, Respondent is not shown to have violated the Act in other ways.

Disposition

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²³

ORDER

The Respondent, Laidlaw Waste Systems (Michigan), Inc., of Adrian, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, suspending, or otherwise discriminating against any employee for honoring subpoenas of the National Labor Relations Board or supporting Local 324, International Union of Operating Engineers, AFL-CIO, or any other union.

(b) Refusing to hire or otherwise discriminating against anyone for honoring subpoenas of the Board or supporting Local 324 or any other union.

(c) Coercively interrogating any employee about union support or union activities.

(d) Threatening employees with discharge, closure, or unspecified reprisals if they select Local 324 or any other union as their collective-bargaining representative.

(e) Engaging in surveillance of union meetings and activities or creating an impression that it is doing so.

(f) Harassing and threatening to discharge employees because of their support for Local 324 or any other union.

(g) Maintaining a work rule requiring prior approval of the Company before employees can comply with subpoenas issued them by the Board.

(h) 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) Recognize and, on request, bargain in good faith with Local 324 as the exclusive collective-bargaining representative of its employees in the appropriate unit with respect to rates of pay, hours of work, or other terms and conditions of employment; and should any understanding or agreements be reached, on request of Local 324, embody the same in a written and signed instrument; and the appropriate unit is:

All full-time and regular part-time equipment operators, laborers, mechanics and dock workers employed by the Employer and engaged in construction, heavy equipment maintenance, and operation of its landfill facility (Adrian landfill) located at 1983 Ogden Highway, Adri-

an, Michigan; but excluding employees represented by any other labor organization, office clerical employees and guards and supervisors as defined in the Act and all other employees.

(b) Offer Delbert Baldwin, Kent Cannon, Manuel Cruz, Michael Miller, Scott Myers, and Christopher Stacey permanent, immediate and unconditional reinstatement to their former jobs or, if no longer in existence, to substantially equivalent jobs without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole, with interest, for any loss of earnings suffered as a result of their unlawful discharges in the manner set forth in the remedy section of this decision.

(c) In the same manner, make Joe Medina whole, with interest for any loss of earnings suffered as a result of his unlawful suspension.

(d) Remedy the unlawful failure to offer jobs to John Arnold, Patrick Blaine, Paul Cook, Gomer DeCocker, Garry Jones, David Mecum, Allen Pangburn, Todd Southward, David Swift, or David Vasquez by placing them on a preferential hiring list and offering them jobs as they become available based on their past seniority or other reasonable and nondiscriminatory basis.

(e) Offer David Mecum the option of remaining on that list or immediate employment as a mechanic in the hauling division and, in any event, make him whole from February 7, 1990, for all wages and benefits lost as a result of its unlawful failure to hire him on that date, computed in the manner specified above.

(f) Revise its work rule 14 so as to make clear that employees are not required to obtain company approval to attend hearings in response to Board subpoenas.

(g) Remove from its files any reference to the unlawful discharges and suspension, and notify the involved employees in writing that this has been done and that the discharges/suspension will not be used against them in any way.

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

(i) Post at its landfill in Adrian, Michigan, copies of the attached notice marked "Appendix."²⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

²³If 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.

²⁴If 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."

IT IS FURTHER RECOMMENDED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge, suspend, or otherwise discriminate against any employee for honoring subpoenas of the National Labor Relations Board or supporting Local 324, International Union of Operating Engineers, AFL-CIO, or any other union.

WE WILL NOT refuse to hire or otherwise discriminate against anyone for honoring subpoenas of the Board or supporting Local 324 or any other union.

WE WILL NOT coercively interrogate any employee about union support or union activities.

WE WILL NOT threaten employees with discharge, closure, or unspecified reprisals if they select Local 324 or any other union as their collective-bargaining representative.

WE WILL NOT engage in surveillance of union meetings and activities or create an impression that we are doing so.

WE WILL NOT harass and threaten to discharge employees because of their support for Local 324 or any other union.

WE WILL NOT maintain a work rule requiring prior approval of the company before employees can comply with subpoenas issued them by the Board.

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

WE WILL recognize and upon request bargain in good faith with Local 324 as the exclusive collective-bargaining representative of our employees in the appropriate unit with re-

spect to rates of pay, hours of work, or other terms and conditions of employment; and should any understanding or agreements be reached, upon request of Local 324, embody the same in a written and signed instrument; and the appropriate unit is:

All full-time and regular part-time equipment operators, laborers, mechanics and dock workers employed by the Employer and engaged in construction, heavy equipment maintenance, and operation of its landfill facility (Adrian landfill) located at 1983 Ogden Highway, Adrian, Michigan; but excluding employees represented by any other labor organization, office clerical employees and guards and supervisors as defined in the Act and all other employees.

WE WILL offer Delbert Baldwin, Kent Cannon, Manuel Cruz, Michael Miller, Scott Myers, and Christopher Stacey permanent, immediate and unconditional reinstatement to their former jobs or, if no longer in existence, to substantially equivalent jobs without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole, with interest, for any loss of earnings suffered as a result of their unlawful discharges.

WE WILL in the same manner, make Joe Medina whole, with interest for any loss of earnings suffered as a result of his unlawful suspension.

WE WILL remedy our unlawful failure to offer jobs to John Arnold, Patrick Blaine, Paul Cook, Gomer Decocker, Garry Jones, David Mecum, Allen Pangburn, Todd Southward, David Swift, or David Vasquez by placing them on a preferential hiring list and offering them jobs as they become available based on their past seniority or other reasonable and nondiscriminatory basis.

WE WILL offer David Mecum the option of remaining on that list or immediate employment as a mechanic in the hauling division and, in any event, WE WILL make him whole from February 7, 1990, for all wages and benefits lost as a result of our unlawful failure to hire him on that date.

WE WILL revise our work rule 14 so as to make clear that employees are not required to obtain company approval to attend hearings in response to Board subpoenas.

WE WILL remove from our files any reference to the unlawful discharges and suspension, and notify the involved employees in writing that this has been done and that the discharges/suspension will not be used against them in any way.

LAIDLAW WASTE SYSTEMS (MICHIGAN), INC.