

Nave, Inc. and Michigan Waste Handlers, Inc. and Local 247, International Brotherhood of Teamsters, AFL-CIO¹ and Local 283, International Brotherhood of Teamsters, AFL-CIO, Party in Interest. Case 7-CA-30804

March 30, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On July 9, 1991, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed 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 exceptions² and has decided to affirm the judge's rulings, findings,³ and conclusions and to adopt the recommended Order.

¹ The names of the Charging Party and the Party in Interest have been changed to reflect the new official name of the International Union.

² In the absence of a motion to strike by the General Counsel, the Board has accepted the Respondent's exceptions as falling within Sec. 102.46 of the Board's Rules and Regulations. We note, however, that the vagueness and lack of clarity of the exceptions have made it difficult to discern, with certainty, those findings by the judge to which the Respondent has excepted.

Member Devaney, in accepting the Respondent's exceptions, does not rely on the absence of a motion to strike the exceptions. Rather, he finds that although the exceptions do not fully comply with the Board's Rules, they sufficiently identify the portions of the judge's decision the Respondent claims are erroneous. See generally his position in *Worldwide Detective Bureau*, 296 NLRB 148 fn. 4 (1989).

³ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 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 violated Sec. 8(a)(2) and (1) by signing a collective-bargaining agreement with Local 283, we rely solely on his finding that there existed a single, agreed-upon bargaining unit of the Respondent's employees of drivers, mechanics, and yardmen/laborers at the Wyoming and Greenfield yards. That single bargaining unit was represented by Local 247. In light of this finding, we find it unnecessary to pass on the judge's reliance on *Dubuque Packing Co.*, 303 NLRB 386 (1991).

Finally, while we adopt the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by laying off employees at the Wyoming yard without notifying Local 247, we find it unnecessary to rely on *Lapeer Foundry & Machine*, 289 NLRB 952, 953-954 (1988). Instead, we hold that, where a decision is motivated by antiunion reasons, an employer cannot claim an exemption from its bargaining obligation under *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 687-688 (1981). See also *Continental Winding Co.*, 305 NLRB 122 (1991).

306 NLRB No. 189

ORDER

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

Linda Grayson, Esq., for the General Counsel.
Barry E. Solomon, Esq., of Berkley, Michigan, for Respondent Nave, Inc.
Donald J. Prebenda, Esq., of Southfield, Michigan, for Local 247.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. This case was tried in Detroit, Michigan, on December 12-13, 1990.¹ The charge was filed July 24 (amended September 5) and the complaint was issued September 26.

The case arose when Respondent Nave, Inc. (the Company) engaged in a series of maneuvers that were obviously designed to displace Local 247 as the bargaining representative.

Ignoring the relocation and other provisions in its collective-bargaining agreement with Local 247, the Company (a) hired 11 nonunion employees of Respondent Michigan Waste Handlers, Inc. to perform bargaining unit work at a separate location, (b) signed a less costly agreement there with Local 283, (c) laid off 6 of its 14 bargaining unit employees, (d) transferred or rehired 5 employees to work at lower wages and benefits under the Local 283 agreement, and (e) refused to bargain for a renewal of the Local 247 agreement.

The primary issues are whether the Company (1) unlawfully refused to recognize Local 247 as bargaining representative of unit employees at the separate location, (2) rendered unlawful assistance to Local 283, (3) laid off six employees and reduced hours of remaining employees to displace Local 247, (4) bypassed Local 247 by dealing directly with individual employees, and (5) unlawfully refused to bargain with Local 247 for unit employees at both locations, in violation of Section 8(a)(1), (2), (3), and (5) of the National Labor Relations Act.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, is engaged in the collection and disposal of waste at its facilities on Wyoming Avenue

¹ All dates are in 1990 unless otherwise indicated.

² The General Counsel's unopposed motion to correct the transcript, dated January 30, 1991, is granted and received in evidence as G.C. Exh. 28.

in Dearborn and Greenfield Road in Melvindale, Michigan, where it annually performs over \$50,000 in services for customers that annually receive over \$50,000 in goods directly from outside the State. The Company 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 Locals 247 and 283 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Contractual Provisions in Local 247 Agreement

After signing its first collective-bargaining agreement with Local 247 in 1980, the Company relocated its operations first from 23d Street in Detroit to Stanbury Avenue in Detroit, second from Stanbury Avenue to Telegraph Road in Redford, and third (about 1986) to the Wyoming Avenue yard in Dearborn. As required by the agreement, the Company continued to recognize Local 247 as the bargaining representative. (Tr. 24–27.)

The most recent agreement, effective from 1987 through September 30, 1990 (G.C. Exh. 2), covered both local and over-the-road drivers in the following stipulated appropriate bargaining unit:

All full-time and regular part-time drivers, mechanics, and yardmen employed by Nave, Inc. at its facility located at 4440 Wyoming, Dearborn, Michigan, but excluding office clerical employees, guards, and supervisors as defined in the Act.

The agreement contained provisions to give the employees maximum protection for preserving their jobs, working conditions, and representation by Local 247.

The recognition provisions, article I, section 1, second paragraph (G.C. Exh. 2, p. 2), stated:

The terms of this Agreement shall apply to all employees in the classifications of work set forth herein and shall cover *all accretions to or relocations* of bargaining unit operations [Emphasis added.]

Subcontracting provisions, article IV (G.C. Exh. 2, p. 5), stated:

For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no work or services *presently performed, or hereafter assigned* to the collective bargaining unit, will be subcontracted . . . in whole or in part to any other . . . person, company, or to nonunit employees.

The Employer hereby assigns all work performed in, or *fairly claimable* by, bargaining unit classifications to employees covered by this Agreement. [Emphasis added.]

The “Extra Contract Agreements” provisions, article V (p. 5), stated:

The Employer agrees not to enter into any Agreement *with another labor organization* during the life of this Agreement with respect to the employees covered

by this Agreement Any such agreement shall be null and void. [Emphasis added.]

I note that it was in July 1986, the year before signing this Local 247 agreement, that Company President Vasilios Madias incorporated a second waste hauling corporation named Michigan Waste Handlers (MWH). The 1988 annual report for the corporation shows that Madias was the president and the sole officer and director of the “currently inactive” corporation, which then still had no assets. (G.C. Exh. 15; Tr. 94–97.)

B. Hazardous and Nonhazardous Waste

On July 2 the Company began dispatching at the Greenfield Road yard in Melvindale (in the Detroit area) all its hazardous waste hauling, as well as all its tank cleaning and the hauling of nonhazardous sludge and liquids. This yard is covered with asphalt, whereas the Wyoming Avenue yard is not. President Madias personally owns both yards. (Tr. 24, 28, 51, 55.)

For years at the Wyoming yard, the Company had been dispatching tank cleaning and the hauling of solid rubbish, asbestos waste, and both hazardous and nonhazardous sludge and liquids (Tr. 32–38, 40–43, 90–91, 129–131, 194–196, 199, 206–208, 214). Two of the Company’s seven sludge-hauling accounts required the hauling of hazardous sludge (Tr. 40–41, 50, 91; G.C. Exh. 3). Four of its ten drivers at the Wyoming yard at the time of the transfer of work to the Greenfield yard, Matthew Emanuelsen, Jose Gonzalez, Mark Obidzinski, and James Whitten, had been hauling hazardous waste (Tr. 42, 132; G.C. Exh. 9). It is undisputed that they hauled hazardous sludge on a daily basis (Tr. 132–133) and that about 60 to 70 percent of driver Emanuelsen’s time was spent hauling hazardous materials (Tr. 205). The evidence shows that driver Whitten had taken a 40-hour class in hazardous waste hauling (G.C. Exh. 27).

The Company’s 3500-gallon vacuum tank truck at the Wyoming yard was used to haul both hazardous and nonhazardous sludge and liquids and to clean tanks (Tr. 40–41, 91, 98, 129–130, 193–196, 199, 206–208, 213). The sludge—as well as solid rubbish and asbestos materials—was also hauled in 20- and 30-cubic-yard containers, loaded on straight and roll-off trucks and trailers (Tr. 42, 130, 160, 170, 193, 214). Hazardous waste consisting of cyanide-contaminated rags was hauled in barrels (Tr. 214).

I discredit President Madias’ unsupported “guess” that only 10 to 12 percent of the business was hauling sludge and that the rest was hauling rubbish (Tr. 91). This claim obviously understated the amount of hazardous and nonhazardous sludge hauled and ignored the tank cleaning and the hauling of liquids and hazardous solids. By his demeanor on the stand, he impressed me as being less than candid.

Before November or December 1989, over-the-road drivers in the bargaining unit were assigned to haul hazardous waste out of the State. Then, to cut labor costs, the Company began violating the Company’s agreement with Local 247 “that no work or services presently performed, or hereafter assigned to the . . . unit, will be subcontracted” (G.C. Exh. 2, p. 5). It subcontracted this over-the-road driving, to be performed at President Madias’ Greenfield yard by nonunion drivers on MWH’s payroll (Tr. 44–47).

By this time President Madias had sold his interest in MWH (Tr. 94–98). The Company’s Wyoming yard manager, Thomas Chapman (Tr. 30), was then MWH’s president and sole officer and director (G.C. Exh. 15).

The Company began assigning unit drivers to deliver the hazardous waste to the Greenfield yard. There the MWH drivers would haul the waste outside the State, using the Company’s equipment (Tr. 31, 46–47, 66, 104–105, 223). MWH drivers were also being assigned to perform hauling for other Madias companies at the Greenfield yard (Tr. 94–97, 120–121).

On January 8 Local 247 Secretary-Treasurer Kenneth Hollowell filed a group grievance signed by 12 bargaining unit employees, protesting the violation of subcontracting and other provisions in the agreement. Hollowell pointed out the importance of the matter and requested that the Company contact him in within 5 days. (G.C. Exh. 22.) Instead, Chapman met with the employees, outside Hollowell’s presence (Tr. 139, 155–156, 248–249).

Yard Manager Chapman told the employees that “it wasn’t feasible to pay hourly [wages] on an over-the-road trip” (as the Company’s over-the-road drivers were being paid), that the Greenfield yard drivers were paid by the load, and that the money saved was “for the betterment of the company” and “would revert back to us,” helping the Company grow. The employees agreed to withdraw the grievance. (Tr. 136–139, 248.) I discredit President Madias’ claim that he did not know why the grievance was withdrawn (Tr. 106).

I note that although the Greenfield yard was covered with asphalt, it did not meet the requirements for a transfer facility. On December 3 (the week before the trial), the Waste Management Division of the Michigan Department of Natural Resources notified President Madias that the Company was illegally operating a transfer facility at the Greenfield yard by off-loading containers of hazardous waste or transferring waste from one vehicle to another without meeting the transfer facility requirements. It warned that for “Failure to stop this activity . . . your company may be subject to penalties of \$25,000.00 or more” for “Each day of continued non-compliance.” (R. Exh. 1; Tr. 115–116.)

C. Maneuvers to Displace Local 247

1. Replacing employees represented by Local 247

After succeeding in getting the Union’s subcontracting grievance withdrawn, the Company engaged in a series of maneuvers obviously designed to displace Local 247 as the bargaining representative of its employees.

The Company had found that cleaning tanks and hauling hazardous and nonhazardous sludge and liquids at the Wyoming yard were more profitable than hauling solid rubbish and asbestos waste. It decided to expand this part of its operations. It also decided to relocate this bargaining unit work to the more suitable asphalt-covered Greenfield yard. (Tr. 47–55, 99–104.) Instead of honoring the accretion, relocation, and subcontracting provisions in the Local 247 agreement, however, it further decided to withdraw this work from the bargaining unit (Tr. 61).

The Company began by subcontracting similar work for new accounts. In March, April, and May, when it acquired accounts to clean tanks and haul sludge for Mobil and other oil companies, it had the work dispatched at the Greenfield

yard to MWH’s nonunion drivers, using the Company’s equipment. (Tr. 51, 82–83, 207, 230.) This was a clear violation of another subcontracting provision in the Local 247 agreement, that it “assigns all work performed in, or fairly claimable by, bargaining unit classifications to employees covered by this Agreement” (G.C. Exh. 2, p. 5).

The Company did not notify the Union that it was subcontracting this bargaining unit work. When Union Secretary-Treasurer Hollowell was informed that some of the Company’s equipment was being used at the Greenfield yard, he asked Wyoming Yard Manager Chapman about it. Misleading Hollowell, Chapman said that it was “surplus equipment that [the Company] had on hand that they didn’t need” and it was being leased to MWH. (Tr. 251.)

Although subcontracted, the work for these new accounts was performed under the Company’s supervision. About April or May the Company hired and assigned MWH driver Harvey Sargent as the Company’s working supervisor over the MWH drivers performing the work. Sargent was under the supervision of General Manager Chapman, who was then in charge of the Company’s operations at both the Wyoming and Greenfield yards (Tr. 62–64).

The Company also dispatched Wyoming yard drivers to perform the oil company work. One of them was vacuum tank truckdriver Emanuelsen, who used his vacuum truck at the Greenfield yard, working with the MWH drivers in cleaning tanks for Mobil, one of the new accounts (Tr. 201, 207). President Madias admitted at one point that the work was being performed by both MWH’s (nonunion) and the Company’s (bargaining unit) employees at the Greenfield yard (Tr. 83).

At this time both the equipment and work at the Wyoming and Greenfield yards were further integrated. Trailers and containers for hauling sludge were being interchanged between the two yards (Tr. 119–120, 159–160). The Company’s vehicles at the Greenfield yard were being repaired by Wyoming yard mechanics, either at the Wyoming yard garage or at the Greenfield yard (Tr. 135, 158–159).

Neither the Company nor MWH then had the use of the Greenfield yard garage (which was leased to an outside company), and MWH’s only mechanic was driver-mechanic Duffield (Tr. 225–226, 232, 235–236). Wyoming yard mechanic Jeffrey Schultz credibly testified that when he was assigned to do truck repairs for vehicles used at the Greenfield yard, “I didn’t write it down, I just fixed it,” without keeping any records of the repairs (Tr. 158–159).

Sometime in June President Madias purchased MWH from Chapman and replaced him with Sargent as the Company’s general manager over the Greenfield and Wyoming yards (Tr. 28–29, 62–65). Madias then placed the 11 MWH drivers and laborers on the Company’s payroll. These 11 employees were a “yard boss” (William Douglas), a driver-mechanic (John Duffield), 5 drivers (Stanley Alexander, Kenneth Gaines, Robert Gregory, Royce Leonardo, and James Verhelle), 2 other drivers who were later classified as laborers (Ronald Ott and Roger Rooker), and 2 laborers (Matthew and Simmie Adkins). (G.C. Exhs. 13, 14; Tr. 88, 148, 226.)

There were 14 bargaining unit employees at the Wyoming yard. There were 10 drivers (Thomas Adams, Donald Cook, Matthew Emanuelsen, Jose Gonzalez, James Hurst, Mark Obidzinski, Earl Shoemaker, Frank Smith, Melvin Tucker, and James Whitten), 3 mechanics (Jeffrey Schultz, Bill

Thompson, and Gordon Wiser), and 1 mechanics helper-yardman (David Faunce). (G.C. Exh. 9; Tr. 58, 127, 136, 174.)

Respondent MWH again became a dormant corporation (Tr. 31) and did not participate in any of the unfair labor practices alleged in this proceeding. I find that the allegations against it must therefore be dismissed.

2. Signing agreement with Local 283

On June 25, President Madias went to a card check and recognized Local 283 as the bargaining representative of the Company's Greenfield yard employees (Tr. 56, 104). About 2 days later he and Local 283 signed an undated 3-year agreement, which the 11 former MWH employees also signed (Tr. 57, 106–107, 225, 229; G.C. Exh. 4). The agreement provides both lower wage rates and lower benefits than those in the Local 247 agreement.

The city driver rate in the Local 283 agreement is \$9.75 (G.C. Exh. 4, p. 29), in place of Local 247's rate of \$11.25 for both city and over-the-road drivers (G.C. Exh. 2, p. 36). The "Labor, Helper, Dock Worker" rate is \$6, in place of \$9.80 for mechanics helper and \$8.30 for yardmen (G.C. Exh. 2, p. 1). The mechanic rate, "to be added at later date," was still not negotiated over 5 months later at the time of trial (Tr. 153, 225–226). The coverage of the welfare plan is not as wide, and the deductibles are higher (Tr. 205, 209–210). Payments to the pension fund are \$5 a week (G.C. Exh. 4, p. 32), in place of \$27 a week in the Local 247 agreement (G.C. Exh. 2, p. 22).

On July 2, the day the Company transferred work and equipment from the Wyoming to the Greenfield yard, it employed two new employees (Edward Doyle and Corbin Sargent) at the \$6 rate. This made a total of six employees (Matthew and Simmie Adkins, Edward Doyle, Ronald Ott, Roger Rooker, and Corbin Sargent) being paid at that rate. Five drivers were paid the \$9.75 city driver rate and the "yard boss" and driver-mechanic were paid \$10.35. (G.C. Exhs. 13, 14.) The Local 283 agreement provided both a flat rate and mileage rates for over-the-road trips (art. XXV, sec. 1).

The legality of the Company's recognizing Local 283 is discussed later.

3. Laying off Wyoming yard employees

On July 2, the Company announced that the hauling of rubbish would remain at the Wyoming yard and that sludge would be handled through the Greenfield yard (Tr. 140, 162). It then transferred all its equipment, except equipment for hauling solid rubbish and asbestos waste, from the Wyoming to the Greenfield yard (Tr. 35, 58, 84–85, 128, 162–163). The transferred equipment included trucks, tractors, trailers, and the Company's 3500-gallon vacuum tank truck used for hauling hazardous and nonhazardous sludge and liquids and for tank cleaning (Tr. 98, 163, 198–199).

When mechanic Jeffrey Schultz arrived at the Wyoming yard that morning, he overheard General Manager Sargent laying off two employees and noticed that four trucks and three trailers were already gone. He asked Sargent "where all the truck were," and Sargent "told me they were at the Greenfield yard and the hazardous waste would be over there." (Tr. 162–163.)

The transfer of vehicles, without any of the drivers except Emanuelsen (discussed below) and without the mechanics and the mechanics helper-yardman, resulted in the layoff of nearly half of the employees. The Company had lost business at the Wyoming yard, but President Madias admitted that this happened in 1989, the year before (Tr. 47–49). As discussed later, the 14 employees had been working overtime. Mechanic Bill Thompson had been working 50 to 60 hours a week since January 1988 (Tr. 143). Mechanic Jeffrey Schultz had a mandatory 6-day workweek and sometime worked 7 days a week (Tr. 167).

The Company laid off, for lack of work, a total of 6 of the 14 Wyoming yard employees. It laid off drivers James Hurst and James Whitten, mechanic Gordon Wiser, and mechanics helper-yardman David Faunce on July 2; driver Thomas Adams on July 6; and mechanic Jeffrey Schultz on August 3. (Tr. 58, 136, 166, 174; G.C. Exhs. 5A, 5B, 9, 24, 25.)

Meanwhile, the Company was purchasing new equipment, which arrived in June, July, and August (Tr. 55–56, 60). Some of the new vehicles were purchased for use at the Wyoming yard and were in use there in the rubbish hauling operation at the time of trial in December (Tr. 60–61). Vehicles purchased for use at the Greenfield yard included a 3000-gallon and a 5000-gallon vacuum tank truck and also a vactor truck, which has a large vacuum hose on the front for sewer cleaning (Tr. 51, 98).

Driver Emanuelsen, who drove the Company's 3500-gallon vacuum tank truck at the Wyoming yard before he went to the Greenfield yard, credibly testified that performing his work at the Greenfield yard (hauling hazardous waste and doing tank and sewer cleaning) had not required any different training (Tr. 192, 195, 208). The drivers at both yards are required to have a class 2 chauffeurs license (Tr. 67). The Company continues to train drivers in the handling of hazardous waste (Tr. 48).

Apart from the legality of the Company's recognizing Local 283 as the bargaining representative at the Greenfield yard, I find that the General Counsel has made a prima facie case, supporting an inference that the layoff of the Wyoming yard employees was motivated in part by the Company's decision to undercut Local 247's representation of bargaining unit employees and to encourage membership in Local 283. *Wright Line*, 251 NLRB 1083 (1980). The Company presented no evidence of any nondiscriminatory reason for not transferring the drivers with their vehicles to the new location. I find that the Company has failed to carry its burden to demonstrate that it would have laid off the employees in the absence of the unlawful motivation.

Accordingly I find that the Company, by laying off Thomas Adams, David Faunce, James Hurst, Jeffrey Schultz, James Whitten, and Gordon Wiser, discriminated against them to discourage membership in Local 247 and to encourage membership in Local 283, violating Section 8(a)(3) and (1).

I also find that the Company violated Section 8(a)(5) and (1) by laying off the employees without notifying Local 247 and giving it an opportunity to bargain, even if the layoffs had not been discriminatorily motivated. *Lapeer Foundry & Machine*, 289 NLRB 952, 953–954 (1988).

4. Dealing directly with employees

a. *Dealing with driver Matthew Emanuelson*

Before and after the July 2 transfer of equipment from the Wyoming yard to the Greenfield yard, the Company dealt directly with Wyoming yard employees, bypassing the Union.

Shortly before July 2, after the Company on June 25 recognized Local 283 as the bargaining representative of the Greenfield yard employees, it met and dealt directly with Wyoming yard driver Emanuelson. The meeting was held at the Greenfield yard, where the Company had been assigning Emanuelson to work with his Wyoming yard 3500-gallon vacuum tank truck (Tr. 197, 201, 207).

President Madias invited Emanuelson to the meeting, along with Harvey Sargent, who was then the Company's general manager over both the Wyoming and Greenfield yards. They told Emanuelson that he could stay and work at the Wyoming yard and be in Local 247, or "come over to [the] Greenfield yard and work in [Local] 283," but for less money. Emanuelson asked if his (vacuum tank) truck was "going to be coming over there with me," and Madias replied yes. (Tr. 197-198.) Sargent did not testify. I discredit Madias' denial that he "ever discussed directly with any of the employees working at [the Company], located at the Wyoming facility, anything about cutting their wages at any time in the year 1990" (Tr. 269).

Emanuelson agreed to the transfer, at the lower wage. He credibly explained at the trial that he "wanted to continue doing the vacuum tank truck work" and "keep earning a living." As found, 60 to 70 percent of his work had been hauling hazardous materials, and all this work was being transferred the following Monday to the Greenfield yard. "I didn't see good times ahead over at the Wyoming yard." (Tr. 198-199.) It is obvious that the Company was dealing with Emanuelson as an individual employee, not as a union steward for Local 247 (Tr. 211).

Emanuelson began working at the Greenfield yard on July 2. His wages were reduced from the \$11.25 driver rate in the Local 247 agreement to \$10.35 an hour (60 cents above the \$9.75 driver rate in the Local 283 agreement). From then until December 13, when he testified, he had lost about \$411 in coverage under the welfare plan in the Local 283 agreement. (Tr. 199, 205, 209.)

I find that the Company dealt directly with Emanuelson and negotiated a lower wage rate and lower benefits with him, bypassing the bargaining representative Local 247, in violation of Section 8(a)(5) and (1) of the Act.

Although Emanuelson had remained a company driver, performing virtually the same work at the other yard, the Company required him on July 3 to submit an application for employment (G.C. Exh. 16). Then, about 2 months later in late July or early August—after Local 247 filed the charge on July 24—the Company presented him a typed, backdated "Notice of Voluntary Resignation" (G.C. Exh. 17), which he signed.

The quit slip stated:

I, Matthew Emanuelson on this date 07-01-90 do voluntarily resign/quit my employment with the Rubbish (Wyoming Ave) Division of Nave, Incorporated.

At this same time, Emanuelson observed similar typed, backdated quit slips being presented to two other former Wyoming yard drivers who had been rehired or transferred weeks earlier. They were James Whitten, who was laid off July 2, and Jose Gonzalez, who was transferred about July 9 (Tr. 202-203; G.C. Exhs. 9, 14, 18, 19).

The Company's having the employees sign these sham backdated quit slips was obviously a transparent attempt to bolster the Company's defense (rejected below) that its employees at Greenfield yard constituted a separate bargaining unit.

I find that the General Counsel has made a prima facie case, supporting an inference that the transfer of Emanuelson to the Greenfield yard to work under the Local 283 agreement was motivated in part by the Company's decision to undercut Local 247's representation of bargaining unit employees and to encourage membership in Local 283.

The Company had a legitimate reason for transferring the hauling of hazardous sludge from the Wyoming yard and relocating it to the Greenfield yard where the asphalt-covered surface was more suitable. I find, however, that the Company has failed to show that it would have required Emanuelson to work there under the Local 283 agreement, ignoring the relocation provision in the Local 247 agreement, in the absence of its decision to undercut Local 247's representation of bargaining unit employees and to encourage membership in Local 283.

Accordingly I find that the Company, by requiring Emanuelson to work under the Local 283 agreement as a condition for being transferred to the Greenfield yard, discriminated against him to discourage membership in Local 247 and to encourage membership in Local 283, violating Section 8(a)(3) and (1).

I similarly find that the Company discriminated against drivers Jose Gonzalez, James Hurst, and James Whitten and against mechanic Bill Thompson (G.C. Exhs. 9, 13, 14, 26, 27), to discourage membership in Local 247 and to encourage membership in Local 283, by requiring them to work under the Local 283 agreement as a condition for being transferred, reactivated, or rehired at the Greenfield yard, violating Section 8(a)(3) and (1).

b. *Dealing with five remaining drivers*

Sometime in July, after the transfer of work and equipment to the Greenfield yard, Trucking Superintendent Robert Martin spoke to the five remaining drivers. They were Donald Cook, Mark Obidzinski, Earl Shoemaker, Frank Smith, and Melvin Tucker. (Tr. 175, 214a-215; G.C. Exh. 6.)

Martin said that President Madias had "asked him to talk to us [to see] if we would take a pay cut [to] 9.75 an hour, but if he was us, he would hold out for \$10 and he could probably work something out for us to take the pay cut [to] \$10." The drivers refused. They were being paid \$11.25 an hour, the rate in the Local 247 agreement; \$9.75 was the driver rate in the Local 283 agreement. (Tr. 217; G.C. Exhs. 2, 4.)

Martin "suggested that we take a pay cut in order to keep the Wyoming yard open longer, that they were in distress and if we were to take a pay cut we might be able to hang on a little longer" (Tr. 175). Martin did not testify. I discredit Madias' denial that he ever authorized any supervisor to discuss any pay cut (Tr. 269).

I find that by dealing directly with these drivers instead of with Local 247, their bargaining representative, the Company again violated Section 8(a)(5) and (1).

c. Dealing with mechanic Bill Thompson

Mechanic Thompson had remained at the Wyoming yard garage where his hours were sharply cut, as discussed below. About August 27, General Manager Sargent asked him if he was ready to work at the Greenfield yard, stating that there was not much work left at the Wyoming yard. Sargent offered to pay him \$10.25 an hour. Finally Sargent agreed to pay him his current wage of \$11.75 an hour, but "I would have to sign a quit slip"—not to resign from the Company, but to quit his job at the Wyoming yard. He "voluntarily" sign the slip and was transferred to the Greenfield yard. (Tr. 143–146, 154; G.C. Exh. 9.)

It is undisputed that Thompson was required to sign the quit slip as a condition for employment at the other yard. I find that the Company engaged in direct, individual bargaining with Thompson, bypassing the Union, by offering him employment at the Greenfield yard contingent on his signing a quit slip, in violation of Section 8(a)(5) and (1).

5. Reduced hours of work

On July 2, the day the Company transferred work and equipment to the Greenfield yard, Trucking Superintendent Martin posted the following notice, entitled "OVERTIME," to all Wyoming yard employees (G.C. Exh. 6):

AS OF TODAY JULY 2, 1990 THE SCHEDULED WORK DAY WILL NOT EXCEED EIGHT (8) HOURS UNLESS AUTHORIZED BY MANAGEMENT.

Two of the employees testified about the resulting reduction in hours of work. Mechanic Thompson, who had been working 50 to 60 hours a week since his starting date, January 1988, credibly testified that all the employees' hours were cut back and that his hours were reduced to 40 to 42 hours a week. Mechanic Schultz estimated that his hours were cut 6 or 7 hours a week. (Tr. 143, 166.)

It is obvious that the reduction in the working hours of the remaining employees was a result of the Company's maneuvers designed to displace Local 247 as the bargaining representative. In addition, the reduction would also encourage these employees to seek employment at the Greenfield yard, where the Company had recognized Local 283 as the bargaining representative.

It is undisputed, as mechanic Schultz credibly testified, that on July 2 (the day the overtime notice was posted), General Manager Sargent invited Schultz to "come over to the Greenfield yard." Sargent said the wage would be about \$10.35 or \$10.45 an hour and that the union was Local 283. Schultz, who was earning \$11.75 an hour under the Local 247 agreement (Tr. 165), refused the transfer. That evening President Madias telephoned and "asked me about what Harvey [Sargent] talked to me about a job" at the Greenfield yard, and Schultz again refused the transfer. (Tr. 162–165.) I note, however, that about a week later, driver Gonzalez did transfer to the other yard, as did mechanic Thompson on August 28, as found above.

I find that the General Counsel has made a prima facie case, supporting an inference that the reduction in the remaining employees' working hours was motivated in part by the Company's decision to undercut Local 247's representation of bargaining unit employees and to encourage membership in Local 283. I also find that the Company has failed to carry its burden to demonstrate that it would have reduced the hours in the absence of the unlawful motivation.

I therefore find that beginning July 2, the Company discriminatorily reduced the hours of Jeffrey Schultz, Bill Thompson, and other employees remaining at the Wyoming yard to discourage membership in Local 247 and to encourage membership in Local 283, violating Section 8(a)(3) and (1).

D. Refusals to Bargain with Local 247

1. Single bargaining unit

I agree with the General Counsel that there remained a single bargaining unit of drivers, mechanics, and yardmen/laborers at the Wyoming and Greenfield yards.

I find that in March, when the Company began subcontracting its bargaining unit work for the new oil company accounts to MWH without notifying Local 247, this work remained in the bargaining unit. The tank cleaning and sludge hauling were virtually the same work as that previously performed at the Wyoming yard. Clearly the Company's subcontracting the work violated its agreement with Local 247 (G.C. Exh. 2, art. IV, p. 5) that it would assign "all work performed in, or fairly claimable by, bargaining unit classifications to employees covered by this Agreement."

Although the work for the new oil company accounts was assigned to employees on the MWH payroll at the Greenfield yard, the work was performed under the Company's supervision and Wyoming yard employees were also assigned to perform the work. The Company's trailers and containers used in hauling the sludge were interchanged between the two yards, and Wyoming yard mechanics repaired the Company's vehicles used in performing the work, both at the Wyoming yard garage and at the Greenfield yard. Wyoming yard driver Emanuelsen was assigned with his 3500-gallon vacuum tank truck to work with the MWH drivers in cleaning oil company tanks.

Thus in June, when President Madias repurchased the MWH capital stock from the Company's general manager Chapman and placed the 11 MWH employees on the Company's own payroll (leaving MWH a dormant company again), these new company employees continued to perform bargaining unit work.

On July 2 the Company transferred the remainder of its tank cleaning and the hauling of both hazardous and nonhazardous sludge and liquids from the Wyoming yard to the Greenfield yard. This was the fourth relocation of bargaining unit work in a 10-year period. Although part of the bargaining unit work (the hauling of solid rubbish and asbestos waste) remained until the trial in December at the Wyoming yard, I find that the relocation obviously was covered by the Company's agreement with Local 247 (G.C. Exh. 2, art. I, sec. 1, 2d par. p. 2) that the terms of the agreement "shall cover all accretions to or relocations of bargaining unit operations."

2. Replaced employees or accretion to bargaining unit

The evidence shows that the Company was engaged in “the substitution of one group of workers for another to perform the same task,” as the Board in *Dubuque Packing Co.*, 303 NLRB 386 (1991), quoted from Justice Stewart’s concurrence in *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 224 (1964). This would be obvious if the Company had relocated the tank cleaning and the hauling of hazardous and nonhazardous sludge and liquids (including the work for the new oil company accounts) to the Greenfield yard and replaced bargaining unit employees with new employees. That, I find, is precisely what the Company did indirectly, for the purpose of displacing Local 247.

Without notice and in violation of the subcontracting provision in its agreement with Local 247, the Company first subcontracted to MWH its tank cleaning and sludge hauling for its new oil company accounts. It next placed the 11 MWH employees on its own payroll, recognized Local 283, and about 2 days later signed a less costly agreement with Local 283 to cover the Greenfield yard employees. With this agreement in place, the Company then relocated the remainder of the bargaining unit tank cleaning and sludge and liquids hauling—together with the trucks and other equipment—to the Greenfield yard. It laid off six bargaining unit employees and required the five employees who were transferred or rehired at the Greenfield yard to work under the Local 283 agreement.

“In furtherance of the statutory duty to protect employees’ right to select their bargaining representative, the Board follows a restrictive policy in finding accretion.” *United Parcel Service*, 303 NLRB 326 (1991). The Board held in *Gould, Inc.*, 263 NLRB 442, 445 (1982), cited in *United Parcel*:

In determining whether a new facility or operation is an accretion, the Board has given weight to a variety of factors including integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, and interchange of employees. In the normal situation some elements militate toward and some against accretion, so that a balancing of them is necessary. Where the new employees are found to have common interests with members of an existing bargaining unit and would have been . . . covered by the current collective-bargaining agreement an accretion is found to exist.

Here, the tank cleaning and sludge and liquids hauling at the Greenfield yard was not a new operation. There was merely “the substitution of one group of workers for another to perform the same task.” I find, however, that even if this were a new operation, an accretion existed.

The operations have been integrated. After laying off mechanics helper-yardman Faunce on July 2, the Company assigned former MWH laborers Matthew and Simmie Adkins to perform his work at the Wyoming yard (Tr. 141, 174–175). Former MWH driver-mechanic Duffield worked with other employees at the Wyoming yard garage about 2 or 3 weeks, repairing his Greenfield yard truck (Tr. 231–232). Before August 27, Wyoming yard mechanic Thompson serviced trucks assigned to the Greenfield yard. Since August 27

(when he was transferred to the Greenfield yard) until the trial months later, he has serviced trucks assigned to the Wyoming yard. (Tr. 127–128.)

The Company had a superintendent in charge of trucking (Robert Martin, G.C. Exh. 24) and a general manager (Harvey Sargent), who had an office both at the Wyoming yard and at the Greenfield yard, with “duties in overseeing the operations of those yards” and “to administer discipline to employees” at both yards (Tr. 63–65). The payroll is handled at the Company’s central office and all employees are paid from the same checking account (Tr. 81).

The yards are 5 or 6 miles apart (Tr. 55). Except for the lower wages and benefits at the Greenfield yard under the Local 283 agreement, the working conditions are similar. Drivers at both yards were required to have a class 2 chauffeurs license. Skills and functions of the drivers, mechanics, and yardmen/laborers were similar (Tr. 61, 67, 208).

President Madias controlled the labor relations at both yards (Tr. 78). There had been no collective-bargaining history at MWH. After the transfer of work, there have been five employees transferred or rehired from the Wyoming yard, as found above.

On balance, I would find that the facts of this case meet the restrictive policy requirements for finding accretion. I therefore would find that the 11 employees hired from MWH at the Greenfield yard had common interests with the 14 employees in the bargaining unit at the Wyoming yard and that the new employees constituted an accretion to the bargaining unit represented by Local 247.

Accordingly I find that the collective-bargaining agreement (containing compulsory union security, G.C. Exh. 4, p. 3) that the Company signed about June 27 with Local 283, covering employees who were already a part of the bargaining unit represented by Local 247, constituted unlawful assistance to Local 283, violating Section 8(a)(2) and (1) of the Act.

3. Refusals to negotiate

On July 3, the day after the transfer of work and equipment to the Greenfield yard, Local 247 Secretary-Treasurer Hollowell wrote to President Madias complaining about the Company’s operating in a second place nonunion and “requesting immediate negotiations for the Melvindale location under the terms and conditions of our current Collective Bargaining Agreement” (G.C. Exh. 10).

On July 5 the Company responded with a letter backdated July 2, terminating the Local 247 agreement on its September 30 expiration date and stating that the Company “will not enter in negotiations for reopening or renewal” of the agreement. The letter cited loss of business, economic hardship, and escalated costs “beyond the Company’s ability to provide services competitively.” (G.C. Exh. 7; Tr. 74.)

In response to Hollowell’s August 8 request to commence bargaining for a new agreement (G.C. Exh. 11), Company Attorney Barry Solomon stated in a letter dated August 21 that he understood the Company “is going to cease operations on or about the end of the contract period, and to that extent we will be more than pleased to sit down and negotiate a closing agreement” (Tr. 23). On September 21, in response to Hollowell’s repeated requests to negotiate, Solomon again suggested negotiating “a closing agreement . . .

because of the company's plans to cease doing business" (R. Exh. 3).

Despite these assertions by the attorney, the Company has not given any indication that it now in fact intends to relinquish its substantial business in hauling rubbish and asbestos waste. President Madias admitted at the trial that the Company bought "new vehicles for use in the Wyoming operations" and that the vehicles are being "used in the rubbish hauling operation" (Tr. 60–61). He also admitted there were "Between four and five" employees in the rubbish hauling operation (Tr. 43).

When called as the Company's only defense witness near the close of the trial, Madias merely testified that his plans "after July of 1990" were to disband the rubbish operation—not his present plans (Tr. 270). The record does not reveal whether, by retaining its rubbish-hauling customers several months after its September 30 termination of the Local 247 agreement, the Company plans to relocate this part of the business to the Greenfield yard on closing the Wyoming yard.

I find that the Company, by refusing since July 3 to recognize and bargain with Local 247 as the representative of bargaining unit employees at the Greenfield yard, has unlawfully refused to bargain, violating Section 8(a)(5) and (1).

I also find that the Company, by refusing since August 8 to negotiate for a renewal of its collective-bargaining agreement with Local 247 covering the bargaining unit employees at the Wyoming and Greenfield yards, has further refused to bargain in violation of Section 8(a)(5) and (1).

CONCLUSIONS OF LAW

1. By refusing since July 3 to recognize and bargain with Local 247 as the representative of bargaining unit employees at the Greenfield Road yard and refusing since August 8 to negotiate for a renewal of the collective-bargaining agreement with Local 247 covering an appropriate bargaining unit of employees at the Wyoming Avenue and Greenfield Road yards, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

2. The following is an appropriate bargaining unit:

All full-time and regular part-time drivers, mechanics, and yardmen/laborers employed by Nave, Inc. at its facilities located at 4440 Wyoming Avenue, Dearborn, and 3345 Greenfield Road, Melvindale, Michigan, but excluding office clerical employees, guards, and supervisors as defined in the Act.

3. By signing with Local 283 about June 27 the collective-bargaining agreement covering employees at the Greenfield Road yard, the Company rendered unlawful assistance to Local 283, violating Section 8(a)(2) and (1).

4. By laying off drivers James Hurst and James Whitten, mechanic Gordon Wisner, and mechanics helper-yardman David Faunce on July 2; driver Thomas Adams on July 6; and mechanic Jeffrey Schultz on August 3 to discourage membership in Local 247 and to encourage membership in Local 283, the Company discriminated against them in violation of Section 8(a)(3) and (1).

5. By requiring Matthew Emanuelsen, Jose Gonzalez, James Hurst, Bill Thompson, and James Whitten to work

under the Local 283 agreement as a condition for being transferred, reactivated, or rehired at the Greenfield Road yard, the Company discriminated against them to discourage membership in Local 247 and to encourage membership in Local 283, violating Section 8(a)(3) and (1).

6. By reducing since July 2 the working hours of Jeffrey Schultz, Bill Thompson, and other employees remaining at the Wyoming Avenue yard to discourage membership in Local 247 and to encourage membership in Local 283, the Company discriminated against them in violation of Section 8(a)(3) and (1).

7. By laying off bargaining unit employees without notifying Local 247 and giving it an opportunity to bargain, the Company violated Section 8(a)(5) and (1).

8. By dealing directly with bargaining unit employees for lower wages and benefits, bypassing Local 247, the Company violated Section 8(a)(5) and (1).

9. By dealing directly with an employee by offering him employment at the Greenfield yard contingent on his signing a slip to quit his bargaining unit job, the Company violated Section 8(a)(5) and (1).

REMEDY

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

Respondent Nave, Inc. having discriminatorily laid off employees, it must offer them reinstatement to their former jobs with their prelayoff wages and benefits and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of layoff to date of proper offer of reinstatement with their prelayoff wages and benefits, 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).

Respondent Nave, Inc. having discriminatorily required bargaining unit employees to work for lower wages and benefits under the Local 283 agreement as a condition for being transferred, reactivated, or rehired at the Greenfield Road yard, I find that it must make them whole for the lost wages and benefits, plus interest.

Respondent Nave, Inc. having discriminatorily reduced the working hours of employees remaining at the Wyoming Avenue yard, it must make them whole for lost wages, plus interest.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Nave, Inc., Dearborn, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off, reducing working hours, or otherwise discriminating against bargaining unit employees in an effort to

³If 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.

displace Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL–CIO as their bargaining representative.

(b) Requiring bargaining unit employees to work for lower wages and benefits under an agreement with a different local union as a condition of employment at the Greenfield Road yard.

(c) Laying off bargaining unit employees without notifying Local 247 and giving it an opportunity to bargain.

(d) Dealing directly with bargaining unit employees concerning their wages or conditions of employment.

(e) In any like or related 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) On request, bargain with Local 247 as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time drivers, mechanics, and yardmen/laborers employed by Nave, Inc. at its facilities located at 4440 Wyoming Avenue, Dearborn, and 3345 Greenfield Road, Melvindale, Michigan, but excluding office clerical employees, guards, and supervisors as defined in the Act.

(b) Withdraw recognition from Local 283, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL–CIO as bargaining representative of employees at the Greenfield Road yard.

(c) Offer Thomas Adams, David Faunce, James Hurst, Jeffrey Schultz, James Whitten, and Gordon Wisner immediate and full reinstatement to their former jobs with prelayoff wages and benefits or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered after their layoffs as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(d) Make Matthew Emanuelson, Jose Gonzalez, and Bill Thompson whole for lost wages and benefits resulting from the requirement that they work under the Local 283 agreement at the Greenfield yard.

(e) Make Jeffrey Schultz, Bill Thompson, and other remaining drivers at the Wyoming Avenue yard whole for lost earnings resulting from the reduction of working hours since July 2, 1990.

(f) Remove from its files any reference to the unlawful layoffs and notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

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

(h) Post at its facilities in Dearborn and Melvindale, Michigan, copies of the attached notice marked “Appen-

dix.”⁴ 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.

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

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

IT IS FURTHER ORDERED that the allegations in the complaint against Respondent Michigan Waste Handlers, Inc. are dismissed.

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX

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

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

WE WILL NOT lay off, cut your working hours, or otherwise discriminate against any of you in an effort to displace Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL–CIO as your bargaining representative.

WE WILL NOT require you to work for lower wages and benefits under an agreement with a different local union to work at the Greenfield Road yard.

WE WILL NOT lay you off without notifying Local 247 and giving it an opportunity to bargain.

WE WILL NOT bypass Local 247 and deal directly with you concerning their wages or conditions of employment.

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, on request, bargain with Local 247 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time drivers, mechanics, and yardmen/laborers employed by Nave, Inc. at its facilities located at 4440 Wyoming Avenue, Dearborn, and 3345 Greenfield Road, Melvindale, Michigan, but excluding office clerical employees, guards, and supervisors as defined in the Act.

WE WILL withdraw recognition from Local 283, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO as your representative at the Greenfield Road yard.

WE WILL offer Thomas Adams, David Faunce, James Hurst, Jeffrey Schultz, James Whitten, and Gordon Wiser immediate and full reinstatement to their former jobs with their prelayoff wages and benefits or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and

WE WILL make them whole for any loss of earnings and other benefits resulting from their layoffs, less any net interim earnings, plus interest.

WE WILL make Matthew Emanuelsen, Jose Gonzalez, and Bill Thompson whole for lost wages and benefits resulting from the requirement that they work under the Local 283 agreement at the Greenfield yard.

WE WILL make Jeffrey Schultz, Bill Thompson, and other remaining drivers at the Wyoming Avenue yard whole for lost earnings resulting from the cut in working hours since July 2, 1990.

WE WILL notify each of the laid-off employees that we have removed from our files any reference to his layoff and that the layoff will not be used against him in any way.

NAVE, INC.