

PJAX and MGR Management Services, Inc. and Teamsters Local Union No. 107, a/w International Brotherhood of Teamsters, AFL-CIO¹ and Robert Briggs. Cases 4-CA-19271 and 4-CA-19519

July 9, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On December 26, 1991, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondents filed exceptions and a supporting brief, and the General Counsel filed a brief in response.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.³

¹ The name of the Charging Party Union has been changed to reflect the new official name of the International Union.

² The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondents challenge, inter alia, the judge's finding that the testimony of employee Robert Briggs was more credible than that of Terminal Manager Jeffrey Hammel. We agree with the Respondents that the judge made what appear to be contradictory statements in fn. 4 concerning whether Hammel denied certain testimony by Briggs. We nevertheless find a sufficient basis for affirming the judge's crediting of Briggs' testimony, because the judge also relied on his observation of the witnesses while they testified. Thus, the judge found that Hammel "seemed tentative as he testified," while Briggs "testified with genuine certainty." In view of his demeanor findings, we affirm the judge's credibility resolution. See *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). ("[T]he demeanor of a witness may satisfy the tribunal . . . that the witness' testimony is not true," while "the Board and the reviewing court look only at cold records.")

The Respondents also contend that the judge's findings and conclusions reflect bias. After a careful review of the entire record, we find the allegations are without merit. There is no basis for finding that bias and partiality existed merely because the judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *NLRB v. Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact."

³ In his recommended remedy, the judge erroneously stated that the backpay period for purposes of making Robert Briggs whole for the unlawfully withheld raise began in May 1990. The record, as well as the judge's findings, establishes that this backpay period starts in October 1990.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, PJAX, Bristol, Pennsylvania, and MGR Management Services, Inc., Pittsburgh, Pennsylvania, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

Margaret M. McGovern, Esq., for the General Counsel.
William A. Gray, Esq. (Vuono, Lavelle & Gray), of Pittsburgh, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried at Philadelphia, Pennsylvania, on May 28, 1991.¹ On an unfair labor practice charge, and an amended charge filed on October 4 and November 21, respectively, by the Union, Teamsters Local Union No. 107, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, in Case 4-CA-19271, the Regional Director for Region 4, referred to below as the Regional Director, issued a complaint and notice of hearing against the Respondents, PJAX and MGR Management Services, Inc. on November 29, alleging that the Respondents violated Section 8(a)(1) and (3) of the National Labor Relations Act (29 U.S.C. § 151, et seq.), by promising to rehire or reinstate an employee if Respondents' employees rejected the Union as their collective-bargaining representative, and by discharging employee Larry Briggs because he engaged in union activity.

On a further charge filed on January 23, 1991, by Robert Briggs, an individual, in Case 4-CA-19519, the Regional Director issued another complaint and notice of hearing against the Respondents on March 8, 1991, alleging that the Respondents violated Section 8(a)(1) and (3) of the Act by withholding a wage increase from Robert Briggs and suspending him for 3 days because of Respondents' employees' union activity. By his order of April 8, 1991, the Regional Director consolidated Cases 4-CA-19271 and 4-CA-19519. Thereafter, on May 8, 1991, the Regional Director amended the complaint in Case 4-CA-19519 to include allegations that Respondents violated Section 8(a)(1) of the Act by telling an employee that they could not grant a wage increase to their employees because of the Union.

The Respondents have denied committing the alleged unfair labor practices. The General Counsel and the Respondents timely filed posthearing briefs.

On the entire record, including my observation of the witnesses and their demeanor, and after considering the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent PJAX, a Pennsylvania corporation, provides trucking services from its Bristol, Pennsylvania, facility. During the year preceding issuance of each of the complaints,

¹ All dates are in 1990, unless otherwise stated.

PJAX provided trucking services valued in excess of \$50,000 directly to customers located outside the Commonwealth of Pennsylvania.

Respondent MGR Management Services, Inc. (MGR), a Pennsylvania corporation, with its main office at Pittsburgh, Pennsylvania, provides management services to trucking companies, including PJAX. The Respondents deny that MGR's business operations satisfy the Board's jurisdictional standards. The record does not show any commerce data for MGR. However, in the Stipulated Election Agreement, in Case 4-RC-17408, approved by the Regional Director on September 5, which involved PJAX's Bristol, Pennsylvania facility, the Respondents conceded that they were joint employers of the employees at that facility. In the same agreement, the Respondents also conceded that they were employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

In the instant proceedings, the parties have stipulated as follows:

At all times material, MGR has employed drivers and dock workers who perform work for PJAX and has administered a common labor policy with PJAX for the employees of MGR.

I find from the Respondents' concessions in Case 4-RC-17408, and the stipulation, which I have accepted in the instant cases, that PJAX and MGR are, and have been at all times material to these cases, joint employers, and that they are engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. *Floyd Epperson & United Dairy Farmers*, 202 NLRB 23 (1973).

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the parties have stipulated, and I find that Teamsters Local Union No. 107, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO is, and has been at all times material in these cases, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background and Issues

On September 5, the Regional Director approved the Stipulated Election Agreement between the Respondents and the Union in Case 4-RC-17408. Pursuant to that agreement, on October 5, the Regional Director conducted an election in a unit of drivers and dock workers employed at PJAX's Bristol, Pennsylvania facility. Of the 11 ballots cast, 6 were for the Union, 4 were against the Union, and 1 was challenged. On January 23, 1991, the Board certified the Union as the collective-bargaining representative for all full-time and regular part-time drivers and dock workers employed at PJAX's Bristol, Pennsylvania facility.

The issues presented here include whether, in response to union activity at PJAX's Bristol facility, the Respondents violated Section 8(a)(1) and (3) of the Act by discharging employee Larry Briggs, suspending employee Robert Briggs, and by withholding a wage increase from Robert Briggs. Further issues presented are whether the Respondents violated Section 8(a)(1) of the Act by telling employees Larry

Briggs that his reinstatement might depend on the result of the pending representation election at PJAX's Bristol facility and by telling employee Robert Briggs that he would not receive a wage increase because of the Union.

B. Larry Briggs' Discharge

1. The facts

The Respondents employed Larry Briggs (Larry) as a full-time tractor-trailer driver at PJAX's Bristol facility, from mid- or late June until Labor Day. MGR carried Larry on its payroll as its employee. However, PJAX management supervised his work. Larry's work consisted of making freight deliveries from the PJAX facility and picking up freight for return to the same facility, within an approximately 50-mile radius of Philadelphia, for 10 to 12 hours per working day.

At all times material to these cases, PJAX's Bristol facility operated under the immediate supervision of Terminal Manager Jeffrey Hammel. Jeffrey Hammel reports to his brother, Donald Hammel, who is PJAX's president. Donald Hammel's office and PJAX's corporate headquarters are in Pittsburgh, Pennsylvania. I find from Donald Hammel's testimony that in the course of PJAX's business, the brothers have frequent telephone conversations.

The Union began its organizing effort at the Bristol facility in August. However, there was no showing that Larry engaged in union activity or supported the Union.

Prior to Labor Day, Larry, who had been a substitute bus-driver for a local school district, from February until June, accepted full-time employment driving a schoolbus for the same district. Approximately 1 week before Labor Day, Larry informed PJAX's Terminal Manager Jeffrey Hammel that he would quit at the end of the week, and take up his new job as a schoolbus driver.

However, on the next day, at the suggestion of Supervisor Chuck Homer, Larry approached Terminal Manager Hammel and offered to work part time at PJAX. Larry wanted to work for PJAX during the day, between his schoolbus runs, and in the evening, after he had completed his schoolbus driving for the day.

Larry said he would go to work at PJAX for a whole day, when he was off from driving for the school district. Larry also warned that there would be days when the school district's demands would prevent him doing any work for PJAX. Hammel readily accepted Larry's proposition without reservation.

Larry, remained an MGR employee, and began his part-time employment at PJAX, on Tuesday, September 4. Because of an accident, Larry did not work for PJAX on September 7, 8, and 11. Following this first week, PJAX employed Larry an average of 40 hours weekly. Larry worked at PJAX before and after his twice daily schoolbus runs. Thus, he would work at PJAX, for 2 hours, early in the morning, return to PJAX at 9 or 9:30 a.m., work until 1 or 1:30 p.m., and then return to PJAX late in the afternoon, and work there until 8 or 9 p.m.. During this employment at PJAX, Larry did some driving. For the most part, however, he performed dock work.

On Tuesday, October 2, Larry came to work at PJAX at approximately 4:30 p.m., and began working on the terminal's dock. Terminal Manager Jeffrey Hammel approached Larry, and began talking. The two moved away from the

other employees on the dock. Hammel stated that he had just ended a telephone conversation with his father, who was pretty sure that Larry's brother, Robert, had started the Union. Jeffrey Hammel added, in substance, that because of Robert's role in the effort to bring in a union, PJAX could not employ Larry "until this thing blew over." Larry's immediate response to Hammel's remarks was: "[D]oes this mean I have to go home?" Hammel answered yes.² I find from Donald Hammel's testimony that, as of October 2, PJAX employed his and Jeffrey Hammel's father as a consultant.

Larry punched out, went to Jeffrey Hammel's office, and asked Hammel if "until this thing blows over" meant "the union thing." Hammel answered yes. Larry responded, asking: "If the union loses, will you get me my job back?" Hammel replied, in substance, that in that event, he would look into it.

On the same evening, Western Union telephoned the following mailgram message to Larry at his home:

Dear Mr. Briggs,

On or about September 4, 1990 you informed the terminal manager of PJAX's Bristol facility that you had taken a position as a bus driver and would only be available between the hours of 9:30 AM and 1:30 PM. As I am sure you are aware the companies business is extremely service oriented to accommodate the schedules of their customers needs, not our own. In order to satisfy these needs we must have full time employees and have no provisions for part time drivers for this facility.

We must also consider the compliance requirements regarding hours of service regulations as set forth by the Department of Transportation which would virtually be impossible to maintain properly.

Weighing these factors, we have no recourse but to terminate your services as an employee with MGR Management Services, Inc., effective immediately. Your file is being closed and your final check will be mailed to you.

Sincerely,

M G R Management Services Inc., Max G Rein
President 2987 Babcock Blvd.
Pittsburgh PA 15237

Three or four weeks after Jeffrey Hammel had terminated him, Larry received a letter, dated October 2, from MGR

²Conflicts between the testimony of Jeffrey Hammel and Larry Briggs raised important issues of credibility. Jeffrey Hammel testified that when he hired Larry as a part-time driver, he, Jeffrey said he was doing so on a trial basis. According to Larry's testimony, Jeffrey hired him on a part-time basis, without reservation. In his testimony, Jeffrey also denied telling Larry, on October 2, that he was being terminated because of his brother's involvement with the Union. However, unlike Larry, who was allowed to testify fully and forthrightly on direct examination, Jeffrey was, for the most part, carefully led by Respondent's counsel regarding these two incidents. At times, Jeffrey Hammel's demeanor evidenced uncertainty about what he had said, as he qualified his answers with "to the best of my knowledge" or "I think my answer to him was . . ." Thus, of the two, Larry impressed me as being the more reliable witness. Accordingly, I have credited Larry Briggs' testimony where it conflicts with Jeffrey Hammel's.

Management Services, Inc. with the same message set out in the quoted mailgram.

On the evening of October 2, Larry notified the Union of his termination, in a conversation with its head organizer and business agent, William Hamilton. On the following day, Hamilton telephoned Jeffrey Hammel and asked him if he had fired Larry. Hammel said no, adding that Larry had quit. Hamilton suggested that Hammel reinstate Larry. Hammel disclaimed authority to honor Hamilton's suggestion, and said that he would have to consult his father in Pittsburgh.

The Regional Director conducted the representation election in Case 4-RC-17408, at PJAX's Bristol terminal, on October 5. The Union won. During the election, Jeffrey Hammel saw Larry acting as an observer for the Union, and objected to his presence. A Board agent overruled this objection.

In her posthearing brief, dated July 10, 1991, counsel for the General Counsel asserted that Larry Briggs had declined an offer of reinstatement.

2. Analysis and conclusions

Section 8(a)(3) of the Act prohibits an employer from discriminating "in regard to . . . tenure of employment or any term or condition of employment to . . . discourage membership in any labor organization." Where the record shows that an employer's opposition to union activity was a motivating factor in a decision to discharge an employee, the employer will be found to have violated the Act unless the employer shows that the discharge would have occurred even in the absence of the protected activity. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 400, 403 (1983). Accord: *D & D Distribution Co. v. NLRB*, 801 F.2d 636, 641-642 (3d Cir. 1986). Where the employer's explanation for its action are pretextual—that is, if the reasons either did not exist or were not in fact relied on—the employer has not met its burden, and the inquiry is logically at an end. *Limestone Apparel Corp.*, 255 NLRB 722 (1981), *enfd.*, 705 F.2d 799 (6th Cir. 1982); *Wright Line*, 251 NLRB 1083, 1084 (1980), *enfd.* on other grounds 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

The required unlawful motivation may be shown not only where the employer has discharged an employee in retaliation for his or her union activity, but also where the employer has discharged an employee because he or she was related to an employee engaged in union activity. *Carrizo Mfg. Co.*, 214 NLRB 171, 181 (1974). For by firing an employee because of his or her relative's union activity in support of a union's organizing campaign, an employer's apparent purpose is to discourage the union activist and other employees, who might be union supporters, from assisting the union. *NLRB v. Advertiser's Mfg. Co.*, 823 F.2d 1086, 1088 (7th Cir. 1987). As the Court of Appeals for the Seventh Circuit stated: "To retaliate against a man by hurting a member of his family is an ancient method of revenge, and is not unknown in the field of labor relations." 823 F.2d at 1088. Cited with approval in *Kenrich Petrochemicals v. NLRB*, 893 F.2d 1468, 1478 (3d Cir. 1990).

The General Counsel contends that the Respondents violated Section 8(a)(3) and (1) of the Act by discharging Larry Briggs because they believed that his brother, Robert, was responsible for bringing on the Union's organizing campaign at PJAX's Bristol facility. Respondents urge rejection of the

General Counsel's position, arguing that the record does not show the required unlawful motive. Instead, Respondents assert that the record shows that business reasons caused them to discharge Larry. Guided by the doctrine which the Board has expressed in *Wright Line*, supra, 251 NLRB 1083, 1084, and for the reasons recited below, I find merit in the General Counsel's contention.

Terminal Manager Jeffrey Hammel's remarks to Larry on October 2, 3 days before the scheduled representation election at PJAX's Bristol terminal, made clear that Respondents were firing Larry with that event in mind. Hammel announced that he was getting rid of Larry because of Larry's brother's leading role in bringing on the Union's organizing campaign among PJAX's Bristol employees. Then, when Larry asked if he would be reinstated if the Union lost the representation election, Hammel's response again reflected the Respondents' hostility toward the Union. Hammel answered, in substance, that if the Union lost the election, he would refer the question to the Respondents. I also find that Hammel's answer was calculated to discourage the listening employee from supporting the Union, and thus violated Section 8(a)(1) of the Act.

That the record does not show that Larry's brother, Robert, was in fact a leading union activist or advocate at PJAX's Bristol facility did not impact adversely on the General Counsel's effort to prove the Respondent's unlawful motive. For, the Board has held that a discharge violated Section 8(a)(1), and (3) of the Act, where the employer was motivated by the belief that the discriminatee was a union supporter. *Armstrong Rubber Co.*, 283 NLRB 625, 635-637 (1987).

Here, I find from Jeffrey Hammel's remarks to Larry on October 2, and Jeffrey's close ties to PJAX's president, Donald Hammel, that PJAX's management believed that Larry's brother, Robert Briggs, was responsible for the inception of the Union's organizing effort at the Bristol terminal. I also find from Donald Hammel's testimony that he, Donald, decided that Larry was to be discharged. Jeffrey carried out that decision.

I also find from Donald Hammel's testimony and the relevant exhibits in evidence that on PJAX's instructions, and in accordance with its arrangement with PJAX, MGR followed up with confirmatory telegram and letter. In light of the close business relationship between PJAX and MGR, and their participation in the representation proceeding in Case 4-RC-17408, I find that PJAX shared with MGR the information regarding Robert Briggs' perceived union activity, and Donald Hammel's decision to fire Larry, prior to the preparation of the confirmatory telegram and letter.

From the foregoing, I find that the General Counsel has made a prima facie showing that their belief that Robert Briggs was a union activist provoked the Respondents to discharge his brother, Larry. I base my finding on the suddenness and timing of Larry Briggs' discharge, without any warning, only 3 days before a scheduled representation election at the Bristol facility, and on Jeffrey Hammel's remarks on October 2, which revealed the Respondents' motive and their hostility toward union activity.

The Respondents insist that union activity played no part in Larry's discharge. In support of this defense, the Respondents offer business reasons. However, Jeffrey Hammel's remarks to Larry on October 2 showed that Robert Briggs' per-

ceived leadership in the Union's organizing effort at the Bristol terminal motivated PJAX's decision to get rid of Larry. Thus, there is ample ground for finding that the Respondents' explanations are pretextual. However, analysis of the Respondents' attempts to justify Larry's discharge provides further support for that finding.

Respondents assert that they discharged Larry because his employment violated Federal Highway Administration regulations which limit hours of driving and, further, because he could not perform his job efficiently on a part-time basis. Before analyzing these reasons, I note factors which suggest that they were advanced to camouflage the real reason. First, there was no showing that Jeffrey Hammel or any other of Respondents' management ever warned Larry that he was driving too much or that his performance was impairing the Bristol terminal's service to customers. Neither Jeffrey nor any other official of Respondents' management raised either of these matters, when Respondents readily hired Larry as a part-time employee. More important, Jeffrey said nothing about either of these asserted problems on October 2, when he terminated Larry.

One day after he terminated Larry's employment, Jeffrey Hammel attempted to conceal the deed. For, when the Union's business agent asked if he had fired Larry, Hammel denied doing so and asserted that Larry had quit. By this untruth, Jeffrey Hammel provided further evidence of the Respondents' intent to prevent detection of the reason for Larry's departure from his job at PJAX.

According to Donald Hammel, he directed Jeffrey Hammel to discharge Larry to protect PJAX from violating Department of Transportation regulations limiting employees' driving time, and because Larry's dock work and driving were not cost effective. In arriving at these conclusions, Donald relied on Larry's timecards for the week ending September 24. However, Larry's timecards only showed when Larry punched in and punched out. They do not explain how Larry, who worked mostly on the dock, but did some driving, spent his hours at PJAX's terminal. The timecards did not tell Donald whether Larry was loading, unloading, driving, sweeping, or even standing around. Jeffrey Hammel might have provided some information on the topic, but Donald was content to rest his decision on these cards and PJAX's safety department's review of their content. No one from that department testified before me. However, according to Donald, the safety department agreed with him that Larry's 50 hours of work at PJAX that week would violate DOT regulations. How either Donald or PJAX's safety department was able to conclude that Larry was driving even 1 hour for PJAX is left to speculation. Nor am I persuaded that Donald could determine whether Larry's work was cost effective or not from those cards.

Donald admits that he did not consult Larry's daily driving logs for the same week. Nor did Donald offer any explanation for his neglect to consult these records, which the Department of Transportation requires PJAX to maintain for 6 months. Nor did he explain why PJAX did not keep Larry's log available for the hearing regarding his discharge. Counsel for the General Counsel provided copies of Larry's daily logs for September 17 through 22, which showed that he did not drive for PJAX on those dates. There was no log for Sunday, September 23. Donald testified that he did not know whether Larry drove on that date for PJAX. Donald's unex-

plained failure to check the daily logs before deciding that Larry's 50 hours of work included an excessive amount of driving suggests that Donald acted hastily to come up with a lawful reason for firing him.

Donald Hammel's unfounded accusations against Larry, and Donald's demeanor, as he testified before me, provided further grounds for rejecting his explanation for his decision to discharge Larry. When Donald testified about his claimed perception that Larry's driving exceeded Federal limits, he became agitated, and embellished his testimony with expressions of fear that this excess had threatened PJAX's existence. At another point, Donald depicted Larry as having said that driving a schoolbus was more important to him than delivering PJAX's freight. But, Donald admitted that Larry never said that to him. Nor was there any showing that Larry Briggs ever said it to anyone. Donald became particularly animated as he asserted that he had received complaints about undelivered freight, and that Larry had not delivered assigned loads. Yet, neither Donald nor his brother, Jeffrey, presented any record of such failure. Jeffrey's testimony was bare of any assertion that he criticized Larry or disciplined him for poor performance. On cross-examination, Donald frequently showed reluctance to answer, as he was unresponsive. In sum, Donald Hammel testified in a biased manner and thus cast serious doubt on the reliability of his testimony regarding Larry's discharge.

Donald Hammel's testimony did not substantiate the Respondents' stated reasons for discharging Larry. Indeed, scrutiny of Donald Hammel's assertions revealed the pretextual nature of the Respondents' defense, thus suggesting that there was another explanation for the discharge. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966). Accordingly, I find that the Respondents have failed to rebut the General Counsel's showing that Larry suffered discharge because the Respondents believed that his brother, Robert, had encouraged the Union to organize PJAX's Bristol terminal. I also find that the Respondents discharged Larry Briggs to discourage his brother, Robert, and other employees from engaging in union activity or otherwise assisting the Union. I find that by this conduct, the Respondents violated Section 8(a)(3) and (1) of the Act.

C. The Withholding of Robert Briggs' Wage Increase

1. The facts

As of May 28, 1991, the date of the hearing in these cases, Robert Briggs had been on MGR's payroll, and had worked at PJAX's Bristol terminal as a truckdriver for about 14 months. Soon after PJAX hired Robert Briggs, a salesman told him to expect a wage increase after 3 months, and a second increase after 6 months' employment. Briggs signed an authorization card for the Union on July 25. Roberts hourly wage since he began working for the Respondents has been \$10.50.³

The record shows that PJAX granted a \$.25 hourly wage increase to Bristol driver Jerry O'Reilly, effective September 14. PJAX hired O'Reilly somewhat earlier than it hired Robert Briggs.

³My findings regarding Robert Briggs' employment history at PJAX, his wage rate, and the salesman's remarks are based on Robert's credible and uncontradicted testimony.

In August, Robert asked his supervisor, Jeffrey Hammel, for a wage increase. Hammel replied that Robert would qualify for a wage increase after working at the terminal at least 2 months without missing a day. Robert pointed out that he had worked at PJAX for almost 3 months and had missed only 1 day, when his son was born. Hammel replied that this 1 day's absence had been excused. When Robert repeated his request for a wage increase, Hammel broke off the discussion without answering further.

At the end of September, Robert went to Jeffrey Hammel and said: "I'm going to be here six months come next Friday." Hammel answered: "Don't worry about it, Bob, I'll get you a raise, just don't smack up my trucks no more."

In October, Robert approached Jeffrey Hammel and asked about a raise. Hammel answered that he could not do anything about it. Continuing, Hammel said: "I can't give out any raises because of the union."

Robert made a final unsuccessful attempt to obtain a wage increase in December. Again, Jeffrey Hammel answered, in substance, that he could not give a wage increase to Robert because of the Union. Hammel also told Robert not to worry about a wage increase "because come February, everybody is going to get a raise, and you'll be voting on a contract."⁴

2. Analysis and conclusions

The amended consolidated complaint alleges that the Respondents violated Section 8(a)(1) of the Act in October, and again, in December, when Terminal Manager Jeffrey Hammel told an employee that the Respondents could not grant wage increases to employees because of the Union. I have found above, that Jeffrey Hammel told employee Robert Briggs in October, and again in December, that he, Jeffrey, could not seek a wage increase for Briggs because of the Union. Hammel's remarks occurred against a backdrop of the Union's organizing effort, and the representation election which occurred at PJAX's Bristol facility on October 5. I find that by Hammel's remarks, in October, and again in December, implying that union activity and the Union's organizing effort had caused the withholding of Robert Briggs' wage increase, the Respondents violated Section 8(a)(1) of the Act. *Otis Hospital*, 222 NLRB 402, 404 (1976), enf'd. 545 F.2d 252 (1st Cir. 1976).

Applying the Board's doctrine set out in *Wright Line*, supra, 1084, I find ample ground for the General Counsel's contention that the Respondents withheld a wage increase from Robert Briggs, because they believed that he was re-

⁴My findings of fact regarding Robert's requests for a wage increase and Jeffrey Hammel's responses to them are based on Robert's testimony. Jeffrey denied that Robert came to him before the representation election and asked about a raise. Jeffrey also admitted that after the representation election, Robert asked him about a wage increase, and that he, Jeffrey rejected the request and explained that "it was part of the collective bargaining." However, Jeffrey did not dispute Robert's testimony regarding a conversation at the end of September, in which Jeffrey had raised the topic of Robert's wage increase. I also noted that Jeffrey seemed tentative as he testified about his explanation to Robert. In contrast, Robert testified with genuine certainty, as he gave his recollection of conversations with Jeffrey about a wage increase. This contrast, and Robert's unchallenged, plausible testimony regarding Jeffrey's remarks to him at the end of September, convinced me to accept Robert's testimony regarding his quest for a wage increase.

sponsible for the Union's organizing effort at the Bristol facility. At the end of September, Jeffrey Hammel said that he would obtain a wage increase for Robert. On October 2, 3 days before the Board-held representation election at the Bristol terminal, Jeffrey learned that PJAX believed that Robert was responsible for the Union's presence among the Bristol terminal's employees. That same day, Jeffrey, acting on behalf of the Respondents, fired Robert's brother as a reprisal. Thus did the Respondents show their strong union animus and their hostility toward Robert.

Respondents showed their preoccupation with the Union in October, and again in December, when Jeffrey Hammel, in rejecting Robert's requests for a wage increase, raised the Union as an excuse for not granting it. Hammel's remarks suggested that the Union's organizing effort, and employee support for the Union at the Bristol terminal were to blame for the withholding of Robert's wage increase. Thus, the General Counsel has made a prima facie showing that the Respondents' decisions to withhold a wage increase from Robert Briggs in October, and again in December, were motivated by hostility toward the Union and its supporters and a desire to discourage union activity among the Bristol terminal's employees.

The Respondents argue that the record showed that business reasons motivated their decision to withhold a wage increase from Robert Briggs. The Respondents offer two reasons. The first is based on Jeffrey Hammel's testimony that he told Robert that "it was part of the collective bargaining, and that, no, he couldn't receive one." The second reason, offered through Donald Hammel's testimony, is that Robert did not deserve it. I find the Respondents' reasons fatally lacking in substance.

At the outset, I note two infirmities in the Respondents' proffered reasons. First, Jeffrey mentioned neither of them in his remarks to Robert in October and December. Instead, I have found that Jeffrey blamed the Union on both occasions. Second, Donald Hammel's testimony is inconsistent with what Jeffrey told Robert and suffers from internal contradiction. Thus, early in his testimony, Donald Hammel testified that the only reason Robert Briggs did not receive a wage increase was that Robert did not deserve one. Later in his testimony, Donald asserted that in October, he refused Jeffrey's request for a wage increase for Robert Briggs saying, "this is part of what we're bargaining with the union on, wages are a bargaining issue." However, according to the Respondents' brief, there were two reasons. Respondents' failure to give these reasons to Robert, the inconsistencies between Jeffrey's remarks to Robert, Donald Hammel's testimony and Respondents' brief, and the internal conflict in Donald's testimony, imply that the Respondent's defense consists of hastily contrived excuses offered to mask the real reason for denying a wage increase.

These excuses do not withstand analysis. Having credited Robert's testimony, I have found, contrary to Respondents' assertion, that in October and December, Jeffrey Hammel did not mention the obligation to bargain with the Union as a bar to their granting a wage increase to Robert. Instead, I found that Jeffrey unlawfully blamed the Union for blocking Robert's wage increase.

Nor was there explanation for Respondents' asserted belief that Robert did not deserve a wage increase. Donald Hammel, whose testimony contains that assertion, did not

elaborate.⁵ Respondents did not provide any other evidence to show why they believed that Robert did not merit a wage increase in October and in December. Thus, the Respondents have failed to rebut the General Counsel's prima facie showing of unlawful motivation.

In sum, I find that Respondents refused to grant a wage increase to Robert Briggs, in October, 6 months after he began his employment at PJAX, and again in December, because they believed that he was responsible for the Union's organizing campaign at PJAX's Bristol terminal and to discourage him from supporting the Union. I also find that by this discriminatory conduct the Respondents violated Section 8(a)(3) and (1) of the Act.

D. Robert Briggs' 3-Day Suspension

1. The facts

On January 16, 1991, Robert Briggs made an overdelivery to Lower Bucks Hospital. He delivered a shrink wrapped pallet of a boxed product which had originated at PJAX's customer, Ross Abbott Laboratories. I find from Larry Briggs' uncontradicted testimony, that PJAX uses shrink wrapping to keep a palletized order together. On January 16, 1991, all the cases in the upper half of the shrink wrapped load, which Robert Briggs delivered to Lower Bucks Hospital, were marked for delivery to the hospital. Thirty cases, lower down in the load, were destined for Thrift Drug. Robert had checked his trucking manifest before embarking on the day's deliveries, and had noted a delivery for Thrift. However, he had not checked the contents of his truck, to match the freight to the manifest.

When Robert arrived at Thrift Drug, he had nothing to deliver. He telephoned Jeffrey Hammel, who said the hospital had called to report the overdelivery. Robert protested that because all the Abbott Laboratories' product had been on a single, shrink wrapped pallet, he had assumed that the entire pallet load was for Lower Bucks Hospital.

Jeffrey did not respond to Robert's explanation of the misdelivery. Nor did Jeffrey raise the possibility of disciplinary action or mention anything about an investigation. He instructed Robert to proceed with his deliveries. When Robert called later in the day, to report that his truck was empty, Jeffrey directed him to make pickups, and did not refer to either the misdelivery or to any discipline for it.

Robert worked on Thursday. He saw Jeffrey Hammel during the day. Jeffrey said nothing about the previous day's incident or about any possible repercussions. On the evening of Friday, January 18, 1991, Robert found a suspension letter stapled to his timecard, after he had punched out for the day. The letter announced Robert's 3-day suspension.

On learning of his suspension, Robert Briggs immediately sought an explanation from Jeffrey Hammel. Robert complained, asking why he had been suspended, when the incident involved was not his fault, "since it was all on a stretch wrapped pallet." Jeffrey answered, in substance, that Robert

⁵ Donald Hammel's curt tone and annoyed attitude when I questioned him on this topic suggested a considerable lack of respect for the forum. A further infirmity in Donald's testimony regarding the withholding of Robert's wage increase, was the self-contradiction discussed earlier in my analysis. This flaw and his demeanor irreparably damaged the credibility of his testimony regarding the Respondents' reasons for not giving Robert a wage increase.

should have counted the load. Robert asked why he should have counted the load, if it was "all on a stretch wrapped pallet, and all the top boxes . . . say Lower Bucks Hospital."

Robert Briggs went on to ask Jeffrey Hammel if the dock worker, who had loaded the truck with the stretch wrapped pallet, would suffer suspension. Hammel answered that "MGR asked me that, also. I told MGR, no, not to suspend the dock worker, because he did his job, he loaded the truck."

Prior to the incident of January 16, 1991, Respondents had not disciplined Robert Briggs. Nor had Robert made any misdeliveries prior to that date. However, in the previous year, Robert was involved in two vehicle accidents, while driving for PJAX. The record does not contain any documentation or testimony showing that Respondents investigated the first accident, or otherwise exhibited concern about it, either in writing, or orally.

However, the record showed that PJAX reacted to the second accident. In a letter to Robert, dated November 6, PJAX stated that its investigation of an accident which had occurred on October 18 showed that he had pushed a dumpster into a building with his truck. The letter ended with: "You will be advised of your status through your employer, MGR Management Services, Inc." The record did not disclose any further communication from either PJAX or MGR Management Services, Inc. to Robert.

The record shows that Respondents have treated other Bristol drivers with remarkably less punishment than suspension for errors in handling shipments. Respondents issued a warning to driver Thomas Austin on November 19 for delivering only one pallet, when the freight bill called for delivery of two pallets. The disciplinary notice warned that: "Any future incidents of failing to properly follow procedure will be dealt with in a more severe manner."

Respondents issued a second warning to Austin in March 1991, when he picked up only 7 pieces of a 12-piece shipment, signed for the 12 and left 5 pieces on the shippers dock. This second warning was not designated as a "warning" and did not caution Austin that Respondents would deal more harshly with him if he made another error in handling shipments.

In April 1991, Respondents issued a third warning to Austin, for delivering 31 cartons, when the shipment's documentation called for a delivery of 29 cartons. The notice complained that Austin's error "will cost [PJAX] well over one or two hundred dollars . . ." However, this third warning did not accompany a suspension. Nor did it contain the threat of harsher discipline included in the first warning issued to Austin in November.

In May 1991, PJAX driver Franklin Cain received the following letter, dated May 10, 1991, from MGR Management Services, Inc.:

It has been brought to out [sic] attention that you recently picked up a shipment at Abbott Labs that was identified to be transported by another carrier, not PJAX, Inc. The order called for 355 cartons of freight consisting of sensitive medicines.

The order, you picked up in error, was returned today, May 10, 1991, with 354 cartons. Due to the additional unnecessary handling, one carton of this very

sensitive freight, was initially missing from the return delivery. Fortunately, for everyone concerned, the one missing carton was discovered at the drivers next stop and was taken back to complete the order. A rather concerning situation that would never have occurred if the freight would have gone the way it was originally routed. Not to mention all of the added expenses also involved as a result of your mistake.

I'm sure that you are aware that Abbott Labs is a major account for PJAX, Inc. Negligent actions of this nature jeopardizes [sic] and could result in loosing [sic] this valued customer. If that would occur, you, and possibly several others would become unemployed, as the jobs currently held would no longer exist!

It is a drivers [sic] responsibility, not only to properly count all orders they are assigned to pick up, or deliver, but to also be certain [sic] the freight is to be shipped by the carrier they represent.

We further understand errors regarding this critical and time sensitive freight, have occurred a number of times before, and that you have been verbally warned.

Any future negligent incidents of this nature, will result in more severe disciplinary action.

On December 5, PJAX driver Peter Pastore delivered 30 cartons of intravenous solutions from Abbott Labs to a consignee and neglected to obtain a signature at the destination. This violation of PJAX policy resulted in damage to the contents of 27 of the 30 cartons. The consignee refused to accept the damaged merchandise. PJAX issued a written warning, dated December 19, to Pastore, but did not suspend him for this error.

The warning dated December 19 came in the wake of an earlier written warning, dated October 26, for an over delivery on October 22. The earlier warning had also reminded Pastore that PJAX had verbally reproached him for similar errors in the past. Both warnings threatened "more severe disciplinary action" for "future incidents of this nature."

Notwithstanding the two warnings he had received in 1990, Pastore erred three times in January and once in March 1991. However, in disciplining him, the Respondents did not suspend him or impose any other economic penalty on him. On January 14, 1991, he made a delivery which was four cartons short. On January 15, he made a delivery which was one piece short. On both occasions, Pastore violated PJAX's policy by not calling PJAX to report the shortage. On January 23, 1991, PJAX issued a warning notice to him for both infractions.

On January 25, 1991, Pastore delivered 62 cartons of milk food to a consignee, instead of the 63 indicated on the freight bill. In response to this short delivery, PJAX issued a warning notice to him, dated January 30, 1991.

On March 14, 1991, PJAX issued to Pastore a warning notice stating that he had erred 2 days earlier, by delivering 40 pieces of merchandise on 2 skids, instead of 70 pieces on 3 skids, as required by the freight bill. The notice also attributed this shortage to Pastore's negligence in loading his truck with only two skids. Finally, the notice complained that: "This error now delays our service and cost the Company for a redelivery."

2. Analysis and conclusions

Applying the *Wright Line* test, I find, contrary to the Respondents' contention, that Robert Briggs' 3-day suspension was in retaliation for his perceived role in the Union's organizing effort at PJAX's Bristol terminal. In reaching this finding, I have rejected the overdelivery to the Lower Bucks Hospital as the real reason for Donald Hammel's decision to suspend Briggs. The circumstances leading up to the suspension, the disparity between the punishment the Respondents inflicted on Robert Briggs for one error, and that which the Respondents imposed on other employees for repeated errors, and the lack of merit in the Respondents' explanation for the difference in treatment, compelled me to find a violation here.

Donald Hammel's decision to suspend Robert Briggs came in the wake of Respondents' discharge of Robert's brother, and its refusal to give a wage increase to Robert. I have found that antiunion sentiment motivated both of these adverse actions, which, therefore, violated Section 8(a)(3) and (1) of the Act. The decision to punish Robert came against a background of the same union organizing effort which surrounded the discharge and the refusal to grant a wage increase. Indeed, Robert's suspension came only 3-1/2 months after the Board-held representation election at PJAX's Bristol terminal, and 5 days before the Board certified the Union as the bargaining representative of a unit of employees at that facility.

The timing of Robert's suspension, during the pendency of the representation election results, the earlier manifestations of Respondents' hostility toward him because of his perceived union activity, and the Respondents' inclination to resort to economic reprisals suggest that this punishment was unlawful. The disparity between Robert's 3-day suspension, and the lighter discipline which the Respondents imposed on other drivers for errors in delivering or picking up merchandise, completed the General Counsel's prima facie showing of unlawful motive.

At the outset, I find that Donald Hammel's testimony and the Respondents' posthearing brief disagree about why he decided to suspend Robert Briggs. According to the brief, "Robert Briggs was suspended for three days on January 17, 1991, due to his misdelivery of 'high risk' freight." According to Donald Hammel's testimony, on direct examination, and on cross-examination, he decided to suspend Robert Briggs because of the misdelivery and two driving accidents. I also find from Robert Briggs' and Jeffrey Hammel's conversation on January 18, 1991, that neither of them raised either the "high risk" or the driving accidents as a factor in Briggs' suspension. The inconsistencies between Donald Hammel's testimony, Jeffrey's remarks to Robert Briggs, and the brief, cast serious doubt on the Respondents' defense. This disarray suggests that the Respondents were grasping, seeking an acceptable excuse to mask the real reason for Briggs' suspension.

Donald Hammel's asserted reliance on Robert Briggs' two 1990 driving accidents adds to my impression that the Respondents were attempting to shore up a hastily contrived facade for the real motive behind the suspension. For, when the Respondents learned of these accidents in 1990, they inflicted no discipline on Briggs. There was no warning in 1990 that, if Briggs committed some other infraction against PJAX's work policies, the Respondents would punish him

more severely. Nor was there any testimony that Respondents orally disciplined Robert Briggs for the driving accidents. The first time the accidents became a disciplinary matter was when Donald Hammel raised them in his testimony before me. Thus, it appears that Donald seized on them as ground for punishing Robert only after the suspension had been inflicted.

The Respondents' attempts to show that Robert Briggs' single misdelivery merited disparate punishment were unconvincing. Donald Hammel appeared agitated and outraged, as he testified to being "totally appalled" when he heard of Robert Briggs' overdelivery to the Lower Bucks Hospital and inability to make a delivery to Thrift Drug, in Langhorm. Outrage again set in, when Respondents' counsel asked Donald: "Did you make the decision to give Robert Briggs a three day suspension for this problem?" Donald answered, vigorously:

Absolutely. I mean, I am totally appalled. I drove a truck for a lot of years, and never in my life did I ever go to a place without the freight on the truck. That's insane. I mean, that really is.

That is utter stupidity that you cannot look at your truck and say, "I've got Thrift in Langhorm, 30 cases, here's my 30 cases. I'd rather drive all the way to Langhorm, PA," which I have no idea how far it is from Bristol, PA, "but I'd rather drive all the way to Langhorm, get registered at Thrift in Langhorm, go through the security gate, back into their dock, and open my truck," and say, "oh, oh, I don't have this on it." "I'm going to call Jeffrey. I mean, I don't know what my job is. It isn't on the truck, Jeff." No kidding.

Donald's histrionics as he described Robert Briggs' error on January 16, 1991, cast a shadow on his credibility, but did not explain why the Respondents suspended Briggs for 3 days for 1 error, in delivering a shipment for Abbott Labs, and only warned Franklin Cain for erroneously picking up 355 cartons at the same shipper in the spring of 1991. This disparity grows, when one notes that in the warning to Cain, Respondents stated that Cain had made other errors "regarding this critical and time sensitive freight . . . a number of times before" and that Respondents had "verbally warned" him before.

Respondents' affirmative attempt to justify the disparity between Robert Briggs' 3-day suspension and the warnings issued to other drivers for misdeliveries or pickup errors fell wide of the mark. In his testimony on direct examination, Donald Hammel asserted that PJAX does not know the contents of Abbott Laboratory's shipments. Yet, when Respondents' counsel asked if the other drivers' misdeeds were as serious as Robert Briggs' misdelivery of drugs,⁶ Donald Hammel answered: "No, they were not." Counsel's question was referring to Briggs' delivery of January 16, 1991, which was an Abbott Laboratory shipment. Further, the record does not reveal the content of either Cain's Abbott shipment or of the Abbott shipment which Briggs misdelivered on January 16.

⁶On cross-examination, Donald Hammel conceded that he did not know whether the Abbott shipment, which Robert Briggs misdelivered on January 16, 1991, contained narcotics.

Nor was there any showing that Robert Briggs knew the contents of that shipment, any more than Cain knew what was in the 355 cartons, which he mistakenly picked up from Abbott in the spring of 1991. Moreover, I fail to see the relevance of the shipments' contents in comparing Cain's warnings to Briggs' suspension. In any event, I note that in their letter to Cain, the Respondents showed concern by referring to the Abbott shipment as "very sensitive freight." Despite that concern, and his other errors "regarding this critical and time sensitive freight," Respondents did not suspend Cain. As I see it, the Respondents have not shown that Briggs' misdelivery justified the disparity between his punishment and the warnings issued to Cain or the other erring PJAX drivers mentioned in this decision.

In sum, I find that Donald Hammel seized on Robert Briggs' misdelivery on January 16 as a pretext for suspending Briggs for 3 days. I also find that the record leaves little doubt that the real reason for Hammel's action was his belief that Robert Briggs had encouraged the Union to organize the employees at PJAX's Bristol terminal. Accordingly, I find that by punishing Briggs with this suspension, the Respondents violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. PJAX and MGR Management Services, Inc. are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters Local Union No. 107, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By telling a discharged employee that they would consider him for reinstatement if Respondents' Bristol terminal employees rejected the Union as their collective-bargaining representative, and by telling an employee that they could not grant a wage increase to him because of the Union, the Respondents violated Section 8(a)(1) of the Act.

4. By discharging employee Larry Briggs because they believed that his brother, Robert Briggs, assisted the Union's organizing campaign among their employees at PJAX's Bristol, Pennsylvania terminal, the Respondents violated Section 8(a)(3) and (1) of the Act.

5. By withholding a wage increase from employee Robert Briggs, and suspending him for 3 days, because they believed that he assisted the Union's organizing campaign among their employees at PJAX's Bristol, Pennsylvania terminal, the Respondents violated Section 8(a)(3) and (1) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As the Respondents discriminatorily discharged Larry Briggs on October 2, 1990, but have offered him reinstatement, which he has declined, they must make him whole for any loss of earnings and other benefits he may have suffered as a result of the discrimination against him, computed on a quarterly basis, from the date of the discharge to the date of the 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).

As the Respondents discriminatorily suspended Robert Briggs on January 18, 1991, for 3 days, and discriminatorily withheld a wage increase from him in May 1990, and again in December 1990, I shall recommend that they be required to make him whole for any loss of earnings and other benefits he may have suffered as a result of this discrimination against him, in accordance with *F. W. Woolworth Co.*, supra, plus interest as computed in *New Horizons for the Retarded*, supra.

I shall also recommend that the Respondents be required to remove from their respective files any references to the either the discharge of employee Larry Briggs or to the 3-day suspension of employee Robert Briggs, both of which I have found violative of the Act, and notify each of them, in writing, that they have done so, and that they will not use either the discharge against Larry Briggs, or the suspension against Robert Briggs, in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

The Respondents, PJAX, Pittsburgh, Pennsylvania, and MGR Management Services, Inc., Pittsburgh, Pennsylvania, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in, or support for, or activities on behalf of Teamsters Local Union No. 107, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, or any other labor organization, by discriminating in any manner against any of their employees in regard to their hire and tenure of employment, wages, or any other terms or condition of employment, because of their union membership, sympathies, or activities.

(b) Telling discharged employees that their reinstatement might be conditioned on the rejection, by the Respondents' Bristol terminal employees, of Teamsters Local Union No. 107, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, or any other labor organization, as their collective-bargaining agent.

(c) Telling employees that Respondents cannot grant a wage increase because of Teamsters Local Union No. 107, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO or any other labor organization.

(d) 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) Make whole employees Larry and Robert Briggs for any loss of pay or other benefits they may have suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision, plus interest.

⁷If 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.

(b) Remove from their respective files all references to Larry Briggs' discharge and to Robert Briggs' 3-1/2-day suspension, and notify each of them in writing that this has been done, that the discharge will not be used against Larry Briggs in any way, and that the suspension will not be used against Robert Briggs in any way.

(c) 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 amounts of backpay due under the terms of this Order.

(d) Post at Respondent PJAX's terminal at Bristol, Pennsylvania, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to the employees at Respondent PJAX's Bristol, Pennsylvania facility are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

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

⁸If 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.

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, withhold wage increases from, or otherwise discriminate against any of you for supporting Teamsters Local Union No. 107, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO or any other union.

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 NOT tell discharged employees that their reinstatement may be conditioned on your rejection of Teamsters Local Union No. 107, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO or any other labor organization as your collective-bargaining representative.

WE WILL NOT tell you that we cannot grant a wage increase to any of you because of Teamsters Local Union No. 107, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO or any other labor organization.

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 HAVE offered reinstatement to Larry Briggs, but he has declined.

WE WILL make employees Larry and Robert Briggs whole for any loss of pay or other benefits they may have suffered as a result of the discrimination against them, plus interest.

WE WILL remove from our files all references to Larry Briggs' discharge and to Robert Briggs' 3-day suspension, and notify each of them in writing that this has been done, that the discharge will not be used against Larry Briggs in any way, and that the suspension will not be used against Robert Briggs in any way.

PJAX

MGR MANAGEMENT SERVICES, INC.