

**Electrical Construction and Maintenance, Inc. and International Brotherhood of Electrical Workers, Local Union No. 24, AFL-CIO, CLC.** Case 5-CA-21500

July 10, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On November 29, 1991, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt his recommended Order.<sup>2</sup>

ORDER

The National Labor Relations Board adopts the recommended order of the administrative law judge and

<sup>1</sup>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), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We also find no merit in the Respondent's allegations implying bias on the part of the judge. In our review of the judge's decision, we find no evidence of partiality in his analysis and discussion of the evidence, or in his findings.

The Respondent excepts to the judge's finding that the Respondent admitted that the Union is a labor organization within the meaning of Sec. 2(5) of the Act. The Respondent's answer to the amended complaint stated that the "Respondent is without knowledge or information sufficient to form a belief as to the truth of [this averment] . . . ." We find that the record evidence is sufficient to establish that IBEW, Local 24 is an organization in which employees participate and which exists for the purpose in whole or in part of dealing with employees concerning the collective-bargaining matters delineated in Sec. 2(5). We rely on testimony concerning the October 2, 1990 meeting of the Respondent's employees at the union hall, the Union's October 15 and December 24 demands for recognition, and the language of the authorization cards in evidence stating that the card signer "authorize[s] Local Union No. 24, International Brotherhood of Electrical Workers (Union), its agents or representatives, to act for me or my collective bargaining agent in all matters pertaining to rates of pay, wages, hours of employment and other conditions and terms of employment." Further, in finding that IBEW, Local 24 is a labor organization within the meaning of Sec. 2(5) of the Act, we note that it was certified in February 1964 as the collective-bargaining agent for employees of Pikesville Electric Company. *Pikesville Electric Co. v. Electrical Workers IBEW Local 24*, 58 LRRM 2224, 2225 (Baltimore City (MD)) Circuit Court (1965); also see *Electrical Workers IBEW Local 24*, 207 NLRB 337 (1973).

<sup>2</sup>The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

orders that the Respondent, Electrical Construction and Maintenance, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*Steven L. Sokolow, Esq.*, for the General Counsel.  
*Andrew M. Croll, Esq.*, and *Robert Sapiro, Esq.*, of Baltimore, Maryland, for the Respondent.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Baltimore, Maryland, on September 11 and 12, 1991. Subsequently, briefs were filed by both parties. The proceeding is based on a charge filed October 4, 1990,<sup>1</sup> as subsequently amended, by International Brotherhood of Electrical Workers, Local Union No. 24, AFL-CIO, CLC. The Regional Director's complaint dated March 29, 1991, alleges that Respondent, Electrical Construction and Maintenance, Inc., of Baltimore, Maryland, violated Section 8(a)(1)(3), and (5) of the National Labor Relations Act by various statements made by its president, N. John Spiegel, by discriminatorily laying off eight named employees on October 4, 1990; and by failing and refusing to recognize and bargain with the Union. It also is requested that a bargaining order be issued.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a residential and commercial electrical contractor in the Baltimore area. It annually purchases and receives goods and materials valued in excess of \$50,000 directly from points outside Maryland. It admits that at all times material it has been an employer engaged in operations affecting commerce within the meaning of Section 2(2),(6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent is a small electrical contractor wholly owned by John Spiegel, who receives a salary as its president and principal operating official. Pete Spiegel, John's brother, is vice president and Respondent's only other officer, however, he regularly works as an electrician on Respondent's projects. John Spiegel's other brother, Mark Spiegel, lives with their parents on the same properties as Respondent's facility, sometimes referred to as the "barn." He works principally at the "barn" as supply clerk and is salaried as is the secretary, Mandy Moxey, who also was identified as being John Spiegel's girlfriend.

In September 1990, Respondent also employed the following nine electricians (classified as mechanics or helpers); Dennis Goldberger, James Forwood, Peter Bruno, Stephen

<sup>1</sup>All following dates are in 1990 unless otherwise indicated.

Chappelle, David Grauer, Duane Knudsen, Calvin Weaver, William Hardesty, and David Pindell, all hourly employees.

In late September Goldberger contacted Henry Heise, a business representative of the Union, and inquired about the possibility of union representation for the employees.

Goldberger then met with Heise at the union hall and was given a blank authorization card. On September 27, after he had filled out the card, Goldberger returned to the union hall with employee Forwood and both Goldberger and Forwood then signed and dated their cards, in the presence of Heise.

On the afternoon of October 2, Goldberger and Forwood returned to the union hall, with all the other electricians, except Pindell. The eight employees met with Heise, who discussed the benefits of union membership with them. Heise gave each of the other employees a blank authorization card, asked them to read the cards, and watched as each of them filled out his card and signed it. He told them he would visit president Spiegel the next afternoon and he then gave each of the employees "Union Yes" hats, and T-shirts and asked them to wear the hats to work on October 4, 1991.

On October 3, between 3:30 and 4 p.m., Heise went to the Respondent's office and asked to speak to John Spiegel. After he was told by the Respondent's secretary that Spiegel was out of town (although that was not true), he gave her his business card and told her he would like to speak to Spiegel about becoming a union contractor.

At some unspecified time on October 3, Knudsen told Goldberger he was revoking his card and then he called Heise to do so. Hardesty testified that he called Heise the morning of October 3 and told him to tear up the card "because, you know, I wanted to just go ahead and keep working there because it was close to me and, you know it was convenient for me to be close to home." Heise testified that Hardesty also asked him to revoke Weaver's card.

Forwood testified that he received a telephone call from John Spiegel on the evening of October 3, who told them to come to the Respondent's shop at 6:30 a.m. the next day rather than report to the "White Marsh" jobsite where he was working. Forwood asked if they were going to go to the same jobsite and Spiegel said he didn't know if they were going or not.

The next morning, October 4, all the mechanics and helpers reported to the barn (except Knudsen, Hardesty, and Weaver). Vice President Pete Spiegel arrived and gave each of the employees a letter addressed to "all employees" announcing the layoff of eight named employees. The only unit employee not named in the layoff announcement was Dave Pindell, who usually worked as a helper with Pete Spiegel. Spiegel then told the employees that the layoff had come as a surprise to him, and that he could not understand what was happening. A short while later, as Forwood was driving away from the Respondent's facility, he saw Knudsen driving towards it.

The layoff letter, although delivered on October 4, was dated October 2, and said, "Due to the company's financial situation I am forced to immediately lay off the following employees. Your last day of work will be Wed. 10/03/90." After setting forth the eight names, it stated the length of the layoff couldn't be stipulated and was signed by John Spiegel.

As a matter of fact, however, Knudsen and Weaver (who usually worked as Knudsen's helper) were immediately rehired and each put in 8 hours of work on Thursday, October

4 (as well as 8 hours overtime on Saturday). Hardesty called in sick on Thursday but subsequently was called by Respondent and returned to work the week beginning Monday October 15, where he worked 57.5 hours for the week. Knudsen's explanation of the events surrounding this occurrence is set forth in more detail below.

The day he returned to work, Hardesty had a conversation with John Spiegel at a worksite at a store in a mall. Spiegel asked Hardesty if he had anything to do with the Union and said that if he did he couldn't have his job back. Hardesty denied having anything to do with the Union, and told Spiegel that he had torn up his card. Spiegel then said that Hardesty's name was on something that had been filed with the Labor Board. Hardesty told his employer that he had called the Labor Board and told the Labor Board to take his name off of the charge. Hardesty testified he actually had not called the Labor Board, but told Spiegel that he had because "I needed my job back." Thereafter on one or more occasions Spiegel asked Hardesty whether he was sure he was not going union, and Hardesty replied no. Spiegel also had a conversation with Knudsen, assertedly after the layoff, and asked him when everyone had signed the union cards.

On October 15, Heise sent a letter requesting that the Respondent recognize the Union as the collective-bargaining representative of its employees, stating that a majority had signed valid authorization cards. A similar, certified letter dated December 24 was also sent. Spiegel admits receiving both letters; however, no response to the Union was made and no subsequent attempt was made to recall any of the laid-off authorization card signers.

A summary of timecards indicates that after the layoff Pete Spiegel and Pindell were fully employed into March 1991. Knudsen and Weaver also worked essentially continuously (except for brief periods near the Christmas holidays) until mid-February 1991, and Hardesty worked extensively through mid-January. One part-time employee worked between November and mid-February and it appears that John Spiegel regularly performed work on the jobsites, something he had not done prior to the layoffs.

The record also shows that around Thanksgiving 1990, John Spiegel told Hardesty to bring in another electrician that Hardesty had said was looking for work, Hardesty testified that after he returned there appeared to be plenty of work and that at times he worked more than 8 hours a day and more than 5 days a week, hours that were uncharacteristic of his schedule prior to October 4, as he previously had understood the Company didn't want to pay overtime. He also testified that he never saw John Spiegel performing electrical work on a jobsite prior to the layoff but that Spiegel thereafter did electrical work on a daily basis.

### III. DISCUSSION

#### A. *The Mass Layoff*

The principal issue in this proceeding is the matter of the layoff/discharge of several employees. In a case of this nature, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employees' union or other protected, concerted activities were a motivating factor in the employer's decision to terminate or lay off the employees. Here, the record shows that Respondent made a mass layoff of all its

electrician employees (except one who regularly worked as a helper for the brother of Respondent's owner), 2 days after these same eight employees signed union authorization cards and less than 24 hours after a union business agent attempted to see Company President John Spiegel, left his card (with union identification), and told Spiegel's secretary that the purpose of the visit concerned Respondent becoming a union contractor, information that admittedly was conveyed to owner Spiegel that same day.

Although the layoff notice listed employees Knudsen and Weaver, these two employees did not show up at Respondent's facility to receive the notice along with other employees and they otherwise were immediately recalled or rehired and worked a full 8-hour day the same day they purportedly were laid off. Significantly, both of these employees revoked their union authorization cards the previous day, as did Hardesty who otherwise was not there to receive his layoff notice and who was recalled or rehired a short while later.

Hardesty's return to work was accompanied by an inquiry about his union sympathies and a comment by Spiegel that he could not have his job back if he still had something to do with the Union (a comment otherwise found below to be an independent violation of the Act). This, as well as the showing discussed below that Respondent's reasons for the layoff were pretextual, is sufficient to demonstrate unlawful motivation, see *Dorothy Shamrock Coal Co.*, 279 NLRB 1298 (1986).

Under these circumstances, I find that General Counsel has met his initial burden by presenting a prima facie showing, sufficient to support an inference that the employees' union activities were a motivating factor in Respondent's decision to pretextually lay off all of its employees who had signed union authorization cards.

Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980). See *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), to consider Respondent's defense and, in the light thereof, whether the General Counsel has carried his overall burden.

Although its brief fails to directly address the *Wright Line* criteria and resulting shifting burden of proof, Respondent's defense is based on its contention that its termination or layoff of the employees was justified based upon a lack of knowledge of its employees' union activities and a serious financial situation and an inability to meet the payroll. Respondent also suggests that the fact that both union and non-union employees were laid off shows that the layoff was not retaliatory.

The alleged fact that several nonunion employees (those who had revoked their authorization cards on October 3), also were laid off along with the union activist (those who signed authorization cards), does not act as a detraction from the General Counsel's prima facie showing of discrimination, see *Vemco, Inc.*, 304 NLRB 911 (1991), and cases cited therein.

Moreover, in the instant case the overall circumstances strongly suggest that the inclusion of the three persons who had revoked their authorization cards in the layoff letter was nothing but a sham.

After the employees signed authorization cards on October 2, something triggered a reaction that caused Weaver, Knudsen, and Hardesty to call and revoke their cards the next day.

Hardesty said it was because he wanted to keep working "there" because it was close to home (jobsites, however would appear to be at various and changing locations). Weaver did not testify. Knudsen testified he didn't tell anyone about the employees signing cards or about his own revocation of his card prior to the layoff. He also read into the record a portion of his affidavit that indicates that he revoked his card because he "did not want to change jobs because I was not guaranteed to go back to work and I wasn't financially fit to change jobs at that time." Interestingly, Knudsen's testimony (he is still an employee and sometimes acts as job foreman), reflects the following exchange:

Q. And How long were you laid off?

A. A day or two.

Q. And after you—after that day or two, what happened?

A. I don't understand. When I went to the barn that morning?

Q. No. Let's talk about after you were laid off and you said you were laid off for a day or two. Can you tell us about how you came to work for the company again?

A. To come back to—

Q. Yeah.

A. —to work?

Q. Yeah.

A. I called Mr. Spiegel that morning and he told me that he did not have the financial to make payroll, that he laid everybody off. Then later that afternoon I called back and asked him when I would return back to work and he told me to come back the following day.

Q. And did he tell you why you could come back to work after he didn't have financial for you?

A. He received funds for payroll from one of his clients.

Knudsen's testimony is clearly inaccurate and is refuted by credible testimony and Respondent's own timecards and shows that he was not off for a day or two but worked a full day on October 4, the day of the layoff, as well as every day that week and 6 hours on Saturday. Also, there is no apparent reason why both Knudsen and Hardesty would be so concerned about still being able to work at the Company after signing an authorization card unless something alerted them to this possibility, such as one of the three talking to John Spiegel or his brother and receiving the impression that the Company would react with a preemptive layoff.

Inasmuch as Knudsen indicates that he spoke with Spiegel on October 3, the day before he "returned" to work, his testimony, if true in part, suggest that Knudsen spoke with John Spiegel and was aware how Spiegel would react the same day he and two others revoked their authorization cards.

Turning to the layoff notice itself, I do not credit the accuracy of the date of October 2, nor do I credit Spiegel's testimony that it was prepared on that date. As noted, it states in the future tense that the employees' "last day of work will be Wednesday 10/03/90" yet it was not given to anyone until the morning of October 4. No corroborative testimony was offered by the secretary whose initials are on the document and otherwise the date of October 2 is totally self-serving and inconsistent with the totality of the circumstances,

including Respondent's uncorroborated financial defense, discussed below.

Otherwise, I observe that witness Spiegel's demeanor and testimony was frequently evasive, reluctant, and improbable. He also was in control of documentation that was not timely produced in response to the General Counsel's subpoena. Moreover, other corroborative financial documentary records were not produced to support much of his testimony regarding financial and related matters. Accordingly, I do not credit Respondent's claim that the layoff notice was prepared prior to the time Spiegel acquired knowledge of his employees probable union activities. I also find that the continued inclusion of the names of Hardesty, Weaver, and Knudsen on the layoff list, when in fact Weaver and Knudsen were not laid off at all, was a fabrication designed to mislead and to cover up the fact that Respondent had knowledge of who had outstanding valid union authorization cards and that it was laying off only those persons.

Respondent's layoff notice cryptically refers to "the company's financial situation" as forcing an immediate layoff. Respondent's financial assertions made at the hearing, however, offer little, if any, probative or corroborative evidence that it did, in fact, have overriding financial considerations that would reasonably show an urgent need to immediately take this action and then continue its operations understaffed (but with the payment of much more extensive overtime), or without the services of any of its prior employees who had signed outstanding union authorization cards.

First, it is noted that when the Respondent attempted to obtain a continuance in this hearing it obtained documents from three separate clients asserting a need to have full staffing in order to timely complete jobs. No such documentation was offered to support its bare claims at the hearing that it was having problems paying suppliers because one of its general contractors was behind in its payments to Respondent. As noted by the General Counsel, such documents, as well as bank records, were embraced in its subpoena but were not produced by the Respondent. Respondent's only attempt to document<sup>2</sup> its financial condition was the introduction of its accountant's reports for 1988 and 1989 which each showed a significant negative net profit. Conversely, it then objected to the General Counsel's introduction of the 1990 report which showed a profit of over \$27,600 after a \$16,000 increase in officers salaries and a \$5000 increase in travel and entertainment expenses over 1989. The General Counsel ask that an adverse inference be drawn, citing *Auto Workers (Gyrodyne Co.) v. NLRB*, 459 F.2d 1329, 1336 (1972), and under the circumstances, I conclude that the Respondent has failed to support its asserted financial claims. I further find that its various proffered reasons for the immediate, midweek layoff of all of its employees, with outstanding, valid union authorization cards, are pretextual and I conclude that Respondent has failed to meet its burden of proof and failed to show that the alleged discriminatees herein would have been laid off even in the absence of their union activity.

This conclusion is reinforced by Respondent's subsequent actions in promptly "re-hiring" two employees who had revoked their union authorization cards, in its utilizing non-

union employees at extensive and expensive overtime hours in lieu of recalling laid-off employees, and in its subsequently advertising for and hiring new employees<sup>3</sup> while making no attempt to recall the laid-off employees who had displayed prounion sympathies. I therefore conclude that the General Counsel has met his overall burden and shown that Respondent violated Section 8(a)(3) of the Act as alleged in the complaint.

#### B. *Interrogation and Threat*

When Hardesty was recalled to work, Spiegel unlawfully interrogated Hardesty by asking him if he had had anything to do with the Union and questioned Hardesty about his participation in a charge filed by the Union with the Board. Thereafter, Spiegel asked Hardesty whether he was sure he was not going union again. Spiegel told Hardesty he couldn't have his job back if he had something to do with the Union and therefore clearly supplied an element of coercion and I therefore find that Respondent is shown to have violated Section 8(a)(1) of the Act in this respect, as alleged.

It appears that Knudsen also had a conversation with Spiegel about who had signed cards, however, the timing of the conversation after the layoff is somewhat unconvincing and it appears likely that it could have occurred prior to the layoff and have been an element in Knudsen's decision to revoke his authorization card. Under these circumstances I find a separate finding on interrogation would be cumulative and I conclude that it is unnecessary to find a separate violation in the elements of the Spiegel-Knudsen conversation.

#### C. *The Bargaining Unit and Majority Status*

The complaint alleges that an appropriate unit consists of, "All full-time and regular part-time mechanics and helpers employed by the Employer at its Baltimore, Maryland facility, but excluding all other employees, including office clerical employees, guards and supervisors as defined in the Act." Respondent otherwise fails to take a position regarding an appropriate unit but argues that the record does not support a finding that at least five of the nine employees asserted to be in the unit designated the union as their representative.

First, I accept the General Counsel's showing that the eight mechanics and helpers listed in this layoff notice, plus helper Dave Pindell, made up the unit at the time of the layoff (this excludes owner John Spiegel, his secretary, his brother and vice president, Pete Spiegel, and his brother and salaried supply person, Mark Spiegel).

Four persons (Peter Bruno, James Forwood, Dennis Goldberger, and David Grauer) testified and affirmed their designation of the Union as their bargaining representative on or before October 2.

Union Agent Heise also introduced a signed authorization card from employee Steve Chappelle dated October 2, which he obtained at the meeting of that date and which was in his custody until he turned it over to the Board. Heise saw all of the group collectively make out and sign the cards. Knudsen and Grauer each specifically said Chappelle was there as

<sup>2</sup>In keeping with an objection by the General Counsel, Respondent's proposal Exh. 4 is rejected because it was not produced in response to the subpoena.

<sup>3</sup>John Spiegel's affidavit in support of a motion for continuance dated September 10, 1991, states that he is currently working in the field as a mechanic due to a shortage of personnel and that its current work force totaled 12 men.

they all signed cards and Grauer recalls that Stephen Chappelle was right next to him as the cards were being signed. Chappelle was subpoenaed but the General Counsel was informed he was not presently in the area. Otherwise, the Respondent failed to produce any of the subpoenaed business records from which a comparison of signatures could be made (such as withholding forms), and I infer that such a comparison would show the signature to be valid. The Respondent presented no evidence to the contrary and, accordingly, I find that Chappelle's authorization card constitutes reliable, probative evidence which affirmatively shows that the Union held five valid, unrevoked authorization cards, and therefore had majority status on and after October 2, 1990.

#### D. Refusal to Recognize or Bargain and Request for a Bargaining Order

The Respondent received letters from the Union noting majority status and demanding bargaining on October 15 and again on December 24. Spiegel merely forwarded the request to his lawyer and admittedly made no subsequent effort to satisfy the Company's obligation to bargain with the Union. There is no evidence that any new employee was hired prior to November 11, and, accordingly, I find that the record shows that Respondent's conduct is in violation of Section 8(a)(5) of the Act, as alleged.

Under the holding of the Court in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), a bargaining order is an appropriate remedy for violations of Section 8(a)(1) of the Act, where it is shown that a union obtained signed authorization cards from a majority of the employees in an appropriate unit, and, after the union had attained majority status, the employer undermined the union majority status and made the likelihood of a fair election impossible.

In consideration of the nature and extent of Respondent's unfair labor practices discussed above, it is concluded that the General Counsel has shown that Respondent's illegal mass layoff of the majority of the bargaining unit immediately after learning of the employees' union activities, its following subterfuge in rehiring only those who had promptly disavowed any union sympathies and revoked their union authorization cards, its illegal interrogation and threat, and its refusal even to communicate with the Union regarding the recognition and bargaining demand constitute a valid basis for the imposition of a bargaining order.

Here, the impact of Respondent's actions are heightened by the small size of the bargaining unit and the direct involvement of the company owner and president in the illegal activities, see *NLRB v. Bighorn Beverage Co.*, 614 F.2d 1238 (9th Cir. 1980), which enforced a Board *Gissel* bargaining order.

These factors demonstrate conduct which is so serious and substantial in effect that a fair election untainted by the undermining impact of Respondent's retaliatory conduct would be unlikely. No mitigating circumstances are shown that would indicate that a fair election is possible and, it is necessary and appropriate to grant a bargaining order because, given the gravity of Respondent's misconduct, the Union's card majority provides the more reliable test of employees' desires than a contested election. Accordingly, I find that a bargaining order is shown to be justified.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The unit appropriate for collective bargaining is

All full-time and regular part-time mechanics and helpers employed by the Employer at its Baltimore, Maryland facility, but excluding all other employees, including office clerical employees, guards, and supervisors as defined in the Act.

4. By interrogating employees concerning their union sympathies and activities or those of other employees and by stating that an employee can retain his job only if he has nothing to do with the Union, Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

5. By discriminatorily laying off employees Peter Bruno, Stephen Chappelle, James Forwood, Dennis Goldberger, David Grauer, William Hardesty, Duane Knudsen, and Calvin Weaver and thereafter failing to recall employees Bruno, Chappelle, Forwood, Goldberger, and Grauer, Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

6. From on or about October 2, 1990, a majority of the unit designated and selected the Union as their representative for the purposes of collective bargaining and at all times since October 2, 1990, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

7. By failing and refusing to recognize and bargain with the Union on and since October 15, 1990, while engaging in unfair labor practices which undermined the Union's majority status and which would impede the election process, the Respondent violated Section 8(a)(1) and (5) of the Act.

8. A bargaining order is necessary to remedy the Respondent's unfair labor practices.

#### REMEDY

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

Inasmuch as I found that Respondent violated the Act by terminating five bargaining unit employees through its permanent layoff (while reinstating three employees who renounced their union authorization cards), I find it necessary to order that Respondent be required to reinstate these employees in order to restore the status quo ante existing prior to its commission of this unfair labor practice. The Board has long held that restoration as nearly as possible of the situation that would have prevailed, but for the unfair labor practice, is prima facie appropriate and that the burden rests with Respondent to demonstrate that it is not appropriate, see *R & H Masonry Supply*, 238 NLRB 1044 (1978); *Rebel Coal Co.*, 259 NLRB 258 (1981).

Respondent makes some attempt to show that events such as reductions in work resulted in subsequent reduced manpower needs. This position, however, is contrary to evidence of record which shows that Respondent had work sufficient to require frequent overtime as well as the performance of unit work by the owner and president and, after an apparent seasonal reduction, an increase in work sufficient to raise employment levels above that which existed when the pretextual layoff occurred. Under the circumstances of the case, Respondent must accept the responsibility for its precipitous and illegally motivated decision to effectuate a mass termination by so called permanent layoff.

The consequences of this case and Respondent's disregard of its statutory obligations, must be borne by the wrongdoer and, accordingly, reinstatement and backpay running until such time as an offer of reinstatement is tolled is appropriate and should be required, see *Lapeer Foundry & Machine*, 289 NLRB 952 (1988).

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to reinstate all employees terminated on October 4, and not subsequently rehired, to their former jobs or a substantially equivalent positions (dismissing, if necessary any temporary employees or employees hired subsequent to October 4, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered because of the discrimination practiced against them (including payment to employee Hardesty for the 2-week period he was laid off before being recalled), by payment to them a sum of money equal to that which they normally would have earned from the date of the discrimination to the date of reinstatement, in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),<sup>4</sup> and the Respondent remove from its files any reference to their layoff and termination and notify them in writing that this has been done and that evidence of the unlawful termination will not be used as a basis for future personnel action against them.

Inasmuch as a failure to grant a bargaining order as requested by the General Counsel would reward Respondent for its wrongdoing, *Impact Industries*, 285 NLRB 5 (1987), and as the Respondent has engaged in misconduct that demonstrates a general disregard for the employees' fundamental rights, to organize, I find it necessary to issue a bargaining order and a broad order, requiring the Respondent to cease and desist from infringing in any other manner upon rights guaranteed employees by Section 7 of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>5</sup>

<sup>4</sup>Under *New Horizons*, interest is computed at the short-term Federal rate for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest on amounts accrued prior to January 1, 1987 (the effective date of the amendment), shall be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).

<sup>5</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

The Respondent, Electrical Construction and Maintenance, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating or laying off any employees or otherwise discriminating against them in retaliation for engaging in union activities or other protected concerted activities.

(b) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, by interrogating employees concerning their union sympathies and activities or those of other employee and by stating that an employee can retain his job only if he has nothing to do with the Union.

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

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

(a) Offer Peter Bruno, Steven Chappelle, Jimmy Forwood, Dennis Goldberger, and David Grauer immediate and full reinstatement and make them and William Hardesty whole for the losses they incurred as a result of the discrimination against them in the manner specified in the remedy section of the decision and remove from its files any reference to their termination and notify them in writing that this has been done and that evidence of the unlawful termination will not be used as a basis for future personnel actions against them.

(b) Recognize and, on request, bargain collectively with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time mechanics and helpers employed by the Employer at its Baltimore, Maryland facility, but excluding all other employees, including office clerical employees, guards and supervisors as defined in the Act.

(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 amount of backpay due under the terms of this Order.

(d) Post at its Baltimore, Maryland facility and mail to all employees who were laid off on October 4, 1990, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, 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.

<sup>6</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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

#### 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 interfere with, restrain, or coerce our employees in the exercise of rights guaranteed in Section 7 of the Act by coercively interrogating employees concerning their union sympathies and activities or those of other employees or threatening that an employee can retain his job only if he has nothing to do with the Union.

WE WILL NOT terminate or permanently lay off any employees or otherwise discriminate against them in retaliation for union activities or other protected concerted activities.

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

WE WILL offer the persons named below immediate and full reinstatement to their former jobs 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 as well as William Hardesty whole for any losses they may have suffered as a result of our discrimination against them:

Peter Bruno  
Steven Chappelle  
Jimmy Forwood  
Dennis Goldberger  
David Grauer

WE WILL remove from our files any reference to the permanent layoffs of the employees named above and notify them in writing that this has been done and that evidence of the unlawful layoffs will not be used against them in the future.

WE WILL recognize and, on request, bargain collectively with the International Brotherhood of Electrical Workers, Local Union No. 24, AFL-CIO, CLC as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time mechanics and helpers employed by the Employer at its Baltimore, Maryland facility, but excluding all other employees, including office clerical employees, guards and supervisors as defined in the Act.

ELECTRICAL CONSTRUCTION AND MAINTENANCE, INC.