

**Nuclear Support Services, Inc. and Shawn Powers.**  
Case 34-CA-5701

February 28, 1994

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

On June 29, 1993, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief and a motion to reopen the record to adduce additional evidence; the General Counsel filed an answering brief and an opposition to the Respondent's motion as well as a motion to strike Addendum B attached to the Respondent's brief.

The National Labor Relations 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 the recommended Order.<sup>2</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Nuclear Support Services, Inc., Waterford, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<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.

<sup>2</sup>In denying the Respondent's motion to reopen the record to consider evidence concerning the appropriate duration of the remedy, we note that, contrary to the Respondent's assertions, the judge has not provided for a greater than make-whole remedy for the discriminatees. The judge states that because the Respondent treated Powers and Kovach as being "finished" with the Respondent, the backpay period is not cut off on the conclusion of the Millstone job—the first job following the discriminatees' layoff—but rather that the backpay period extends to subsequent jobs until such time as they are offered reinstatement. We agree that the Order properly extends the remedy beyond the Millstone job, but we note that, consistent with the rule of *Dean General Contractors*, 285 NLRB 573 (1987), the Respondent will be entitled in the compliance phase to submit evidence in support of any claim that, pursuant to generally applied nondiscriminatory policies, Powers and Kovach would not have been employed on projects after the termination of the Millstone job.

We grant the General Counsel's motion to strike Addendum B, an affidavit from an individual who did not testify at the hearing, from the Respondent's brief.

*Michael Marchionese, Esq.*, for the General Counsel.  
*Jeffrey Berger, Esq.*, of Washington, D.C., for Nuclear Support Services, Inc.

313 NLRB No. 149

**DECISION**

**STATEMENT OF THE CASE**

JAMES F. MORTON, Administrative Law Judge. The General Counsel contends that Nuclear Support Services, Inc. (the Respondent) refused to hire Shawn Powers and Robert Kovach at one of its jobsites, after they had been laid off at another of its jobsites, because they had complained about various working conditions. The Respondent contends that they were not hired because they had not made timely applications for work at the other jobsite. The complaint alleges that the Respondent's refusals to hire them violated Section 8(a)(1) of the National Labor Relations Act (the Act).

I heard this case in Hartford, Connecticut, on February 1 through 4, 1993. On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent furnishes temporary employees to public utilities to assist in maintenance work. In its operations annually it meets the Board's nonretail jurisdictional standard.

**II. THE ALLEGED UNFAIR LABOR PRACTICE**

*A. Background*

The jobsites involved in this case are at two locations where Northeast Inc. Utilities Inc. (Northeast) operates nuclear powerplants. These plants supply electricity to customers in the State of Connecticut. One of the locations is the Connecticut Yankee Atomic Power Plant (CY) in Haddam Neck, Connecticut. The other location is the Millstone Nuclear Power Plant in Waterford, Connecticut. There are three units there, Millstone I, Millstone II, and Millstone III.

Nuclear plants have to be shut down about every 12 to 18 months so that the fuel can be replaced and necessary maintenance work done. A shutdown of that type is termed an "outage." The Respondent has a master agreement with Northeast under which it provides Northeast with temporary employees who augment Northeast's own maintenance staff on the outages at CY and Millstone.

In early 1992, Powers and Kovach, the individuals whom the Respondent is alleged to have unlawfully refused to hire, had been working for the Respondent at CY. The job they were on then was nearing completion. The Respondent was anticipating that it would be furnishing employees to Northeast for an outage at Millstone in May of that year. Outages at CY and Millstone usually followed one another. The Respondent has a policy of staffing outages, covered by a master contract, from a pool of employees who have worked for it and who live nearby. Thus, the practice it followed was to notify employees, who had worked for it at CY or Millstone and who lived in the area, to report to work when an outage at CY or Millstone began.

When Powers and Kovach were laid off at CY in early 1992 and were not called to work at Millstone in May 1992, Powers filed the unfair labor practice charge in this case.

The General Counsel contends that Powers, Kovach, and other employees of the Respondent were, in the years prior to 1992, routinely hired by the Respondent at CY and Millstone outages or, at times, simply transferred between them, without their having to make a formal application each time to work at one of those outages. The General Counsel argues that the work histories of Powers and Kovach, together with other evidence, establish that they would have been routinely hired by the Respondent to work at the Millstone outage in May 1992 but for their being engaged in various activities protected by Section 7 of the Act. As noted above, the Respondent asserts that they were not hired for the Millstone outage because they applied to work there too late to its project manager.

*B. Alleged Unlawful Refusal to Hire Powers and Kovach*

1. Alleged protected activities and animus thereto

The complaint as amended alleges that the Respondent did not hire Powers and Kovach to work at the Millstone outage because they had concertedly complained to the Respondent about wages, hours, and working conditions at CY. In particular, they are alleged to have organized a protest against the Respondent's refusal to pay employees for the time they were scheduled to attend a job training session, to have protested its failure to pay holiday wages, to have sought a general wage increase, and to have voiced concern over employees being exposed to excessive nuclear radiation.

In the latter part of 1991, there were about 10 employees of the Respondent working at CY, including Powers and Kovach. On about September 11 of that year, Ron Spikes, the Respondent's assistant site coordinator there, told these employees that Northeast had scheduled a written test to be given on September 16. To prepare them for the test, Spikes gave each a voluminous study guide. He also informed them that the Respondent had scheduled a training class for them and that they were expected to forego their overtime work to attend it. Four or more of the employees, including Powers and Kovach, asked if the Respondent would pay the employees for attending the training session and were informed that it would not. Powers asked if they could have more time, a week at least, to look over the voluminous material they had just received. Spikes became "real hostile" and "screamed" that [they] would do what [he tells them] to do."

Right after the meeting ended, these employees discussed among themselves the concerns they had about the test, including the prospect of losing substantial overtime pay. That same day, they went as a group to meet with the Respondent's site coordinator at CY, Bob Monfrette. They told him that they would not attend the training session unless they were paid.

The Respondent did not offer to pay them for attending the training session. None of the CY employees attended it.

Those employees, and others, took the test on Monday, September 16. They fared poorly. On the next day, Kovach and other employees of the Respondent at CY discussed among themselves their view that the testing procedure was unfair.

On Wednesday, September 18, Monfrette met with the employees of the Respondent at CY. He distributed a memo

which stated that senior technicians who score 80 percent or better in a test "will be paid an additional .50 per hour incentive." Monfrette told them that the Respondent had wanted to "get rid of [them because they] didn't go to the training session and that he saved their jobs."

The Respondent then assigned the CY employees to work only for 8 hours each day. As they thus had no overtime assignments, they decided to attend training session for a second test being given by Monfrette on September 30, particularly in view of Monfrette's promise that those who passed, i.e., at 80 percent or better, would receive a 50-cent-per-hour raise.

It was at about this time that Kovach overheard part of a heated discussion between Monfrette and Spikes, during which Spikes was heard to say that those who do not like attending the training session should be fired.

The test given on September 30 proved to be more difficult than the employees expected. Practically all of the Respondent's employees at CY scored less than 80.

Kovach, Powers, and other CY employees continued to discuss among themselves their perception that they were not fairly treated as to the testing. As discussed below, the Respondent in January 1992 sought to mollify their feelings about the tests. In the meantime, two other matters came up, which the employees brought to the Respondent's attention.

As Thanksgiving Day 1991 approached, the Respondent's employees at CY discussed among themselves their prospects of getting paid time and a half if they worked on the Friday immediately after Thanksgiving. Powers asked Monfrette, in about mid-November whether the Respondent would pay them time and a half for the day. Monfrette replied that he would look into the matter. Kovach talked with Eddie King, one of the Respondent's supervisors of CY, about getting extra pay for working on the Friday. Kovach told King that he "was going to call the Labor Department to find out what could be done about the matter. Kovach's testimony indicates that the employees ultimately did get the extra pay, as he related that "they corrected our checks" in the following week.

In the fall of 1991, the Respondent assigned James Elkins, its former Northeastern regional manager who had just returned from military service in the war with Iraq, to assist Monfrette. Monfrette left the Respondent's employ in late December, and Elkins took over as the Respondent's project manager, not only at CY, but also at the Millstone facilities.

Late that December, the Respondent posted a notice at CY informing its employees that one of its divisions, Integrated Services, had a job "tentatively coming up" at a plant in Indian Point, New York. Kovach had worked there previously and was asked by his coworkers at CY about his experiences there. He told them that his wage rate there was low and that the exposure to radiation was high. Employees are allowed by law to be exposed, in a calendar year, only to a limited amount of radiation. In effect, Kovach was telling his coworkers that, if they took the Integrated Services job in early 1992, they would absorb so much radiation that they would quickly reach their exposure limits for 1992 and then would not be eligible to work at any nuclear plant for the remainder of the year. Several days later, project manager Elkins told Kovach that he did not know what Kovach's problem is. Kovach asked him what he was talking about. Elkins replied that Kovach was "scaring the guys . . . [that he should]

kick it in neutral and let's get this outage behind us." Kovach then said that he had radiation exposure records from the Indian Plant job and that he had brought them in to show his coworkers "what type of dose you would get." He then told Elkins that, if his coworker asked him questions, he was going to tell them the truth because he felt that Elkins would not.

On January 10, 1992, the Respondent sent a memorandum to its employees at CY which stated:

several individuals . . . have not turned in resume updates and training records. If you plan on working (at Millstone) in May/June you need to get this information turned in (as soon as possible).

Powers and Kovach, shortly before that memo was distributed, had submitted their respective resume updates to the Respondent's headquarters in Hershey, Pennsylvania.

On January 15, 1992, the Respondent had a meeting of all of its CY employees. Its senior vice president, Fred Erskine, began the meeting by apologizing for the way the tests, discussed above, had been handled. He then mentioned the upcoming job that Integrated Services would be doing at Indian Point. Powers, however, interrupted to say that, while it was nice for him (Erskine) to say he was sorry about the tests, the employees did not get the 50-cent-an-hour raise. Powers was told that that subject was closed. Kovach spoke up, saying that the employees lost \$500 in overtime pay when they attended the training sessions. Erskine resumed talking about the Integrated Services job. Kovach then commented as to his experience at the Indian Point jobsite, saying that the employees there did not get the things they had been promised. Powers asked Erskine whether the employees would be tested again at Millstone, referring to an outage at the Millstone location scheduled to start in a few months. Powers also asked if they would then be paid for attending training sessions there. He also questioned Erskine as to the prospect of employees receiving so high a radiation exposure at Indian Point that they would not be able to work for the rest of 1992. Erskine replied that that was not an issue. As the meeting approached 5:30 p.m., the time that the shift ended, Kovach asked Elkins if the Respondent would pay the employees if they stayed late. When Elkins told him that it would not, Kovach left and all the other employees left with him.

## 2. The alleged unlawful refusals

### a. *The contentions*

The General Counsel contends that Powers and Kovach were not hired for the Millstone outage in April or May 1992 because of their activities discussed above. The General Counsel bases that contention, in part, on this testimony of General Counsel's witnesses that Powers and Kovach indicated their interest in working at Millstone in the same way they previously had sought work at CY and Millstone outages and at which they had previously been routinely hired.

The Respondent asserts that they were not hired at Millstone because they did not indicate to Project Manager Elkins they were interested in working there until well after Elkins had drawn up the staffing roster in February 1992.

## 3. Powers' work history

February 1986 to June 1986—Worked for the Respondent at CY as a building maintenance employee.

September 1986 to December 1986—Worked at Millstone for another employer.

January 1987 to May 1987—Employed in heavy construction work.

June 1987 to June 1989—Worked these 2 years for the Respondent at Millstone, first as a junior mechanical maintenance technician and then as a senior technician.

July 1989 to July 1990—Worked at CY for the Respondent as a senior technician.

September 1990 to December 1990—Worked for the Respondent at a jobsite different from CY or Millstone.

January 1991–February 1991—Worked as service technician at a Millstone outage for the Respondent.

April 1991 to July 1991—Worked as a service technician for the Respondent at a Millstone outage.

July 1991 to March 1992—Worked as a service technician for the Respondent at a CY outage.

[April/May 1992— Alleged unlawful failure of the Respondent to hire Powers to work at a Millstone outage which began then].

## 4. Kovach's work history

July 1984 to October 1984—Worked for the Respondent at CY.

October 1984 to November 1985—Worked for the Respondent as an outage other than CY or Millstone.

December 1985 to May 1986—Worked for the Respondent at CY.

May 1986 to October 1987—The Respondent's Fire Area Coordinator at CY and Millstone.

October 1987 to January 1988—The Respondent's Fire Area Coordinator at CY and Millstone.

March 1988–April 1989—Worked for another employer.

April 1989 to July 1989—Worked for the Respondent at Millstone.

August 1989 to August 1990—Worked for the Respondent at CY.

September 1990–November 1990—Worked for the Respondent at Millstone.

October 1990 to January 1991—Worked for the Respondent at CY.

February 1991 to April 1991—Site Coordinator for the Respondent at another location.

April 1991 to July 1991—Worked for the Respondent on turbine deck at Millstone.

April 1991 to July 1991—Worked for the Respondent at Millstone.

July 1991 to March 1991—Worked for the Respondent at CY.

[April/May 1992—Alleged unlawful refusal of the Respondent to hire Kovach at Millstone.]

## 5. The staffing of Millstone

Project Manager Elkins had the responsibility for hiring employees of the Respondent at the Millstone outage, scheduled to begin in May 1992. In February 1992 he prepared his first draft of the names of the individuals he was considering for employment at that outage. He listed therein, as al-

ternates, the names of other individuals. Neither Powers nor Kovach was named in the draft. In subsequent drafts Elkins prepared, he listed them as not interested in working at Millstone. Elkins testified that the only reason they were not hired at Millstone was that they never had indicated interest in working at the Millstone outage until after he fully staffed that job. Powers' testimony raises an issue on that point. Powers testified that, in about the beginning of March 1992 he asked Elkins when "would we be going to Millstone." His testimony was that he expected to be transferred there as, previously, he had been routinely moved back and forth by the Respondent between CY and Millstone outages, Powers testified that Elkins did not answer him and instead "avoided the question."

As to that testimony by Powers and as to other testimony by Powers as to a later request discussed below, Elkins was asked by the Respondent's counsel whether he had any recollection of being asked by Powers about going to work at Millstone Elkins' reply was in the negative.

Powers testified that, on March 20, when he was laid off at CY, he asked Elkins when would he be going to Millstone and that Elkins replied only, "Have a nice vacation."

After his layoff, Powers called the Respondent's headquarters in Hershey, inquiring as to Millstone. His inquiries were not answered.

On May 13, 1992, he spoke via telephone with Elkins. His account thereof follows. He asked why he did not get a job at Millstone. Elkins told him that he (Elkins), Senior Vice President Erskine and Supervisor Spikes do not want him because he has so many problems with the Company. Powers said that the only problem he had was that the employees had been set up as guinea pigs in the test given them. Elkins told him that he was not devoted to the Company; that, while his work was good, he had an attitude; and that he came off as hostile. Elkins also said that he had people at Millstone with a better attitude who do not go out of their way to make waves and to embarrass the Company, unlike Powers and "several others" at CY. Elkins told him, in the vernacular, that he has a horrible attitude and that he was finished as far as the Respondent was concerned. Powers then said that he should have spoken with Elkins earlier. Elkins told him that he could not expect to waltz into a job. Powers replied that he had called Fred Koller. (Koller's office at Hershey, Pennsylvania, is the focal point for employee inquiries and records.) Elkins commented that he had not avoided Powers. The conversation ended with Powers stating that he had worked for the Respondent a long time.

Elkins' testimony respecting his discussion with Powers that day is that Powers' account is correct except that, at the outset in responding to Powers' inquiry, he told Powers that he had shown no interest in working at Millstone.

Elkins testified that in early 1992, he had asked other CY employees, whom he named, if they were interested in working at the Millstone outage and that they told him that they were not. When Elkins was asked if he had similarly questioned Powers or Kovach, he replied that he could not remember every conversation. He testified that Powers and Kovach "were extended the same amenities and courtesies given everyone else."

Mark Heinomen, Northeast's general maintenance supervisor at Millstone asked Elkins in May 1992 to hire Powers. Elkins declined, saying that there were "administrative prob-

lems." Northeast at that time had an opening to which Powers could have been assigned.

I credit Powers' testimony that he had, more than once, made clear to the Respondent and especially to its project manager Elkins his desire to work at the Millstone outage in 1992. Powers' account struck me as candid. It also was given in response to nonleading questions; it was consistent with his work history with the Respondent; and in significant areas, it was not controverted by Elkins' testimony. One aspect of Elkins' account that gave pause was the contrast between his ability to recall the names of employees whom he asked about their interest in working at Millstone and his inability to recall any such inquiry of Powers or Kovach. His assurance that they were accorded similar courtesies does not impress me as an acceptable substitute. There are other factors which persuade me that Powers' account is more probably true than that of Elkins. Elkins is not the type of person to waste time. It is unlikely that he would have told Powers, at the outset of their discussion, that he was not hired at Millstone because he did not apply in time and that he would then have gone into an extended discussion with Powers over what he himself had termed "trivial" matters. Also, if he had told Powers at the outset that he applied too late, it is likely that Powers would have responded that he had applied and that, in any event, Elkins knew from his history of employment with the Respondent, that he had looked forward to working at Millstone. The Respondent's policy, as articulated by its senior vice president, favors hiring from a local pool of its experienced employees, and supports Powers' account, not Elkins'. Another factor favoring Powers' testimony is the unwillingness of Elkins to accommodate the express request by Northeast's supervisor, Heinomen, that Powers be hired at Millstone, particularly in the light of Elkins' own testimony that the Respondent routinely accommodates similar requests. I note also that the language in the January 10 memorandum supports Powers' account; there CY employees were urged to get their resumes in if they wanted to work at Millstone. Elkins was aware, prior to his preparing his initial draft as to employees available to work at Millstone, that Powers and Kovach had filed their resumes.

As to Kovach, his testimony is that since 1984, he worked steadily for the Respondent except for two periods, when it had no work openings. His practice, whenever he was not directly transferred by the Respondent from one outage to another, had been to telephone the Respondent's main office in Hershey, Pennsylvania, for an assignment. On two occasions in 1989, according to Kovach's undisputed testimony, Elkins offered him a job at Millstone. The first offer was declined by Kovach. He accepted the second. Respecting the notice posted in January 1992 by Elkins which advised the CY employees to update their resumes if they wanted to work at Millstone, Elkins had faxed Kovach's updated resume to Hershey, Pennsylvania.

Elkins acknowledged that Kovach, like Powers, spoke up for those who do not and that "not much gets by [Kovach]."

Kovach was laid off on March 7. He obtained a short-term job at an outage in Illinois with another company. He testified credibly that he called Frank Koller at the Respondent's office in Hershey, Pennsylvania, to inform him of this. Koller was then in charge of the Respondent's management information system there which is responsible for recruiting employees and keeping their records up to date. Kovach, on

his return to his house in Connecticut, called Koller several times, asking about working at Millstone. On May 13, Koller informed him that there was no job for him there.

#### 6. Analysis

Powers and Kovach were engaged in activities protected by Section 7 of the Act where they joined with other employees in challenging the testing procedures promulgated by Spikes, in pressing for holiday pay, in discussing with co-workers the extent of radiation at Indian Point and in questioning the Respondent's senior vice president on these matters at the January 15 meeting. See *Manimark Corp.*, 307 NLRB 1059 (1992). The evidence is clear that the Respondent harbored considerable animus towards them because of their activities. Elkins, in that regard, was more than displeased with Powers' "attitude" and with Kovach's reluctance to "kick it in neutral." That he omitted their names, from the initial draft he prepared soon after the January 15 meeting of those employees he planned on hiring at Millstone, was not merely coincidence as to time. Putting these factors in context with the obviously pretextual nature<sup>1</sup> the reason proffered by the Respondent for not hiring them at Millstone, I find that Powers and Kovach were not given jobs there because they engaged in the protected conduct set out above. See *Electromedics Inc.*, 299 NLRB 928, 940 (1990). As this finding involves "a pretext discharge," it is unnecessary to apply the *Wright Line* rationale.<sup>2</sup> See *Arthur Young & Co.*, 291 NLRB 39 (1988).

If the Board were to apply *Wright Line*, I would find, for the reasons above, that the General Counsel has proved that the Respondent refused to hire Powers and Kovach at Millstone because they engaged in activities protected by the Act and that the Respondent failed to meet its burden of proof that they, notwithstanding, would still have not been hired for nondiscriminatory reasons. On that point, the Respondent proffered evidence that it had many applicants for the Millstone job and that the number of jobs there was relatively small. That does not begin to meet the Respondent's *Wright Line* burden.

The Respondent also offered evidence that Powers at one point was slow in filling out certain personnel forms and that Kovach was reluctant to wear a hard hat but Elkins expressly disclaimed those matters as having anything to do with his decision not to hire Powers or Kovach. If anything, the Respondent's offering testimony on those extraneous matters suggests that the Respondent proffered shifting defenses and that further indicates the pretextual nature of its reason for not hiring Powers and Kovach.

<sup>1</sup> The Respondent contends that Powers' statement, in his May 13 conversation with Elkins, that he should have spoken with Elkins earlier, constitutes an admission that Elkins had required the CY employees to apply to him for work at Millstone and that Powers admittedly had failed to do so. In context, that construction is not warranted. Rather, Powers had first learned from Elkins that the job he had been waiting for since March 20 was denied him, as was any further hope of work there. It is apparent that he was alluding to the obvious fact that, had he known this on March 20, he could have sought work elsewhere.

<sup>2</sup> *Wright Line*, 251 NLRB 1083 (1980).

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by having failed and refused to hire Shawn Powers and Robert Kovach to work at the Millstone outage in 1992 because they had engaged in activities protected by Section 7 of the Act.

3. This unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

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

The recommended Order shall require the Respondent to offer Shawn Powers and Robert Kovach employment at the Millstone outage or if those positions are no longer available, to substantially equivalent positions at an outage without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings suffered as a result of the discrimination against them.<sup>3</sup> Backpay shall be calculated and interest thereon computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

#### ORDER

The Respondent, Nuclear Support Services, Inc., Waterford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to hire employees because they have, concertedly with other employees, complained about working conditions

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

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

(a) As specified in the remedy section of this decision, offer Shawn Powers and Robert Kovach positions of employment and make them whole with interest for all wages and benefits they lost as a result of their not being hired to work at the Millstone outage in May 1992.

(b) Remove from its files all references to the unlawful refusal to hire Shawn Powers and Robert Kovach and notify

<sup>3</sup> As the credited evidence is that Powers was told by Elkins that he was finished with the Respondent and as Kovach was treated by the Respondent as in tandem with Powers, their backpay periods run beyond the Millstone outage of 1992 and continue until they are offered reinstatement.

<sup>4</sup> If 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.

them in writing that this was done and that the refusal to hire them will not be used against them 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 amount of backpay due under the terms of this Order.

(d) Post at its facility in Waterford, Connecticut, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice on forms provided by the Regional Director for Region 34, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and be 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.

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

<sup>5</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."

#### 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 have violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives all employee 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 fail or refuse to hire any employee because he has, together with other employees, complained about wage rates, hours of work, or other terms and conditions of employment.

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

WE WILL offer employment to Shawn Powers and Robert Kovach and WE WILL make them whole, with interest, for our unlawful failure to hire them for work because they complained to us about wages, hours and other working conditions.

WE WILL remove from our files all references to our unlawful refusal to hire Shawn Powers and Robert Kovach at the Millstone outage in April 1992 and WE WILL notify them in writing that this has been done and that our refusal to hire them at Millstone will not be used against them in any way.

NUCLEAR SUPPORT SERVICES, INC.