

United Brotherhood of Carpenters & Joiners of America, AFL-CIO and Carpenters Representation Federation and Michael Beckes. Cases 10-CA-25630, 10-CA-25822, and 10-CA-26015

February 28, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

The questions presented here are whether the administrative law judge correctly found that: (1) the Respondent violated Section 8(a)(1) of the Act by interrogating and threatening its International representatives about the activities of the Carpenters Representatives Federation (CRF); (2) the Respondent violated Section 8(a)(3) of the Act by discharging 11 International representatives because of CRF activities and by subsequently revoking an agreement to continue one discharged representative's health insurance coverage; (3) the Respondent lawfully discharged three other International representatives; and (4) the Respondent violated Section 8(a)(2) of the Act by reimbursing two International representatives for attendance at a CRF meeting where they opposed the incumbent administration of the CRF.¹

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

¹ On July 20, 1993, Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed exceptions and a supporting brief. In addition, the General Counsel filed a brief in response to the Respondent's exceptions and the Respondent filed an answering brief to the General Counsel's exceptions and a reply brief to the General Counsel's answering brief.

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

² We grant the General Counsel's motion to strike those portions of the Respondent's answering brief which refer to evidence which is not in the record of this proceeding.

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

We deny the Respondent's motion to reopen the record to introduce evidence purporting to show that Willard Masters cast an unchallenged ballot in the Board election for a bargaining unit of International representatives. We affirm the judge's finding that Masters was a supervisor within the meaning of Sec. 2(11) of the Act. Among other supervisory duties, Masters assigned and directed the work of International Representative Robert Mark Mullen. We find no merit in the Respondent's contention, predicated on *Montgomery Ward & Co.*, 115 NLRB 645 (1956), enfd. 242 F.2d 497 (2d Cir. 1957), that, even if Masters was a supervisor, his conduct could not properly be attributed to the Respondent because he was also a member of the bargaining unit. Even assuming that Masters was an uncontested member of the bargaining unit, we find that Mullen

conclusions, and to adopt the recommended Order,⁴ as modified below.

1. The judge found that the General Counsel failed to prove a prima facie case in support of the complaint allegations that the Respondent violated Section 8(a)(3) by discharging Lawrence Garcia, Paul Cecil, and Robert Mergner in October 1991.⁵ The General Counsel argues in exceptions that the judge has erred by failing to find prima facie proof of unlawful motivation based on (1) the inclusion of these three alleged discriminatees in a mass discharge with several known or suspected CRF adherents and (2) the numerous other indicia of unlawful motivation repeatedly recited by the judge in reference to that mass discharge.⁶ We agree, for the reasons stated by the General Counsel, that the record as a whole supports finding a prima facie case with respect to all alleged discriminatees in the mass discharge. We further find, however, that the Respondent met its burden of proving that it would have discharged these three employees in the absence of union activity.⁷

The Respondent discharged Garcia, Cecil, and Mergner in the wake of its annual convention. There is no evidence that the Respondent knew or reasonably suspected that any of them had been active in CRF activities prior to or during the convention. All of them, however, had engaged in activities supportive of John "Whitey" Rogers, who led a group of candidates for union office in opposition to incumbent President Sigurd Lucassen and his slate of candidates. The Lucassen slate prevailed in the election held during the convention. Thereafter, the Respondent fired Garcia because he had repeatedly criticized Lucassen's administration, stated that he did not trust Lucassen, and proclaimed that he would not work for Lucassen if Lucassen won reelection. It fired Cecil because he refused to cease supporting the Rogers' faction. Finally, it fired Mergner after Lucassen confirmed information that Mergner had assisted Rogers' supporters and violated security rules by claiming a false relationship with Lucassen in an attempt to get unauthorized persons into the convention.

Significantly, it is undisputed that Lucassen had previously fired other employees solely for political rea-

would reasonably have believed that Masters was acting for or on behalf of management when he interrogated Mullen about union activities in August 1991. *Montgomery Ward & Co.*, supra at 647.

⁴ The General Counsel contends that the Board should order the disestablishment of the CRF as a remedy for assistance provided by the Respondent in violation of Sec. 8(a)(2). We find such a remedy inappropriate for the violation found here.

⁵ All subsequent dates are in 1991, unless otherwise indicated.

⁶ We do not rely on the November 4 1988 letter from the Respondent's general president, Sigurd Lucassen, to its International representatives as prima facie evidence of animus towards the CRF.

⁷ See, generally, *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

sons. He fired his assistant, Jim Davis, in 1990 and International Representative Richard Cox in May 1991. Consequently, there is no basis for finding that the Respondent would not have discharged anyone for political activity after its convention. Furthermore, the Respondent has proved that Lucassen knew or reasonably believed that Garcia, Cecil, and Mergner had openly opposed him, that he had no corresponding knowledge or belief that they had engaged in union activity, and that he would have discharged them for their political opposition even in the absence of CRF activity. Thus, the Respondent met its burden of proving that it would have discharged these three employees in the absence of union activity. These discharges were therefore lawful. We find it reasonable to infer from the record as a whole, however, that the Respondent seized upon the opportunity presented by the internal union political situation and these lawful discharges to subvert the CRF campaign by discharging several known or suspected CRF supporters at the same time.

2. The inclusion of Representative Michael Beckes in the mass postconvention discharge involves similar considerations but leads to a different result. Contrary to the judge's finding, there is insufficient evidence to show that the Respondent knew or had reason to suspect that Beckes supported the CRF prior to his discharge.⁸ Nevertheless, for the reasons stated above, his inclusion in the mass discharge and the evidence of antiunion discrimination attending that discharge suffice to prove a prima facie case of unlawful discrimination against Beckes.

The Respondent contends that it would have discharged Beckes even in the absence of union activity because of his political opposition to Lucassen. The Respondent refers to Beckes' candidacy on the Rogers slate for a Carpenters executive board seat and to his anti-Lucassen speech at an August 1991 convention of the Michigan State Council of Carpenters. According to credited testimony, however, Lucassen summoned Beckes to Washington in September 1991 with the intent of firing him then for the aforementioned conduct. At this meeting, Lucassen had a change of mind. He told Beckes that he could continue in his job, but if Beckes lost the election for the executive board, Lucassen would ask for Beckes' retirement after the first of 1992.

In spite of the foregoing compromise, Lucassen fired Beckes in October. Beckes called Lucassen after receiving his discharge letter and asked Lucassen what had happened to the understanding that Beckes would retire in January 1992. Lucassen replied only that he had "an entirely new executive board and they have a new broom and they're going to sweep out everybody who doesn't believe in their philosophy." In the

⁸The Respondent correctly states in exceptions that Lucassen did not admit knowing that Beckes was involved in the CRF.

ensuing conversation, Lucassen agreed to let Beckes retire on November 1 and to continue his health insurance coverage if Beckes would notify the Board that he was withdrawing from unfair labor practice litigation and from participation in the upcoming NLRB representation election.

We find that Lucassen failed to provide any plausible explanation for his breach of the September compromise agreement with Beckes. That agreement specifically contemplated what would happen to Beckes because of his political activity in the event of an election defeat. In sum, Lucassen had agreed that the "new broom" would not sweep Beckes out of his job until January 1992. The only notable event following that agreement was the unexpected success of the CRF organizing campaign, which culminated in a claim of majority status and demand for recognition during the Respondent's annual convention. Moreover, even if Lucassen did not suspect that Beckes supported the CRF before the discharge action, Lucassen's contemporaneous concern for suppressing potential support of the burgeoning CRF campaign is manifest in his imposition of the condition that Beckes not participate in the Board election if he wanted continued health insurance coverage. In light of the foregoing circumstances, we find that the Respondent has failed to prove that it would have discharged Beckes in October in the absence of union activity. We therefore affirm the judge's finding of a violation of Section 8(a)(3) of the Act.⁹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Washington, District of Columbia, their officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Offer Floyd Doolittle, I. L. Bowling, Ed Fortson, Wanda Phillips, Tom Hohman, Mark Mullen, Gilbert Lee, Burke Smith, Fred Purifoy, and Leo Petri 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 and privileges previously enjoyed, and make those employees and Michael Beckes whole, plus interest, for any loss of earnings and other benefits they suffered by reason of its illegal actions."

⁹In light of the credited testimony that Lucassen would have asked Beckes to retire after January 1, 1992, because of Beckes' political activities, we shall modify the judge's recommended remedial provisions by deleting the requirement that the Respondent offer reinstatement to Beckes and by tolling the Respondent's backpay obligation as of the date that Beckes would have been required to retire.

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

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

WE WILL NOT interrogate our employees about our employees' activities on behalf of the Carpenters Representatives Federation, or about our employees' support for other labor organizations.

WE WILL NOT threaten our employees with discharge, wage reductions and other reprisals, and with more onerous working conditions because our employees engage in protected union activities.

WE WILL NOT assist our employees to attend Carpenters Representative Federation by reimbursing our employees for expenses associated with attending such meetings.

WE WILL NOT discharge or refuse to rehire our employees or to restore their fringe benefits because they have engaged in protected union or other concerted activities.

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 OFFER immediate and full reinstatement to Floyd Doolittle, I. L. Bowling, Ed Fortson, Wanda Phillips, Tom Hohman, Mark Mullen, Gilbert Lee, Burke Smith, Fred Purifoy, and Leo Petri to their former jobs, or if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges.

WE WILL make Michael Beckes whole for any loss of earnings plus interest and other benefits from October 15, 1991, to January 1, 1992, and WE WILL reinstate any benefits he would have acquired had he been permitted to retire voluntarily on January 1, 1992.

WE WILL make Doolittle, Bowling, Fortson, Phillips, Hohman, Mullen, Lee, Smith, Purifoy, and Petri whole, plus interest, for any loss of earnings and other benefits they suffered as the result of their unlawful discharges.

WE WILL rescind the discharges of Beckes, Doolittle, Bowling, Fortson, Phillips, Hohman, Mullen, Lee, Smith, Purifoy, and Petri and remove from our files any reference to those actions, and notify them in writing that this has been done and that evidence of

our unlawful actions will not be used against them in any way.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL-CIO

Richard Prowell, Esq., for the General Counsel.
Jeffrey Freund, Esq., Glenn Fine, Esq., and Shannan M. Kane, Esq., of Washington, D.C., for the Respondent.
Roger Doolittle, Esq., of Jackson, Mississippi, for the Charging Party Union.

DECISION

J. PARGEN ROBERTSON, Administrative Law Judge. The hearing was held on various dates beginning on July 13, 1992, and closing on March 12, 1993, in Atlanta, Georgia. The charge in Case 10-CA-25630 was filed on October 28, 1991, amended on October 31 and second amended on March 13, 1992. The charge in Case 10-CA-25822 was filed on February 27, 1992. The charge in Case 10-CA-26015 was filed on April 7, 1992. A second consolidated complaint issued on June 12, 1992. The complaint includes allegations of independent 8(a)(1) violations, a violation of Section 8(a)(1), and (2), and Section 8(a)(1) and (3) allegations involving the discharges of 14 persons that were alleged to be employees.

Upon consideration of the entire record and briefs filed by General Counsel and Respondent, I make the following findings.

Respondent admitted the commerce allegations. It admitted that at material times, it is and has been an unincorporated association with its general office headquarters in Washington, D.C., and that it represents construction and non-construction industry employees in the United States and Canada for collective-bargaining purposes.

Respondent admitted that during a representative period it received gross revenues at its Washington, D.C. facility in excess of \$100,000 directly from constituent local unions located outside the District of Columbia and that it is and has been at material times an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent also admitted that at material times Carpenters Representatives Federation (CRF) was, and is, a labor organization within the meaning of Section 2(5) of the Act.

I. THE 8(A)(1) ALLEGATIONS

A. *Threat of Discharge, Wage Reductions, and Other Reprisals*

It was alleged that Respondent, by First General Vice President Dean Sooter, threatened employees with discharge, wage reductions, and other reprisals if they joined or engaged in activities on behalf of the CRF on September 19, 1991.

In the third week of September 1991, Representative Thomas Hohman had a conversation with Vice President Dean Sooter at the Florida State Council of Carpenters convention. Sooter phoned Hohman in his hotel room and directed Hohman to meet him in the hospitality room. When Hohman arrived Sooter beckoned him into the bathroom. The hospitality room was crowded. Hohman testified:

The first thing that [Sooter] said to me was, "What are you trying to do, destroy the State Council of Carpenters in Florida?" I said, "Absolutely not. That would be the last thing in the world I would want to do."

. . . .
And we discussed State Council politics in a little more detail. I felt as though Mr. Sooter was trying to intimidate me and I said to him, "You know, Dean, I signed an authorization card to be represented by the Union."

And he said, "Yeah, I know and we are going to bury you on that one."

And I said to him, "What do you mean by that?"

And he said, "What are the wages here in Miami?"

I said, "What do you mean?"

He said, "What are the carpenter's wages here in Miami?"

I said, "What does that have to do with anything?"

He said, "No, just tell me. What are the carpenter's wages her in Miami?"

And I said, "They are about \$13.00 or \$14.00 and change and fringe benefits."

He said, "That is what we are going to pay you if the union comes in."

And I said to him, "Let's let someone else witness this. Let's go outside and say this in front of someone else."

And I walked out of the bathroom, opened the door and walked out of the bathroom and walked into the hospitality room. And I stood against a wall facing the guys who were playing cards and Sooter came out behind me and his affect had changed completely when he came outside. And he began to pace in front of me, nervously, and I said to him, "You shoot from the hip, don't you Dean, just like Patty." I was referring to Pat Campbell. He knew exactly what I was talking about.

. . . .
Sooter's response to me was, "Yeah, I know, that's what scares me. Sometimes it gets me in trouble."

Dean Sooter admitted that he did have a conversation with Hohman in the hospitality bathroom and Sooter admitted that he told Hohman that if Hohman jacked with him that he would bury Hohman. Sooter also admitted that Hohman told him that he had signed a CRF authorization card. Sooter denied that he threatened Hohman because of his CRF activity. Instead Sooter testified that his threat to bury Hohman involved Hohman's backing out of a deal regarding Hohman's successor as president of the Florida State Council of Carpenters.

Ed Hahn testified that Tom Hohman told him that he and Dean Sooter had an argument in a bathroom at the state convention. Hahn testified that Hohman did not mention that the CRF was involved in the conversation between Hohman and Sooter. Hahn did recall that Hohman said that Sooter threatened to bury him.

Findings

I credit the testimony of Thomas Hohman in this instance. Hohman demonstrated good recall and good demeanor regarding this particular allegation. I was not impressed with

either the recall or demeanor of Dean Sooter. Sooter was uncertain as to the placement of segments of the conversation in the bathroom.

Sooter denied that he threatened Hohman regarding Hohman's CRF activities. Under cross-examination Sooter testified about activities at the Florida convention concerning the campaign for general president. Sooter's testimony fluctuated about whether he personally overheard certain participants at the convention support Whitey Rogers for general president and whether Thomas Hohman voiced support for Whitey Rogers. Sooter demonstrated uncertainty as to his recollection, but nevertheless a determination to show that he knew that Thomas Hohman opposed General President Lucassen. I am convinced from his responses under cross-examination that Sooter was determined to show that Hohman opposed Lucassen even though he did not recall how he came to that conclusion. I am convinced that Sooter was not truthful in responding to questions of his personal recollection as opposed to what he may have heard second hand. Due to his responses on cross and his overall demeanor, I am unable to credit the testimony of Dean Sooter.

The credited testimony shows that Sooter threatened to bury Hohman because Hohman signed a CRF authorization card. Sooter also threatened to reduce Hohman's pay to that of a carpenter in Miami if the CRF was selected as bargaining representative.

Those comments constitute violation of Section 8(a)(1) of the Act in that both were threats because of Respondent's employees union activities. *Evans St. Clair, Inc.*, 278 NLRB 459 (1986); *Port East Transfer*, 278 NLRB 890 (1986); *Ryder/P.I.E. Nationwide*, 278 NLRB 713 (1986); *Precision Founders*, 278 NLRB 544 (1986).

B. Threatened More Onerous Working Conditions

It is alleged that on October 2, 1991, Respondent, by assistant to the General President Ed Hahn, threatened employees with more onerous working conditions if they joined or engaged in activities on behalf of CRF.

Thomas Hohman testified that Ed Hahn, an assistant to the general president, was one of his supervisors while he worked for Respondent. Hohman testified about an October 2, 1991 conversation with Hahn:

I asked [Hahn] if he had received my copy of the letter informing him that I had signed an authorization card to be represented by the Carpenters Representative Federation? He said that he had and he said, "What if the union came in, I guess we could send you up to Alaska. You have to be at work in Alaska at seven o'clock every Monday morning." I kind of laughed and said, "Yeah, I guess you could."

Ed Hahn admitted talking with Hohman about Hohman having signed a CRF authorization card. Hahn admitted telling Hohman that the representatives had pretty decent conditions and that the way it was in the field, the International could assign them to any place which could be right next to their homes or it could be Alaska or some place.

Respondent argued, among other things, that Hohman admitted that he did not receive Hahn's comments as a threat because Hahn was his friend. However, Hohman went on to say that he considered Hahn's comments as a real threat of what the general president might do. Hahn was an assistant

to the general president when he and Hohman had the above conversation. Respondent argued that Hahn was doing nothing more than telling Hohman what could occur in the give and take of bargaining. I find that was not the point being made by Hahn. He did not refer to what could occur during bargaining.

Respondent also pointed out that Hohman did not feel threatened and that he laughed. Hohman did testify that he kind of laughed when he responded to Hahn's comments. I am not convinced that testimony, standing alone, shows anything more than Hohman's reaction. His "kind of laughed," could have demonstrated anything from nervousness to humor. No effort was made on the record to determine Hohman's state of mind at that moment.

Hohman phoned Hahn on the Monday after the general convention in October 1991:

My primary motivation for the call, having been right after the general convention, was to get an impression from him of what the mood of the office was in Washington and I asked him that question.

He said, "The only thing that I know that Sig has against you is that you signed an authorization card."

And I said, "What do you mean?"

He said, "I was in his office after you signed it and he said, Hohman signed a God damn authorization card."

Findings

I credit the testimony of Thomas Hohman. That testimony shows that Hahn threatened Hohman with relocation to Alaska if the CRF was selected as bargaining representative. Additionally, Hahn demonstrated to Hohman that he was in displeasure with the general president because he had signed a CRF authorization card. Those comments constitute violations of Section 8(a)(1). *Evans St. Clair, Inc.*, supra; *Port East Transfer*, supra; *Ryder/P.I.E. Nationwide*, supra; *Precision Founders*, supra.

C. Interrogation

General Counsel alleged that Respondent, by Special Programs Supervisor Willard Masters interrogated employees concerning CRF membership, activities, and desires of other employees on August 7, 1991.

Former Representative Robert Mark Mullen testified that his supervisor, Willard Masters, first interrogated him regarding representatives' organizing activities in January 1990. Then, in August 1991 in Orange Texas at a Best Western Motel:

[Masters] asked if I had received the latest letter on the—the new organizing and the current one—or the latest one, and I said yes, I had received it. He asked me again if I knew of anyone that had signed. He asked me if I—first he asked me if I had signed a card and then he asked me if I knew of anybody who had or any Reps that were trying to contact me to sign a card.

. . . .

I told him I didn't know who was doing it other than what was in the letter. That was all I knew, that I hadn't talked to anybody.

Masters denied that he asked Mullen about the CRF or about who had signed authorization cards for CRF. He testified that Mullen brought up the CRF on occasion but he did not participate in discussing the CRF.

Finding

Supervisory question

Respondent denied that Masters was a supervisor.

Willard Masters was the southern coordinator for the BE&K campaign. BE&K is a large employer.

Former Representative I. L. Bowling testified that he received a special assignment from General President Lucassen on March 29, 1989. Bowling was assigned to the BE&K campaign under the direction of Willard Masters. Bowling was directed to submit his weekly reports to Masters and to work under Masters' direction. Bowling testified that Masters made assignments to him all over the southeast regarding the BE&K campaign.

Robert Mullen recalled that Willard Masters designated targets for Mullen and assignments for Mullen—specific assignments where BE&K was working. Masters directed Mullen in handling those campaigns. On one occasion while Mullen was working in the Orange, Texas area, he read in the newspaper there was a \$100 or \$150 million dollar job and he phoned Masters and asked if he could handle that job with his current assignment. Masters told him to go ahead and do whatever Mullen needed to ensure that job went Union.

Edward Joseph Durkin, who was head of the special programs division of the organizing department for Respondent, testified that Willard Masters was the southern coordinator of the BE&K campaign and Masters' responsibility was to see that the Respondent's program was implemented by representatives and business agents. Masters coordinates activities of all the representatives as well as business agents, assigned to the BE&K campaign. Masters does not assign representatives to the BE&K campaign and he does not have the authority to hire, fire, or discipline representatives. Durkin admitted that he and Masters frequently discuss the performance of the various agents assigned to the BE&K campaign. Durkin and Masters have also discussed rearranging assignments when the number of representatives on the campaign were reduced and, from those discussions, Durkin made the actual decisions. Masters was responsible for discussing with each representative, the representative's weekly assignments and for establishing priorities when necessary. Masters did not have authority to approve vacations or to establish salaries. Durkin handles expenditures.

Willard Masters testified that he is a representative to the general president with a current assignment as southern coordinator of the BE&K campaign. Masters testified that he spends most of his time working with business agents as opposed to working with representatives. Business agents are not employed by Respondent and neither Masters nor Respondent is in position to actually direct or require work from business agents. Unlike representatives it is necessary to get agreement from business agents. Masters testified that he voted in the CRF election but, on cross, he testified that he did not know whether his ballot had been challenged.

The report on challenged ballots was received in evidence. That report identified 12 of 13 challenged ballots. One chal-

lenged ballot was not identified. Masters was not 1 of the 12 identified challenges. All those 12 were alleged discriminatees in the instant action. From the report it is impossible to determine whether Masters' vote was challenged.

On cross-examination Masters testified that after he and Durkin went over what needed to be done in the BE&K campaign, he would direct which representatives or agents would perform what activities. Masters admitted that the representatives assigned to BE&K reported to him each week. Also he has directed the representatives assigned to BE&K to advise him of assignments outside the BE&K campaign.

The evidence illustrated that Masters exercised supervisory authority over representatives to the general president. Masters directed several representatives in their work. He was their contact with management and he made decisions regarding organizing such as whether to conduct a campaign at a particular job. I find that Masters was a supervisor at material times. *Sunnyside Home Care Project*, 308 NLRB 346 (1992); *McClatchy Newspapers*, 307 NLRB 773 (1992).

Respondent argued that Masters was not a supervisor. Moreover, Respondent argued, that if it was found that Masters was a supervisor, his action should not be the responsibility of Respondent in the absence of evidence that Respondent "encouraged, authorized or ratified the supervisor's activities or acted in such manner as to lead employees reasonably to believe that the supervisor was acting for and on behalf of management." *Montgomery Ward & Co.*, 115 NLRB 645, 647 (1956), *enfd.* 242 F.2d 497 (2d Cir. 1957); *Cypress Lawn Cemetery Assn.*, 300 NLRB 609, 609 fn. 2 (1990).

In *Cypress Lawn Cemetery Assn.*, *supra* at fn. 2, concluding paragraph, the Board held:

Finally, we affirm the judge's conclusion that the Respondent's assistant superintendents were supervisors within the meaning of Sec. 2(11) of the Act when they coercively solicited employees to sign decertification petitions in June 1988. The record is unclear whether the assistant superintendents were also bargaining unit members at that time. If they were not, their coercive conduct is attributable to the Respondent based solely on their statutory supervisory status. If they were, we agree with the judge's finding that their coercive conduct is attributable to the Respondent under the test set forth in *Montgomery Ward & Co.*, 115 NLRB 645 (1956).

In *Montgomery Ward*, *supra* the alleged supervisor was included in the payroll list of employees for voting and was allowed to vote without challenge. Under those circumstances, the Board refused to find the employer committed 8(a)(1) violations by statements from that alleged supervisor absent a showing that the employer encouraged, authorized, or ratified the supervisor's activities. Even under those circumstances, however, the employer was held chargeable with the knowledge of union activities acquired by that supervisor (115 NLRB 645, 647, 648 (1956)).

Here it is unclear whether Masters was a bargaining unit member at the relevant time. Masters testified that he voted in the NLRB election but he admitted that he does not know if his vote was challenged. As shown above, it is impossible to tell from the report on challenged ballots, whether Masters' vote was challenged. Only in cases where it is proven

that the supervisory employee was in the bargaining unit is it necessary to meet the *Montgomery Ward* test.

The record herein supported General Counsel's contention that Masters was a supervisor at material times. I further find that the representatives could reasonably believe Masters was reflecting UBCJA policy and speaking and acting for management.

I am unable to credit Masters' denial that he interrogated Robert Mark Mullen. I found Mullen to be a credible witness on this question. I made my findings based on his demeanor.

Mullen testified that he was questioned by Masters on an earlier occasion. On January 17, 1990, while Mullen and Masters were driving from Houston to Port Arthur, Texas, Masters took out a list of the representatives and went over the Sixth District representatives. He had highlighted those representatives and their phone numbers. Masters asked Mullen about each of those Sixth District representatives, whether each of them had signed a authorization card, and if Mullen had signed a card. Masters asked Mullen if he had been contacted to sign a card.

The credited testimony of Mullen shows that he was interrogated by Masters asking him about CRF literature and about the participation of Mullen and other representatives in CRF. Masters was engaged in a one-on-one conversation with Mullen at the time when he was Mullen's immediate supervisor. At the time of the interrogation Mullen was not a known CRF advocate.

Additionally, as shown above, there was another instance of interrogation that was fully litigated. After they attended the July 6, 1991 CRF meeting in Atlanta, before walking out, Representatives Ed Fortson and Wanda Phillips visited with Southern States Organizing Director Edgar Fields in Atlanta.

During their conversation, Fields asked Fortson and Phillips how the CRF meeting had gone. Fields asked how many showed up at the meeting and Fortson told him. Fields asked if two Black representatives, Bob Woodson and Sylvester Hicks, had shown up at the meeting. Fortson told Fields that they had not made the meeting. Fortson named all the representatives that attended the CRF meeting. He recalled naming eight representatives as those that attended. Fortson recalled that Edgar Fields told him, and Phillips, when they talked on July 6, that he had already received a phone call about the CRF meeting.

Respondent argued that Masters did not engage in coercive interrogation. *Rossmore House Hotel*, 269 NLRB 1176 (1984), *enfd.* sub nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

I find that the interrogation was coercive and constitutes a violation of Section 8(a)(1) of the Act. *Kona 60 Minute Photo*, 277 NLRB 867 (1985); *Hearst Corp.*, 281 NLRB 764 (1986); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985); *WXON-TV*, 289 NLRB 615, 619 (1988); *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir. 1987).

In reaching the determination that Respondent coercively interrogated its employees, I have considered the full record.

During the fall of 1991 Respondent had gone through at least two previous campaigns to organize its representatives. Neither of the two previous campaigns had been successful and the more recent campaign, the 1988 campaign, had resulted in the representatives withdrawing their petition. There was no showing that Respondent had reason to believe the

1991 campaign would be successful. Nevertheless, Respondent's highest officials had demonstrated concern and opposition to organization of the representatives. As shown herein General President Lucassen wrote all representatives about the actions of the organizers in 1988. In 1989 First General Vice President Sooter told two representatives, one of whom was the same representative interrogated by Willard Masters, to not associate with Fred Purifoy because Purifoy was connected with CRF organizing activity.

The interrogations in 1991 were directed at representatives that were not known to be union supporters. Mullen had been interrogated as to whether he had engaged in CRF activity in 1990. Mullen had done nothing to show Respondent that he favored the CRF. Representatives Fortson and Phillips had just walked out of a CRF meeting in anger with CRF, when they were interrogated in depth by Director Edgar Fields regarding which representatives had attended the July 6, 1991 CRF meeting.

In August 1991, when Mullen was questioned, Respondent had already discharged one representative that was involved in the 1991 CRF campaign and had been involved in the 1988 CRF campaign as well—Fred Purifoy. Respondent gained knowledge of Purifoy's 1991 involvement with CRF during Edgar Fields' interrogation of Fortson and Phillips. Purifoy was known by Mullen to be a CRF advocate. As shown here, First General Vice President Sooter cautioned Mullen to not associate with Purifoy because Purifoy was involved in the organizing activity.

The record convinces me that the interrogation of Mullen was coercive under the circumstances.

II. THE 8(A)(3) ALLEGATIONS

General Counsel alleged that Respondent discharged some 14 employees between July 10 and October 25, 1991, because of their membership in and activities on behalf of CRF.

Beginning in 1988 some of Respondent's representatives tried to organize on behalf of the Carpenters Representatives Federation (CRF). On November 4, 1988, General President Lucassen sent each representative a copy of the following letter:

Over the last six weeks many of you have been receiving leaflets and other information concerning an organizing drive for staff representatives. During this time, I have made no comments on the materials or actions. But because this is beginning to affect our operation and our ability to service our membership, I feel I can no longer be silent. As a representative of the General President you are my eyes and ears in the field. You have been appointed under Section 10-A of the UBC Constitution, which authorizes the General President to appoint any "member" of the UBC to "assist in carrying on the affairs of the United Brotherhood." For over one hundred years representatives have been the leadership of the UBC and have proudly carried out the directions of the General President in an effort to best serve the interests of Carpenters and Industrial workers in North America. Many of you have worked for M.A. Hutcheson, Bill Sidell, Bill Konyha, and Pat Campbell before me and have served each of these presidents well. The loyalty you have shown these

presidents and now myself as General President, has been the backbone of our strength as an International. As a representative, I, myself, worked under the same conditions and know the frustrations and rewards of the job. I came to work under M.A. Hutcheson and he told me, at that time, that we were a team and that I was his representative and he wanted to know the real situation, the real problems in the field, and he was counting on me to tell him what was going on. I believe in this consistent policy and say the same to you.

The individual who sent you the leaflets and information also sent material to many people outside of our organization, including conservative, right-wing, anti-union Senators. I cannot comprehend this kind of irresponsible action. Should this material fall into the hands of corporations, right-wingers, and enemies of labor, you and I surely know that it will be exploited against us to defeat our organizing work and to attack our union. This kind of action can only be aimed at hurting our organization and the things we have worked together to achieve. In closing, let me say that we are all facing difficult times today and even harder times ahead. I appreciate your work and the loyalty you have shown in the past and look forward to the years ahead working together.

General Counsel argued that by equating protected activity with disloyalty, Respondent engaged in what would have been 8(a)(1) violations had charges been filed within the 10(b) time limitations. *Misericordia Hospital Medical Center*, 246 NLRB 351, 357 (1979); cf. *Oklahoma Installation Co.*, 309 NLRB 776 (1992).

It is apparent from reading the above letter, that general president Lucassen went to some length to explain the loyalty expected from each representative. He also strongly encourages each representative to act as the president's eyes and ears and to report what is going on in the field. That background is set against the focal point of the letter—the CRF campaign and how some people behind that campaign have acted in a disloyal manner.

General President Lucassen testified that he did not campaign either for or against CRF during the 1988 campaign but he did write the above letter over concern of literature that was circulated.

During that 1988–1989 campaign, representatives of General President Floyd Doolittle, Gilbert Lee, Willie Shepherson, and Fred Purifoy, attended the representation hearing. Shepherson was discharged before the hearing. An unfair labor practice charge involving Shepherson was resolved without determination on the merits. The NLRB Regional Director determined that the unit sought by CRF in the representation case, was not appropriate. After the Regional Director made that determination, CRF withdrew its petition.

Robert Mark Mullen testified that he was at an educational seminar in Palm Beach on October 23, 1989. First Vice President Dean Sooter saw Mullen and Russell Ward talking with Fred Purifoy. When they walked away from Purifoy, Dean Sooter told them:

you're not supposed to be talking to that guy, he's involved in this organizing thing. [Sooter] said that if you

guys keep this up, there's not going to be any more Reps left when this is over.

Although Dean Sooter denied that he had the above conversation, I credit the testimony of Mullen. Mullen demonstrated good demeanor regarding the above incident. Among other things, that incident demonstrated Respondent's animus regarding the CRF (see *Hearst Corp.*, 281 NLRB 764 (1986)).

In 1991 some of the representatives of the general president renewed organizing efforts and on July 6, 1991, they held their first meeting. The meeting was held in Atlanta and those present included I. L. Bowling, Larry Wyatt, Alice Dixon, Fred Purifoy, Gilbert Lee, Herbert Thomas, Wanda Phillips, Ed Fortson, Bob Bracken, Paul Pinckard, and Floyd Doolittle. There was evidence that two former employees of UBCJA were present. They were James Parker and Gerrod Brown. The representatives present voted to exclude Parker and Brown from the meeting. They voted that the organization would be nonpolitical. Doolittle testified on cross-examination that he understood that Parker and Brown who were retired, were highly political players in the UBCJA. Both had been retired by General President Campbell while Lucassen was First Vice President. Doolittle learned later that Brown supported Whitey Rogers, and opposed Lucassen, in the campaign for the office of general president. Alice Dixon testified that she made a motion to keep CRF nonpolitical. In rebuttal, Floyd Doolittle testified that motion was made by Bob Bracken, not Dixon. Doolittle testified credibly that motion passed unanimously and that everyone that spoke up, spoke in favor of the motion.

As shown below, I am unable to credit the testimony of Alice Dixon. I credit Floyd Doolittle whom I found to be straightforward on both direct and cross-examination. I was impressed with Doolittle's demeanor.

Officers elected at that meeting included I. L. Bowling as chairman, Doolittle as secretary/treasurer, and Alice Dixon as recording secretary. Everyone present except Fortson and Phillips, signed a letter to be mailed to all the staff announcing the start of the organizing campaign.

As shown below, I credited testimony of Ed Fortson and Wanda Phillips that they met with Southern States Organizing Director Edgar Fields after the July 6 meeting and Fortson told Fields the names of all the representatives that attended the CRF meeting that day including Representative Fred Purifoy.

On July 10, 1991, Respondent discharged Representative Fred Purifoy.

On July 12, 1991, the following letter was sent to General President Lucassen:

The below listed Staff Representatives have authorized us to inform you of their organizing activity for the purpose of collective bargaining in accordance with Section 7, of the National Labor Relations Act.

- | | |
|-----------------|----------------|
| Floyd Doolittle | I. L. Bowling |
| Paul Pinckard | Larry Wyatt |
| Alice Dixon | Robert Bracken |
| Gilbert Lee | Robert Woodson |
| Herbert Thomas | Burke Smith |
| Earl Soderman | Fred Purifoy |

Copies of this communication is being forwarded to all Resident Officers and General Executive Board Members as well as the National Labor Relations Board, Washington, D.C.

Fraternally yours,
/s/ I. L. Bowling, President
/s/Floyd Doolittle, Treasurer

On August 10, 1991, a letter was sent to UBCJA resident officers and general executive board members and announced candidates for offices. Floyd Doolittle testified those candidates included President Lucassen and that Lucassen was sent a copy of the letter. The letter asked the candidates to support the organizing efforts of CRF and expressed, among other things,

We are committed that this campaign will not become a political platform for anyone.

The letter was sent by Representatives Doolittle, Wyatt, Pinckard, Bracken, Dixon, Woodson, Lee, Burke Smith, Herbert Thomas, Purifoy, Soderman, Lerline Haasl, and Bowling.

As shown above, Special Programs Supervisor Willard Masters interrogated Mark Mullen about CRF activities during August 1991.

Floyd Doolittle, on behalf of the CRF, filed a representation petition with the NLRB on September 26, 1991.

As shown above, during the third week of September 1991, Vice President Sooter threatened Representative Tom Hohman with discharge, wage reduction, and other reprisals.

On October 2, 1991, assistant to the general president, Ed Hahn, threatened Hohman with more onerous working conditions if the CRF was selected as the representatives' bargaining representative.

Respondent held its annual convention in Atlantic City, New Jersey, on October 7 through 11, 1991. The CRF held meetings daily after the convention started, at the back of the convention hall in the bleachers, at the end of the daily UBCJA proceedings. Either I. L. Bowling or Floyd Doolittle presided over each of those meetings. Buttons were distributed during the meetings showing "Vote & Support CRF, Carpenters Representatives Federation."

Respondent First Vice President Dean Sooter admitted that he attended the convention and that he walked out through the back area one night during the convention. Sooter denied that he noticed representatives involved in a CRF meeting.

During the convention General President Lucassen was re-elected in a hotly contested election.

Floyd Doolittle testified that the CRF obtained a majority of authorization cards and made a demand for recognition by letter to the general president on October 8, 1991. Floyd Doolittle testified without rebuttal that he gave the demand letter to Respondent's attorney, Mayer. I. L. Bowling signed that letter. The letterhead of Bowling's letter showed that Bowling was the CRF chairman, Floyd Doolittle was the secretary/treasurer, and Alice Dixon was the secretary. The organizing committee was listed on that letterhead as including Robert Bracken, Lerline Haasl, Gilbert Lee, Paul Pinckard, Fred Purifoy, Burke Smith, Earl Soderman, Herbert Thomas, Larry Wyatt, and Robert Woodson.

On October 9 Doolittle hand delivered another letter to a secretary to the general president. That letter, written by

Floyd Doolittle, secretary-treasurer, was to President Lucassen. It listed the following representatives as authorizing CRF to inform him of their organizing activity:

Floyd Doolittle	I. L. Bowling
Paul Pinckard	Larry Wyatt
Alice Dixon	Robert Bracken
Gilbert Lee	Robert Woodson
Herbert Thomas	Burke Smith
Earl Soderman	Fred Purifoy
E.L. McGruffe	Lerline Hassl (sic)
Richard Heon	Leo Petri
Mark Mullen	Stephen Perry
Norman Bashore	John Burns
Wayman Bell	Thomas Holman (sic)
Sylvester Hicks Jr.	Maria Cifuentes

Doolittle testified without rebuttal, that the general president's secretary that had received the letter from him, Sue Dillon, came to him and asked for another copy of the letter. Doolittle provided her with a copy that had the spelling of Thomas Hohman's name corrected, and had four additional names handwritten in the margin as additional representatives that had authorized CRF to represent them. Those four included alleged discriminatees Ed Fortson and Wanda Phillips along with Joe Copes and Matt Ruiz.

General President Lucassen testified that he did not see any of the above letters from CRF, during the convention. He claimed that he did not see any of the October letters from CRF, until after he decided to discharge the alleged discriminatees.

Lucassen testified that he did not campaign during CRF's 1991 campaign and he made no effort to determine which representatives were active in the campaign. Lucassen admitted that he received reports that the CRF was meeting during the convention but he did not witness those meetings.

On the basis of Lucassen's testimony, Respondent argued that Lucassen had knowledge of CRF activities by only those representatives that had been identified through CRF letters before October 1991. Of the alleged discriminatees, CRF letters to Lucassen before October 1991, named the following alleged discriminatees: Floyd Doolittle, I. L. Bowling, Gilbert Lee, Burke Smith, and Fred Purifoy. As to Purifoy, Respondent pointed to testimony by President Lucassen to support its argument that Lucassen was not aware of Purifoy's 1991 CRF activity until after he discharged Purifoy on July 10.

General President Lucassen was informed that Tom Hohman had signed a CRF authorization card by letter from Hohman during September 1991.

As shown below additional representatives named in letters from CRF and delivered to Respondent in October before the October 15 discharges, included Leo Petri, Mark Mullen, Wanda Phillips, and Ed Fortson. Unrebutted testimony of Floyd Doolittle which I credit, proved that Lucassen's secretary Sue Dillon, was given letters which identified all 10 representatives named above. Those 10 named to Respondent before their discharges included Bowling, Doolittle, Lee, Smith, Purifoy, Hohman, Petri, Mullen, Phillips, and Fortson.

Sue Dillon was given two letters during the convention (one a copy of the other with handwritten additions to the list of representatives).

On October 12, 1991, all of Respondent's representatives were mailed a letter on the CRF letterhead with the following names typed in as additional members of the organizing committee:

Norman Bashore	Wyman Bell
John Burns	Maria Cifuentes
Joe Copes	Edward Fortson
Richard Heon	Sylvester Hicks Jr.
Thomas Hohman	E. L. McGuffie
Mark Mullen	Stephen Perry
Leo Petri	Wanda Phillips
Matt Ruiz	William Chiarito

On the Monday following the convention—October 14, 1991—assistant to the general president, Ed Hahn, told Tom Hohman that the only thing the general president had against Hohman was Hohman's signing a CRF authorization card.

On October 15, 1991, Floyd Doolittle wrote General President Lucassen confirming a phone call to the UBCJA general office, wherein he had advised UBCJA that he and I. L. Bowling had been subpoenaed to appear at the representation petition hearing in the NLRB Regional Office in Atlanta on October 17.

By letters dated October 15, 1991, Respondent's general president advised Michael Beckes, I. L. Bowling, Paul Cecil, Floyd Doolittle, Edward Fortson, Lawrence Garcia, Thomas Hohman, Gilbert Lee, Mark Mullen, Leo Petri, Wanda Phillips, and Burke Smith of their discharge:

This is to advise you that your employment is hereby terminated and you should submit your final report to this office by Friday, October 18, 1991. Accordingly, you should immediately turn over to this office all property belonging to the Brotherhood including, but not limited to, books, records, papers, keys and credit cards.

In addition to the 12 representatives discharged on October 15, Fred Purifoy had been discharged on July 10, 1991. Counsel for General Counsel argued that all but four of the people discharged on October 15 plus Fred Purifoy who had been discharged on July 10, had been identified as supporters of CRF before their discharge. Nine of those discharged on October 15 were named in the second copy of CRF's October 9 letter to President Lucassen. Both copies of the letter were given to Lucassen's secretary during the UBCJA convention. Twenty-eight representatives were named in the second copy of CRF's October 9 letter to Lucassen. Ten of those 28 representatives are alleged as illegal discharges in the complaint. Nine of the 28 were discharged on October 15.

Fred Purifoy had been named to Respondent's supervisor, Edgar Fields, as being at the July 6 CRF meeting. Purifoy was discharged 4 days after that meeting.

On October 17, 1991, CRF Attorney Roger Doolittle was in the NLRB Regional Office in Atlanta for the scheduled representation case hearing. Roger Doolittle testified that he met with Respondent's attorney to discuss a possible stipulation in the representation case and, as that discussion concluded, Respondent's attorney advised him that 13 representatives had been discharged and that 2 were officers of CRF (I. L. Bowling and Floyd Doolittle). Bowling and Doolittle

were both present at the NLRB Regional Office awaiting the hearing.

On October 18 the general president wrote Robert Mergner advising Mergner that he was discharged:

This is to advise you that your employment is hereby terminated and you should submit your final report to this office by Friday, October 25, 1991. Accordingly, you should immediately turn over to this office all property belonging to the Brotherhood including, but not limited to, books, records, papers, keys and credit cards.

As mentioned above, the record failed to show that Mergner was identified in any of the CRF letters.

General President Lucassen testified that he delayed discharging the representatives until after the October convention because if he had lost they may have been retained by Whitey Rogers and because he did not want to make political hay for his opponents by firing them before the convention. General Counsel argued that Respondent did not delay the discharges for political reasons in view of the fact that it had discharged Fred Purifoy, Richard Cox, and James Davis before the convention.

General Counsel also argued that Respondent's failure to express its justification for the October discharges and its failure to ask the employees for their side of the story, indicates that subsequently stated reasons are pretext. *Delta Gas*, 282 NLRB 1315, 1317 (1987); *Independent Stations Co.*, 284 NLRB 394, 395 (1987); *Lancer Corp.*, 271 NLRB 1426, 1427-1428 (1984); *Kidde, Inc.*, 284 NLRB 78 (1987); *Clinton Food 4 Less*, 288 NLRB 597 (1988); *Abbey's Transportation Services*, 284 NLRB 698, 699-700 (1987).

General President Lucassen did discharge some employees before the October 1991 UBCJA conference. He discharged Fred Purifoy on July 10, 1991. He discharged Richard Cox in May 1991 after Cox announced that he was going to run against incumbent board member, Fred Carter. Lucassen also fired his assistant, Jim Davis. Lucassen testified that he wasn't getting any value out of Davis. He testified that Davis was more and more involved in politics on "Whitey's" side.

When Lucassen terminated 13 of the alleged discriminatees after the UBCJA October 1991 convention, he also fired Allen Howe from the UBCJA legislative department because Howe was working for the Rogers candidacy.

General Counsel argued that Respondent failed to discharge all the representatives that opposed President Lucassen citing General Counsel's Exhibit 54. That exhibit which was available to Respondent, contained some of the responses received in answer to a telephone survey. Jose Collado, who was shown to be a representative in the voter eligibility list (G.C. Exh. 27), was shown to have responded no, he did not support Lucassen. Counsel for General Counsel pointed out that General Counsel's Exhibit 54 was only a partial showing of the results of the telephone survey in view of the administrative law judge refusing to grant his request for production of the entire document.

The parties stipulated to an election by the NLRB. The CRF prevailed during that election. The NLRB certified CRF as collective-bargaining representative of the representatives to the general president and, by a letter signed by Floyd Doolittle, the CRF called a meeting in Atlanta on February 15, 1992.

The February 1992 CRF meeting was held in Atlanta. As shown above, several representatives protested the holding of the meeting. I. L. Bowling presided over that meeting and a negotiating committee was elected.

General President Lucassen denied that CRF activities had anything to do with the discharge of any of the representatives. He testified that he discharged each of the alleged discriminatees because of disloyalty.

Lucassen testified regarding the heated contest for general president during the UBCJA 1991 convention and events that occurred during the period before that election.

The UBCJA has a general executive board made up of the general president, first vice president, second vice president, general secretary, general treasurer, and one board member from each of the Union's 10 districts.

Because of problems in the general executive board which, according to Lucassen, involved John S. "Whitey" Rogers' desire to become general president, there was a serious split in the general executive board during 1990. Two of the general executive board members filed suit against General President Lucassen, a former general president, the current and a retired UBCJA Comptroller, and the UBCJA general counsel. Executive board meetings eventually became an almost even split with seven votes on each side requiring a vote by the general president to resolve issues.

Whitey Rogers announced his candidacy for general president in November 1990. His team of candidates included himself and six other members of the general executive Board including the Second Vice President Jack McMillan; Thomas Hanahan, third district board member; Wayne Pierce; E. Jimmy Jones, fourth district board member; Gene Shoehigh, fifth district board member; and E. Louis Heath, eighth district board member. Whitey Rogers was the general secretary.

Dick Cox ran for Sixth District board member position on the Whitey Rogers team. Cox opposed the sitting Board Member Fred Carter and Fred Purifoy who also ran for that position.

Respondent argued that it discharged all the alleged discriminatees because it was reported to General President Lucassen that each of them had engaged in activity disloyal to the president. Respondent cited *Finnegan v. Leu*, 456 U.S. 431 (1982). Respondent argued that General President Lucassen believed the reports of disloyalty were accurate. *Wyman-Gordon Co. v. NLRB*, 654 F.2d 134, 142 (1st Cir. 1981), and cases cited therein.

However, neither *Finnegan v. Leu*, supra nor *Wyman-Gordon Co.*, supra, establishes that the general president may, any more than any other employer, take action against employees because of protected activity on the contention that it was reported to him that they were disloyal. When it is alleged that an employee was discharged because of protected activity, there arises a question of motivation behind the discharge and, in that light, I must question whether General Counsel proved a prima facie case. If so, then I must examine whether Respondent proved the employee would have been discharged in the absence of protected activity. Additionally, there may be a question of pretext. *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Northport Health Services, v. NLRB*, 961 F.2d 1547 (11th Cir. 1992);

Control Services, 305 NLRB 435 (1991); and *Goldtex*, 309 NLRB 158 (1992), which was cited by Respondent.

Findings

As mentioned above, during the fall of 1991 Respondent had gone through at least two previous campaigns to organize its representatives. Neither of the two previous campaigns had been successful and the more recent campaign, the 1988 campaign, had resulted in the representatives' withdrawing their petition. There was no showing that Respondent had reason to believe the 1991 campaign would be successful. Nevertheless, Respondent's highest officials had demonstrated concern and opposition to organization of the representatives. As shown above General President Lucassen wrote all representatives about the actions of the organizers in 1988. In 1989 First General Vice President Sooter told two Representatives, one of whom was the same representative interrogated by Willard Masters, to not associate with Fred Purifoy because Purifoy was connected with CRF organizing activity.

There was evidence of activity violative of Section 8(a)(1) and (2) and writings and comments by Respondent's top officers, including Sigurd Lucassen and Dean Sooter, which illustrated Respondent's anti-CRF animus. For example, as shown above, I credit testimony of Supervisor Ed Hahn's comment that General President Lucassen had told him that Tom Hohman had signed a "God damn" authorization card and First Vice President Dean Sooter cautioned Mark Mullen about associating with Fred Purifoy because Purifoy supported CRF.

First Vice President Dean Sooter testified about Respondent having good relations with seven other unions. Record evidence illustrated that Respondent's top management feels that a special relationship exists between the general president and representatives of the general president. Regardless of the relationship between Respondent and other unions, a different relationship may exist as to a union of the representatives. I find that the credited evidence reflects that a unique relationship does exist between the general president and the representatives and I am convinced that credited testimony proved that Respondent's management was opposed to an independent union representing the representatives.

I find, on the basis of credited evidence, that Respondent was fully aware of the information contained in all letters delivered to Respondent before the October 15 discharges. Unrebutted testimony of Floyd Doolittle, which I credit, showed that the October 8 demand for recognition letter was given to Respondent's attorney. On October 9, Doolittle hand delivered two letters (one an amended version of the other) to General President Lucassen's secretary. I find that evidences established Respondent's knowledge of the contents of those letters. Additionally, I find that the record established knowledge on the part of Respondent, of Fred Purifoy's attendance at the July 6, 1991 CRF meeting. Respondent learned of Purifoy's attendance shortly after the meeting on July 6, when supervisor and agent, Edgar Fields, was told of which Representatives attended the CRF meeting. *Pinkerton's Inc.*, 295 NLRB 538 (1989); *Darbar Indian Restaurant*, 288 NLRB 545 (1988); *NTA Graphics*, 303 NLRB 801 (1991); *Respond First Aid*, 299 NLRB 167 (1990).

The four alleged discriminatees that were not identified in the second copy of the October 9 letter were Paul Cecil, Mi-

chael Beckes, Lawrence Garcia, and Robert Mergner. Garcia was given a CRF campaign button during the UBCJA convention while General President Lucassen was standing a few feet away according to the credited testimony of Floyd Doolittle. President Lucassen admitted that he was aware of Michael Beckes' support for CRF. Of those discharged on October 15, only as to Paul Cecil was there no showing that Respondent had any basis to believe he supported CRF.

Robert Mergner, who was discharged on October 18, like Paul Cecil, was not shown to have engaged in CRF activity and there was no showing that Respondent believed Mergner was involved with CRF.

It was not until October 8, 1991, during the UBCJA convention, that Respondent first learned there may be more to the 1991 CRF campaign than there was to the campaigns during 1973 and 1988. On that date Respondent's attorney was given CRF's demand for recognition on its assertion that a majority of the Representatives had signed authorization cards. Within 1 week many of the CRF supporters, including its two highest ranking officers, were discharged.

Supervisory Question

Respondent admitted some of the General Counsel's supervisory allegations and denied others. It denied that Edgar Fields was a supervisor.

Floyd Doolittle testified that he received a letter from International President Lucassen regarding a change in his supervisor:

To: Wayman Bell, Floyd Doolittle, Ed Fortson, Sylvester Hicks, Paul Pinckard, H. M. Rowe, Robert Woodson

From: Sigurd Lucassen, General President

To: Southern States Organizing Director

Date: December 1, 1989

Please be advised that effective immediately, Edgar Fields is assuming the position of Director of Southern States Organizing Office. You will be working under his direction and will take your daily direction and supervision from him as Southern States Organizing Office Director. I know that each of you will give him your fullest cooperation in our continuing effort to organize and better our standard of living for all workers in the South.

Doolittle testified regarding his relationship with Edgar Fields that Fields "assigned me to organizing campaigns. He assigned me to survey plants for the purpose of finding out whether we could organize them. He assigned me to negotiate contracts for local unions and perform general organizing and service functions." Doolittle testified that Fields approved his vacations, that Fields had the authority to deny his vacation requests, and that Fields had done so on one occasion. After talking with Doolittle, Fields called back and approved Doolittle's vacation request on that occasion. On cross-examination Doolittle testified that the normal procedure for requesting vacation time is for him to send a letter to the general president, attention Michael Fishman, and to send a copy of that letter to Edgar Fields. Subsequently, he received a letter from Edgar Fields approving his requested vacation. Michael Fishman, director of organization, usually wrote Doolittle in response to his letters requesting vacation, that Doolittle's request meets with his approval as long as

Doolittle does not have conflicting assignments during the requested time.

Larry Wyatt testified that he has been a representative for 14 years. His supervisor is Southern States Organizing Director Edgar Fields. Wyatt testified that Fields' duties include:

. . . he's given [Wyatt] assignments, organizing targets, he's granted time off, he comes in on campaigns now and assists giving campaign directions.

Wyatt has taken potential organizing targets to Fields and Fields has given him directions to check out targets before first checking with anyone else in supervision or management.

Respondent offered into evidence a policy statement from the general president for UBCJA organizer/representatives, dated June 1, 1984. That document specified that Regional Directors may employ temporary organizers for a 30-day period subject to renewal with the approval of the Director of organization. It also states that organizer/representatives work under the immediate supervision of the Regional Directors even though they may receive assignments from the director of organization, the general president, or any other UBCJA assignment official.

Edgar Fields was not included on the *Excelsior* list which Respondent presented to the NLRB as its representation of all employees included in the bargaining unit.

Edward Fortson testified that Fields was his supervisor and that Fields supervised around seven or eight people in 1991. Fortson received most of his assignments directly from Fields. He testified that in addition to giving assignments to his representatives, Fields assisted the representatives with organizing campaigns and helped the representatives get whatever they needed to organize and maintain records on the campaigns. Fortson would tell Fields of occasions when he was contacted by employees asking that the Union organize their facility. Fields would then tell Fortson whether he should or should not try to organize that facility. Fields would sometimes tell Fortson whether to proceed with a particular requested campaign without first checking with anyone else in supervision or management.

General Counsel argued that Fields was a supervisor citing *NLRB v. Porta Systems Corp.*, 625 F.2d 399 (2d Cir. 1980).

I find that the record evidence proved that Edgar Fields was a supervisor at material times. *Sunnyside Home Care*, 308 NLRB 346 (1992); *Control Services*, 305 NLRB 435 fn. 3 (1991).

A. Floyd Doolittle

Floyd Doolittle started working for Respondent in 1979. Doolittle, as well as all the other alleged dischargees, was a representative to the general president. Doolittle's job was that of special service representative. He was stationed in Atlanta and he described his job duties as organizing the unorganized and servicing the local unions that were already organized.

As shown above Doolittle was involved in both recent CRF campaigns. He was one of four representatives that attended the 1988-1989 campaign hearing at the Atlanta Regional Office of the NLRB.

During the 1991 campaign Doolittle was elected secretary/treasurer of CRF. He attended the first CRF meeting in Atlanta on July 6 and he attended the daily meetings

at Atlantic City immediately before and during the UBCJA convention.

Doolittle's name was at the top of the list of representatives supporting CRF which was mailed to General President Lucassen on July 12, 1991. He and I. L. Bowling signed that letter as officers of CRF.

Doolittle filed the representation petition on behalf of CRF with the NLRB on September 26, 1991.

CRF made a demand for recognition by letter dated October 8, 1991. On October 9, during the UBCJA convention, Doolittle hand delivered a letter to the office of the general president which listed a number of representatives, including Doolittle, that supported CRF. He was asked by a secretary of the general president for another copy of that letter.

On October 15 Doolittle wrote the general president in confirmation of a phone conversation during which Doolittle told UBCJA that he and I. L. Bowling had been subpoenaed to appear at the representation case hearing on CRF's petition. That hearing was scheduled for October 17 in Atlanta.

As shown above, Doolittle was one of the representatives fired by letter dated October 15. He testified that he has never received a reason why he was discharged, but at the representation case hearing the CRF attorney was told by the attorney for Respondent that, if asked, Bowling and Doolittle would be told that they were being fired because of political activity at the UBCJA convention.

General President Lucassen gave a different reason why he discharged Doolittle. He testified that he fired Doolittle because Doolittle was not supporting Lucassen's team. Lucassen reached that conclusion when he learned that Doolittle had asked to have his Local's date changed for the election of a delegate to the UBCJA convention.

Lucassen also testified that Doolittle did not particularly like Bill Nipper and was not in favor of Nipper's candidacy to the Executive Board.

Bill Johnson, financial treasurer of Local 221-T in Elberton, Georgia, was called by Respondent. Johnson offered testimony in support of the alleged basis for Doolittle's discharge. He recalled that Floyd Doolittle was formerly assigned to assist Local 221-T. Doolittle transferred his membership to Local 221-T around June 1990. Johnson testified that Doolittle told him that he was transferring his membership in order to run for a delegate to the 1991 UBCJA convention. Eventually Bill Johnson decided to run for that delegate position himself and Johnson was the only candidate nominated for the position. Despite Doolittle's admitted intention to run, Doolittle was never nominated.

Bill Johnson testified regarding changing the date of the Elberton Local's meeting to elect a delegate to the convention. After mailing the notices of the meeting to vote for delegate, Johnson received a phone call from Floyd Doolittle. Doolittle had been transferred away from Elberton. Despite his transfer, Doolittle remained a member of the Elberton Local. Johnson testified that Doolittle asked Johnson to change the meeting date in order to enable Doolittle to be at the meeting.

Johnson did mail another notice changing the date of the meeting. Doolittle was unable to attend the meeting.

After the meeting, Doolittle phoned Johnson and asked how the vote went. Johnson testified that he was the only candidate nominated and Johnson was elected delegate to the UBCJA convention.

Bill Johnson testified that he was wearing a Bill Nipper button at the convention and Floyd Doolittle commented to him that Nipper would not make a good union man.

Steve Herring, assistant to the executive secretary of the Southern Industrial Council of the United Brotherhood of Carpenters, testified that he was assigned to service Local 221-T in Elberton, Georgia, after Floyd Doolittle had been reassigned. Herring asked the Local to set its meeting on a different date each month—the third Wednesday—to accommodate his schedule. Bill Johnson phoned Herring and told Herring that he may have messed up but he had sent out notices changing the date of the meeting to elect a delegate to the UBCJA convention after Floyd Doolittle had asked him to change the date. Herring told him not to worry that they would take care of the matter. Herring had notices sent out to Local members, changing the election meeting back to the original date.

Herring testified that Johnson had asked him on several occasions if he was to listen to Floyd Doolittle or to Herring regarding conducting Local business. Herring explained that since Doolittle had been transferred, that Herring was now servicing the Local and that Doolittle was nothing more than a member as far as Johnson should be concerned.

Steve Herring testified that Bill Johnson told him during the UBCJA convention, that Floyd Doolittle had said to him that Bill Nipper was not being a union type person. Herring passed that information on to his boss, Ray White.

Ray White, executive secretary of Southern Council of Industrial Workers, testified that Steve Herring complained during several phone calls during the spring of 1991, of Floyd Doolittle interfering in Local 221-T business. White wrote General President Lucassen regarding the matter on May 29, 1991, and White enclosed Steve Herring's May 28 letter to him regarding Doolittle creating problems for Local 221-T.

White testified that during the UBCJA convention, Herring reported to him that he had heard from Bill Johnson that Floyd Doolittle had made a comment about Bill Nipper.

On cross-examination White admitted that he was relieved from his position of executive secretary of Southern Council in 1979 after Floyd Doolittle alleged that White had engaged in misconduct and dishonesty.

On rebuttal Floyd Doolittle testified that Bill Johnson first phoned and questioned Doolittle about Johnson's responsibilities regarding electing a delegate to the UBCJA convention. Johnson had received the call to convention from the UBCJA. Doolittle recalled that conversation occurred in March 1991. Doolittle told Johnson what should be included on the meeting notice but he explained to Johnson that he may receive something from Ray White, secretary/treasurer of the Southern Council.

Subsequently, on April 22, Bill Johnson mailed a copy of a meeting notice to Floyd Doolittle. That notice set the meeting for June 25 for the purpose of nominating and electing local officers and for the purpose of electing a delegate to the UBCJA convention. Johnson hand wrote the following note on that draft of meeting notice: "Floyd. I have not received any letters from Ray White." The second page of Johnson's April 22 mailing to Doolittle was a copy of a ballot to elect the executive secretary of the Southern Council, Ray White, as a delegate to the UBCJA convention. Johnson had written a note to Doolittle on that ballot copy, "What

is this for." Doolittle explained to Johnson that the ballot copy represented a ballot to elect Ray White to the UBCJA convention.

Following that, Doolittle received a postcard from the local setting a special meeting to elect a delegate to the UBCJA convention, on June 18, 1991. The postcard was mailed on May 13. Doolittle and Johnson talked about that postcard. Johnson told Doolittle that Steve Herring had mailed the postcards to him for him to mail to the members of the Local and that Herring had changed the meeting date. Doolittle testified that Johnson was upset about Herring mailing the postcards to Johnson for mailing to the members, over Herring changing the meeting date and because Johnson was unable to include on the postcards the fact that the meeting was to also include nomination and election of officers for the Local.

Johnson told Doolittle that the meeting date for local meetings could not change without a vote of the Local and that even though the postcards had been mailed, he was going to go ahead and mail his meeting notice to meet on June 25 for the election of officers and a delegate to the convention.

Doolittle testified that he then asked Johnson that if you are going to change the date of the meeting, put it on June 24 so that I can attend the meeting. Johnson replied, "No, we've had it set for the 25th and that's our regular meeting date and that's where we're going to leave it." Doolittle could not attend on either June 18 or 25 because of a planned vacation and assignments after the vacation.

Doolittle did receive a letter from Johnson postmarked May 20, 1991. That letter contained the meeting notice that had been previously mailed to Doolittle announcing the meeting for election of officers and a delegate:

Dear Member:

In regard to the meeting the Southern Council has called for the purpose of nominating and electing our delegate on Tuesday June 18, 1991 is a mistake on their part. Our meeting dates have been and will remain on the fourth Tuesday of the month until we vote to change it.

Thank you,
William E. Johnson
Financial Secretary

Johnson told Doolittle that he already had the notices of the June 25 meeting in envelopes ready for mailing when he received the postcards from Steve Herring setting the meeting on June 18.

Doolittle then received a letter postmarked in Jackson, Mississippi, with the Southern Council of Industrial Workers return address. May 24 was the date of the postmark. The cover letter in that envelope read:

May 24, 1991

To: All members of Local Union 221T
From: Recording Secretary

You recently received a post card notifying you of a special called meeting set for June 18, 1991 at Local Union 221T's union hall. After that notification you received an unauthorized letter at the direction of Floyd Doolittle to change the meeting from June 18, 1991 to June 25, 1991. You are hereby again notified that the

first notification of June 18, 1991 is correct. You should make arrangements to be in attendance on the evening of June 18, 1991 at 7:00 p.m. at Local Union 221T union hall to nominate and elect your local's delegate(s) to the UBC Convention.

Doolittle was called to Washington to meet with the general president regarding the changed meeting dates. Doolittle met with Mike Fishman and General President Lucassen. Lucassen told Doolittle that he did not have time for that sort of thing and Doolittle responded that he did not have time either, that he had a July 3 election in Charlotte, North Carolina. Lucassen then asked for Doolittle's support on a program he was starting and Doolittle told him that he would be glad to support the program. Lucassen told Doolittle to work with the Southern Council next time to avoid similar problems. Doolittle met with the general president before any CRF activity during 1991.

Representative James Sala testified that he assisted in registration of delegates at the 1991 UBCJA convention. James Sala testified that he saw I. L. Bowling at the convention with Floyd Doolittle and they asked Sala to sign a CRF authorization card. As shown below under I. L. Bowling, Sala noticed that I. L. Bowling had both a large CRF button and a small Whitey Rogers pin. Sala testified that he did not see Floyd Doolittle wearing a political button or pin.

As shown under "I. L. Bowling," I do not credit Sala's testimony that Bowling was wearing a Whitey Rogers pin. I credit the testimony of Floyd Doolittle to the contrary.

I credit the testimony of Floyd Doolittle. I was impressed with his demeanor which was good during both direct and cross-examination. As mentioned above, the record includes copies of mail from Bill Johnson to Doolittle, and other mail from the Southern Council, which fully support Doolittle's version of events and tend to discredit conflicting testimony from Steve Herring, Bill Johnson, and Ray White. I was not impressed with the demeanor of either Herring, Johnson, or White. White admittedly had a basis to dislike Doolittle, having been removed from his position of executive secretary of Southern Council in 1979 because of allegations from Floyd Doolittle that White had engaged in misconduct and dishonesty.

I specifically discredit Johnson's testimony. I credit Doolittle's testimony that Johnson asked Doolittle for assistance in handling the UBCJA convention delegate process and for assistance in selecting candidates at the UBCJA convention. Doolittle agreed to help. At the convention, Doolittle asked Johnson if he had his list of candidates. Johnson indicated that he could handle the voting and would not need assistance. Johnson then asked Doolittle about Bill Nipper who was running for executive board member on the Lucassen ticket. Doolittle replied that he had known Bill Nipper for a long time but that Nipper had not signed a CRF authorization card. Doolittle denied that he ever told Johnson that Nipper was not a good union man.

The record included a statement by attorney for the alleged discriminatees, along with testimony by Bill Johnson on cross, that Attorney Roger Doolittle had tried to talk with Bill Johnson during a recess in the hearing in this matter and that Ray White had intervened. After the attorney asked Johnson to talk with him he told Johnson that Johnson was not required to talk but he would appreciate Johnson talking

to him. At that point Ray White would not leave. Attorney Roger Doolittle then complained to the administrative law judge regarding Ray White's conduct. Attorney Doolittle then returned to the hall and Bill Johnson was talking with Steve Herring. Bill Johnson then told Attorney Doolittle that he no longer wished to discuss anything with him.

Respondent Attorney Glenn Fine spoke on the record saying that he did not know the names of all the witnesses but when he was returning to the courtroom from the bathroom, "they were standing there talking and discussing whether the witness had to talk to Mr. Doolittle, and I said I don't want to get involved, he can talk with him if he wants. He doesn't have to talk to him, if he doesn't want."

There was no explanation offered as to why Ray White, or his assistant, Steve Herring, involved themselves with whether Bill Johnson from Local 221-T should not talk with an attorney in these proceedings.

In view of the full record and my observation of demeanor, I do not credit testimony of Bill Johnson, Steve Herring, or Ray White.

Respondent argued in its brief that the record illustrated that Floyd Doolittle tried to reschedule a local election of delegates so that Doolittle could run against a pro-Lucassen delegate.

I find no credited evidence in the record supporting Respondent's contention. There was no showing that during May and June 1991, when the meeting to elect a delegate to the UBCJA convention was discussed and held, that Bill Johnson was a pro-Lucassen candidate. Nor was there any evidence to show that Doolittle opposed General President Lucassen.

On October 17, Respondent's attorney during the representation hearing, told Roger Doolittle that I. L. Bowling and Floyd Doolittle, 2 officers of CRF, were among 13 representatives that had been discharged. The attorney said that if asked Bowling and Floyd Doolittle could be told that they were discharged because of political activity at the UBCJA convention.

General President Lucassen testified that he fired Doolittle because Doolittle was not supporting Lucassen's team. Lucassen reached that conclusion when he learned that Doolittle had asked to have his Local's date changed for the election of a delegate to the UBCJA convention.

Lucassen said that it would have been all right for Doolittle to run for a delegate position provided there was no opposition. Lucassen called Doolittle into his office and Doolittle admitted asking to have the election date changed.

I find that the credited evidence shows that Doolittle did make a request that the election of delegate meeting date be changed to June 24, but that request had nothing to do with several changes of that meeting between June 18 and 25. I specifically discredit any evidence that Doolittle interfered with the meeting date. Moreover contrary to the testimony of General President Lucassen, there was no showing that Doolittle did anything, including his suggesting a different meeting date for his Local, which would show that he opposed Lucassen's team.

The record supports General Counsel's contention that Respondent's discharge of Floyd Doolittle was caused by Doolittle's CRF activities. The record shows that Respondent opposed CRF's organizational activities; Doolittle was one of the primary players in CRF and the timing of Respondent's

discharge of Doolittle illustrates a connection between the two events (i.e., Doolittle's discharge and the climax of the CRF campaign). I specifically discredited testimony by General President Lucassen that he did not know about letters from Doolittle and CRF delivered to Lucassen's office during the convention. The letters from CRF were delivered to Respondent's attorney and to Lucassen's secretary, Sue Dillon. The undisputed testimony of Floyd Doolittle shows that Lucassen's secretary, Sue Dillon, came back and asked him for a second copy of the letter.

I have also considered that the discharge letters including those to Doolittle and Bowling, were written and signed by President Lucassen, on the very day that Doolittle called the general office and told them of his subpoena to testify in the representation case hearing at the NLRB. Doolittle was the CRF officer that had filed the representation case petition.

Then, Respondent first informed Doolittle and Bowling of their discharge, through the CRF attorney, at the representation case hearing in the NLRB office.

As shown above, Respondent gave varying reasons for its discharge of Floyd Doolittle. The evidence is un rebutted that Respondent's attorney told Attorney Roger Doolittle that if they asked, Doolittle and Bowling could be told they were fired for political activity at the UBCJA convention. However, when he testified in these proceedings, General President Lucassen said he discharged Doolittle because Doolittle was not supporting Lucassen's team.

Additionally, as shown below, I credit testimony of Michael Beckes, that General President Lucassen refused to continue Beckes' medical insurance. Beckes talked to Lucassen as to why his insurance was discontinued and Lucassen told him that he could not continue Beckes' insurance because that would impact on the other general reps who were part of that discharge and that election with the organizers program.

I find that General Counsel proved a prima facie case of discharge. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

Respondent argued that Doolittle would have been discharged in the absence of his protected activities. As to Doolittle and the other alleged discriminatees, Respondent contended that President Lucassen acted on the basis of a sincere belief that Doolittle was disloyal to Lucassen. Counsel for General Counsel argued that Respondent has the burden of proving more than reasonable cause to believe that the discharged representatives engaged in conduct that was disloyal. He argued that Respondent has the burden, once a prima facie case is proved, to prove that the particular Representative engaged in the conduct alleged by Respondent and that would have resulted in discharge absent protected activities. *New Jersey Bell Telephone Co.*, 308 NLRB 277, 278-279 (1992); *Hyatt Hotels Corp.*, 296 NLRB 259, 260 (1989); cf. *Finnegan v. Leu*, 456 U.S. 431 (1982).

I find that regardless of whether I consider whether President Lucassen had a sincere belief of disloyalty or whether I apply the test recommended by General Counsel, the result would be the same. The evidence shows that Respondent engaged in pretext to discharge Doolittle. In that regard, the testimony of General President Lucassen regarding Floyd Doolittle does not square with other evidence in the record.

He contended that he discharged Doolittle because he did not support Lucassen. The record shows that is true only to the extent that Doolittle did not support anyone. He, along with the CRF of which he was the most visible supporter, took a position of not getting involved in politics. The record illustrated that Lucassen's position regarding the discharge of Doolittle was contrary to positions he took regarding other representatives. Other representatives were told that it was not necessary to support Lucassen. Instead employees that spoke out against Lucassen were told to take no position.

For example, as shown below, Fred Carter called Mark Mullen in twice in 1991 and sought Mullen's agreement that he would not continue making derogatory remarks about the general officers, including Sig Lucassen and Mike Fishman. Mullen was not told that he was required to support the Lucassen slate. Instead he was cautioned to stop making derogatory comments about general officers and employees. The record shows that other UBCJA employees were instructed to avoid supporting candidates opposed to Lucassen. No one else was told that they had been or may be discharged because they did not, or would not, support Lucassen.

The credited record shows that General President Lucassen told Representative Paul Cecil that he didn't have to be out supporting Lucassen but Cecil was cautioned not to oppose Lucassen. Paul Cecil admitted meeting with General President Lucassen in October 1990. He admitted that Lucassen said to him that "he didn't mind if [Cecil] wasn't out beating the band for him, but don't—don't oppose him."

Respondent even admitted in its brief that President Lucassen did not necessarily expect representatives affirmatively to support his candidacy; neutrality in the campaign was acceptable.

In view of the above, it is clear and I find, that Respondent did not have a policy or practice of disciplining representatives for failure to support the general president. The evidence does show that Respondent disciplined some employees that were not alleged as discriminatees in this action, because they actively opposed the general president. I find that Respondent treated Floyd Doolittle disparately by applying a unique standard to Doolittle. He alone was expected to openly support Lucassen.

Respondent, in its brief, argued that Doolittle demonstrated disloyalty by opposing a pro-Lucassen candidate for Local 221-T delegate to the UBCJA convention. It was in that context, according to Respondent, that Doolittle tried to change the date of the local meeting.

The evidence, however, failed to show that Bill Johnson supported President Lucassen at any time before the Local 221-T election. Additionally, the record failed to show that Floyd Doolittle did anything at any time, to show that he opposed President Lucassen. Finally, as to that point, the record failed to show that Doolittle actively campaigned against Johnson for the delegate position. All that was shown was that Doolittle told Johnson that he had transferred his membership to Local 221-T in order to run for delegate to the UBCJA convention. Doolittle was never nominated for that position.

As to changing the date of the meeting, President Lucassen testified that he concluded that Doolittle was not supporting the Lucassen team when he learned that Doolittle tried to change the date of the Local 221-T meeting. There

is nothing in the record which supports such a conclusion. Even if I should credit Bill Johnson's account of that occurrence, which I do not, there is no evidence to show that Floyd Doolittle tried to change the date because he did not support Lucassen. Moreover, President Lucassen called Doolittle to Washington because of the problem regarding the change in meeting dates, and Lucassen said nothing to show that he was displeased because Doolittle was not supporting the Lucassen team.

I find that Respondent engaged in pretext in an effort to justify its discharge of Doolittle. *Northport Health Services v. NLRB*, 961 F.2d 1547 (11th Cir. 1992); *Control Services*, 305 NLRB 435 (1991).

General President Lucassen testified that in addition to Doolittle not supporting Lucassen's ticket, Doolittle did not particularly like Bill Nipper. I find that the credited record failed to include evidence supporting that comment by Lucassen. I discredited testimony from Bill Johnson that Doolittle said that Nipper was not a good union man. Fourth District Executive Board Member Bill Nipper testified that he talked with Floyd Doolittle during the 1991 UBCJA convention. Doolittle told him that he would like to support him but did not think he could. Doolittle said, "Jim and you have both been friends for years, but since Jimmy helped me get my job, I feel somewhat obligated to him." Nipper replied "Everyone is entitled to vote for who they choose."

I find that credited evidence failed to show that Doolittle "did not particularly like Bill Nipper," and there was no showing that Doolittle did anything, other than his conversation with Nipper, to openly oppose Nipper's candidacy or to openly support Nipper's rival.

Additionally, none of the representatives discharged after the UBCJA convention were told of any specifics as to the basis of their discharges. Doolittle and Bowling learned from the CRF attorney that he had been told they were discharged and if they asked for the reason they would be told it was because of political activity at the convention. The record including credited testimony of Floyd Doolittle, proved that Doolittle did not engage in politics, other than his protected CRF activity, at the convention.

I find that the record does not support Respondent. I credit Doolittle's testimony. He presented good demeanor and he appeared to respond candidly to questions on both direct and cross. I specifically credit his testimony that he neither supported nor opposed Lucassen's reelection efforts. Doolittle credibly testified that he maintained a neutral position because of the CRF campaign which was nonpolitical.

I find that Respondent failed to prove that Doolittle would have been discharged in the absence of his protected activities in support of CRF.

B. I. L. Bowling

I. L. Bowling testified that he started working for Respondent as a representative in October 1968. When discharged Bowling worked under Director Edgar Fields.

On March 29, 1989, Bowling received a special assignment from General President Lucassen. Bowling was assigned to the BE&K campaign under the direction of Willard Masters. Bowling was directed to submit his weekly reports to Masters and to work under Masters' direction.

Bowling testified that Masters made assignments to him all over the southeast regarding the BE&K campaign.

I. L. Bowling was active in three efforts to organize Respondent's representatives. Those campaigns were in 1973, 1988, and 1991. As shown above Bowling was elected chairman of CRF in 1991.

Bowling attended the 1991 UBCJA convention. He held CRF meetings beginning with one on October 4 before the convention opened. Twenty-five or 30 representatives attended that meeting. Bowling presided over that meeting.

After the convention started Bowling held daily CRF meetings in the back of the convention area in the grandstands. Some 15 to 25 employees attended each of those meetings. Bowling noticed management officials, including Sig Lucassen, Dean Sooter, and Michael Fishman, in the convention hall within sight while the CRF meetings were being held.

Bowling testified that CRF was nonpolitical. During the convention Representative Jack Burns asked Bowling to permit Joe Lia to speak to the CRF meeting. Bowling denied Burns' request telling Burns that CRF had pledged not to be political.

As shown above Bowling was one of the representatives fired by letter dated October 15. He testified that he has never received a reason why he was discharged but at the representation case hearing the CRF attorney was told by the attorney for Respondent that, if asked, Bowling and Doolittle would be told that they were being fired because of political activity at the UBCJA convention.

The record supports General Counsel's contention that a reason for Respondent's discharge of I. L. Bowling was Bowling's CRF activities. The record shows that Respondent opposed CRF's organizational activities; Bowling was one of the primary players in that organizing campaign and the timing of Respondent's discharge of Bowling illustrates a connection between the two events (i.e., Bowling's discharge and the climax of the CRF campaign).

As shown below and above under Floyd Doolittle, I credit testimony of Michael Beckes that General President Lucassen refused to continue Beckes' medical insurance. Beckes talked to Lucassen as to why his insurance was discontinued:

I called Sig again and we had our conversation and the jest of the conversation was, he says, you know, Mike, I thought about it. He says, I can't go through with the deal. I said, hell, I've got your word on it. He said, well, I can't do it, and I said why not. He says, because if I give it to you, your hospitalization, it's going to impact on the other general reps who were part of that discharge and that election with the organizers program.

Moreover, when Beckes phoned Lucassen after being discharged, he asked Lucassen what about the deal they had that Beckes would retire after the first of 1992. Lucassen told him that he had "an entirely new executive board and they have a new broom and they're going to sweep out everybody who doesn't believe in their philosophy."

I find that General Counsel proved a prima facie case of discharge. *Wright Line*, supra; *NLRB v. Transportation Management Corp.*, supra.

Respondent argued that Bowling would have been discharged in the absence of his protected activities.

President Lucassen testified that he fired Bowling because Bowling was not enthused about UBCJA organizing pro-

grams and had made derogatory remarks about them. Some of the locals where Bowling had worked asked to have him transferred because he was "bad mouthing" the general office and programs Bowling was working on. Also Bowling did all he could to head off the Georgia State Council vote to elect a delegate to the convention because he knew that a strong candidate for that office was Ed Lashley, an open Lucassen supporter.

As shown below, I specifically find that those alleged factors did not contribute to Bowling's discharge. As to Lucassen's contention that Bowling was discharged because some of the locals where Bowling had worked had asked that he be transferred because he was "bad-mouthing" the general office, Larry Phillips, business representative in Augusta, Georgia, testified that Dick Bowling was assigned to assist him in March 1991. He and Bowling discussed UBCJA politics on several occasions and Bowling brought up the UBCJA loans saying it was a conspiracy and a coverup. Bowling said the loans were the problem of Patty Campbell and Sig Lucassen. Phillips talked to Jim Sala and asked that Bowling be reassigned because Phillips said he did not want to be dragged into politics. Phillips told Sala what Bowling was saying about the loans.

Representative James Sala testified that Larry Phillips, business agent in Augusta, Georgia, had asked during the spring or summer of 1991, that I. L. Bowling be transferred away from Augusta because he was talking politics, regarding supporting Whitey Rogers, with people in the Local. Sala testified that he reported to Mike Fishman, the comments he had received from Larry Phillips regarding Bowling.

On rebuttal, Bowling admitted discussing the loans with Larry Phillips. Bowling denied that he told Phillips that the loans were the problem of Pat Campbell and Sig Lucassen. Bowling agreed with Phillips that Bowling had LM reports from the Department of Labor. Bowling recalled that Phillips asked Bowling for a copy of the reports.

In consideration of the credibility of the above testimony, I note that while Jim Sala testified that Larry Phillips complained that Bowling was talking politics regarding supporting Whitey Rogers, that did not accord with the testimony of Larry Phillips. While Phillips testified that Bowling complained about the bad loans made by UBCJA and he recalled Bowling said those loans were the responsibility of Pat Campbell and Sig Lucassen, Phillips said nothing about Bowling campaigning for Whitey Rogers. Bowling also denied that he campaigned for Rogers. I credit that testimony of Bowling that he complained about the loans. I do not credit the testimony of James Sala that Larry Phillips told him that Bowling was supporting Whitey Rogers.

Due to inconsistencies in the testimony of Phillips and Sala, I do not credit their testimony. I credit the testimony of Bowling that he did complain about the alleged bad loans but did not support Whitey Rogers. I credit the testimony of Bowling and discredit the testimony of James Sala to the effect that it was reported to him that Bowling was campaigning for Whitey Rogers. Additionally, as shown below, I also discredit the testimony of Sala that Bowling was wearing a Whitey Rogers pin during the UBCJA convention. I credit the testimony of Bowling, as well as that of Floyd Doolittle, that Bowling did not wear a Whitey Rogers pin.

James Sala testified that he saw I. L. Bowling at the 1991 UBCJA convention with Floyd Doolittle and they asked Sala

to sign a CRF authorization card. Sala did not see Doolittle with a button or a pin but he noticed that I. L. Bowling had both a large CRF button and a small Whitey Rogers pin similar to the one Lawrence Garcia was wearing.

During rebuttal testimony, Floyd Doolittle testified that he spent a great deal of time with I. L. Bowling during the UBCJA convention and that he did not ever see Bowling wearing a Whitey Rogers pin. Doolittle recalls that Bowling wore a legislative improvement committee pin.

Bowling denied that he wore a Whitey Rogers pin or button during the UBCJA convention. Bowling testified from pictures of himself at the UBCJA convention and identified pins he was wearing as his 35-year UBCJA pin, a delegate badge, an identification tie pin for entrance into the convention, a CRF pin, a CLIC pin and a plaque of names of cities of UBCJA conventions he had attended. Bowling denied that he ever wore a Whitey Rogers pin. I credit the testimony of Bowling and Floyd Doolittle that Bowling did not wear a Whitey Rogers pin.

There was additional evidence regarding comments Bowling made to Local employees. George Geiger, executive secretary-business manager for the North Florida District Council of Carpenters, testified that I. L. Bowling phoned and asked him about a UBCJA loan on some land near Jacksonville. Bowling mentioned that there was \$93 million in loans and there had been a coverup. Bowling said they should put "all their asses in jail." Some time later Geiger talked to Ed Lashley. Lashley stated that Bowling had talked to him about the UBCJA loans. Lashley said that he did not believe Bowling was on Sig's side.

Geiger was unable to recall when the above conversations occurred. He could not recall whether the conversations occurred during 1990, 1991, or when.

Ed Lashley, business manager of the Carpenters Local in Brunswick, Georgia, testified that I. L. Bowling was assigned to assist him in the BE&K campaign during 1991. During one conversation Bowling said that the current general president and the one before him, Pat Campbell, had invested several million dollars of the UBCJA money and had lost it. Bowling said "their asses should go to jail." A few days later, Lashley talked to George Geiger about his conversation with Bowling. After that Lashley called the BE&K coordinator Willard Masters and told Masters what Bowling was saying. Masters told Lashley that he would take the matter to the general office.

Subsequently, according to Lashley, on occasion while he was in his office with Bowling, he overheard Bowling talking on the phone about the loans made by UBCJA. Lashley testified that Bowling told him that he was going to support Whitey Rogers. Bowling told Lashley that he could not support Lashley because his national politics were wrong. Lashley was in favor of the Lucassen ticket. Bowling told Lashley that Whitey Rogers would be the next general president. Lashley also testified that he told Bowling he was supporting Bill Nipper and Bowling told him that they did not need that "old son-of-a-bitch" as board member.

I. L. Bowling testified in rebuttal that he checked his reports to UBCJA and the last time he worked in Brunswick, Georgia, was in February 1990. Bowling testified that he did not recall politics coming up during conversations with Ed Lashley. He denied that he made comments to Lashley supportive of Whitey Rogers. Bowling denied that he made

comments to Lashley critical of General President Lucassen. He admitted discussing loans made by UBCJA with Ed Lashley and Bowling admitted that he was very concerned about the loans because they came from the UBCJA general fund which supports the pension fund. Bowling testified he was nearing retirement and was concerned about his retirement funds. He denied that he ever told Lashley that Lucassen was responsible for the loans.

Bowling also testified that copies of his personal reports to UBCJA showed that he last worked on the BE&K campaign during June 1990.

Bowling testified that Lashley phoned him in August or September 1991 and questioned Bowling as to who he was supporting. Bowling told Lashley about the CRF and that they had made a commitment to not support any candidate.

Bowling denied that he ever told Ed Lashley that he did not need Bill Nipper as a board member. He denied speaking negatively about Nipper to Lashley.

According to Bowling, he first learned that Whitey Rogers was a candidate in November 1990.

As to the above evidence, I am convinced that Bowling did complain that Respondent's officials were at fault in loans advanced by UBCJA. I am convinced that Bowling was not campaigning for Whitey Rogers. As shown above, George Geiger, like Larry Phillips, recalled that Bowling complained about the bad loans and Geiger recalled that Ed Lashley told him that Bowling had complained to Lashley about the loans. Geiger also recalled Lashley said that he did not believe Bowling was on Sig's side.

I was not impressed with Ed Lashley's testimony. Unlike Geiger and Larry Phillips, Lashley testified that Bowling openly supported Whitey Rogers for general president. I do not credit that testimony which was rebutted by Bowling. I discredit Lashley's testimony which was not supported by credited testimony from Geiger as to what Bowling was saying. I was not impressed with Lashley's demeanor. I do not credit his testimony as to what Bowling allegedly said about Bill Nipper.

I credit Bowling's testimony that his records show that he last worked in Brunswick in February 1990, that he last worked on the BE&K campaign in June 1990 and that he did not discuss politics at that time. The record did not reflect that before June 1990, it was well known among the representatives to the general president, that Whitey Rogers would run for general president. The evidence showed that Rogers announced his candidacy in November 1990.

I also credit Bowling's testimony that he told Ed Lashley during a August or September 1991, phone conversation about the CRF and that they had made a commitment not to support any candidate.

As to the alleged bad loans made by UBCJA. There was no dispute that it was rumored that some \$93 million of loans had gone bad. The record illustrated that UBCJA members were discussing those loans and those discussions continued into the 1991 election campaigns.

In regard to the Georgia State Council vote, I. L. Bowling testified that he did not do anything to oppose a referendum vote regarding a delegate to the UBCJA convention from the Georgia State Council of Carpenters. I credit Bowling's testimony in that regard.

Lashley recalled that he told Willard Masters and others that Bowling was with the Whitey Rogers crowd during the

UBCJA convention. Bowling denied that he was with a Whitey Rogers crowd during the convention.

As to the above evidence, I credit the testimony of Floyd Doolittle and I. L. Bowling. I do not credit Ed Lashley. I find that Bowling did not wear a Rogers button or pin and he was not with the Whitey Rogers crowd during the convention.

Moreover, General President Lucassen did not claim that he relied on such evidence as to a basis for Bowling's discharge.

The above credited evidence shows that from early 1990, I. L. Bowling was critical of the loans made by UBCJA. Due to the long lapse in time from the first reports to Respondent that Bowling was making such comments, until his discharge in October 1991, I am convinced that those reports did not contribute to Bowling's discharge. I credit Bowling's testimony that he last worked in Brunswick, Georgia, and he last worked on the BE&K campaign early in 1990.

As to contentions that Bowling was supporting Whitey Rogers, I specifically discredit that evidence as shown above.

General President Lucassen said that Bowling was discharged because he was bad mouthing the general office. I have determined that did not lead to Bowling's discharge, especially in view of the time factor. Comments that were supported by credited evidence involved the alleged bad loans and Bowling was making those comments in early 1990. No disciplinary action resulted until his discharge in October 1991.

Lucassen also alleged that Bowling was discharged because he tried to head off the Georgia State Council vote. I specifically credited Bowling's testimony that he did no such thing. There was no probative evidence supporting Lucassen's claim.

Finally Lucassen said he discharged Bowling because he opposed Ed Lashley and that Lashley was on the Lucassen ticket. I find there was no credited evidence to support that allegation. In fact I specifically credited Bowling's testimony that, during an August or September 1991 phone conversation, he told Lashley that he was involved with CRF and CRF had decided to avoid involvement in politics.

In view of the above, I find that Respondent did not prove that it would have discharged I. L. Bowling in the absence of his protected activities.

C. Edward Fortson

Edward Fortson testified that he was first employed by Respondent as an Industrial Organizing Representative in April 1973.

Fortson attended the July 6 CRF meeting in Atlanta. Fortson had asked Gerrold Brown, a retired representative, to attend the meeting, but the other representatives at the meeting voted to not seat Brown. They voiced a desire to keep the CRF out of politics and a fear that Brown would cause some to question whether CRF was involved in politics. When Brown was rejected, Fortson, along with Wanda Phillips, walked out of the CRF meeting.

After leaving the meeting, Fortson and Phillips visited with Gerrold Brown in a cafe. Then Fortson and Phillips went by Edgar Fields' house. As shown above, I find that Edgar Fields was a supervisor at material times.

During their conversation, Fields asked Fortson and Phillips how the CRF meeting had gone. Fields asked how many

showed up at the meeting and Fortson told him. Fields asked if two Black representatives, Bob Woodson and Sylvester Hicks, had shown up at the meeting. Fortson told Fields that they had not made the meeting. Fortson named all the representatives that attended the CRF meeting. He recalled naming eight representatives as those that attended and he specifically recalled that he named Fred Purifoy. Fortson recalled that Edgar Fields told him, and Phillips, when they talked on July 6, that he had already received a phone call about the CRF meeting.

Fortson was also involved in the 1989 CRF campaign.

After receiving his notice of termination dated October 15, 1991, Fortson phoned Edgar Fields and asked why he had been fired. Fields told Fortson that he did not know.

Fortson testified that he has never been told why he was fired.

I find that General Counsel proved a prima facie case in support of the discharge of Fortson. General Counsel proved that Fortson's protected union activity was a reason for his discharge. After the July 6 meeting when Fortson and Phillips visited their supervisor, Edgar Fields, and were questioned about the CRF meeting, neither Fortson nor Phillips appeared in correspondence from CRF until October 9, 1991.

As shown above, Floyd Doolittle hand delivered a letter to General President Lucassen's secretary, Sue Dillon, on October 9. Sue Dillon came to Doolittle and asked for another copy of that letter. That letter contained a listing of representatives that had authorized CRF to inform Lucassen of their involvement with CRF. When Sue Dillon asked for a second copy, Doolittle gave her a copy that had written in the correct spelling of Tom Hohman's name and had four additional representatives written in as authorizing CRF to name them to Lucassen. Those four additional representatives included Ed Fortson and Wanda Phillips.

As shown below, I credit testimony of Michael Beckes that during his discussion with General President Lucassen about Lucassen changing his mind about granting continued medical insurance to Beckes, Lucassen gave as a reason that to grant the insurance would impact on the other representatives who were discharged and were part of the organizing activity.

In an October 12 letter Fortson and Phillips were named as members of the CRF organizing committee. Three days later Fortson and Phillips were included in the 12 representatives discharged by General President Lucassen. I find that General Counsel proved a prima facie case. *Wright Line*, supra; *NLRB v. Transportation Management Corp.*, supra.

Respondent's General President Lucassen testified that he fired Fortson because Fortson supported Fred Purifoy in opposition to the Lucassen candidate, Fred Carter, from the Sixth District.

Lucassen testified that on one occasion Fortson resigned because of personal problems. Lucassen called him into his office and told him UBCJA would let him take some time off to take care of his problems if he would not take early retirement. Fortson took up that offer.

President Lucassen admitted that Fortson was active in the CRF and had testified on behalf of the CRF during the 1988 campaign.

Additionally, as shown above, on October 23, 1989, Dean Sooter identified Fred Purifoy as being involved in organizing activity. Sooter told Mark Mullen that he should not be

talking to Purifoy because Purifoy was involved in organizing the representatives. Lucassen identified Fortson's support of Purifoy as the reason Fortson was fired.

Representative Jim Tudor testified that he often saw Ed Fortson sitting with Jim Osborne a District Council executive secretary from Little Rock and with former representative Fred Purifoy during the 1991 UBCJA convention. Tudor reported to Johnny Ray Conklin. Conklin was chairman of the SDF committee—Sig, Dean, and Fred supporters.

Ed Fortson admitted that he did sit with Fred Purifoy and Jim Osborne during the convention. Fortson denied that he wore any pin except the CRF pin and a "CLIF" pin, which is a pin for the legislative branch of the UBCJA. Fortson denied doing anything to support either candidate for general president. Fortson testified that he told his supervisor, Edgar Fields, that he was staying neutral. I found Fortson to be a credible witness with good demeanor. I credit his testimony that he did not support Purifoy or anyone else during the 1991 convention.

In view of the above, I find that Respondent failed to prove that it would have discharged Fortson in the absence of protected union activities.

There was some evidence that Fortson supported Whitey Rogers. Because of Fortson's association with Osborne and Purifoy, reports he had received and the fact that he did not see Fortson at any of the support Lucassen's slate functions that he attended, Representative Jim Tudor felt that Fortson was a Whitey Rogers supporter. Tudor reported to Johnny Ray Conklin how he felt about Fortson supporting Rogers.

Fred Carter, general executive board member from the Sixth District, testified that he saw Ed Fortson wearing both a Whitey Rogers button and a Cox button.

I do not credit the above evidence that Fortson supported Whitey Rogers. As shown above I credit Fortson's testimony that he did not support anyone during the 1991 campaign.

Moreover, despite the testimony of Tudor and Carter, which I do not credit, General President Lucassen testified that Fortson was discharged by him because of Fortson's support of Fred Purifoy. Lucassen did not mention other reasons for Fortson's discharge. He did not testify that he relied on evidence that Fortson supported Whitey Rogers.

In that regard Respondent argued in its brief, that Fred Carter observed Fortson associating with Fred Purifoy, Wanda Phillips, and Jim Osborne.

I find that testimony fails to establish that Fortson supported Fred Purifoy in opposition to the Lucassen candidate, Fred Carter, from the Sixth District. I cannot find that Fortson demonstrated disloyalty to his general president by "associating with," or sitting with Fred Purifoy, and others, at the UBCJA convention.

D. Wanda Phillips

As shown above, Wanda Phillips with Ed Fortson, attended the July 6 CRF meeting in Atlanta. Fortson had asked Gerrold Brown, a retired representative to attend the meeting, but the other representatives at the meeting voted to not seat Brown. They voiced a desire to keep the CRF out of politics and a fear that Brown would cause some to question whether CRF was involved in politics. When Brown was rejected, Phillips, along with Fortson, walked out of the CRF meeting.

After leaving the meeting Fortson and Phillips visited with Gerrold Brown in a cafe. Then Fortson and Phillips went by Edgar Fields' house.

During the conversation with Fields, he asked Fortson and Phillips how the CRF meeting had gone. Fields asked how many showed up at the meeting and Fortson told him. Fields asked if two Black representatives, Bob Woodson and Sylvester Hicks, had shown up at the meeting. Fortson told Fields that they had not made the meeting. Fortson named all the representatives that attended the CRF meeting.

I find that General Counsel proved a prima facie case in support of the discharge of Phillips. General Counsel proved that Phillips' protected union activity was a reason for her discharge. After the July 6 meeting when Fortson and Phillips visited their supervisor, Edgar Fields, and were questioned about the CRF meeting, neither Fortson nor Phillips appeared in correspondence from CRF until October 9, 1991.

On that date Fortson and Phillips were shown as additional representatives that had authorized CRF to inform the general president of their organizing activity. Floyd Doolittle hand delivered a letter to General President Lucassen's secretary, Sue Dillon, on October 9. Sue Dillon came to Doolittle and asked for another copy of that letter. Doolittle gave her a copy that had written in the correct spelling of Hohman's name and had four additional names written in, including Ed Fortson and Wanda Phillips.

As shown above, in its October 12 letter to all representatives, CRF named Fortson and Phillips as members of the CRF organizing committee. Three days after that letter and 6 days after Lucassen's secretary received two copies of Doolittle's October 9 letter, Fortson and Phillips were discharged by General President Lucassen.

As shown below, I credit testimony of Michael Beckes, that during a phone conversation with General President Lucassen, Lucassen told Beckes that he could not continue Beckes' hospital insurance because that would impact on the other representatives who were discharged and were part of the organizing activity.

The record supports a finding that General Counsel proved a prima facie case. *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

Respondent's general president testified that he heard that Wanda Phillips opposed some members of his slate in 1991. Specifically, he heard that she opposed First Vice President Dean Sooter and she supported Fred Purifoy in his campaign against Fred Carter. Both Sooter and Carter ran on the Lucassen slate.

Lucassen admitted that Wanda Phillips was listed on the CRF letterhead but he testified that made no difference in his decision to discharge Phillips. That admission, which I credit in view of the full record, conflicts with Lucassen's claim that he did not see CRF letters during and after the UBCJA convention, until he discharged Phillips and other representatives on October 15. The full record shows that Wanda Phillips had not been included in CRF letters before October 9, 1991. Those earlier letters are all in evidence and none show Phillips until she, along with Ed Fortson and two others, were written in as supporting CRF in the second copy of the October 9, 1991 letter given to the general president's secretary.

There was evidence showing that Phillips opposed some members of Lucassen's slate. Respondent called Johnny Ray Conklin, secretary-treasurer of the Missouri State Council. Conklin asked for additional assistance in organizing activity in Missouri in 1991. One of the representatives sent to him was Wanda Phillips. Conklin eventually asked that Phillips be removed because he felt she was not productive.

Conklin testified that after Phillips arrived some of the representatives reported to him that she voiced opposition to Dean Sooter and Fred Carter in the upcoming election. As shown above, Conklin headed a support effort called SDF, which worked for the election of Sig Lucassen, Dean Sooter, and Fred Carter.

Jim Tudor, one of the representatives who worked with Wanda Phillips in Missouri, testified that he and Phillips discussed the general election around April 1991. Phillips asked him where she could get one of the president's committee pins like Tudor was wearing. That pin was passed out by the committee to reelect General President Lucassen. Tudor told Phillips that she could get one of the pins by contributing to the campaign. Phillips told him that she was not going to make any contribution to any committee and especially a committee that had to do with the election of Dean Sooter because he had chewed her out big time in a meeting. Phillips said she may get fired because she did not make a contribution and she wouldn't help Sooter in any way.

Wanda Phillips denied that she told Tudor that she would not make a contribution because of Dean Sooter. Phillips testified that Tudor showed her his president's committee pin and said it cost \$500. Tudor recommended that Phillips contribute \$500 as job security. Phillips testified that she told Tudor that she didn't have the money. Tudor asked Phillips would she wear it if he could get her one of the president's committee pins. Phillips admitted that she replied that she just did not have the money.

Johnny Conklin testified that he frequently saw Phillips in the company of Fred Purifoy and James Osborne, during the UBCJA convention in October. He reported to Fred Carter that from all the information he could gather, Wanda Phillips was definitely a Rogers-Purifoy supporter.

David Powers, an international representative for UBCJA, testified that he talked with Wanda Phillips and Ed Fortson on the boardwalk in Atlantic City during the 1991 UBCJA convention. While they were there, someone else came up and started talking with Fortson but Powers and Phillips continued to talk together. Before Fortson turned to the other conversation he explained that Phillips' credentials had been messed up. Phillips told Powers that everybody in the Sixth District received blazers and straw hats but she did not receive either the blazer or the hat. Powers told her to go see Johnny Ray, that he had one for her. As Phillips and Powers continued to talk, Phillips said to Powers, "I'm not going to vote for that God damn Dean Sooter."

Phillips denied making a comment that she was not going to vote for Sooter.

Ed Fortson testified that he did not hear Wanda Phillips make any comment about Dean Sooter while she was talking with David Powers.

Powers recalled telling others about Phillips' comment that she was not going to vote for Dean Sooter. He told Ronnie Angell and Russell Ward. He believed that he also told Johnny Ray Conklin.

In addition to evidence mentioned above regarding the reasons General President Lucassen gave for firing Phillips, there was also evidence that Phillips supported Lucassen's opponent during the 1991 election. Lucassen did not testify that that evidence was used in his decision to discharge Phillips.

Ronald Angell, a representative of the general president, testified that he was in charge of security at the 1991 UBCJA convention. Angell testified that he noticed that Wanda Phillips was wearing a Whitey Rogers campaign button when he saw her in the lobby of the hotel on Monday night of the convention. On the second day of the convention Angell saw Wanda Phillips in the bleachers of the convention center, with a white Whitey Rogers hat.

Wanda Phillips denied that she wore a Whitey Rogers button or that she had a Whitey Rogers hat at any time during the convention.

Angell testified that David Powers came to him during the convention and told him that Wanda Phillips had said she was not going to vote for that "God damn Dean Sooter."

Ronald Angell testified that he reported all Phillips' actions showing her support for Rogers and David Powers' comments to him regarding Phillips, to Fred Carter. Fred Carter is the UBCJA general executive board member from the Sixth District. He ran for that position in 1991 on the Lucassen slate.

Fred Carter testified that Ron Angell and David Powers reported to him that Wanda Phillips said she would do nothing to support Dean Sooter. Carter passed that information on to Lucassen and Sooter.

Carter testified that he saw Wanda Phillips wearing a Whitey Rogers button during the 1991 UBCJA convention.

As shown above, Wanda Phillips denied wearing a Whitey Rogers button. She testified that a CRF button was the only button she wore.

Carter testified that Ron Angell and David Powers reported to him that Wanda Phillips said she would do nothing to support Dean Sooter. Carter passed that information on to Lucassen and Sooter.

Representative to the General President Tudor testified that he had received reports from Tim Burr that both Phillips and Ed Fortson were making comments in support of Whitey Rogers during the 1991 general election campaign. Tudor reported to Johnny Ray Conklin what Phillips had said about not supporting Dean Sooter.

The above evidence does tend to show that Wanda Phillips indicated opposition to Dean Sooter and support for Fred Purifoy. President Lucassen testified that those two matters caused him to discharge Phillips.

I was not satisfied with Phillips' denial that she made comments about not supporting Sooter. I found David Powers to be a credible witness and I credit his testimony that Phillips told him that she would not vote for that "God damn Dean Sooter." I credit Powers' testimony that he reported that comment to Ronnie Angell and, perhaps, to Johnny Ray Conklin. I also credit the testimony of Lucassen that he learned that Phillips opposed Dean Sooter and supported Fred Purifoy against Fred Carter.

As shown above, Fred Purifoy was considered to be a CRF organizer as early as 1989. Dean Sooter told Mark Mullen not to associate with Purifoy because Purifoy was involved in organizing for CRF.

In addition to the confusion regarding Fred Purifoy because Purifoy was both a political opponent of the Lucassen ticket and closely connected with CRF, General President Lucassen admitted that Wanda Phillips was listed on some of the CRF letterhead. Actually Phillips was listed in CRF letters only on and after October 9, 1991—some 6 days before she was discharged.

As shown above, that admission by Lucassen that Phillips was listed in CRF letters, tends to prove that he did see CRF letters distributed during the UBCJA convention despite his testimony to the contrary. Lucassen's admission tends to prove that he was aware of Phillips' renewed CRF activity at the time of her discharge.

I find that the evidence supports Lucassen's testimony that Phillips refused to support Dean Sooter. However, Phillips was shown to have made those comments from at least early 1991. Despite Lucassen's testimony to the contrary, the credited record shows that Lucassen discharged others that he felt were disloyal, before the UBCJA convention. In fact General President Lucassen testified that he discharged several employees including Representative Fred Purifoy, because of disloyalty before the convention. As shown below, Lucassen testified that he did not discharge Michael Beckes, when Beckes announced that he was running for executive board, because Beckes was having heart surgery. I discredited Lucassen's testimony in that regard and also, I discredited Lucassen's testimony that he did not discharge other employees, including 13 representatives because he would be making political hay for his opponent if he discharged them before the convention.

Additionally, contrary to Respondent's argument in its brief, there was evidence that Lucassen did not discharge all those representatives that opposed him. There was evidence of Representatives responding to a Lucassen telephone poll and, at least one representative that was not discharged was marked opposed to the reelection of Lucassen. General Counsel moved for production of the entire telephone survey but that was denied by the administrative law judge. Therefore, General Counsel was provided with only one page of the results of that poll and, for that reason, did not have an opportunity to examine the complete results of that poll as to whether other representatives that were not discharged, had responded in opposition to Lucassen's reelection.

That evidence of the phone poll, tends to show that General President Lucassen did not discharge all representatives that opposed him during the 1991 election.

In view of the timing of Phillips' discharge, coming 6 days after she surfaced as a supported of CRF, as opposed to her vocal opposition to Dean Sooter for several months, I am convinced that she would not have been discharged absent her CRF activity. In consideration of the full record, I find that Respondent failed to show that it would have discharged Wanda Phillips in the absence of her protected CRF activities.

E. Robert Mark Mullen

Mullen testified that he was employed by Respondent as a representative to the general president from April 1987 until his discharge on October 15, 1991. At the time of his discharge Mullen worked under the supervision of Willard Masters, the Southern coordinator of the BE&K campaign.

I found above that Masters was a supervisor at material times.

As shown above, Robert Mark Mullen testified that his supervisor, Willard Masters, first interrogated him regarding representatives' organizing activities in January 1990. Then, again, in August 1991 in Orange Texas at a Best Western Motel.

Also as shown above, Mullen testified that he was at an educational seminar in Palm Beach on October 23, 1989. Dean Sooter saw Mullen and Russell Ward talking with Fred Purifoy. When they walked away from Purifoy, Dean Sooter told them to stay away from Purifoy because he was mixed up in this organizing and there was not going to be any representatives when this is over.

Mullen was one of the representatives discharged on October 15, 1991. His letter, like the others on that date, did not show a reason for his discharge.

Mullen was never told why he was discharged.

During the 1991 campaign Mullen was first named as supporting CRF on October 9, 1991, when Floyd Doolittle hand delivered a letter to the general president's office, listing Mullen as one of the representatives that had authorized CRF to inform Lucassen of their organizing activity.

Then on October 12 Mullen was listed as one of the members of the CRF organizing committee in a letter to all representatives of the general president.

Three days later the general president discharged Mullen.

I find that the credited evidence illustrates that Respondent opposed the efforts of its employees to organize for CRF; Respondent learned of Mullen's association with CRF; and some 6 days after first learning of Mullen's association he was discharged. The credited evidence proved Respondent's animus against CRF.

In view of the above and the full record, I find that General Counsel proved a prima facie case in support of the discharge of Mark Mullen. General Counsel proved that Mullen's protected union activity was a reason for his discharge. *Wright Line*, supra; *NLRB v. Transportation Management Corp.*, supra.

Respondent offered evidence to show that Mullen was discharged because of his internal political activities.

General President Lucassen heard that Mullen would not support Fred Carter, the Lucassen candidate for board member; Dean Sooter, first vice president; or Lucassen, during the 1991 campaign. Lucassen heard that Mullen alleged that Lucassen was part of the Mafia and Mike Fishman was a Commie Jew. He also heard that Mullen said he would not carry out Lucassen's policies.

Lucassen denied that Mullen's involvement with CRF had anything to do with his discharge.

Jackie St. Clair, secretary-treasurer of the Texas State AFL-CIO, testified that he has known Mark Mullen for about 10 years and that Mullen came by his office and talked to St. Clair in February or March 1991. During that conversation with Mullen the subject of the upcoming election for UBCJA general officers came up. St. Clair testified:

We got discussing the, you know, officers representing the folks that I knew, and [Mullen] made the statement that we're going to get rid of Fred Carter and specifically named Dean Sooter and the General President, Sig Lucassen.

. . . .

[Mullen] said we're going to—I think he said, "We're going to clean house."

St. Clair recalled that he told Fred Carter what Mullen had said. St. Clair believes that he mentioned it to Fred Carter on a second occasion when Carter was in his office with Ron Angell.

Mullen admitted that he talked to St. Clair about the 1991 campaign. St. Clair had asked him about a rumor that Lucassen had serious opposition. Mullen told St. Clair that it was true that Lucassen had a serious opponent but that it looked like Sig was going to win. Mullen told St. Clair that Lucassen would probably get 70 percent of the vote. St. Clair asked Mullen about the bank loans.

Mullen denied telling St. Clair that we are going to clean house; get rid of Carter, Sooter, and Sig Lucassen.

When asked about St. Clair's motivation in testifying against him, Mullen testified that St. Clair is close to Dean Sooter but other than that, he did not know why St. Clair would testify falsely about him.

Mullen testified that he supported Carter, Sooter, and Lucassen during the 1991 campaign.

Ronald Angell testified that he was involved in several conversations with Mullen regarding the 1991 general election. Angell testified that in June 1991, at the Local hall in Austin, Texas, he recalls Mullen making the comment:

"Hell, Sig is Italian, it's Lucassen, and he's a part of the mafia and if he's re-elected the mafia is going to run this Union."

Mullen denied telling Angell that Sig is Italian and a part of the Mafia or that the Mafia is going to run this Union.

In July at the Texas AFL-CIO convention in Austin, Angell recalled that several of them were passing out handbills, and someone mentioned he needed to get some information from UBCJA general office. Mullen responded,

Well, you're not going to get anything out of the general office, they're not doing a God damn thing. They're all sitting on their ass.

Mullen denied that he made the above statement to Angell.

Later during the Texas AFL-CIO convention, Mullen commented to Angell that Mullen should go to work for John Sharp, an elected official in Texas. Angell asked him why and Mullen replied,

I'm not happy with this Brotherhood and I don't think they're happy with me.

Mullen denied the above. He admitted that after introducing Angell to the administrative assistant to the state controller, he told Mullen that they should get a job like his.

In September 1991 at the Local in Austin, Angell recalled talking with Mullen and the general election came up. Mullen commented:

Sig's slate is going to get defeated and that suits me because then Fishman's going to get his rotten ass fired.

Angell recalled that Mullen had expressed unhappiness with Mike Fishman, UBCJA director of organizing, as early as 1988. During a phone conversation then Mullen told Angell he was pissed. When Angell asked why, Mullen stat-

ed: "That no good Yankee Jew son of a bitch, Mike Fishman."

In 1991 Mullen made several comments, that the best thing that could happen to the Brotherhood would be if Fishman was run off, shot, or something, according to Ronald Angell. Angell recalled one instance where he was talking on the phone with Mullen in the first part of August 1991, when it came up that former representative Willie Shepherson had sent out something saying that Fishman was a communist or belonged to the Communist Party and Mullen said, "See there, that Commie son of a bitch, now they ought to fire his ass."

Mullen denied that he ever made derogatory comments about Mike Fishman and he denied that he referred to Fishman as a "Commie son of a bitch."

Angell testified that he told Fred Carter about Mullen's comments during the Texas AFL-CIO convention and Carter told him to keep his ear open. Angell started keeping notes of Mullen's comments. Fred Carter is the UBCJA general executive board member from the Sixth District.

Angell testified that just before the October 1991 UBCJA convention, Gale VanHoy, who succeeded Jackie St. Clair as executive secretary of the Texas Building Trades, told him that Mark Mullen had told him that he was going to the UBCJA convention and "see that Whitey's group is elected, otherwise they're going to fire my ass."

Ronald Angell testified that he reported all Mullen's derogatory comments and the above comments from VanHoy to Fred Carter.

Mullen denied that he ever told Angell that Lucassen was Italian and with the Mafia. Mullen testified that he has known Lucassen was Scandinavian since 1982.

Mullen testified that he had to write a special report to former President Campbell because of a botched organizing campaign in Mullen's Local that Ronnie Angell worked on and left Mullen to clean up. Mullen testified about that matter when asked if he and Angell got along.

Fred Carter testified that he met with Mark Mullen twice during 1991 regarding reports he had received that Mullen was making derogatory comments about the UBCJA general office especially comments about Mike Fishman. Carter confronted Mullen with the reports. Mullen admitted that he had made derogatory comments about Fishman but explained that he was only kidding. Carter testified that Ron Angell had reported to him that Mullen remarked that General President Lucassen was Italian and associated with the Mafia and that one of the Mafia kingpins was going to be on the podium at the general convention. Carter reported that matter to Lucassen and Sooter. The second meeting Carter had with Mullen was on September 9, 1991. Mullen told Carter that he wouldn't make such remarks again.

Mark Mullen testified that Carter asked him about a rumor that Mullen was looking for another job. Mullen told Carter that he had joked that he should have a job like the administrative assistant to the state controller. Mullen testified that Carter also asked him about what had been a joke regarding a secretary at the state AFL-CIO.

Mullen denied that he confirmed to Fred Carter in September 1991 that he had called Lucassen a "Mafia King Pin."

Mullen testified that he and Carter had a run in in 1982 when Carter told Mullen he should not run for an executive board position of the Texas State Council of Carpenters and

Mullen refused to step aside. Carter told Mullen that they had already picked their candidate for the position.

Johnny Ray Conklin, secretary-treasurer of the Missouri State Council of Carpenters, testified that Mullen complained to him during the UBCJA convention in October 1991 about not having a suite of rooms. Conklin explained to Mullen how he had handled the Missouri State suite assignment. Conklin testified that Mullen told him that Dean Sooter and Fred Carter didn't like him because he would not knuckle under to the old man. Mullen identified the old man as Sig Lucassen. He said Lucassen's philosophies were all wrong and Lucassen did not have his priorities in place.

Mullen denied telling Conklin that Sooter and Carter did not like him or that they were responsible for Conklin's handling of the Missouri State suite assignment. Mullen denied saying that Lucassen's philosophies were all wrong and that Lucassen did not have his priorities in place. Mullen denied that he ever said that he would not follow Lucassen's orders if he knew they were wrong.

On rebuttal Mullen testified that he supported Sig Lucassen in the 1991 campaign. He identified a letter he sent to Lucassen which included a resolution of the Texas State Council of Carpenters to support Lucassen. He also made a \$100 contribution to Lucassen and was a member of the SDF committee.

Mullen testified that Conklin was upset at the UBCJA convention because Mullen was wearing a CRF badge. Other than that Mullen did not testify as to any reason why Conklin would testify falsely against Mullen.

Mullen testified that he wore a Sig Lucassen pin during the 1991 UBCJA convention.

Although Respondent argued that Mullen was discharged because of his internal political activities, that was not listed as a reason for his discharge in his letter of discharge. Mullen was not told that internal politics had anything to do with his discharge.

In view of the substantial testimony, I am convinced that Mullen made derogatory comments attributed to him in the testimony of St. Clair, Angell, Conklin, and Carter. I am convinced those matters were reported to General President Lucassen and I credit his testimony to that effect. Even though I credited much of Mullen's testimony, I found his testimony regarding his own actions, was not believable in view of the substantial testimony to the contrary.

The full record shows that Respondent sought to rid itself of various undesirable employees during mid-October. I have found herein that some of those employees were discharged because of their CRF activities. Apparently others were discharged because of their political opposition to the Lucassen team. Still others were discharged because they both opposed the Lucassen team and engaged in CRF activities. Mullen appears to fall within the last category.

The credited testimony shows that Mullen had been making derogatory comments about UBCJA officers since 1988. Ronald Angell testified to comments Mullen made about Mike Fishman during that year. General President Lucassen testified that he did not want to make political hay for his opponents by discharging representatives during the campaign, but Mullen was making comments about the officers long before the campaign started in 1991. Although Respondent proved that Mullen repeatedly made derogatory

comments about UBCJA officials, the evidence also showed that was a longstanding problem with Mullen.

Jurisprudence is clear that an employer may not legally seize upon a matter which is demonstrated to be a longstanding problem, and justify a discharge during the time of a union organizing campaign. Here, Respondent indeed cleaned house in October 1991 but as to Mullen, they attempted to justify their actions with a problem that had existed with Mullen for over 3 years. No reason was shown why Respondent waited to discharge Mullen. Perhaps Mullen's comments against UBCJA officials had some impact on Respondent's action, but the record clearly illustrated that Mullen was associated with CRF immediately before his discharge.

In view of Respondent's tolerance of Mullen's remarks since as early as 1988, I am convinced that Mullen's comments would not have caused his discharge absent his pro-CRF activities. Respondent failed to prove that Mullen would have been discharged in the absence of his CRF activity.

F. Gilbert Lee

The record shows that Gilbert Lee was involved in both the 1988-1989 and the 1991 CRF campaigns. Lee attended the representation case hearing in 1989.

Gilbert Lee was one of the representatives that attended the first CRF meeting of the 1991 campaign. That meeting was held on July 6, 1991, in Atlanta. Everyone present at the July 6 meeting, except Fortson and Phillips, signed a letter mailed to the UBCJA staff announcing the start of the organizing campaign. Lee was one of the representatives listed in CRF's July 12 letter to General President Lucassen. Lee was one of the representatives that signed an August 10 letter from CRF and Lucassen was sent a copy of that letter. Lee was included in the organizing committee listed in CRF's October 8, 1991 demand letter to General President Lucassen. He was included as one of the representatives listed as authorizing CRF to represent them, in the letter hand delivered to Lucassen's staff on October 9.

Lee was one of the representatives notified of his discharge in letters from the general president dated October 15, 1991.

The record supports General Counsel's contention that Respondent's discharge of Gilbert Lee was caused by Lee's CRF activities. The record shows that Respondent opposed CRF's organizational activities, and the timing of Respondent's discharge of Lee illustrates a connection between the two events (i.e., Lee's discharge and the climax of the CRF campaign).

As shown below, I credit testimony of Michael Beckes, that during his discussion with General President Lucassen about Lucassen changing his mind about granting continued medical insurance to Beckes, Lucassen gave as a reason that to grant the insurance would impact on the other representatives who were discharged and were part of the organizing activity.

I find that General Counsel proved a prima facie case. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

General President Lucassen said that he fired Gilbert Lee because he heard from representative, Leo Decker, that Lee had told him he did not think Lucassen's stewardship of the

Brotherhood was adequate and that he did not intend to support Lucassen.

Leo Decker, a representative to the general president, testified that he worked with Gilbert Lee on a project in Richmond, Virginia, beginning in May 1991. On May 10 Decker had a conversation with Lee regarding the upcoming general election. Decker testified that Lee told him that he was going to support Whitey Rogers. Lee was adamant that he did not like General President Lucassen. Decker talked with both the general executive board member, William Michaelowski, and with General President Lucassen.

Gilbert Lee denied that he ever said anything negative to Leo Decker about General President Lucassen. He testified that he did not tell Leo Decker that he could not support Lucassen.

Lee testified that he supported the Lucassen team and wore a "Lucassen Team" button during the convention. He also wore a CRF button. Lee contributed \$100 to the Lucassen campaign.

I found Lee to be a credible witness. I was impressed with Lee's demeanor. Moreover, I found the testimony of both Lucassen and Decker to be incredible. The essence of that testimony was that Lucassen relied on a single instance comment of support for Whitey Rogers during May 1991, to discharge Lee on October 15, 1991. Unlike some of the other alleged discriminatory discharges, there was no evidence of Lee's political conduct after May and up to and during the October UBCJA convention. Lee's testimony that he supported Lucassen during the convention, wore a Lucassen button and contributed to the Lucassen campaign was un rebutted. I find that the alleged basis for Lee's discharge was pretextuous. *Northport Health Services v. NLRB*, 961 F.2d 1547 (11th Cir. 1992); *Control Services*, 305 NLRB 435 (1991).

The credited evidence failed to prove that Lee would have been discharged in the absence of his protected activities. The only evidence in that regard was the discredited testimony of Leo Decker and General President Lucassen.

G. Burke Smith

Burke Smith like Gilbert Lee, was named in the July 12, 1991 letter to General President Lucassen as a supporter of the CRF. He, among others as noted above, signed the August 10, 1991 CRF letter to general executive board members.

Several of the alleged discriminatees were listed in the October 9 letter, as authorizing the CRF to represent them. Doolittle hand delivered that letter to Lucassen's secretary. Burke Smith was one of the representatives named in that letter.

In view of my findings above I am also convinced that Burke Smith's CRF activities was one reason for his discharge. I find that Lucassen knew that Burke Smith was involved in CRF activities.

As shown below, I credit testimony of Michael Beckes, that General President Lucassen refused to continue Beckes' medical insurance. Beckes talked to Lucassen as to why his insurance was discontinued:

I called Sig again and we had our conversation and the jest of the conversation was, he says, "You know, Mike, I thought about it." He says, "I can't go through

with the deal.” I said, “Hell, I’ve got your word on it. He said, “Well, I can’t do it,” and I said why not. He says, “Because if I give it to you, your hospitalization, it’s going to impact on the other general reps who were part of that discharge and that election with the organizers program.”

In view of the record and all the matters found herein, I find that General Counsel proved prima facie that Smith’s CRF activities was a reason for his discharge. As mentioned above the record proved that Respondent opposed its representatives’ CRF activities and the discharge of Burke Smith occurred shortly after CRF advised the general president that a majority of the representatives had signed authorization cards. *Wright Line*, supra; *NLRB v. Transportation Management Corp.*, supra.

General President Lucassen testified that he fired Burke Smith because he heard that Smith told union officials in Indiana that Lucassen’s handling of the finances was not proper and that Whitey Rogers was getting a raw deal and Rogers would make a better general president than Lucassen. Lucassen said that Smith’s CRF activities had nothing to do with his discharge.

Assistant Business Representative Bruce Wingert from Indiana, testified that Burke Smith was one of two representatives sent to assist him in May 1991. Business Agent Harry Gowan came in while Wingert was working with the two representatives, Smith and Ken Viscovich. Gowan introduced himself and asked them how the general election was going. Burke Smith replied that he did not support Sig’s views and he did not go along with everything Lucassen had espoused including the loans. Smith said that things would come out about the loans and people would see what the real story was.

Subsequently during lunch at a restaurant, another agent, C. B. Smith was along with Viscovich, Wingert, and Burke Smith. C. B. Smith asked about the general election and Burke Smith repeated to him the comments against Sig Lucassen. Burke Smith also stated that he felt Whitey Rogers was getting a bum rap on a computer program that he was setting up. Burke Smith said that Lucassen had not given Rogers enough money to fund that computer program.

Wingert reported the incident at the restaurant to Business Agent Harry Gowan.

Business Manager Harry Gowan testified that representative, Burke Smith, came to Indianapolis in late May 1991. During a conversation with Smith, Gowan recalled along the lines recalled by Bruce Wingert, that Burke Smith said that he didn’t see eye-to-eye with General President Lucassen. Smith said that he was not a Lucassen supporter and that he believed Lucassen would not be around at the next election. Gowan recalled the other visiting representative, Ken Viscovich, did not comment during that conversation. Viscovich was making a phone call on his portable phone.

Gowan talked with Bruce Wingert later and Wingert told him that Burke Smith was opposed to their candidate, Sig Lucassen. Gowan phoned Mike Fishman and told Fishman that Burke Smith was talking against Lucassen. Fishman said that he would pass the word along. Later that day Lucassen phoned Gowan about another matter and Gowan asked if Fishman had passed on what Gowan told him earlier. Lucassen said that Fishman had passed the information on to him and Lucassen said that was good information.

Business Manager C. B. Smith testified that he was involved in a conversation with Burke Smith at a restaurant in Indianapolis during May 1991. Burke Smith said that Whitey Rogers was getting a bum rap about the computer program. C. B. Smith reported back to Harry Gowan that Burke Smith was campaigning. When he left Harry Gowan was phoning the International.

International Representative Gregory Martin testified that he was called by Bruce Wingert in Indianapolis a couple of months before the UBCJA convention. Wingert complained that representative Burke Smith was bad-mouthing the general president.

On rebuttal Burke Smith admitted going to Indiana and meeting with Gowan, Wingert, and C. B. Smith but he denied making any statements either supporting Whitey Rogers or opposing or criticizing General President Lucassen. General Counsel introduced a letter from Director of Organization Michael Fishman showing that Burke Smith’s request to purchase a computer and printer was approved on April 11, 1991. Burke Smith also received a letter postmarked September 25, 1991, from General President Lucassen expressing thanks for Smith’s commitment to a member of the Lucassen volunteers, to vote for Lucassen.

Executive Secretary/Treasurer Leonard Terbrock of the Carpenters District Council of St. Louis testified that he was actively involved in the president’s committee during 1991. He assisted in conducting a telephone poll to determine support for Lucassen among delegates. From a list of delegates Terbrock phoned those assigned to him. He rated each one he talked with on a scale of one to five, how Terbrock felt as to the delegates’ feelings for Lucassen. If the delegate indicated support for Lucassen he was rated at one and sent a letter thanking him for his support of the general president. If not the delegate was rated lower depending on how strongly he expressed himself. The lowest rating was a five. Those delegates were sent letters asking them to reconsider. Terbrock testified that the total number results were told to John Cunningham but to Terbrock’s knowledge, the specific response of a particular delegate was not communicated to general president Lucassen. Terbrock did admit on cross-examination that the list used to phone the delegates was sent back to John Cunningham and Cunningham was aware of the numerical rating system for judging a delegate’s support or opposition for the General President. Burke Smith was rated “1,” which is the top rating given to supporters of General President Lucassen.

In consideration of whether the record evidence proved that Burke Smith would have been discharged in the absence of his CRF activities, I find that I cannot discredit the testimony of Bruce Wingert, C. B. Smith, Gregory Martin, and Harry Gowan. All presented good demeanor under both direct and cross-examination. I am convinced that it was reported to General President Lucassen that Burke Smith was talking in opposition to Lucassen. I find that their credited testimony supports General President Lucassen’s testimony. Smith was critical of Lucassen and supportive of Whitey Rogers.

Nevertheless, as shown above regarding Mark Mullen, Burke Smith falls within that category of employees that were discharged both for internal political activity and activity on behalf of CRF.

Smith's comments regarding Lucassen allegedly misusing UBCJA funds were made in May 1991. Around that time Smith, in Indiana, stated that he did not support Lucassen and did not agree with Lucassen on everything and on the bad loans. I credit that testimony and find that Smith's denials that he made the comments recalled by Gowan, Wingert, and C. B. Smith, cannot be credited. Smith talked in favor of Whitey Rogers for general president.

Those comments were made early in the campaign for the general offices of UBCJA. In fact those comments were made before Fred Purifoy was discharged by Lucassen in July. The timing of Smith's comments in opposition to Lucassen, calls into serious question Lucassen's alleged basis for Smith's discharge. Smith could have been discharged for those remarks before Respondent discharged Fred Purifoy in July 1991. In view of the strong evidence supporting my finding in favor of General Counsel and the above-mentioned evidence, I am unable to find that Respondent would have discharged Burke Smith in the absence of his CRF activities.

H. Lawrence Garcia

There was testimony by Floyd Doolittle that he gave a CRF button to Lawrence Garcia during the UBCJA convention at Atlantic City in October 1991. Doolittle testified that when he gave the button to Garcia, General President Lucassen was standing 4 or 5 feet away from them. Garcia took the button and put it in his pocket.

UBCJA General President Lucassen denied that he saw anyone pass a CRF button to Lawrence Garcia during the 1991 UBCJA convention.

Tom Hohman recalled seeing Garcia wearing a CRF pin during the UBCJA convention.

Garcia was not mentioned in any of CRF's letters before his discharge.

As shown above I must first determine whether General Counsel proved a prima facie case of illegal discharge. *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

There was little evidence that Garcia engaged in CRF activity before his discharge. Moreover, the evidence showing that Respondent had reason to suspect that Garcia was involved in CRF activity was thin. As shown above, that evidence amounted to Garcia receiving and later wearing, a CRF button. Only one person was shown to have seen Garcia wearing a button. Otherwise the evidence was limited to President Lucassen being close enough to see Garcia accept a CRF button.

On the other hand, there was evidence that Respondent had other grounds for the discharge of Garcia. General President Lucassen testified that he received a report from Danny Curtin who works for the California State Council of Carpenters that Garcia wouldn't work for Lucassen if Lucassen won reelection in 1991.

Paul Richards testified that he was a representative to the general president of UBCJA until he retired on May 1, 1992. Richards was assigned by General President Lucassen to check into an election for executive secretary of the Sacramento District Council of Carpenters. Leon Wagner had been declared ineligible by the Sacramento District Council President Ron Osborne and the only other candidate, Jim Larson, had been declared the winner. Richards investigated

and found that both candidates were eligible. An election was called and Leon Wagner won. On the evening the votes were counted, Lawrence Garcia was in the room. Richards asked the head of the District Council, Rod Osborne, to install Wagner, who was a supporter of Sig Lucassen while the loser, Jim Larson, supported Whitey Rogers. Osborne refused to install Wagner. Richards declared Wagner the winner and installed him as executive secretary. Richards overheard Garcia tell another member of that Local, Paul Haskins, that the installation of Wagner wasn't right and was unconstitutional. Haskins replied that Richards was just doing what he had been assigned by the general president, to do. Garcia replied that he did not care, it being dictatorship and it was all "a bunch of b-s" and it should be laid over until the next council meeting. Richards reported the matter including Garcia's comments to General President Lucassen.

Dan Curtin, director of California State Council of Carpenters, attended the UBCJA convention in October 1991. Before the election at that convention, Curtin had a conversation with Babe Garcia. Garcia commented that if Lucassen won, he couldn't work because he did not trust Lucassen. Although Curtin could not specifically recall, he testified that he was sure he discussed Garcia's comment with his boss, Bob Hannah. Hannah was a Sig Lucassen supporter.

Ja Nae Bartels testified that she worked for the California State Council during 1991. In July, August, or September 1991, while she was in the office of Lou Heath, she had a conversation with Lawrence "Babe" Garcia. She recalled Garcia telling her that if Sig Lucassen were to win, that he simply could not work for him. Garcia said that he did not trust Lucassen. Bartels talked to her boss, Bob Hannah, about Garcia's comments. She recalled hearing Garcia make similar comments on other occasions. On Thursday after the general election at the UBCJA convention in October 1991, Bartels was in the bar along with several people including Babe Garcia. She recalled that Garcia seemed distressed and upset and was making the same comment about he couldn't work for Sig Lucassen. Bartels testified that she also talked with Bob Hannah about Garcia's comments in the bar. Bartels met and talked with Garcia in June or July 1992. At that time Garcia mentioned to Bartels that he had another job and that he had been fired because he supported Whitey Rogers.

Lucassen testified that the above matters were reported to him before he discharged Garcia and they led to Garcia's discharge.

Representative James Sala testified that he assisted in registration of delegates at the 1991 UBCJA convention. He was also a delegate to that convention.

According to Sala, he saw Lawrence Garcia on two occasions during the 1991 UBCJA convention. On the one occasion Garcia was wearing a small Whitey Rogers, pin. Sala did not recall reporting that he had seen Garcia with a Rogers pin.

In view of the above evidence I find that the record failed to establish that a reason for Garcia's discharge was CRF activity.

I find that General Counsel failed to prove that Garcia was discharged because of protected activity. *Wright Line*, supra; *NLRB v. Transportation Management Corp.*, supra.

I. Robert Mergner

CRF secretary, Alice Dixon, testified that to her knowledge Robert Mergner had not signed a CRF authorization card before the UBCJA convention in October 1991. Dixon also testified that to her knowledge Tom Hohman had not signed a card before the convention. As shown below, I was unable to credit Dixon's testimony about when Hohman signed an authorization card.

General President Lucassen denied that he knew of any CRF activities by Robert Mergner. In fact Mergner told him during a phone conversation before the convention, that he was not a supporter of CRF.

Mergner denied that he told Lucassen that he was not a supporter of CRF. Mergner testified that he was called to testify during the 1988 representation hearing. Record evidence showed that Mergner was called and testified for Respondent.

The record shows that Mergner did not attend the July 6, 1991 CRF meeting in Atlanta. Mergner was not named in the CRF letters of July 12 or August 10, 1991. Nor was Mergner named in any of the letters from CRF dated during the October 1991 UBCJA convention. Mergner was not named in CRF's October 12 letter.

On October 18, 1991, General President Lucassen wrote Mergner:

This is to advise you that your employment is hereby terminated and you should submit your final report to this office by Friday, October 25, 1991. Accordingly, you should immediately turn over to this office all property belonging to the Brotherhood including, but not limited to, books, records, papers, keys and credit cards.

Mergner testified that he supported General President Lucassen during 1991. He wore a "President's Committee" button during the convention and he contributed over \$600 to President Lucassen's campaign.

Lucassen testified that he learned that Robert Mergner had gone out front of the UBCJA convention and worked the crowd that opposed Lucassen and supported Rogers. Those were the people, according to Lucassen, that wanted to crash the convention. Lucassen also heard that Mergner had tried to get admission to the convention for some unauthorized persons.

Representative Russ Domino testified that he was assigned to check credentials at the UBCJA convention. According to Domino, each delegate was entitled to one, and only one, guest pass to the convention.

Domino recalls that during the convention, Robert Mergner asked him for guest passes for Siggy's friends coming from out of town. Domino did not know how many passes were left so, rather than giving Mergner 10 passes, he gave him 5 or 6 passes. The next morning Domino asked Mergner to return the passes. Mergner said something about Sig being angry because they were his friends. Mergner returned all the passes except for two that he told Domino were already given out. Domino told Norm Neelan that he had gotten some of the guest passes back from Mergner. Domino said that Lucassen never expressed anger to him for failing to give some friends passes.

Mergner denied that he asked for passes for Siggy's friends. He admitted that he did ask for four passes for his wife and three daughters and that after Domino gave him the passes he gave them to his wife. When Domino returned he told Mergner that the Rep Domino was working for was giving him a hard time and asked for return of the passes. Mergner agreed but his wife had left the area and he returned with the passes the next morning. Domino told him to return only two of the four and Mergner did since two of his daughters had left because one was sick.

John McKay, a training coordinator with the New Jersey Carpenters Apprentice Training and Educational Fund, testified that he attended the 1991 UBCJA convention as a guest. McKay witnessed the incident of the large group of people trying to crash into the convention. McKay recognized the people because they were from his local union. McKay estimated there were about 60 members of his local union present. After a while signs appeared showing they supported Whitey Rogers and they began chanting "we want in and fuck Sig."

McKay testified that he saw Robert Mergner there at the front of the group of people trying to get into the convention. Mergner appeared to have been talking to the people trying to get in as well as to the security people at the entrance to the convention hall. Mergner eventually left the group and came over and stood near McKay. McKay told Mergner to get away from him and go back with his friends. Mergner said "they are my friends, they should get in." Mergner then went back with and stood in the middle of, the group of people that were still trying to get into the convention. McKay told Second District Executive Board Member Bill Michaelowski about Mergner's conduct with the group of demonstrators. Michaelowski was running on the Lucassen slate. The following week Michaelowski phoned McKay and asked him to phone the general president. McKay phoned Lucassen and Lucassen asked him what he had seen at the convention with Mergner. McKay repeated what he had observed with Mergner and the crowd of Whitey supporters. McKay told Lucassen that it appeared to him that Mergner was trying to get the Whitey crowd admitted into the convention.

Mergner agreed that he spoke with McKay on the day of the demonstrations but he denied the conversation occurred as McKay testified. Mergner testified that he was standing near McKay and McKay said, "Bob, look at this, this is my Local and they're making a bunch of assholes out of themselves." Mergner responded, "Hey, what ya do."

Ronald Angell was in charge of security at the 1991 UBCJA convention. One day there were rumors that busloads of people were coming. When the people arrived they were carrying Whitey Rogers signs on large 2-inch by 2-inch stakes. Angell stopped the crowd from entering the convention hall and the crowd yelled derogatory comments about General President Lucassen and supporting statements for Whitey Rogers. During that demonstration Angell noticed Robert Mergner standing near the crowd talking with some of the crowd. Angell called Mergner over and told him they could not protect him outside. Mergner said it is alright, that these people were his friends. Mergner then walked over, lighted a cigar and started laughing and talking with some of the demonstrating people.

Angell testified that shortly after the crowd left saying, "Let's go to lunch," he was called back to the front gate. When he got there the warden explained that he had a problem with Bob Mergner. Mergner was standing there with two men. Mergner said to Angell, "I've got these two guys that I want in." Angell told him that he could not get anyone in without a badge. Mergner became angry and said he would get "Ziggy [General President Sig Lucassen] to straighten your ass out." Ronald Angell testified that he reported all Mergner's actions that day to Fred Carter. Fred Carter is the UBCJA general executive board member from the Sixth District. He ran for that position in 1991 on the Lucassen slate.

Mergner agreed that he went out and talked with some of the crowd of about 100. He testified that Representative Greg Martin came to him and told him that Sig wanted him out front because there was a problem. Some people from New Jersey are coming down to try and get in the convention. Martin said that Lucassen wanted Mergner to go out and tell the people that the fire marshall had declared the place at capacity and no one else could get in. Mergner did that. He knew some of the crowd since he is also from New Jersey. He told those people what he had been instructed to say.

Mergner testified that during Wednesday when the crowd tried to get in, he was told by a representative, whose name he did not know, that president of the Contractors Association in New Jersey, Jack James, had been invited by Lucassen to the convention, but could not get in. Mergner went to Sue Dillon, Lucassen's secretary and Dillon checked and said that James' name was on her list. She told Mergner to check James in. Mergner went out and cleared James through. Then General President Lucassen's wife, Audrey, told him that the wife of a deceased board member, Mildred Raggapi, was coming with her daughter. Audrey Lucassen told Mergner that he knew Mildred Raggapi, to go out and get her in. Mergner went to Sue Dillon and asked for two badges. Sue Dillon told him that she was out of guest badges, but she gave him two delegate badges. Mergner then looked but was unable to locate Mildred Raggapi. He then returned the two badges to Sue Dillon. Mergner testified that other than the above, he did not try to get anyone else in the convention. He specifically denied that he tried to get Ron Angell to let two men into the convention.

International Representative Gregory Martin testified that he was assigned to work registration during the 1991 UBCJA convention. On Wednesday morning during the convention, Martin was told there were going to be busloads of people from New York and Ronnie Angell needed help out front. Martin was told the building was at capacity and the fire marshall would not allow any more guest passes. Martin testified that he did not have a conversation with Representative Robert Mergner that morning. He did not talk with Mergner at Joe Durst's exhibit. Nor did Martin talk with General President Lucassen that morning.

Martin denied that he told Mergner that the general president wanted him outside to tell people that the fire marshall has found that the building is at capacity and will not allow any more guest badges.

Fred Carter recalled that Ron Angell reported to him during the 1991 UBCJA convention about the demonstration at the front of the convention hall of Whitey Rogers supporters and how Robert Mergner talked and laughed with some of

those Rogers supporters. Carter reported those matters to Dean Sooter.

After receiving his discharge letter Mergner phoned General President Lucassen and asked what happened. Lucassen told him that he had heard that Mergner was trying to get some of George Clark's people in the convention and Lucassen said he had no use for George Clark. Mergner denied that he had tried to get George Clark's people in and Lucassen said he would check into the matter and get back with Mergner. The next week Mergner received a letter from Lucassen saying he was sticking with the decision to discharge Mergner. Mergner testified that Lucassen said nothing about guest passes or Russ Domino when he told Mergner why he discharged him. The only reason given to Mergner was that Mergner was trying to get some of George Clark's people in the convention.

Lucassen said he did not believe the information he had on Mergner because he had given Mergner his job. Lucassen made his own contacts to verify the information on Mergner.

As to Mergner, there was no evidence that Respondent had reason to believe that he was involved in CRF activity. I was not convinced that Mergner was truthful in his denial of his activities during the UBCJA convention. The evidence favoring Respondent regarding his activities on Wednesday during the convention, was substantial. That evidence shows that Respondent discharged Mergner for his convention activities. I find that General Counsel failed to prove a prima facie case in support of Robert Mergner. *Wright Line*, supra; *NLRB v. Transportation Management Corp.*, supra.

J. Fred Purifoy

Fred Purifoy testified that he started to work for Respondent as a general representative on May 5, 1980. He was discharged on July 10, 1991. Purifoy testified that he and Willie Shepherson, Floyd Doolittle, and Gilbert Lee attended an RC hearing during the 1988-1989 CRF organizing campaign. The petition in that campaign was withdrawn after the NLRB found the unit sought by CRF was not appropriate.

As shown above, I credit the testimony of Robert Mark Mullen that he was at an educational seminar in Palm Beach on October 23, 1989. Dean Sooter saw Mullen and Russell Ward talking with Fred Purifoy. When they walked away from Purifoy, Dean Sooter told Mullen and Ward not to talk with Purifoy because he is involved in "this organizing thing."

On May 25, 1991, Purifoy wrote invitations to friends for Whitey Rogers get together to be held June 8. As shown above, Whitey Rogers was running for general president in opposition to General President Lucassen. The record includes a copy of the letter Purifoy wrote to E. Jimmy Jones, Fourth District general executive board member inviting Jones to the friends of Whitey Rogers get-together.

Purifoy testified that before 1991 he took vacation without clearing the time. He simply noted the times he took vacation whenever he sent in his voucher. As mentioned above, in 1991 he received a letter from General President Lucassen dated June 19, after his vacation:

Your report of June 8, 1991, makes no mention of your request for vacation for the following week, nor does your report of June 15, 1991, mention any vacation either requested or taken.

You are, I am sure, aware of our policy on vacations and you are to adhere to that policy from this date forward. Vacation time must be requested and approved prior to being taken.

Fraternally yours,
/s/ Sigurd Lucassen
General President

On June 29, 1991, Purifoy responded to Lucassen's letter with a special report to the general president:

I am responding to the above referenced letter mindful of our telephone conversation wherein the explanation was given that some of the documents floating around the country, bearing the signature of Sigurd Lucassen, were not authentic. The letter dated June 19, 1991 was written when, according to our more recent telephone conversation, you were out of town and the rubber stamp signature certainly places the June 19th letter in the unauthenticated category. The Sigurd Lucassen that I have come to know would not have written or approved the June 19th letter without first considering the facts.

The facts about vacation and relative policy as stated in the June 19th letter are as follows:

The vacation time in question was offered, to me, as an incentive to accept employment on the International staff, by the then G.P., an authorized agent. I accepted vacation time as a job benefit and condition of employment. It was further agreed that I could take my accrued vacation time whenever I chose and that I would only have to note on my voucher the vacation time taken.

I am interested in the June 19, 1991 proposed policy on vacation. I look forward to knowing the additional vacation benefit that it provides.

Please forward to me a complete copy of the proposed policy on vacation as soon as possible. I will add it to my file on the other financial harassment that I have encountered in recent years.

If in the unlikely event that the author of the June 19th letter is unaware that I am properly using vacation time to establish my candidacy for the office of U.B.C. 6th District general executive board member and to conduct related political activities, then please accept this document as additional notification.

It is through this remedy of appeal to the U.B.C. General Executive Board, in its entirety, that I wish to plea for relief from policies, orders, rules, directions, and coordination of the same that may further, alterably affect my candidacy, the financial burden therein, my constitutional right to seek and hold office, and the outcome of the October 1991 Election of General Officers.

The most compelling questions arising from the June 19, 1991 letter are:

Have all representatives of the General President received an after the fact mailing suggesting an identical policy on vacations and to what extent has each followed that policy?

Have other representatives of the General President requested and received time off (vacation) to travel to and stay overnight to attend and participate in SDF

fund-raisers and political rallies? Which General Officers granted the time off and which General Officers approved payment of union funds to cover their travel, lodging, and salaries for that period of time?

General President Lucassen testified that he fired Purifoy in July because Purifoy stated he was running for election for the general executive board in opposition to a candidate supported by Lucassen. Purifoy made that announcement in the above quoted June 29 letter to Lucassen.

Fred Purifoy was notified of his discharge by letter dated July 10, 1991:

I have your Special Report of June 29, 1991, and find it dismaying, not amusing. As a representative of the General President, you are employed to represent me and act as an extension for my views and ideas and to assist me as directed in the stewardship of the United Brotherhood. As stated in the Constitution and Laws, you are to further perform such other duties as directed by me.

It is evident from your Special Report that you have your own agenda and are following your own policies and that you are no longer representing me honestly and faithfully. Accordingly, I have no alternative but to terminate your employment.

Return to me immediately your credential as my representative, your travel card and any other supplies and materials belonging to the United Brotherhood. Submit your last voucher effective July 20, 1991.

With reference to your inquiry concerning vacation, just let me advise you that former General President William Konyha, who appointed you to the staff on May 5, 1980, informs me that he did not offer you, nor did you seek, any special privileges other than those afforded to all representatives of the General President.

Fraternally yours,
/s/ Sigurd Lucassen
General President

General Counsel argued that Purifoy was fired before Lucassen's slate was announced. Purifoy could not have foreseen that he was running against a candidate on Lucassen's slate. As shown above, in his testimony, Lucassen gave that as the reason for Purifoy's discharge.

Purifoy testified that he attended the CRF meeting in Atlanta on July 6, 1991. During that first CRF meeting, there was discussion of whether CRF should be involved in UBCJA politics and there was discussion of whether Purifoy should be allowed to attend the meeting because he was a declared candidate for UBCJA office. The representatives at that meeting decided the CRF would not be involved in UBCJA politics. Fred Purifoy could attend with the understanding that Purifoy would keep his campaign separate and apart from the campaign to organize the representatives.

As shown above, former representative, Ed Fortson, testified that after going to the July 6, 1991 CRF meeting, he and Wanda Phillips visited with Regional Director Edgar Fields. During their conversation, Fields asked Fortson and Phillips how the CRF meeting had gone. Fields asked how many showed up at the meeting and Fortson told him. Fortson named all the representatives that attended the CRF meeting. He recalled naming eight representatives as those that at-

tended and he specifically recalled that he named Fred Purifoy. Fortson recalled that Edgar Fields told him, and Phillips, when they talked on July 6, that he had already received a phone call about the CRF meeting.

The record included numerous references to Respondent's policy of permitting representatives to the general president to run for office unless they had opposition. Under that policy, Purifoy would not be in violation of Lucassen's policy until he had announced opposition. Moreover, as shown above, in other situations where a representative did run in opposition to other candidates, Lucassen did not take immediate action. For example, both Floyd Doolittle and Michael Beckes, announced an intent to run for office. As to Doolittle, Lucassen testified that he was aware that Doolittle was running for delegate to the UBCJA convention and an officer of the Local was also running for that position. Lucassen did not take action against Doolittle for that reason. As to Beckes, he was openly running for an executive board position. Lucassen told him that he would take no action if Beckes won that election but, if Beckes did not win, Lucassen would ask for his retirement in January 1992—several months after he talked with Beckes.

The record did show that Lucassen's slate was not published when Purifoy was discharged.

General Counsel argued further that Respondent did not act on Purifoy's June 29 letter until it learned that he was again involved in organizing for CRF. As shown above Southern States Organizing Director Edgar Fields learned from Ed Fortson and Wanda Phillips on July 6, 1991, that Purifoy was one of the representatives that attended the first CRF meeting in 1991.

General Counsel also argued that Lucassen's testimony as to why he discharged Purifoy is at variance with the reason for the discharge specified in Purifoy's letter of discharge.

The above calls into question whether Purifoy was discharged, as argued by General Counsel, because of his CRF activities, or whether, as General President Lucassen testified, he was discharged because he was running for election for the general executive board in opposition to a candidate supported by General President Lucassen.

The record does show that before 1991 Respondent knew of Purifoy's association with CRF. Respondent opposed Purifoy's action in that regard. I credited the testimony of Mark Mullen regarding what he was told by Vice President Dean Sooter in Palm Beach on October 23, 1989. Sooter told Mullen not to associate with Purifoy because he was involved in organizing.

On July 10, 1991, when General President Lucassen discharged Purifoy, Respondent was aware that CRF was renewing its campaign to organize the representatives to the general president, and that Fred Purifoy was involved in the renewed campaign. That finding is rooted in the credited testimony of Ed Fortson and Wanda Phillips, regarding their July 6 conversation with Southern States Organizing Director Edgar Fields. In response to questioning by Fields, Fortson named Purifoy as one of the representatives that attended the first meeting of the CRF in 1991.

Respondent argued that Lucassen testified that he was unaware that Purifoy was involved in an 1991 CRF campaign before his discharge.

I credited testimony that Respondent's supervisor and agent, Edgar Fields, learned on July 6, 1991, that Purifoy

was one of the representatives that attended the first 1991 CRF organizing meeting. Respondent is charged with knowledge of a supervisor. *Control Services*, 305 NLRB 435 (1991); *NTA Graphics*, 303 NLRB 801 (1991); *Pinkerton's Inc.*, 295 NLRB 538 (1989).

The record shows that Respondent gave varying reasons for the discharge of Fred Purifoy. One reason was given Purifoy in General President Lucassen's letter of July 10. Lucassen gave another reason in his testimony. That conflict in evidence, as well as the credited evidence in the full record, shows that Respondent's asserted basis for Purifoy's discharge was a pretext. In view of that finding and the record, especially the timing of Purifoy's discharge, coming immediately after Respondent learned that the representatives, and especially Fred Purifoy, were again involved in a campaign to organize the representatives, I find that General Counsel proved that Purifoy was discharged because of his activities on behalf on CRF. *Northport Health Services v. NLRB*, 961 F.2d 1547 (11th Cir. 1992); *Control Services*, 305 NLRB 435 (1991).

In view of the above, and my earlier findings as to animus and timing, I find that General Counsel has proved a prima facie case in support of its allegation that Fred Purifoy was discharged because of his CRF activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

In consideration of whether Respondent proved that Purifoy would have been discharged in the absence of his protected activity, I note that General President Lucassen gave a different reason for Purifoy's discharge when he testified, than he had given in his July 10, 1991 letter to Purifoy.

As shown above, General President Lucassen testified that he fired Purifoy because Purifoy stated he was running for election for the general executive board in opposition to a candidate supported by Lucassen.

General Counsel argued that, at the time of Purifoy's discharge, Lucassen had not announced his slate for 1991. Therefore, how could Purifoy have been guilty of running against a Lucassen candidate? As shown above, that point was supported by the un rebutted testimony of Purifoy that Lucassen had not announced his election slate at the time of Purifoy's discharge.

In his July 10 letter to Purifoy, Lucassen gave a different reason for Purifoy's discharge:

It is evident from your Special Report that you have your own agenda and are following your own policies and that you are no longer representing me honestly and faithfully. Accordingly, I have no alternative but to terminate your employment.

Here, instead of opposing someone on the Lucassen slate of candidates, Lucassen accused Purifoy of not honestly and faithfully representing the general president.

In view of the record and especially the evidence showing that Respondent gave varying reasons for Purifoy's discharge, I find that Respondent failed to prove that it would have discharged Purifoy in the absence of his protected CRF activity. Moreover, the discharge followed the renewal of the CRF campaign by only 4 days. Fred Purifoy with other representatives, launched the 1991 campaign on July 6, 1991,

and Respondent was advised of that July 6 meeting on that same day.

The Managerial Issue

In its answer Respondent alleged as its second affirmative defense:

The individuals discharged by Respondent were supervisory or managerial employees unprotected by the Act.

Respondent contended that four of the alleged discriminatees are managerial employees: Beckes, Cecil, Hohman, and Petri.

General Counsel argued that Respondent has the burden of proving that Beckes, Cecil, Hohman, and Petri were managers (*Soil Engineering Co.*, 269 NLRB 55 (1984)); that the record contains no evidence that their duties varied from those of other representatives which Respondent had stipulated as employees in the representation proceeding (*Craft Maid Kitchens*, 284 NLRB 1042, 1043 (1987)); and that the Board findings in this area do not turn upon frequency of exercise of authority but instead upon the power to exercise authority (cf. *Kern Council Services*, 259 NLRB 817, 818 (1981)).

General Counsel offered the Report on Challenged Ballots into evidence. That report showed that alleged discriminatees Bowling, Cecil, Fortson, Garcia, Hohman, Lee, Mergner, Mullen, Petri, Purifoy, and Smith attempted to vote in the NLRB-conducted election to determine whether a majority of the representatives employed by Respondent, desired to be represented by CRF. Their votes were challenged by Respondent on the sole basis that each of those former employees were discharged for cause prior to the election and were thus not eligible.

The bargaining unit found appropriate by the NLRB Regional Director, in the above-mentioned election (Case 10-RC-14172) was as follows:

All field representatives (General & Organizers) employed by the Employer in the United States of America and covered under the NLRA and coming under the Jurisdiction of the NLRB in the United States of America, but excluding all foreign national employees employed outside the United States of America, all office clerical employees, technical employees, supervisors, guards, directors, assistant directors, confidential employees and any other excluded by the Act.

The above-described unit included all representatives to the general president whether historically considered general representatives or organizers. The Respondent argued in this instance that Representatives Beckes, Hohman, Cecil, and Petri were managerial employees because they were traditional general representatives.

First Vice President Dean Sooter testified that to become a representative of the general president, one must have been a member in good standing in a local union for 12 months and a member of UBCJA for 5 years. He testified there are 100 representatives throughout districts in the United States and Canada. Early in the UBCJA history, the general president negotiated agreements with employers but when that became too big a job, the general president asked the executive board for authority to hire representatives to handle duties

formerly handled by him. In handling their duties, according to Sooter, representatives exercise their own discretion as opposed to following set guidelines. As is the case with members of the executive board, representatives are required to submit weekly reports and they have the same fringe benefits as the board members.

Until 1985 there were two classes of representatives. One was general representative and one was organizer. Even though all are now called representatives, some of the representatives' general responsibilities are organizing while others have general responsibilities outside organizing. Approximately 65 percent of the representatives are principally organizers. Representatives Beckes, Cecil, Petri, and Hohman were representatives whose principal duties were other than organizing.

The organizers are usually involved in organizing campaigns with employers and the negotiation of the initial collective-bargaining agreements with those employers as well as the policing of problems within those newly organized bargaining units. The representatives other than organizers, handle jurisdictional disputes, internal affairs, supervisions, restructuring, and a multitude of things.

As to jurisdictional disputes, those are handled by business agents but, if they are unsuccessful, the International is contacted and a representative is assigned to work out the matter. Sooter testified that those representatives have discretion in resolving the dispute with other unions. The representative, for instance, has authority to concede or abandon work to the other union if, in his discretion, the work is of the type that traditionally falls to the other union.

Until 1985 executive board members received assignments of handling jurisdictional disputes.

Supervisions involve removal of the officers of a local and placing the local under the trusteeship of the International. Representatives are assigned to operate supervisions in replacement of the former officers until that trusteeship is removed. During supervision, among routine day-to-day operation of the local, the representative is charged with the responsibility of correcting the problems within the local that led to the supervision.

Restructuring would involve mergers, creating new locals, chartering millwright locals, removing officers, removing business representatives, appointing new officers business representatives, or combinations of those duties.

Supervisions follow a recommendation by a representative, then an investigation and, if needed, a hearing involving three Board Members. That three-member committee makes a report and the general executive board then votes on the decision as to whether a supervision will occur. If so, the general president assigns a representative to handle or to assist in the supervision. Whether the representative is appointed supervisor or assistant, he or she handles the day-to-day affairs of the respective local.

Restructuring does not require a hearing. Recommendations for restructuring go directly to the general president. According to Sooter, in the majority of cases, the general president follows the recommendation of the representative.

Internal affairs involves working toward solution of day-to-day matters in a supervision or restructuring situation. If necessary, a representative may be assigned to work toward solution of an internal affairs problem. That representative acts in his discretion guided by the UBCJA constitution.

Vice President Sooter gave as an example of an assignment to representatives, a recent assignment of eight representatives to oversee the merger of Tile, Marble, and Terrazzo workers into the UBCJA and to make sure the merger went smoothly. There are also representatives assigned to the Heavy and Highway Committee to work with five basic trade unions in securing and distributing work to appropriate crafts of highway, bridges, and sewerage treatment plants. Representatives are also assigned to the basic trades committee involved with construction work such as buildings and infrastructure other than heavy and highway work.

Tom Hohman was a representative on the basic trades agreement at the time of his discharge. Leo Petri was assigned to work with respect to floor covering locals. Additionally, documents were introduced showing that Representatives Beckes, Hohman, Petri, and Cecil have received assignments as shown above, at various times during their tenure as representative.

During the representation case, Respondent and CRF stipulated that all representatives were included within the bargaining unit including both general and organizers. Respondent did not contend that traditional representatives, as opposed to traditional organizers, were managerial and should be excluded. Instead it agreed to language which specifically included general representatives like Hohman, Petri, Beckes, and Cecil.

The representatives were not shown to have authority in formulating UBCJA policy. That authority is reserved to the Executive Board (cf. *Ithaca College*, 261 NLRB 577 (1982)). Nor do they have the authority to recommend changing UBCJA policy (*Bradford College*, 261 NLRB 565 (1982)). Employees, like the representatives, whose decisionmaking is limited to the routine discharge of professional duties are not managerial and cannot be excluded from coverage *NLRB v. Yeshiva University*, 444 U.S. 672 (1980).

K. Michael Beckes

Beckes testified that he started work as a general representative with Respondent in 1971. Beckes was one of the representatives discharged on October 15, 1991.

Respondent argued there was no evidence that Beckes was involved in CRF activity other than Beckes' unsubstantiated and testimony.

However, General President Lucassen admitted that he knew that Beckes was involved in the CRF. When asked if he knew whether Beckes was involved in the CRF, Lucassen replied "I did know." Beckes testified that he signed a card and supported the CRF movement. see *Respond First Aid*, 299 NLRB 167, 169 fn. 13 (1990).

As shown above General President Lucassen discharged Michael Beckes, I. L. Bowling, Paul Cecil, Floyd Doolittle, Edward Fortson, Lawrence Garcia, Thomas Hohman, Gilbert Lee, Mark Mullen, Leo Petri, Wanda Phillips, Burke Smith, and Robert Mergner by letters during October 1991. None of those letters included a reason for the discharges.

In September 1991 Beckes was called to the General President's office in Washington. General President Lucassen talked to Beckes regarding attendance at the Michigan State Council of Carpenters convention. Lucassen understood that Beckes went there without an assignment. He told Beckes that he had called him in to discharge him. Beckes told Lucassen that he had an assignment from Jack McMillan

(UBCJA second vice president) to attend the Michigan meeting. Lucassen then appeared to calm down. But he told Beckes that if he did not win his election to the executive board from District 3, that he would ask for Beckes' retirement after the first of 1992.

General President Lucassen agreed that he called Beckes into his office when he heard that Beckes attended the Michigan State Council convention. Beckes told him that he had an assignment from Second Vice President McMillan to attend and he also had an assignment to attend the Florida State Council convention. Lucassen told him not to go to Florida. Lucassen heard and later read a transcript of a speech Beckes gave at the Michigan State Council convention in which Beckes spoke against Lucassen.

According to Lucassen, when he talked to Beckes about his attendance at the Michigan Council convention, he told him that he could not stay on Lucassen's staff. Beckes then said that he was going to retire after the convention anyway but that he would probably go to the end of the year. Lucassen said, "Well, we'll see what happens." Lucassen denied that he told Beckes that if he lost the election for the Third District position, he could stay on the payroll until the first of the year. According to Lucassen, he did not discharge Beckes as he did Purifoy, when he first learned that Beckes was running for the Third District board member position because Beckes was having heart surgery and he did not want to discharge him before he had the surgery.

General President Lucassen testified that he fired Beckes because he ran for Board Member in the Third District on the Whitey Rogers' ticket. According to Lucassen, Beckes came to him in the spring 1991 and asked him to put him on the Lucassen ticket for the Third District board member. Lucassen told Beckes that he would keep his name in mind but before Lucassen selected his candidate, he heard that Beckes had elected to run on the Rogers' camp.

General Representative Eddie Baydoun attended both the Michigan State and the Ohio State Council conventions in 1991. The Michigan convention was in August. Baydoun testified that Mike Beckes spoke at the Michigan convention. Beckes' speech was, according to Baydoun, anti-Lucassen. Baydoun phoned Dean Sooter and told him about Beckes' speech. Sooter told Baydoun that Sig Lucassen should hear about that speech and Baydoun told Lucassen about Beckes' speech. Lucassen seemed surprised and expressed that even though Beckes was running on Whitey Rogers' ticket he had thought that he had a good relationship with Beckes.

After receiving his letter of discharge in October 1991, Beckes phoned General President Lucassen and asked what happened to their understanding that Beckes would retire in January. Lucassen told him that he had "an entirely new executive board and they have a new broom and they're going to sweep out everybody who doesn't believe in their philosophy." During that conversation Beckes brought up his situation with his wife having a severe medical problem and his need for continued hospital insurance. Lucassen suggested to Beckes that he notify the pension department that he was going to retire as of November 1. But Lucassen said, "We've got a couple of other matters that we want to clear up." Lucassen said that he understood that Beckes was suing him through the Department of Labor. Lucassen also mentioned there was a union election coming up for the general representatives. Lucassen asked if Beckes was going to par-

ticipate in that. Beckes told Lucassen that he wanted his hospital and life insurance and if it was any consolation to Lucassen he would write a letter stating that he was not a party in the labor department suit and that he would not participate in the election by the representatives even though he had supported that movement and had signed a CRF card.

General President Lucassen denied that he agreed to continue Beckes' health insurance in exchange for Beckes' withdrawing from the election and legal actions against UBCJA.

The record shows that Beckes wrote the following letter to the CRF attorney:

As per our recent conversation, I am withdrawing my participation in the upcoming General Representative election. On 11/14/91, I spoke with Tom Nichols, National Labor Relations Board agent, Cleveland, Ohio office, (216-522-3715) and informed him of my decision. He agreed to the withdrawal of my participation and also agreed to notify both you and Sigurd Lucassen, General President, United Brotherhood of Carpenters and Joiners of America.

Beckes testified that he either sent a copy of the above letter to Lucassen or he wrote Lucassen and told about his letter. Beckes did not recall which of those two he followed. No one disputed Beckes' testimony in that regard.

Additionally, I note from the report on challenged ballots that Michael Beckes was not among the former representatives that tried to vote in the NLRB election and were challenged. That tends to show that Beckes did not vote and supports Beckes' testimony that he and Lucassen had an agreement that Beckes would withdraw from the suits and the Representatives' election.

In November and December 1991 Beckes did receive his health insurance. In December he received notice of his right to transfer to a different plan. That signified to Beckes that his health insurance with UBCJA was being terminated. He phoned Lucassen at that time:

I called Sig again and we had our conversation and the jest of the conversation was, he says, "You know, Mike, I thought about it." He says, "I can't go through with the deal." I said, "Hell, I've got your word on it." He said, "Well, I can't do it," and I said why not. He says, "Because if I give it to you, your hospitalization, it's going to impact on the other general reps who were part of that discharge and that election with the organizers program."

General President Lucassen testified that he did tell Beckes that he could receive medical benefits but that he subsequently found out that you may only carry over medical benefits if you retire from active employment. Under the circumstances, since Beckes was first discharged, Beckes was not eligible for medical benefits.

Beckes admitted that he ran for the executive board, Third District, and that he supported Whitey Rogers for general president.

Respondent introduced into evidence Beckes' speech to the Michigan Council of Carpenters (R. Exh. 23). In that speech Beckes attacked both Vice President Sooter and General President Lucassen about the literature they had distributed during the 1991 campaign. President Lucassen admitted that he did not receive a transcript of Beckes' Michigan State convention speech until after Beckes had been discharged.

Here, there is a question as to whether Beckes was discharged because of Respondent's knowledge that Beckes supported CRF, or whether, as Respondent argued, he was discharged because he opposed the general president's campaign for reelection.

Beckes was not among the employees mentioned in letters from the CRF before and during the October UBCJA convention. As shown above, President Lucassen admittedly believed that Beckes was involved in CRF activities.

In many respects I found both Beckes and Lucassen were less than candid in their testimony. Beckes was evasive to questions regarding his vocal opposition to President Lucassen during the 1991 UBCJA campaign. Lucassen demonstrated varying reasons for the discharges of several alleged discriminatees. As to direct conflicts between the two over conversations, I found Michael Beckes to be a believable witness on the basis of my observation of his demeanor. Moreover, Beckes' testimony was supported by his subsequent actions. Documents in the record show that Beckes' did withdraw from participation in the NLRB election among representatives and he did withdraw from participation in actions against Lucassen including charges before the NLRB.

As to General President Lucassen, he testified that he did not immediately fire Beckes as he had Purifoy, when he found out that Beckes was running for the executive board, because Beckes had a heart problem. However, I note that Lucassen testified that he talked to Beckes about his campaign for executive board, when he called Beckes to Washington. At that time Lucassen told Beckes that he had called Beckes in to fire him on the belief that Beckes attended the Michigan convention without assignment and, according to Lucassen, he told Beckes that he could not remain on Lucassen's staff because Beckes was running for the executive board.

I find Lucassen's explanation of the disparity between his treatment of Beckes and Purifoy is inconsistent. If, as he claims, he did not discharge Beckes before the convention because he was concerned with Beckes' heart condition, why did he tell Beckes that he would discharge him after the convention and why would he tell Beckes that he had called him to Washington to discharge him. On the other hand, if he was not concerned with Beckes' heart condition before the convention because Beckes had improved to the point of being out campaigning for executive board, why didn't he discharge Beckes when he called him to Washington because, like Purifoy, Beckes was running for the executive board.

In view of their demeanor and the full record, I am convinced that Beckes testified truthfully regarding his conversations with Lucassen.

I credit Beckes' account of his September 1991 meeting with General President Lucassen regarding the Michigan State Council convention. Beckes credibly testified that Lucassen told him that he would ask for Beckes' retirement after the first of 1992 unless Beckes won his election to Third District board member.

I discredit General President Lucassen's testimony that he discharged Beckes because Beckes ran for Third District board member. Lucassen and Beckes had discussed Beckes' candidacy in September 1991, and Lucassen had told Beckes that, unless Beckes won, he would ask for Beckes' retirement after the first of 1992.

Beckes' credited testimony proved that after Beckes' discharge, Lucassen made a second agreement with Beckes. At that time Lucassen agreed to Beckes' retirement on November 1 and to continue Beckes' health insurance. Beckes testified, and the record supported his testimony, that Lucassen told Beckes to submit his retirement to the pension department effective November 1 and Lucassen agreed to continue Beckes' health insurance provided Beckes withdraw from participation in the representatives election and withdraw from legal actions against Lucassen and the UBCJA. Beckes did withdraw from the upcoming general representatives election and his legal action against UBCJA.

General President Lucassen admitted that he told Beckes that he would be treated just like anyone else that retired.

Afterward Lucassen withdrew from his commitment to continue Beckes' insurance. In that regard I was impressed with Beckes' demeanor and I credit his account of the events regarding his loss of medical insurance. As shown above, Beckes testified:

[Lucassen] said, "Well, I can't do it," and I said why not. He says, "Because if I give it to you, your hospitalization, it's going to impact on the other general reps who were part of that discharge and that election with the organizers program."

The above shows that Lucassen reneged on his offer to permit Beckes to retire after the first of 1992. Lucassen withheld Beckes' health insurance because not doing so would impact "on the other general reps who were part of that discharge and that election with the organizers program." Lucassen's agreement to continue Beckes' health insurance was based, at least in part, on Beckes' agreeing to withdraw his actions with the Department of Labor and the NLRB and to withdraw from the general representatives election.

The above-credited comment by Lucassen does tend to show that Lucassen did not include Beckes in the group of other reps who were part of that discharge and that election with the organizers program. Nevertheless, by reneging on its agreement with Beckes because that action may compromise its discharges because of the CRF campaign, Respondent also engaged in activity in violation of the provisions of the Act. Regardless of whether Lucassen included Beckes in the group that supported CRF, or whether he reneged on his agreement with Beckes because Lucassen felt that would impact on the alleged unfair labor practice discharges, Beckes would be protected under the Act.

In view of the credited evidence I find that General President Lucassen did not discharge Michael Beckes because Beckes ran for board member in opposition to a Lucassen candidate as Lucassen testified. That asserted reason was simply a pretext. Instead, in September 1991, Lucassen knowing that Beckes was running for the board member position, told Beckes that he would ask for Beckes to retire after the first of 1992 if Beckes lost that election. *Northport Health Services v. NLRB*, 961 F.2d 1547 (11th Cir. 1992); *Control Services*, 305 NLRB 435 (1991).

Beckes was not given a reason for his discharge until he phoned General President Lucassen after receiving his discharge letter. During that conversation, Lucassen told him that he had attended the UBCJA convention and had been a participant. Lucassen told Beckes that he had a new executive board and they were going to sweep out everybody that

doesn't believe in their philosophy. However, with the exception of the progressing CRF campaign, nothing had changed since Lucassen talked with Beckes in September. At that time, Lucassen knew that Beckes would be a participant—i.e., Lucassen knew that Beckes was running for executive board—in the UBCJA convention.

Beckes was not permitted to retire and his health insurance benefits were withdrawn because of Lucassen's concern with what impact continuation of Beckes' insurance would have on employees that had been discharged because of their CRF activity. Respondent engaged in conduct violative of the Act by denying Beckes' health insurance and the opportunity to retire after January 1, 1992.

The record evidence proved that Respondent's general president believed Beckes was involved with the CRF (see *Respond First Aid*, 299 NLRB 167, 169 fn. 13 (1990)). Additionally, the record supports another basis for finding that Respondent engaged in violative action by discharging Beckes and denying him retirement opportunity along with health and life insurance. Lucassen told Beckes that he was not going to permit Beckes to continue his insurance, because Lucassen felt extension of those benefits to Beckes, would impact on the representatives that had been discharged and were involved in the CRF campaign. The credited evidence proved that Beckes was discharged in violation of the Act and Respondent failed to prove that it would have discharged Beckes in the absence of its employees protected CRF activity. *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982); *NLRB v. Transportation Management*, 462 U.S. 393 (1983).

L. Thomas Hohman

Tom Hohman testified that he was first employed by Respondent in 1983. When discharged in October 1991 Hohman was a representative of the general president.

Hohman testified that he phoned General President Lucassen in March 1991 and complained to Lucassen about comments made by Vice President Sooter. Lucassen told Hohman that he should not worry and that if Lucassen had any problems with Hohman that he would phone Hohman. Hohman then commented, "What do I need to do, form a union in order to get justice here?" Subsequently, on cross-examination Hohman recalled that he mentioned forming a union or running for office. Lucassen replied, "Tom, I don't want to have to let you go."

Hohman signed an authorization card for CRF. On September 9, 1991, Hohman mailed a certified letter to General President Lucassen notifying him that Hohman had signed an authorization card for CRF.

Alice Dixon, who was secretary for CRF, testified that to her knowledge Hohman had not signed an authorization card before the UBCJA convention in October.

General President Lucassen agreed that he received a letter from Hohman saying that he had signed a CRF card. Lucassen testified that had nothing to do with Hohman's discharge.

In view of the evidence showing that not only had Hohman signed an authorization card, but he had written to the UBCJA general president notifying him on September 9 that he had signed a card, I do not credit Dixon's testimony in that regard. Additionally, I was not impressed with Dix-

on's demeanor nor was I impressed with her testimony on cross-examination. Dixon appeared to be hesitant in responding to questions from counsels for General Counsel and the alleged discriminatees.

Hohman attended at least two of the CRF meetings at Atlantic City while he was there for the general convention in 1991.

Hohman testified that he phoned Ed Hahn on the Monday after the general convention in October 1991:

My primary motivation for the call, having been right after the general convention, was to get an impression from him of what the mood of the office was in Washington and I asked him that question. He said, "The only thing that I know that Sig has against you is that you signed an authorization card." And I said, "What do you mean?" He said, "I was in his office after you signed it" and he said, "Hohman signed a God damn authorization card."

Ed Hahn testified that he did not recall having that conversation with Hohman. Hahn did testify that the only thing that he had discussed with Lucassen about Hohman at that time was Hohman signing a CRF authorization card. Hahn testified "so that's the only thing I knew that Lucassen had—and I had discussed."

Respondent argued that Hohman was not a credible witness. In view of Hahn's testimony I am convinced that Hohman accurately testified as to his conversations with Hahn. I credit the testimony of Hohman and, to the extent their testimony conflicts, discredit Hahn.

Hohman learned of his discharge while he was in Atlanta on the Friday after the general convention. His wife phoned and read his discharge letter to him.

As was the case with the other representatives discharged on October 15, the letter to Hohman did not mention a reason for his discharge.

After flying back to Gainesville, Florida, Hohman phoned General President Lucassen and asked why he had been discharged. Lucassen told him that he had nominated Randy Wildes for president of the Florida State Council of Carpenters. Hohman eventually told Lucassen that he could not believe that was the reason for his discharge. He asked Lucassen if there were other reasons. Lucassen replied, "That is enough."

In consideration of whether General Counsel proved a prima facie case of Hohman being illegally discharged, the above evidence tends to show that Hohman was discharged because, at least in part, Respondent was unhappy that he was involved with CRF.

General President Lucassen testified that he fired Hohman because Hohman directly disobeyed an order. According to Lucassen he had told Hohman not to become involved in Florida State Council politics. The North and South Florida groups had an agreement that Hohman, from the South, would serve as president of the Florida State Council until 1991 when he would be replaced by the vice president who was from the North. Hohman allegedly breached the agreement by nominating a candidate from the South for the presidency in 1991. When Lucassen first heard there may be a break from the agreement, Lucassen phoned Hohman and told him not to get involved and to do nothing more than chair the meeting. Hohman agreed that he would follow

Lucassen's directive. At the Florida State Council convention, Hohman actually nominated a candidate from the South to oppose the vice president in his candidacy for the presidency.

Lucassen agreed that Hohman phoned him after his discharge and Lucassen told him he did not take instructions. When Hohman asked if the discharge was just for nominating Randy Wildes. Lucassen replied that is enough.

The evidence regarding Hohman's actions during the 1991 Florida State Council convention includes the following.

Larry Jones, business manager from a carpenter's local in Tampa, testified that he met with Dean Sooter during the Florida State Council convention and told Sooter that Representative Tom Hohman was apparently backing out on the deal made in 1989.

After talking with Larry Jones, Dean Sooter phoned Hohman's room and asked Hohman to come down and talk. Jones was there outside the bathroom while Sooter and Hohman talked.

Hohman recalled that Sooter phoned him in his hotel room and directed Hohman to meet him in the hospitality room. When Hohman arrived Sooter beckoned him into the bathroom. The hospitality room was crowded. As shown above, Hohman testified:

. . . and I said to him, "You know, Dean, I signed an authorization card to be represented by the Union." And he said, "Yeah, I know and we are going to bury you on that one." And I said to him, "What do you mean by that?" And he said, "What are the wages here in Miami?" I said, "What do you mean?" He said, "What are the carpenter's wages here in Miami?" I said, "What does that have to do with anything?" He said, "No, just tell me. What are the carpenter's wages here in Miami?" And I said, "They are about \$13.00 or \$14.00 and change and fringe benefits." He said, "That is what we are going to pay you if the union comes in."

As shown above, Dean Sooter admitted that he talked with Hohman in the bathroom of the hospitality suite during the Florida convention. Sooter admitted that Hohman said that he had signed a CRF card and Sooter admitted that he told Hohman he would bury him, but Sooter denied that he threatened Hohman regarding Hohman's CRF activities.

Under cross-examination Sooter testified about activities at that convention concerning the campaign for general president. Sooter's testimony fluctuated as to whether he personally overheard certain participants at the convention support Whitey Rogers for general president and whether Thomas Hohman voiced support for Whitey Rogers. Sooter demonstrated uncertainty as to his recollection but nevertheless a determination to show that he knew that Thomas Hohman opposed General President Lucassen. I am convinced from his responses under cross-examination that Sooter was determined to show that Hohman opposed Lucassen even though he did not recall how he came to that conclusion. I am convinced that Sooter was not truthful in responding to questions of his personal recollection as opposed to what he may have heard second hand. I am unable to credit Sooter's testimony to the extent it conflicts with other evidence because, in part, of my observations of his testimony especially his testimony under cross-examination.

As mentioned above, Ed Hahn testified that Tom Hohman told him that he and Dean Sooter had an argument in a bathroom at the state convention. Hahn testified that Hohman did not mention that the CRF was involved in the conversation between Hohman and Sooter. Hahn did recall that Hohman said that Sooter threatened to bury him. Sooter agreed with Hohman, that Hohman mentioned that he had signed a CRF card.

I credit the testimony of Hohman regarding his conversation with Dean Sooter in the bathroom. Sooter's comments during that conversation show that he was angry both over Hohman's actions at the Florida convention and Hohman signing a CRF authorization card.

The above-credited evidence shows that Respondent's second ranking official, its first vice president, expressed anger at Hohman during the third week of September 1991, over Hohman's actions during that week at the Florida convention and over Hohman signing a CRF authorization card.

Moreover, when Hohman phoned his supervisor, Ed Hahn on the Monday after the October 1991 UBCJA convention, it was Hohman's signing of a CRF card, that Hahn recalled as the only thing General President Lucassen had against Tom Hohman.

Additionally as shown above Hohman was involved in an 8(a)(1) violation with his supervisor, Ed Hahn.

Ed Hahn admitted talking with Hohman about Hohman having signed a CRF authorization card. Hahn admitted telling Hohman that the representatives had pretty decent conditions and that the way it was in the field, the International could assign them to any place which could be right next to their homes or it could be Alaska or some place.

To the extent their testimony conflicts, I credit Hohman and discredit Hahn.

Respondent argued that Hohman was discharged for political disloyalty. As noted above, that is not what Respondent's general president gave as the reason for Hohman's discharge. President Lucassen told Hohman that he could not follow orders. Lucassen was referring to Hohman's nomination of Randy Wildes during the September Florida State Carpenters Convention.

I find that General Counsel proved a prima facie case of illegal discharge. *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

In consideration of whether Respondent proved that it would have discharged Hohman in the absence of his union activities, the testimony of Hohman and General President Lucassen shows that Lucassen allegedly fired Hohman because of Hohman's actions during the September 1991 Florida State Council convention. Respondent contends that General President Lucassen discharged Hohman because he nominated Randy Wildes for president of the Florida State Council and Wildes opposed Lucassen's election to general president.

Hohman testified without rebuttal that Randy Wildes had told him that he had not made up his mind as to which candidate he would support for general president at the time Hohman nominated Wildes for president of the Florida council.

Larry Jones testified that Tom Hohman was unopposed as Florida State Council president in 1989, as part of an agree-

ment between South Florida and North Florida forces in the UBCJA. The agreement included a North Florida delegate being unopposed as president in 1991. At the September 1991 Florida State Council convention, Tom Hohman nominated Randy Wildes, a South Florida delegate, in opposition to George Geiger from North Florida. Geiger was scheduled to become president in accord with the 1989 agreement. Geiger was defeated by Randy Wildes in the 1991 election.

Hohman engaged in the Florida convention activities in the third week of September but was not discharged until October 15. Lucassen testified that he did not take action sooner because it would have harmful to him during his election campaign. According to Respondent's evidence, Hohman was openly campaigning for Lucassen's opponent. If so, how did Lucassen benefit by permitting Hohman to continue to hold his job? Additionally, when Vice President Sooter confronted Hohman at the Florida State convention, he threatened Hohman because Hohman had signed a CRF authorization card. I credited Hohman's testimony that, on October 14, Ed Hahn told him that the only thing Lucassen had against him was Hohman's signing a "God damn authorization card."

In view of the entire record and especially comments made to Hohman by Lucassen, Sooter, and Hahn; the timing of Hohman's discharge; the fact that Respondent gave varying reasons for Hohman's discharge and the fact that Lucassen acknowledged to Michael Beckes that he was denying Beckes' benefits because of the impact that would have on Representatives discharged in October 1991 that were involved in the organizing effort, I find that General Counsel proved a prima facie case regarding Hohman's discharge and Respondent failed to prove that Hohman would have been discharged in the absence of his protected activities.

Respondent offered additional evidence against Tom Hohman. Larry Jones testified that after the vote for general president at the UBCJA convention in October, Tom Hohman came to him and apologized. Jones said that he commented that it appeared Hohman had it all worked out,

Whitey gets elected, E. Jimmy Jones gets re-elected, E. Jimmy Jones retires, Whitey appoints (Hohman) as Board Member to the Fourth District . . . that's just about the way it was supposed to come down.

Hohman responded, "that's pretty much the way we had it figured."

Alice Dixon also testified about a conversation with Tom Hohman during a CRF meeting on the last day of the UBCJA convention. She asked Hohman why he was upset and he told her that he had supported Whitey Rogers for general president because he thought that Rogers would win. Dixon testified that Petri also told her that he had supported Rogers for general president.

Hohman denied that he had the above conversation with Dixon.

Ronald Angell testified that on the day a crowd of Whitey Rogers' supporters tried to enter the convention area during the 1991 UBCJA convention, he saw Tom Hohman leave. The crowd was chanting "Fuck Sig, Fuck Sig," and as Hohman walked out of the convention hall toward the group of demonstrators, Hohman held his fist up and shook his fist, while Hohman yelled, "You're right. Whitey, Whitey, Whitey."

Ronald Angell testified that he reported all Hohman's actions that day to Fred Carter.

Fred Carter testified that Ron Angell told Carter that Tom Hohman had been part of the demonstrations of Whitey Rogers' supporters at the 1991 UBCJA convention. Carter reported those matters to Dean Sooter.

International Representative Gregory Martin testified that he was assigned to work registration during the 1991 UBCJA convention. On Wednesday morning during the convention, Martin was told there were going to be busloads of people from New York and Ronnie Angell needed help out front. Martin was told the building was at capacity and the fire marshall would not allow any more guest passes.

On Wednesday, at lunch the crowd of Whitey supporters were still outside at the entrance, when the delegates started out for lunch. Martin saw Tom Hohman leaving. As Hohman approached the demonstrators he raised his fist and pumped his fist. Martin was of the opinion that Hohman was firing up the crowd.

Martin reported to Mike Fishman what he had observed of Tom Hohman that morning and the demonstrators.

Representative James Sala testified that he assisted in registration of delegates at the 1991 UBCJA convention. He was also a delegate to that convention. He testified that he saw Tom Hohman standing alone on Saturday before the convention actually opened. He noticed that Hohman was wearing a Whitey Rogers button. It was a large white button with a picture of Whitey Rogers.

Sala testified that he attended the Fourth District caucus during the convention before the main proceedings started. During that caucus Tom Hohman and some other South Florida delegates escorted Charles Cladder into the caucus. Cladder was the candidate for Board Member from the First District on the Whitey Rogers ticket. There was an effort made to have Cladder speak but opposition because he was not in the Fourth District prevented Cladder speaking. The meeting was adjourned after Jimmy Jones, who was then Fourth District board member and on the Whitey Rogers ticket, spoke to the caucus chairman. Hohman and others wanted to leave but Sala was of the opinion that Lucassen supporters did not want the meeting to adjourn. Before the end of the convention Sala told Mike Fishman that he had seen Hohman with a Whitey Rogers button.

Hohman disagreed with Sala about the Fourth District caucus. Hohman recalled that Sala and Ernie Curtis escorted a number of Black delegates into the caucus. Hohman spoke to one that seated himself near Hohman and the man did not respond until Hohman spoke several times. Hohman then walked to the back and asked several of the Black delegates why they did not want Charlie Clayton, who is also Black, to speak when it became obvious that the Blacks and Sala/Curtis did not want Clayton to speak. No one responded and Curtis came over and told Hohman that he was playing with Curtis' people. Hohman told Curtis that he was not playing but simply had asked a question. The Representative Hohman had spoken to then said, "And I don't have to answer it." Hohman went over and talked with Clayton for about 10 minutes. He then went back to his seat and voted.

Leo Decker testified that he had dinner with Tom Hohman during the fall 1990. Hohman told Decker that Jimmy Jones, the executive board member who had been in a serious accident, was going to support Hohman as his successor as exec-

utive board member. Decker asked Hohman about other people that had been in that district longer than Hohman. Hohman told him that the selection down there was very thin. Decker asked what Hohman would do if General President Lucassen did not appoint him. Hohman replied that he would run with Whitey Rogers.

The following morning at breakfast, Hohman asked Decker to forget their conversation the night before. Decker asked why and Hohman said, "Well, I'm a young man, I can wait my turn." Decker replied that he was glad to hear it. Decker testified that he reported the conversations with Hohman, to someone in management and he believed it was Dean Sooter.

Bruce Wingert was a warden at the 1991 UBCJA convention. He testified that he was called to go out front on Wednesday during the convention. There was a large crowd with Whitey Rogers signs trying to get into the convention. On cross-examination Wingert testified that Tom Hohman came out of the convention hall with his fist held up yelling, "Whitey, Whitey."

Business Representative Gordon Malmberg from a local in Ocala, Florida, testified that during 1990 Tom Hohman was assigned to assist the Ocala local. Malmberg had a conversation with Hohman in which Hohman asked him to consider supporting Whitey Rogers for general president. Hohman told Malmberg there was going to be some evidence that would sway Malmberg's opinion toward Whitey Rogers.

In 1991 Hohman came to Ocala and talked with Malmberg. Hohman asked Malmberg if he still planned to support E. Jimmy Jones as Malmberg had told Hohman back in 1990. Malmberg told Hohman that he did not think so. Hohman asked Malmberg who he was supporting for general president and Malmberg replied that he would vote for Lucassen unless something came out during the convention. Hohman replied that Lucassen was a "god damn thief."

Malmberg had another conversation in a parking lot with Hohman in August or July 1991. Hohman asked why Malmberg had changed his support for E. Jimmy Jones for executive board member. Their conversation became heated. A week later Hohman told Malmberg that Dean Sooter had charged UBCJA for large phone bills. Malmberg laughed and Hohman became angry and cursed.

Hohman agreed that he worked with the Ocala Local in 1991 and that he had several conversations with Gordon Malmberg including one in the parking lot. He testified that Malmberg asked him on several occasions as to whether the UBCJA was involved with the "outfit" because the moneys were invested in New York and former General President Pat Campbell's son's office. Hohman worked as Pat Campbell's assistant for 3-1/2 years and Malmberg thought he knew something about the situation with Campbell. According to Hohman, the conversation in the parking lot included Malmberg again asking about the UBCJA loans. Hohman denied that he ever asked Malmberg to support Whitey Rogers and he denied saying that evidence would come out against Lucassen and sway people to supporting Rogers. Hohman denied saying that Lucassen was a "god damned thief."

Hohman said that Malmberg may hold against him an occasion when Hohman called Malmberg down about his having a tool rental business on the side. Malmberg admitted having the business to Hohman but later denied it to his boss within the District Council.

In November 1991, the recently elected executive board member, Bill Nipper, asked Malmberg about the conversation in the parking lot. When Malmberg told of that conversation, Nipper asked him to phone General President Lucassen. Malmberg phoned but Lucassen was out. Malmberg then spoke with Dean Sooter and explained what had happened regarding Hohman. Sooter asked if Malmberg would testify to those conversations and Malmberg said that he would.

Hohman admitted that as he left the convention hall on Wednesday—the day of the demonstration of people wanting into the Hall—he held up a fist as the demonstrators chanted “we want in.” Hohman denied that he said, “Whitey, Whitey.”

Despite the above evidence, the record is clear that General President Lucassen never claimed that Hohman’s support of Whitey Rogers caused Hohman’s discharge. Hohman, like the other representatives discharged in October, was not told in his discharge letter why he was being discharged. Afterward, when Hohman phoned, Lucassen told Hohman that he was fired because he nominated Randy Wildes.

As shown above, the incident of Hohman nominating Randy Wildes occurred during the third week of September 1991. Hohman was discharged by letter dated October 15, 1991. At that time General President Lucassen had expressed displeasure with Hohman signing a CRF card and Vice President Sooter had told Hohman that Respondent would bury him because he had signed the CRF authorization card. Despite Hohman’s nomination of Randy Wildes at the Florida State Council convention, I am persuaded from the entire credited record that Hohman would not have been discharged absent his CRF activities.

Respondent argued that Hohman openly supported Whitey Rogers at the UBCJA convention. I find that Hohman engaged on activity which could have led Respondent to believe he was supporting Rogers. Nevertheless, that was not the reason for his discharge according to General President Lucassen.

In view of the full record, I find that Respondent failed to prove that Hohman would have been discharged in the absence of his protected activities.

M. Paul Cecil

There was no showing that Paul Cecil was involved in CRF activity during 1991.

General President Lucassen testified that he was in Albuquerque in the fall of 1990 and spoke to Paul Cecil. Lucassen had heard that Cecil had some pressure to support Whitey Rogers. Lucassen talked with Cecil and Cecil pledged that he would not oppose Lucassen. A couple weeks later, according to Lucassen, Cecil spoke to the Orange County, California financial secretary, Jensen that Whitey Rogers was a great man and should be elected general president. Additionally Lucassen heard that Cecil tried to get officials to file suit against the International to stop a dissolution of the San Diego District Council, and merger with the Los Angeles District Council.

Lucassen testified that he decided to discharge Cecil upon conclusion of the 1991 convention.

Hal Jensen who is employed by a joint labor-management committee designed to do compliance work within the public works industry, testified that in November or early December

1990 Cecil was assigned to investigate a complaint in Local 2203 in Anaheim, California. Jensen was financial secretary of Local 2203 at that time. While there Cecil talked with Jensen. Cecil asked what Jensen thought about Whitey Rogers and Sig Lucassen for the president’s race. Jensen replied that he didn’t know much about either of them. Cecil told him that he was supporting Whitey Rogers and asked Jensen to consider supporting Rogers. Cecil said that Sig Lucassen had made some bad decisions and was showing poor leadership for the Brotherhood. After Jensen told Cecil he would think about supporting Rogers, Cecil told him that he didn’t have anything to worry about regarding Cecil’s report on the complaint. When the decision came down it was in Jensen’s favor. Jensen said he reported his conversation with Cecil to Doug McKarin, secretary-treasurer of the Los Angeles District Council.

Paul Cecil denied that he told Jensen he was supporting Whitey Rogers and he denied making adverse comments against General President Lucassen.

John P. Kennedy, a business representative from California, testified that the San Diego District Council was placed under supervision of the UBCJA executive board member for the Sixth District. In August 1990, Kennedy and Jim Shear, who was financial secretary of Local 505 (San Diego) met with Paul Cecil. Cecil advised them to transfer Local 505 funds to a separate account and retain legal counsel to fight any impending merger of the locals in San Diego. Cecil explained that since the Council was under supervision, it was just a matter of time before UBCJA representatives would come in and seize all the funds. Cecil told Kennedy and Shear that the general president wanted to reduce delegate votes at the 1991 UBCJA convention and thereby eliminate or reduce opposition. Cecil said there had been one vote in the last convention that was close and most of the opposition in the Sixth District came from California.

Cecil wanted them to use the Local’s assets to fight the General President Lucassen in any merger action. When Kennedy and Shear told Cecil they would not follow his advice, Cecil said he would get friends to fight for his suggestions on the floor in the Local. Cecil told Kennedy and Shear that he was supporting Whitey Rogers and that Rogers had promised him appointment as the Eighth District board member if Rogers was elected general president at the 1991 UBCJA convention.

On other occasions before their August 1990 meeting, Cecil had told Kennedy that he was supporting Whitey Rogers.

Kennedy testified that he reported the confrontation with Cecil to Jack Green.

On rebuttal Paul Cecil admitted having lunch with Kennedy and Shear and he admitted talking about merger of the San Diego Council with Los Angeles. Cecil denied that he advised Kennedy and Shear to fight the merger or to move funds into other accounts. Cecil testified that he advised Kennedy and Shear that the merger was going to occur. Cecil denied telling Kennedy that he was supporting Whitey Rogers.

Cecil testified that he does not get along with Kennedy’s current boss, Doug McKarin. He ruled against the Carpenters in a jurisdictional dispute and he and McKarin had words. They have not been friendly with each other since that time.

Cecil testified that he supported general president Lucassen during the 1991 UBCJA convention. He wore a "Sig" badge.

Paul Cecil admitted that he met with general president and that Lucassen said he had reports that Cecil was opposing the merger of San Diego into the Los Angeles Council and Lucassen said that he should fire Cecil. Cecil admitted that Lucassen said to him that "he didn't mind if Cecil wasn't out beating the band for him, but don't—don't oppose him."

The evidence failed to prove that Cecil was involved in CRF activities. I find that General Counsel failed to prove a prima facie case as to the discharge of Cecil. The record showed that Cecil was cautioned to not oppose President Lucassen and that, despite that warning, Cecil continued to campaign for Lucassen's opponent. *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

N. Leo Petri

General President Lucassen testified that he was unaware of CRF activities by specific representatives other than those named in letters that he received. Lucassen denied that he saw any of the CRF letters during the UBCJA convention or before October 15. Leo Petri was first named in one of those letters which was hand delivered to Lucassen's secretary on October 9, 1991. Six days later Petri was discharged.

As shown above, I do not credit Lucassen's testimony that he did not see letters from CRF during the convention, until after he made the decision to discharge representatives on October 15, 1991. Credited evidence demonstrated that Respondent's attorney was given the Union's demand for recognition on October 8, 1991, and General President Lucassen's secretary, Sue Dillon, was given two copies of CRF's October 9 letter by Floyd Doolittle. That evidence was not rebutted (see, e.g., *NLRB v. General Wood Preserving Co.*, 905 F.2d 803 (4th Cir. 1990); *Control Services*, 305 NLRB 435 (1991); *NTA Graphics*, 303 NLRB 801 (1991); *Pinkerton's Inc.*, 295 NLRB 538 (1989)).

I find that Respondent was aware of all letters from CRF, delivered to Lucassen's secretary and attorney, during the UBCJA convention.

As shown above, Lucassen's secretary, Sue Dillon, subsequently asked Floyd Doolittle for another copy of the October 9 letter. Petri was named on both the original and the amended copy of the letter that was delivered to Lucassen's secretary.

President Lucassen testified that he received a report from a business representative, Wilson, from Indiana that Petri had talked to him in support of Whitey Rogers. Additionally, Petri was supporting other than Lucassen's slate people, in the Ohio State Council convention. Lucassen said that Petri's CRF activities had nothing to do with his discharge.

Ted Wilson, a business representative from Minneapolis, Minnesota, recalled that Leo Petri was assigned to hold an election in his local. Wilson and his partner picked up Petri at the airport. On the way in Petri asked what was going on in the area as far as the election between Lucassen and Rogers. After Wilson said he was a delegate but would wait until the convention to decide, Petri commented:

Well, I don't see how in the hell anybody can support Sig in view of the fact all that money going down the tube.

After Petri made two more trips out to Wilson's local, Wilson wrote and asked Petri not to return. Petri returned and met with the Local members without notifying Wilson. Wilson contacted Executive Board Member Gene Judge. Judge told Wilson that Sig Lucassen would like him to phone Lucassen. Wilson told Lucassen about his conversation with Petri in which Petri said he didn't see how anybody could support Lucassen, and that Petri had interfered with the Local. Wilson recalled his conversation with Lucassen was in August 1991.

Petri admitted having conversations with Wilson. Petri testified that he suggested that Wilson should support Lucassen. Petri denied that he ever suggested to Wilson that he supported Whitey Rogers.

Alice Dixon testified that she noticed that Hohman and Petri were upset during a CRF meeting on the last day of the UBCJA convention. She asked Hohman why he was upset and he told her that he had supported Whitey Rogers for general president because he thought that Rogers would win. Dixon testified that Petri also told her that he had supported Rogers for general president.

Petri denied that he told Alice Dixon that he supported Whitey Rogers. Petri testified that Dixon supported Lucassen.

General Representative Eddie Baydoun lives in Michigan. Baydoun testified that he attended the Ohio State Council convention in Toledo, Ohio, in early fall of 1991. Baydoun testified that he saw Leo Petri several times during that convention. Baydoun recalled that Petri was wearing political buttons for Michael Beckes and an "I Jack" button that was a button for Jack McMillen. Both Beckes and McMillan were on the Whitey Rogers team according to Baydoun. Baydoun was with Dean Sooter at that convention and he expressed surprise to Sooter that Petri did not speak to either of them. Sooter said he was not surprised in view of Petri's buttons being for the other side.

Petri admitted attending the Ohio State Council convention but he denied that he wore any political buttons.

Business Manager Harry Gowan of the Central Indiana Council of Carpenters, testified that he discussed UBCJA politics at the Ohio State Council convention in the summer of 1991, with Leo Petri. Gowan testified that he supported General President Lucassen. He noticed that Petri was reluctant to talk with him and he grabbed Petri and said just because we are not on the same side doesn't mean we can't talk to each other. Petri made the comment that everybody has to make a choice and "I've made mine. It's not too late for you to change your mind." Gowan said he didn't think there was a fat chance of his changing his mind.

Petri admitted speaking to Harry Gowan several times during the Ohio State Convention but Petri denied that he gave Gowan any suggestion that he and Petri were on different political sides.

In view of the entire record I find that General Counsel proved a prima facie case regarding the Leo Petri discharge. As shown above, Petri's name first appeared in a CRF letter to the general president on October 9. That was only 6 days before Petri, along with several others, was discharged. In view of that evidence and other evidence which proved Re-

spondent's animus against CRF, as shown above, General Counsel proved its case. *Wright Line*, supra; *NLRB v. Transportation Management Corp.*, supra.

In consideration of whether Respondent proved that it would have discharged Petri in the absence of protected activities, I credit the testimony of Ted Wilson that in August 1991, Petri commented that he didn't see how anyone could support Lucassen because all that money going down the tube. I also credit Wilson's testimony that he spoke to Lucassen regarding Petri's actions. As shown above, I am unable to credit the testimony of Alice Dixon.

As to the testimony of Eddie Baydoun and Harry Gowan, Respondent did not dispute that matter came to General President Lucassen's attention after he made the decision to discharge Petri.

The record includes substantial evidence that Respondent would not have discharged Petri absent his CRF activities. As shown above under Michael Beckes, Beckes' credited testimony including a phone conversation in which General President Lucassen told Beckes that he could not continue his deal to allow Beckes hospital insurance. Lucassen said to do so would impact on the other representatives that were discharged and were involved in the representatives election.

Despite President Lucassen's contention that he did not discharge representatives before the convention because those Representatives may work for Whitey Rogers if Rogers had been elected general president, and because he did not want to make political hay for his opponent, I must consider that Lucassen did not wait to discharge Fred Purifoy during July 1991, which was some 8 or 9 months after Whitey Rogers launched his campaign for general president. Also, Lucassen testified that he would have discharged Michael Beckes when Beckes announced he was running for the executive board, if Beckes was not scheduled for heart surgery. Lucassen called Beckes to Washington after Beckes had recovered from surgery to the extent he was able to campaign for executive board. At that time Lucassen planned to discharge Beckes because he felt Beckes had attended the Michigan State Council convention without an assignment. Also, Lucassen discharged some employees outside the bargaining unit, before the general election, because they supported Whitey Rogers.

All the matters mentioned above, tend to discredit Lucassen's testimony as to why he waited until after the UBCJA convention to discharge some of his representatives. Moreover, the credited record evidence supported my finding herein that several of the representatives discharged on October 15, would not have been discharged in the absence of their CRF activities.

As to Petri, general president learned in August 1991, that Petri was campaigning for Whitey Rogers. He did not discharge him at that time even though he had discharged others for disloyalty. I am unable to credit General President Lucassen's alleged basis for waiting to discharge Petri. Shortly after he first learned of Petri's CRF activity, on October 9, 1991, he discharged Leo Petri. I find that Respondent failed to prove that Petri would have been discharged in the absence of his CRF activity.

I find that Respondent used the internal political campaign as a pretext to justify its discharge of some of its representatives involved with CRF, after the UBCJA convention. It was not until the convention, that Respondent first learned

that CRF may be successful in the 1991 campaign. On October 8, during the convention, CRF demanded recognition on the basis of a majority of the representatives having signed authorization cards. On October 9, Floyd Doolittle, delivered a letter to Lucassen's office, that listed 24 representatives that authorized CRF to inform Lucassen of their CRF activity. Later that day, Doolittle, gave Lucassen's secretary another copy of that letter with the names of four additional representatives written in. Leo Petri was mentioned for the first time, as a representative supporting CRF, on both copies of the letter delivered to Lucassen's office during the convention on October 9, 1991. *Northport Health Services v. NLRB*, 961 F.2d 1547 (11th Cir. 1992); *Control Services*, 305 NLRB 435 (1991).

As shown above, I find that Respondent discharged Representatives Garcia, Mergner, and Cecil for reasons which were unprotected. Although Garcia, Mergner, and Cecil were also discharged in October 1991, there was no evidence that Respondent believed that Garcia, Mergner, and Cecil engaged in protected CRF activity. I find their situation was different from Leo Petri, who engaged in CRF activity near the time of his discharge and was shown to have engaged in political activities several months before the UBCJA convention.

I find that Petri was discharged because of his CRF activity and Petri would not have been discharged in the absence of his protected CRF activity.

The 8(a)(2) allegations

The complaint alleges that Respondent rendered assistance and support to, and interfered with, the organization and operation of CRF by paying the expenses of some members of CRF to attend CRF's Atlanta, Georgia meeting on February 15, 1992.

Respondent First General Vice President Dean Sooter testified that he initialed a letter report from Representative John E. Oglesby showing that Oglesby traveled to Atlanta, Georgia, and met with Board Member Bill Nipper on February 14, 1992. Sooter approved travel expenses to Atlanta and hotel expenses while Oglesby was in Atlanta on February 14 and 15, 1992.

Sooter testified that the bill on its face showed that Oglesby was meeting with Executive Board Member Bill Nipper in Atlanta. Since such a meeting would have been proper, Sooter did not investigate the matter further. Sooter denied that he had knowledge that Oglesby attended the CRF meeting in Atlanta.

John Oglesby testified that he started receiving CRF material in the mail before the UBCJA convention in October 1991. Oglesby is a representative assigned to the BE&K campaign. At the time of the UBCJA convention Oglesby was not active in the CRF. In his BE&K assignment Oglesby was assigned to work in the western North Carolina area—in Canton and Charlotte, North Carolina. Bill Nipper, who had been elected UBCJA Board member from the October 1991 UBCJA convention, asked to meet with Oglesby to discuss what was going on in North and South Carolina. They arranged to meet on February 14, 1991. Oglesby had received an invitation to attend a CRF meeting in Atlanta on February 15. He decided to attend the meeting because he was in Atlanta to meet with Nipper who lived in Atlanta. Oglesby testified that he did not talk with Nipper or anyone

else in UBCJA management, about the CRF meeting. No one in the UBCJA urged him to attend the CRF meeting.

Two other representatives, David Allen and Walt Darnell, were meeting with Bill Nipper when Oglesby arrived. The four discussed their UBCJA work through lunch. After meeting with Nipper, Oglesby checked into the motel where the CRF meeting was planned.

Oglesby attended the CRF meeting the next day—Saturday, February 15, 1992. During the meeting Oglesby got into a heated discussion with I. L. Bowling and walked out. He immediately checked out of the motel and drove home—a 8- or 9-hour drive. Oglesby testified that he did not discuss the CRF meeting with anyone in management at UBCJA.

David Allen testified that he wanted to attend the CRF meeting in Atlanta during February. He felt the CRF needed a broad democratic base to be successful and he was concerned that the people running the CRF would not necessarily have the same goals as he had, since they were among the discharged representatives. Allen testified that no one from UBCJA management tried to influence him regarding his thinking on CRF.

Allen needed to meet with Bill Nipper since Nipper was the newly elected board member from his district. Allen was working in Florida. After deciding to attend the CRF meeting Allen phoned Nipper and asked if he could meet with Nipper on Friday, February 14. Allen testified that enabled him to both meet with Nipper and attend the CRF meeting during the same trip.

Allen testified that he did not discuss CRF with Nipper and he was not at the CRF meeting at the suggestion of anyone from UBCJA management.

Allen admitted that he rented a suite at the Hotel where the CRF meeting was scheduled and that he normally does not rent a suite when he travels.

Assistant to the President and Director of Organization Michael Fishman testified that he approved a report of Representative David Allen showing that Allen traveled to Atlanta, Georgia, on February 14, 1992, and met with Board Member Bill Nipper. Fishman approved Allen's travel expenses to Atlanta on February 14 and Allen's stay in Atlanta on February 14, 15, and 16.

David Allen and John Oglesby stayed at the Holiday Inn, Airport/North in Atlanta while in Atlanta on February 14 until each left as shown above. The February 15 CRF meeting was held at that hotel.

I. L. Bowling testified that David Allen attended the February 15, 1992 CRF meeting in Atlanta and that Allen protested the holding of the meeting.

Larry Wyatt testified that he asked his supervisor, Edgar Fields, for February 14 off to travel to the CRF meeting in Atlanta. Fields told Wyatt he could give him that day off but he could not give him that day off to attend the CRF meeting. There were protests over the holding of the February 15 meeting in Atlanta. Several representatives signed protest letters. Representatives David Allen, John Oglesby, Jerry Jahmke, Daniel Walburn, Alice Dixon, and Earle Soderman were called as witnesses for Respondent. All agreed that they were involved in protest over holding the meeting of February 15 in Atlanta. All testified that they did not attend the February meeting or take protest action at the request or suggestion of anyone in UBCJA management.

Alice Dixon testified that she was assigned a portion of the representatives to contact regarding the February 15 meeting but she admittedly did not get back with CRF officers until a week later. Floyd Doolittle, during rebuttal, agreed that Dixon was assigned a number of representatives to contact. Dixon and others contacting various representatives were to get back with Doolittle by a Tuesday. Dixon failed to get back with Doolittle and the notices were sent out on Friday.

As shown below, I do not credit the testimony of Alice Dixon. The credited evidence including the testimony of Floyd Doolittle shows that Alice Dixon did not contact the CRF officers with the results of her survey of representatives until after the deadline for her response passed and not until notices of the meeting had been mailed.

Finding

Section 8(a)(2) of the Act makes it an unfair labor practice

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it

The evidence included records considered by Respondent in paying travel expenses to Oglesby and Allen. Both stayed at the same motel in Atlanta—The Holiday Inn Airport/North. Oglesby's motel voucher shows he stayed one night at a rate of \$70.85. Allen, on the other hand rented a suite and his voucher showed he stayed two nights for \$145.60 per night. His motel voucher totalled \$324.62. Allen admitted that he does not normally rent a suite when he travels.

Allen's suite was used by the representatives that protested the holding of the meeting on February 15 in Atlanta. Alice Dixon testified that there was a meeting in the restaurant, the lobby of the motel, and in David Allen's room. At the CRF meeting the next day, Allen presented letters opposing the holding of the meeting and talked in opposition to the meeting. Allen testified that he met with other representatives in the lobby and invited them up to his room. When asked if he had a supply of protest letters on hand, Allen responded that he suspected that he did. He also testified that he probably faxed letters to some representatives that were not there.

General Counsel argued that the evidence illustrated that Respondent interfered "with the formation or administration of" the labor organization CRF, and cited *Duquesne University*, 198 NLRB 891, 892 (1972), and *Electromation, Inc.*, 309 NLRB 990 (1992).

The record evidence supporting General Counsel's argument involved the travel vouchers of Oglesby and Allen. Those vouchers show that Oglesby and Allen met with Board Member Nipper in Atlanta on February 14. Allen's voucher was unusual in that it involved his staying in a suite, as opposed to a room, and that he stayed two nights after meeting with Nipper. Allen testified that he planned to stay two nights in order to qualify for a cheaper plane ticket by staying over Saturday night. Allen admitted that he did not usually rent a suite when he traveled.

There was no showing that Respondent inquired as to why Allen rented a suite or that it inquired about his staying over Saturday night.

The record also showed that Representatives involved in CRF, attempted to contact all other CRF Representatives regarding the February 15 meeting. When that factor is considered along with the full record, it is apparent that Respondent was aware of the February 15, 1992 meeting beforehand, and Respondent was aware of the actions of Oglesby and Allen during and in preparation of that meeting, when it paid their expenses associated with attendance at the CRF meeting.

The full record illustrated there is continuous, close contact between the office of the general president and many of the representatives to the general president. Moreover, the testimony of Larry Wyatt, which I credit, shows that Wyatt asked Director Edgar Fields for Friday, February 14, off to attend the CRF meeting. That evidence shows that Fields, whom I have found herein to be a supervisor, knew of the planned February 15 CRF meeting.

The full record shows that representatives continually reported matters of interest to their supervisors including the general president. Representatives reported such matters as representatives being seen during the convention with other representatives that were thought to support Whitey Rogers. Other evidence in this record shows that representatives and others, routinely reported to Respondent. That evidence convinces me that representatives reported to their supervisors that CRF had called a February 15 meeting in Atlanta and that Respondent was advised of what occurred during that meeting. Moreover, as shown above, Director Edgar Fields was told of the meeting when Larry Wyatt requested a day off to attend the CRF meeting. (See, e.g., *NLRB v. General Wood Preserving Co.*, 905 F.2d 803 (4th Cir. 1990); *Control Services*, 305 NLRB 435 (1991); *NTA Graphics*, 303 NLRB 801 (1991); *Pinkerton's Inc.*, 295 NLRB 538 (1989); and *Darbar Indian Restaurant*, 288 NLRB 245 (1988), and cases cited therein, where Board relied on circumstances to show knowledge.)

As mentioned above, it was not until October 8, 1991, during the UBCJA convention, that Respondent first learned there may be more to the 1991 CRF campaign than there was to the campaigns during 1973 and 1988. On that date Respondent's attorney was given CRF's demand for recognition on its assertion that a majority of the representatives had signed authorization cards. Within 1 week many of the CRF supporters, including its two highest ranking officers were discharged. Respondent acted quickly to defeat the CRF campaign. However, that action proved to be insufficient and the CRF won an election and was certified as exclusive collective-bargaining agent for the representatives.

Respondent was left to contend with CRF as best it could. General Counsel contends that it did so by attempting to control CRF.

Before the February 15 meeting, Respondent learned of the certification of CRF as collective-bargaining representative for its representatives. Respondent was fully aware that the two principal officers of CRF were former representatives that had been discharged on October 15 and that CRF had charges pending with the NLRB alleging that those two, Bowling and Doolittle, had been illegally discharged. The first of those charges was filed by CRF on October 28, 1991, and had been signed by the CRF Attorney Roger Doolittle, the son of Floyd Doolittle.

The evidence also shows that Respondent was advised of CRF meetings. When, according to credited testimony of Ed

Fortson and Wanda Phillips, Fortson and Phillips visited Southern States Organizing Director Edgar Fields, they told Fields about the CRF meeting. Fields told them that he had already received a call about the meeting. Before the February 15, 1992 meeting, Representative Larry Wyatt informed Edgar Fields of that meeting by asking Fields for a day off to attend the CRF meeting.

In consideration of the full record, I find that Respondent was aware of the CRF meeting. President Lucassen advised the representatives they were his eyes and ears in the field and he expected the representatives to keep him informed.

As an example, Lucassen wrote all representatives during the 1988 CRF campaign. That letter dated November 4, 1988, included the following comments by General President Lucassen:

As a representative of the General President you are my eyes and ears in the field. You have been appointed under Section 10-A of the UBC Constitution, which authorizes the General President to appoint any "member" of the UBC to "assist in carrying on the affairs of the United Brotherhood." For over one hundred years representatives have been the leadership of the UBC and have proudly carried out the directions of the General President in an effort to best serve the interests of Carpenters and Industrial workers in North America. Many of you have worked for M.A. Hutcheson, Bill Sidell, Bill Konyha, and Pat Campbell before me and have served each of these presidents well. The loyalty you have shown these presidents and now myself as General President, has been the backbone of our strength as an International. As a representative, I, myself, worked under the same conditions and know the frustrations and rewards of the job. I came to work under M.A. Hutcheson and he told me, at that time, that we were a team and that I was his representative and he wanted to know the real situation, the real problems in the field, and he was counting on me to tell him what was going on. I believe in this consistent policy and say the same to you.

The entire record demonstrated that representatives obeyed Lucassen's directive that they report to him on matters in the field.

James Sala, who was called to testify by Respondent, testified that he works for Respondent in the general office as assistant to the director of organizing. Sala testified that one of the representatives that supplied him with knowledge of who were Lucassen supporters and who were Rogers supporters, was David Allen. Sala also identified John Oglesby as a Lucassen supporter.

I find that the evidence proved that Respondent through its agent and supervisor, Director Edgar Fields, learned of the CRF meeting scheduled for February 15, 1992. Also, I am convinced that Respondent was advised by some of the representatives that CRF was holding a meeting in Atlanta on February 15, 1992. I am convinced that Respondent received a report on the CRF meeting, after that meeting was held. See *NLRB v. Augusta Bakery Corp.*, 957 F.2d 1467, 1473 (7th Cir. 1992), where the court supports Board's inference when supported by substantial evidence.

I find that when Respondent paid Oglesby and Allen their expenses for their trip and stay in Atlanta, Respondent knew

about the CRF meeting and what happened during that meeting including the roles played by Allen and Oglesby. I find that Respondent knew that Allen rented a suite and that he led the protest and effort to unseat the leaders of the CRF that had been discharged. Respondent knowingly paid Allen and Oglesby, and, by that action, assisted in Allen's action of organizing a protest against the meeting. I find that Respondent thereby engaged in activity violative of Section 8(a)(2) of the Act.

General Counsel pointed to evidence showing that neither Allen nor Oglesby had participated in CRF before February 15.

Employers' interference in administration of labor organizations is especially dangerous in situations involving small unaffiliated unions. In *NLRB v. Homemaker Shops*, 724 F.2d 535 (6th Cir. 1984), cited by Respondent, the court recognized that danger in finding that Section 8(a)(2) deals with reality rather than potential. Here the reality was that actions by Representative David Allen, who was at the CRF meeting at the expense of Respondent, resulted in the eventual overthrow of the CRF leadership.

I am convinced and find that Respondent knowingly reimbursed Oglesby and Allen and paid for Allen's use of a suite because of its knowledge of the activities at and before, the CRF meeting. I find that Respondent acted in violation of Section 8(a)(1) and (2).

General Counsel argued that the above proved that the election of CRF officers was tainted by Respondent's actions in violation of Section 8(a)(2), and that the election should be overturned. That issue was not fully litigated. However, it may be considered in compliance proceedings if necessary.

CONCLUSIONS OF LAW

1. United Brotherhood of Carpenters & Joiners of America, AFL-CIO is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Carpenters Representatives Federation is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent by interrogating its employees about their activity on behalf of Carpenters Representatives Federation; by threatening its employees with wage reduction, discharge, and other reprisals; and by threatening its employees with more onerous working conditions, because of its employees' activities on behalf on Carpenters Representatives Federation, engaged in activity violative of Section 8(a)(1) of the Act.

4. Respondent, by reimbursing its employees to attend a CRF meeting, engaged in activity violative of Section 8(a)(2) of the Act.

5. Respondent, by discharging its employees Michael Beckes, Floyd Doolittle, I. L. Bowling, Ed Fortson, Wanda Phillips, Tom Hohman, Mark Mullen, Gilbert Lee, Burke Smith, Fred Purifoy, and Leo Petri and by discontinuing the medical and life insurance benefits to Michael Beckes because of its employees' protected union activities, engaged in activities violative of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and

desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has illegally discharged and refused to rehire its employees Michael Beckes, Floyd Doolittle, I. L. Bowling, Ed Fortson, Wanda Phillips, Tom Hohman, Mark Mullen, Gilbert Lee, Burke Smith, Fred Purifoy, and Leo Petri and that Respondent has illegally discontinued medical and life insurance benefits to Michael Beckes in violation of sections of the Act, I shall order Respondent to offer Beckes, Doolittle, Bowling, Fortson, Phillips, Hohman, Mullen, Lee, Smith, Purifoy, and Petri immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges. I further order Respondent to make Beckes, Doolittle, Bowling, Fortson, Phillips, Hohman, Mullen, Lee, Smith, Purifoy, and Petri whole for any loss of earnings they suffered as a result of the discrimination against them and that Respondent remove from its records any reference to the unlawful actions against its employees Beckes, Doolittle, Bowling, Fortson, Phillips, Hohman, Mullen, Lee, Smith, Purifoy, and Petri, and notify Beckes, Doolittle, Bowling, Fortson, Phillips, Hohman, Mullen, Lee, Smith, Purifoy, and Petri, in writing, that Respondent's unlawful conduct will not be used as a basis for further personnel action. Backpay shall be computed as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *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 recommended¹

ORDER

The Respondent, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, its officers, agents, representatives, and shall

1. Cease and desist from

(a) Engaging in conduct in violation of Section 8(a)(1) by interrogating its employees about their activity on behalf of Carpenters Representatives Federation; by threatening its employees with wage reduction, discharge, and other reprisals; and by threatening its employees with more onerous working conditions, because of its employees' activities on behalf on Carpenters Representatives Federation.

(b) Engaging in conduct in violation of Section 8(a)(2) by interfering with the administration of CRF or any other labor organization.

(c) Discharging and refusing to rehire, and discontinuing health insurance benefits on, its employees because of their protected activities.

(d) In any like or related 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 Beckes, Doolittle, Bowling, Fortson, Phillips, Hohman, Mullen, Lee, Smith, Purifoy, and Petri immediate

¹If 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.

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 make Beckes, Doolittle, Bowling, Fortson, Phillips, Hohman, Mullen, Lee, Smith, Purifoy, and Petri whole for any loss of earnings plus interest they suffered by reason of its illegal actions.

(b) Rescind its discharge of Beckes, Doolittle, Bowling, Fortson, Phillips, Hohman, Mullen, Lee, Smith, Purifoy, and Petri, and remove from its files any reference to those actions, and notify Beckes, Doolittle, Bowling, Fortson, Phillips, Hohman, Mullen, Lee, Smith, Purifoy, and Petri in writing that this has been done and that evidence of its unlawful actions 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 and social security payment records, and timecards, personnel records, 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 Washington, D.C., copies of the attached notice. "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 10, 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.

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

²If 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."