

**Virginia Concrete Company, Inc. and Drivers,
Chauffeurs and Helpers, Local 639, Inter-
national Brotherhood of Teamsters, AFL-CIO.**
Case 5-CA-23018

February 8, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

On April 21, 1994, Administrative Law Judge Michael O. Miller issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief addressed to the judge.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings as modified, and conclusions and to adopt the recommended Order.¹

The judge found that an August 13, 1992² petition bearing 116 employee signatures did not rebut the Union's presumed majority status because there were at least 245 eligible voters in the unit. The Respondent contends that the unit consists of 221 individuals.

For the following reasons, we find that the unit consists of at least 237 eligible voters:³

(a) The judge found that the method of counting replaced strikers used by Respondent's personnel manager, Glen Rupert, who counted 97, was more reliable than that used by Vice President Diggs Bishop, who counted 93. We assume *arguendo* the Respondent is correct that there were 93 (rather than 97) replaced strikers working at the commencement of the strike.

¹ Citing *Manhattan Eye Ear & Throat Hospital v. NLRB*, 942 F.2d 151 (2d Cir. 1991), the Respondent contends that an order requiring it to make payments to fringe benefit funds for any losses they may have suffered as a result of the unilateral modification of the collective-bargaining agreement exceeds the Board's remedial power under Sec. 10(c) of the Act because it goes beyond making employees whole. We find *Manhattan* to be factually distinguishable. Unlike here, the employees in *Manhattan* were compensated by substitute benefit plans and prior to the Board's decision had disclaimed any present or future interest in being covered by union funds. Further, the union in *Manhattan* had disclaimed any interest in representing the employees in question. The employees here continue to be represented by the Union and have an interest in the viability of the funds. Accordingly, we find no merit to the Respondent's contention and shall require payments to the fringe benefit funds as part of our status quo ante remedy. See *Ron Tirapelli Ford*, 304 NLRB 576 fn. 2 (1991), remanded 987 F.2d 433, 443-445 (7th Cir. 1993).

² All dates hereinafter refer to 1992, unless otherwise indicated.

³ The judge determined unit size as follows: 128 employees working when the petition was received, 97 replaced strikers, 11 laid-off employees who had been recalled at the commencement of the strike, 5 shop employees, 2 individuals who were on disability leave, and 2 additional plant maintenance employees.

(b) We agree with the judge that the 11 laid-off employees who were recalled on June 4 and who indicated they were honoring the strike should be included in the unit. We reject the Respondent's argument that these 11 individuals' jobs had been eliminated prior to the strike. A respondent bears the burden of establishing that the jobs of economic strikers otherwise eligible to vote have been eliminated. *Lamb-Grays Harbor Co.*, 295 NLRB 355, 357 (1989).

We find that the Respondent did not sustain its burden of showing that the 11 jobs had been eliminated. Although the record indicates that the Respondent encountered a downturn of business and the Respondent speculates that this downturn resulted in the loss of jobs, we find that the Respondent failed to come forth with sufficient evidence to establish that all, or any ascertainable number, of the positions of the laid-off employees were eliminated.

Further, although Bishop testified that the Respondent had made the decision to eliminate the jobs in January 1991, at the time the employees were laid off, the Respondent's January 1991 letter advising the employees of the layoff did not indicate that their jobs were eliminated. And, in fact, in a July 4, 1992 letter, the Respondent "recall[ed]" the employees. We find this evidence to be inconsistent with the Respondent's contention that the jobs were eliminated in January 1991.

The Respondent contends that 1 of the 11, mixer driver Dennis Browne, should be excluded because he obtained a permanent full-time job with another employer. The record shows that Browne was employed at a different locale while on strike, that he was paid \$3 an hour less than his prestrike wage, and that he intended to return to work for the Respondent after the strike. Rather than indicating that Browne abandoned an interest in his job with the Respondent, the record supports the presumption in favor of Browne's continued voter eligibility. See *Marchese Metal Industries*, 313 NLRB 1022, 1031 (1994).

(c) We agree with the judge, for the reasons he stated, that the Respondent failed to show that the five striking shop employees' jobs had been eliminated and that therefore they should be included in the unit.

(d) We agree with the Respondent that the judge incorrectly counted two plant maintenance employees twice. The judge found that Bishop's notations on the April seniority list showed that five plant maintenance employees went on strike, but that Bishop counted only three as replaced strikers and neglected to count the two others. The judge therefore added the two plant maintenance employees to the Respondent's list of replaced strikers. In fact, the record shows that the 2 employees abandoned the strike and therefore were correctly counted by Bishop as part of the 128 employees working at the time the petition was received.

It is undisputed that there were 128 unit employees when the petition was received. Thus, with the 93 replaced strikers, 11 recalled employees, and 5 shop employees, the unit size is at least 237.⁴

Accordingly, the 116 signatures on the petition the Respondent received did not constitute a majority of voters. We also find, in agreement with the judge, that the Respondent did not have a good-faith doubt of the Union's majority status.⁵ The Respondent therefore violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union and changing the terms and conditions of employment agreed on by the parties.

ORDER

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

⁴Because we find that there were at least 237 voters in the unit, with only 116 signatures on the petition, we find it unnecessary to pass on the Respondent's exceptions to the judge's inclusion in the unit of B. F. Lambert and E. J. Kemp, who were on disability leave.

⁵Because we conclude that the Respondent did not have a good-faith doubt of the Union's continued majority status, we find it unnecessary to decide whether the Respondent was required to bargain with the Union pursuant to the parties' informal settlement of 8(a)(5) charges.

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge. This case was tried in Washington, D.C., on January 19 and February 1 and 2, 1994, based upon a charge filed by Drivers, Chauffeurs, and Helpers, Local 639, International Brotherhood of Teamsters, AFL-CIO (the Union), and a complaint issued by the Regional Director for Region 5 of the National Labor Relations Board (the Board), on May 26, 1993, as amended at hearing. The complaint alleges that Virginia Concrete Company, Inc. (Respondent or the Employer) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act) by improperly withdrawing recognition from the Union, unilaterally changing terms and conditions of employment, and by failing to consider economic strikers as being among those entitled to preferential recall or rehire. Respondent's timely filed answer denies the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all parties, I make the following

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS

Preliminary Conclusions of Law

The Respondent, a corporation, with its principal office in Springfield, Virginia, is engaged in the production and non-retail sale and delivery of ready-mix concrete in northern Virginia. During the 12 months preceding issuance of complaint, Respondent purchased and received at its various facilities located within the State of Virginia goods and materials valued in excess of \$50,000 directly from points located outside the State of Virginia. The complaint alleges, the Respondent admits, and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent operates 12 concrete plants in northern Virginia, providing ready-mix concrete to concrete subcontractors and builders in the construction industry in that area. Not all 12 plants are necessarily open or in production at the same time.

Since at least 1970, the Union has represented Respondent's ready-mix and dump truckdrivers and plant and repair shop employees.¹ The term of the most recent collective-bargaining agreement ran from May 15, 1988, to May 15, 1991.

B. The Layoffs

On January 4, 1991, Respondent laid off 56 unit employees, including some from each of the separate addenda other than the tractor-trailer drivers. Thirteen more ready-mix drivers were laid off on January 24, 1992; 9 or 10 were recalled in April 1992. The layoffs were economically motivated, following substantial diminution of the Employer's business.

The volume of business Respondent does in a year is closely tied to the fortunes of the construction industry, particularly commercial construction. During the years of the mid-1980s, commercial construction was booming in the Washington, D.C. area, including northern Virginia. Re-

¹The unit, admitted to be appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act, is described as follows:

All mixer truck drivers, master electricians, ready-mix mechanics and mechanic helpers, equipment operators, tractor-trailer and ten wheel dump drivers, shop mechanics and welders, shop mechanic and welder helpers, tire maintenance men and helpers employed by Respondent at its operations in the City of Alexandria, and the counties of Arlington, Caroline, Fairfax, Loudoun, and Prince William, and elsewhere where the Union has organizing jurisdiction, excluding all other employees, executives, administrative, professional, office and clerical employees, guards and supervisors as defined in the Act. Each category of employees (i.e., ready-mix drivers, plant employees, dump truck drivers, and repair shop employees) is covered by a separate contractual addendum and seniority list.

spendents' volume, measured in yards of concrete delivered, doubled from 1982 to 1986,² from about 600,000 yards per year to more than 1.3 million. It remained at about that level through 1989 when it began to decline, slipping 20 percent to under 1 million in 1990. Additional reductions were projected for 1991 and, in fact, business decreased by 30 percent or more, to about 570,000 yards. The decline has continued into 1992 and 1993, leveling off at about 480,000 yards.

Respondent attributes the growth of commercial construction in the 1980s to advantageous tax laws and generous lending practices by banks and savings and loans. In 1986, however, the advantages granted by the tax code were eliminated. Lending institutions ceased to lend and many went "belly" as a result of bloated portfolios of real estate and other loans. As the work in progress was completed, and the market became glutted with vacant commercial space, construction work dried up. With it went the ready-mix business. According to John McMahan, a witness proffered by Respondent with long and extensive experience in the industry within this geographical area, the industry was going through more than a normal business cycle. What had occurred was a "classic down-sizing." McMahan opined that the industry would not return to the boom days of the 1980s within any reasonable period of time.

Additionally impacting upon Respondent's business, George Hossenlopp, its president, suggested, was increased competition from new entrants into the field during the 1980s and changes in zoning regulations in northern Virginia limiting building density.

In addition to the 2 layoffs of unit employees, Respondent's salaried complement was reduced by 19 during 1991. By June 1992, its fleet of trucks had been reduced by 44. In January 1991, Respondent was only operating at 7 of its 12 plants; as of the end of that year, 7 plants were closed. Respondent still retained those facilities and could reopen them as needed.

At hearing, the Employer contended that the employees had not been merely laid off but had actually been terminated in 1991. However, neither the Union nor the employees were ever told that the job separations were permanent. Respondent had removed the names of the 56 laid off in January 1991 from its payroll register after 1 year, in January 1992. However, under the collective-bargaining agreement, those employees retained job rights for 18 months, through June 1992, and their names had not been removed from the seniority lists through at least April 1992. The layoff letters in both January 1991 and again in January 1992 stated that the layoffs were for an "indefinite" period, that the employee might be called back to work when business conditions improved and that management hoped that the economic climate turned around for everyone's benefit. In a second letter dated January 28, 1991, the laid-off employees were told to apply for unemployment compensation and instructed as to the steps necessary to extend their health coverage. It was also suggested that they seek employment elsewhere so as to reduce the Employer's unemployment tax liabilities.

² Respondent operates on an October 1 through September 30 fiscal year.

C. *The Strike and the Recall Letters*

Collective bargaining toward a new agreement began in April 1991; it was still continuing on June 4, 1992,³ when the Union began an economic strike. On that same date, Respondent sent letters to 52 of the laid-off ready-mix drivers and plant maintenance employees, offering to recall them to work. Those letters also advised them of the labor dispute and the picketing. The employees were asked to call dispatch to notify the Employer of their "intention to return to work" or whether they "elect[ed] to participate in the strike." No recall letters issued to any of the laid-off shop employees.

At least 26 of those who received recall letters called Glenn Rupert, Respondent's personnel manager. Rupert took notes of those calls; he subsequently transferred those notes to a summary sheet, listing the names and, in most cases, abbreviated comments. The comment appearing next to 15 of the names is simply "strike." On three others, the comments are: "abandon job; strike," "Strike (that's the way I feel)," and "no supporter of the union—strike." Rupert had little or no recollection of the individual conversations. He claimed that he wrote "strike" next to those names only to signify that they were not going to return to work, denying that his notation indicated that the individual had stated that he was joining the strike. He wrote "abandon" next to one name; by this he claimed to signify that the individual never intended to return to Virginia Concrete.

Rupert also received messages relating calls from five laid-off employees, two of whom (Sutton and Reynolds) had also spoken with him. Three of those messages stated that the caller would not cross the picket line but would like to come back when the strike was over (Reynolds, Foglio, and Sutton). One related that Browne would not be returning. The fifth (Blakey) indicated that he would be honoring the picket line.

Fourteen laid-off employees testified as to their communications with Rupert. Ten (Gustavo Risso, James Foglio, Christopher Quartro, Bobbie Anderson, David Langhorne, Jesse Smith, Donald Taylor, Kenneth Norman, Sam L. Smith, and Neddie Vernon) told Rupert that they would like to return but intended to honor the strike. One, Bobbie Anderson, wrote Rupert a letter indicating his intention to return but for his fear for his safety if he crossed the line; orally, Anderson told Rupert that he would honor the picket line. Four others (Lynn, Browne, Manning, and Ofsonka) told Rupert that they would honor the picket line without expressly stating they that would otherwise return. In his conversation with Ofsonka, Rupert asked which way the employee was going to go, "union or nonunion?"⁴

All of the above-named employees except for Quartro, Jesse Smith, and Ofsonka picketed one or more of Respondent's plants during the strike, participating in such activities on an occasional basis for some (Norman) to between three

³ All dates hereinafter are in 1992 unless otherwise indicated.

⁴ I credit the testimony of these employees, noting that it is essentially uncontradicted and is, in fact, corroborated by Rupert's summary of the calls and by the telephone messages. While I find nothing particularly sinister in Rupert's transfer of information to such a summary and his destruction of the original notes of the conversations, such as might warrant an adverse inference, I cannot credit Rupert's assertion that his notation, "strike," meant only that the individual was not coming back and did not mean that caller had said that he was going to honor the strike.

and five times a week for most of them.⁵ They identified some supervisors, such as Rupert, Hossenlopp, Richard Charles, Clarence Pender, and a Mr. Pedigo as seeing them on the lines. They were also apparently caught on videotape by the employees of a security firm hired by Respondent during the strike. Respondent's witnesses denied viewing any such tapes and Hossenlopp and Charles denied seeing any of these individuals at the picket lines. I find the testimony of the employees as to their presence more reliable to establish such presence than those denials are to negate it.⁶

The strike ended on July 1 with the Union's unconditional offer to return to work "on behalf of all the striking employees." The Employer responded on July 2, stating that it would be calling some employees back to work and would place the remaining "strikers for whom we do not presently have positions available" on a preferential rehire list.

Respondent never actually created a list of employees entitled to preferential rehire. According to Rupert, that list existed as a concept only. As conceptualized, it consisted of those employees who had been working prior to the strike who had been replaced. It did not include any of the laid-off employees, even if they had been sent recall letters and responded by indicating that they would return but for the strike.

At hearing, counsel for the General Counsel moved to amend the complaint to allege, as an 8(a)(3) and (1) violation, Respondent's failure to place the laid-off employees on the preferential rehire list. In response, the Employer, without conceding that they were countable as members of the unit on August 13, agreed to consider those laid-off employees who had joined the strike as entitled to preferential rehire.

On July 20, in response to a union request, Rupert informed the Union that there were 131 jobs existing in the unit, consisting of 87 ready-mix driver positions, 18 positions for plant employees, 10 for tractor-trailer drivers, and 16 for employees in the repair shop. None of these positions, Respondent's letter related, were "presently available." Attached to the letter was a list of 98 permanent replacements. On August 12, Respondent updated that list; the new list named 97 replacements.

D. *Withdrawal of Recognition—Unilateral Action*

On August 13, two employees gave Respondent's vice president for operations, Diggs Bishop, a petition stating that its 117 employee signatories no longer wished to be represented by Local 639 or any other union. Bishop, together with George Hossenlopp, Respondent's president, and Rupert confirmed that these were employee signatures, spot checked

⁵They so testified and that testimony was corroborated by the testimony of others who observed them at the picket line. Neither Jesse Smith nor Quatro picketed; Ofsonka's testimony that he did is contradicted by his testimony that he only picketed after he got the recall letter, which did not occur until after the strike ended. The testimony of Foglio and Union Representative James Woodward identifying Quatro, Jesse Smith, and Ofsonka as being among those who picketed is thus contradicted by the facts and, to that extent, cannot be credited.

⁶Two additional laid-off employees, Richard Honse and William Proctor, were identified by Woodward as having picketed. Both of these individuals had called Rupert and indicated their support for the strike. However, given Woodward's mistaken identification of others at the picket lines, I can not give this testimony any weight.

a couple against known signatures on employment applications and then compared the petition against the current payroll, including replaced strikers. He concluded that there were 116 valid signatures⁷ on the petition, more than a majority of the 221 he deemed to be employees at that time. On August 14, Respondent withdrew recognition from the Union, asserting that "a substantial majority of our unit employees" had indicated that they no longer desired union representation.

The complaint alleged and, at hearing, Respondent admitted, that after it withdrew recognition, it changed the unit employees' terms and conditions of employment. Those changes involved work scheduling for ready-mix drivers, the scheduling and payment of overtime, wage rates for certain classifications, and restrictions on working out of classification. It also ceased making payments to the Union's health, welfare, and pension trusts. All of these changes, it admitted, involved mandatory subjects of bargaining, and would violate the Act if its withdrawal of recognition was faulty. It was stipulated that if any of these acts was found to involve a monetary remedy, the amount of that remedy would be determined in a separate backpay proceeding.

III. ANALYSIS

A. *Section 8(a)(5)—Withdrawal of Recognition and Unilateral Action*

1. General principles

"It is well settled that an employer may rebut an incumbent union's presumption of majority status by demonstrating, at an appropriate time, that the union in fact no longer enjoys majority support or that the employer has a good faith and reasonably grounded doubt of the union's majority status." Such a good-faith doubt must be grounded upon objective factors. *Laidlaw Waste Systems*, 307 NLRB 1211 (1992); *NLRB v. Curtin Matheson Scientific*, 494 U.S. 775 (1990). Voter eligibility is equatable to presence in the unit for determining majority status upon a withdrawal of recognition and Section 9(c)(3) provides that replaced economic strikers remain eligible to vote for 12 months following the conclusion of a strike. *Sanderson Farms*, 271 NLRB 1477 (1984); *Pioneer Flour Mills*, 174 NLRB 1202, 1203 (1969). Unreplaced economic strikers lose their employee status if, prior to the election, they secure permanent employment elsewhere or the employer demonstrates that it eliminated their jobs for economic reasons. *Lambs-Grays Harbor Co.*, 295 NLRB 347, 357 (1989); *Gulf States Paper Corp.*, 219 NLRB 806 (1975).

The voting eligibility of laid-off employees, however, depends on whether they were laid off permanently, in which case they are not eligible to vote, or merely temporarily, remaining eligible voters. The test is whether or not they have a reasonable expectation of recall. *Apex Paper Box Co.*, 302 NLRB 67, 68 (1991).

The instant case brings together the foregoing principles.

⁷One name, Decaire, was struck from both the petition and the payroll list inasmuch as he had quit between the time he had signed the petition and Bishop's receipt of it.

2. The size of the unit

In determining the size of the unit, Bishop worked from the April and July 1992 separate seniority lists for each of the four addenda (i.e., the ready-mix drivers, the shop or plant employees, the ready-mix plant maintenance employees, and the dump or tractor-trailer drivers addenda). He made certain changes, purportedly to reflect his understanding of the status of various individuals, in order to determine who was working and who were replaced strikers. Bishop did not consider any of the laid-off employees to be unit employees, excluding even those who had received the June 4 recall letter and signified their support for the strike. Neither did he utilize the Rupert's July 20 response to the Union's questions concerning existing unit positions nor Rupert's lists of strike replacements of that date or of August 12.

There were 86 names on the July seniority list of ready-mix drivers, all of whom were strike replacements, including 2 laid-off employees who had accepted the recall offer and 84 hired after the strike began. To this, Bishop added one name, Lazarus Thomas, who started work in July, for a total of 87. This number agrees with the numbers shown on Rupert's July 20 and August 12 lists of strike replacements.

From the July seniority list of 23 purportedly working under the shop addendum, Bishop struck 8 names. One, Tucker, had quit in April. The other seven were mechanics who had been laid off in January 1991.⁸ He concluded that there were only 15 employees in the shop. That is three fewer positions than Rupert had told the Union existed in the shop on July 20.

Bishop added 1 name to, and struck another from, the dump truck (tractor-trailer) drivers seniority list, leaving 10, a count identical with both Rupert's count on July 20 and the payroll register (department 50) covering the critical date.

From the July seniority list for the ready-mix plant maintenance employees, Bishop struck 3 names, W. Crabtree and F. R. Keith, both of whose names appear in the payroll register with the designation "ES" in place of hours worked, and R. W. Decaire, who had quit, leaving a total of 16 who were still working on August 13. His count of employees on that seniority list agreed with Rupert's.

Bishop concluded that there were 128 employees in the unit when the petition was received.

To the 128 working employees, Bishop added 93 considered by him to be the replaced strikers, based upon the April 1992 seniority lists as he adjusted them, as follows:

There were 134 names on the April ready-mix drivers' list. Bishop struck the name of B. F. Lambert, whom he knew to be terminally ill, H. B. Kinard, who was permanently disabled, 43 drivers who had been laid off in January 1991 and 2 who had been laid off in 1992. One of the latter, S. K.E. Stiltner, was also on a medical disability which rendered him unable to work. He concluded that there were 87 replaced ready-mix drivers.

The shop seniority list for April contained 28 names. Five of these employees participated in the strike. However, Bishop deemed that none of them were to be counted as either replaced or unreplaced strikers inasmuch as he had no jobs for them; he contended that their jobs had been perma-

nently eliminated. Neither did he count any of the shop employees who were on layoff status.

Bishop determined that only three of the employees from the plant maintenance department were replaced strikers, notwithstanding that what appear to be his notes on the list indicate that five or six went on strike. Rupert's July 20 and August 12 lists of strike replacements indicates that there were four strike replacements employed in the plant maintenance department on those dates.⁹ Bishop considered 6 of 10 of the employees listed on the dump truckdrivers seniority list to be replaced strikers, consistent with the lists of replacements sent to the Union by Rupert.

Based on the above, Bishop concluded that there was a total of 93 replaced strikers. Adding these to the 128 employees he deemed to be working on August 13, he determined that there were 221 employees who had to be counted for majority purposes as of that date. The 116 valid names on the petition, he concluded, was a majority of those properly counted.

Counsel for the General Counsel and for the Union dispute Bishop's methods and conclusions. Their principal argument, based upon *Rockwood & Co.*, 281 NLRB 862 (1986), is that the laid-off employees who received recall letters and joined the strike must be counted as being within the unit for majority purposes. In *Rockwood*, supra, 54 employees had been on layoff status for an undisclosed period due to the recessionary state of the employer's industry when an economic strike began. In an effort to maintain production, the employer solicited the laid-off employees to cross the picket line and come to work. At least 20 of the laid-off workers rejected that offer and joined the picket line. Sometime after the end of the strike, the employer terminated the recall rights of the laid-off employees. The Board found that those laid-off employees who had received the employer's offer to return to work and joined the strike assumed the status of economic strikers entitled to reinstatement to any available job for which he or she was qualified. The statements of those laid-off employees, when asked if they would return to work, to the effect that they were supporting the strike, and their participation in that strike, were sufficient to clarify any ambiguity in their employee status while on layoff whether or not the employer actually knew that they had joined the strike. See also *Brinkerhoff Signal Drilling Co.*, 264 NLRB 348, 349 fn. 5 (1982).

In this case, Respondent solicited 52 laid-off employees to return to work. Of these, at least 29 replied. Based upon the notes Rupert made (as he transposed those notes to a summary) and the telephone messages taken of calls from the others, at least 20 indicated support for the strike. The telephone messages and their testimony establishes that 12 specifically stated that they would like to come back to work but for the strike and others indicated support for the strike. No less than 11 actively joined the picket lines. I find, based upon the authority of *Rockwood*, supra, and *Brinkerhoff*, supra, that their presence on the picket lines, taken together with their conversations with Rupert or others answering the telephones and taking messages in Respondent's personnel

⁸There was no explanation as to why the July seniority list for the shop included the names of laid-off employees while the ready-mix drivers seniority list for the same period did not.

⁹G. E. Bowler and M. A. Pinion, equipment operators with hire dates of October 21 and February 3, 1985, respectively, and mechanics first class A. Hall and R. Clark, hired on July 1 and June 22, respectively.

department, was overt action sufficient to put Respondent on reasonable notice of their strike support. It is irrelevant that Respondent disclaims actual notice of their picket line activity, even if that disclaimer was deemed credible.

Contrary to Respondent's contentions, I conclude that the overt actions of those who joined the picket line established not only their right to preferential rehire (which Respondent conceded) but is also determinative of their voter eligibility. If they are economic strikers entitled under *Laidlaw Corp.*, 171 NLRB 1366 (1968), to preferential rehire, they are, perforce, economic strikers eligible to vote for at least 12 months under Section 9(c)(3) unless they had secured other employment or their jobs were eliminated. *Lambs-Grays Harbor*, supra.

Respondent argues, however, that these laid-off employees had no reasonable expectation of recall, and that, in fact, their jobs had been eliminated for reasons unrelated to the strike. Even assuming that their voter eligibility is determined by their status as laid-off employees rather than as strikers, I must reject these contentions. The record establishes that these employees retained contractual rights to recall at the time of the strike, were still carried on the seniority rosters and were, in fact, offered recall when a need for labor, albeit strike related, arose. Neither the employees nor their representatives were ever informed that these jobs had been eliminated and the Respondent was still employing workers in the same classifications. Moreover, while Respondent had closed some of its concrete plants and sold some trucks, those plants could be and were opened and closed as business conditions warranted and trucks can generally be acquired by purchase or lease as needed. And, most of those laid off in January 1992 had been recalled in April. At most, it can be said that the status of these laid-off employees was ambiguous. Respondent's offers to recall them, their responses to those offers and their strike-related activities, resolved the ambiguities in favor of their continued employee status. *Rockwood*, supra; *Brinkerhoff*, supra.

If, as I find, there were at least 11 laid-off employees who, by virtue of having responded to the Employer's recall offer and then joining the picket line activity, clarified their employee status, the 116 names on the petition represents a bare 50 percent of those eligible to vote on August 13, even using Bishop's other numbers. He assumed a unit of 221; adding 11 brings the unit to 232.

Moreover, I am compelled to conclude that Bishop's count of those within the unit falls short in several other respects. Utilizing an April seniority list, he concluded that there were but 93 replaced strikers. Yet, Rupert had determined that there were 97 strike replacements as of August 12, the day before Bishop made his calculations and his list names them. The difference, it would appear, was that Rupert counted those who had been hired as strike replacements while Bishop counted those he deemed replaced. Rupert's method is clearly the more reliable.¹⁰ Utilizing the number of 97 as

the correct number for replaced strikers, the unit complement thus becomes 236 as of the critical date.

Bishop also excluded the five shop employees who were working when the strike began and joined the strike from his count of those strikers remaining eligible to vote,¹¹ contending that their jobs had been eliminated. He testified that Respondent's fleet of trucks had been reduced by "almost 25 percent" and was further reduced by the time of trial. He did not claim, however, that any such reductions had occurred during the month that these employees were on strike. Neither was there any evidence of any management determinations that these jobs should be permanently eliminated. Respondent bears the limited burden of establishing permanent job elimination for substantial nonstrike-related reasons. *Lambs-Grays Harbor*, supra. The mere fact that these employees were not replaced during the strike or recalled immediately thereafter is insufficient evidence to sustain that burden.

Thus, in *Gulf States Paper*, supra, economic conditions had resulted in a lessened need for employees and would have resulted in layoffs had not the employees gone on strike. The employer replaced only 43 of 78 employees (out of 124 in the unit) who remained on strike after nearly 13 months. The Board held that such facts do not "suffice to show that the jobs of the [35] unreplaced strikers have been permanently eliminated or abolished so as to terminate the strikers' employment status and render them ineligible to vote." See also *Globe Molded Plastics Co.*, 200 NLRB 377 (1972), where despite depressed conditions in the employer's industry precluding any reasonable anticipation of increased business in the foreseeable future, the otherwise eligible voters were not disenfranchised in the absence of evidence that the strikers' work had been permanently abolished. In both *Gulf States*, supra, and *Globe Molded Plastics*, the Board cited *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375 (1967), for the proposition that "a striker's basic right to a job cannot depend upon job availability as of the moment he applies for reinstatement."¹²

I note, moreover, that Bishop's view of how many jobs existed under the shop addendum differed from what Rupert had told the Union on July 20. At that time, Rupert told the Union that there were 18 positions "existing" under the plant or shop addendum. Bishop would have struck from the April 1992 plant seniority list of 28 names all those who were on layoff (7), plus Tucker, who had quit, as well as the 5 named strikers, leaving only 13. It seems that the personnel manager's view of the employee complement differed from that of his vice president for operations. Had the jobs of these five shop employees been eliminated, the personnel manager would have known of it. That Rupert believed the shop complement remained at 18 indicates to me that no decision to eliminate these 5 positions had ever been made.

¹⁰ Indeed, Bishop's failure to utilize the very current (July 20 and August 12, 1992) lists of strike replacements and unit positions which his personnel manager had just prepared suggests an effort to manipulate the numbers so as to arrive at a desired conclusion. I note that Rupert was present with Bishop and Hossenlopp when the counts were made.

¹¹ Shanholtzer, Pownell, Jewell, Muterspaw, and Wood.

¹² Compare the cited cases with *Meridian Plastics*, 108 NLRB 203, 205-206 (1954), where the company had sold one machine on which 10 of the strikers had worked and permanently subcontracted the work of 13 others and *E. J. Kelly Co.*, 98 NLRB 486, 488 (1952), where the record established that jobs had been eliminated or consolidated for efficiency.

Accordingly, I would add the 5 striking shop employees to the list of eligible voters, bringing that list to at least 241.¹³

Further, the General Counsel urges that certain additional employees must be added to Respondent's list of those working in the unit on the critical date and that others, counted by Respondent, must be excluded.

The General Counsel would include two summer employees, Kodi Killion and Scott Hossenlopp. They were college students; the sons of Respondent's managers. They had worked for several successive summers, loading ice on the cement trucks, doing general yard maintenance and cleanup, and what was described as odd jobs. For one summer prior to 1992, Killion had served as a plant manager at the Dumfries plant; the record does not indicate whether this was a true managerial or supervisory position. They were paid \$8 or \$9 per hour, several dollars per hour less than was paid under any of the four addenda. Their employment records reflect that they received no pension, insurance, or other benefits under the agreement. The Union asserted that the work they did was unit work and denied that it had ever agreed to the employment of nonunit part-time or summer help when unit members were on layoff. The contract contains no job title or description which would include the work these two did but Woodward claimed that the unit members were required to do whatever work was assigned to them and had done such work in the past.

Given the relationship of these two employees to Respondent's management, the limited tenure of their employment coinciding with the school vacation and (most probably) the final completion of their studies, the fact that they did not receive contractual wage rates or benefits, the additional fact that the work which they performed was not specifically encompassed in any of the contract's job titles, and the sparse state of the record with respect to them, I must conclude that Kodi Killion and Scott Hossenlopp were not eligible voters on the critical date. They were temporary summer help lacking a community of interest with the unit employees. *Jakel Motors*, 288 NLRB 730, 743 (1988) (Petermeyer); *Comet Corp.*, 261 NLRB 1414, 1438 (1982) (Winebrenner).

The General Counsel would also add to the total of those in the unit on August 13 four employees who were on workmen's compensation, disability, or sick leave at that time, F. R. Keith, H. J. Kemp, B. F. Lambert, and S. E. Stiltner.¹⁴

In *Red Arrow Freight Lines*, 278 NLRB 965 (1986), the Board stated:

The fundamental rule governing the eligibility of an employee on sick or maternity leave is that he or she is presumed to continue in such status unless and until

¹³For the same reason, it would appear appropriate to add at least two striking employees from the plant maintenance seniority list for April. Bishop indicated that at least five went on strike but he only counted three as replaced strikers. There was no evidence that the jobs of the others had been eliminated. To add these individuals as replaced strikers would raise the unit total to 245.

¹⁴While reference was made at the hearing to several other individuals, either as employees who should have been counted and were not or as employees who were counted but should not have been, this decision will address only those argued in the General Counsel's brief.

the presumption is rebutted by an affirmative showing that the employee has been discharged or has resigned.

It further held that the "reasonable expectation of employment" test, applicable to laid-off employees, was not applicable to employees on medical leave. *Id.* at fn. 5, where the Board referred to its prior use of the "reasonable expectation of employment test" in "isolated cases" as inadvertent. See also *Edward Waters College*, 307 NLRB 1321 (1992).

F. R. Keith was still carried on the April and July 1992 plant maintenance addenda seniority rosters. However, he was not carried on the payroll register as of August. According to Woodward, he suffered from a work-related lung condition but had not been ruled totally disabled as of August 13. Company records indicate that he was disabled and that a retirement party had been held for him in April, at which time a plaque honoring his years of service was awarded him. The presumption of his continued employment has been rebutted by this evidence of his retirement and he was properly excluded from the list of employees counted in the unit.

Woodward testified that E. J. Kemp had been off work due to an injury for perhaps 5 to 8 years. However, his status had never been resolved and, although his name appears on neither of the seniority lists nor on the payroll, the General Counsel argues for his inclusion. Respondent has failed to rebut the presumption of his continued employment and he must be counted.

Bishop had struck B. F. Lambert's name from the April roster of ready-mix drivers because Lambert had not worked since December 1991. Lambert had been diagnosed as continuously totally disabled for an "indefinite" period of time following December 7, 1991.¹⁵ Bishop knew Lambert to be suffering from cancer and, when they spoke in the spring of 1992, Lambert acknowledged the terminal nature of his condition. Respondent was not carrying him on the payroll register as of August. Woodward acknowledged Lambert's condition but contended that he intended to return to work. Woodward related that Lambert had stopped by the picket line on one occasion and, in phone conversations, had told Woodward that he was fighting his disease and intended to get well and return to work. I am compelled to conclude that Respondent has failed to rebut the presumption of his continued employee status.

Sam Stiltner had been out on a work-related injury since December 1991. He was also one of the ready-mix drivers laid off in January 1991 and he had received a recall letter in June to which he did not respond. As of May 1992, he was considered permanently disabled from lifting more than 20 pounds and Respondent's ready-mix trucks require that a driver lift more than that weight. He had been listed on the April seniority roster but he was not listed on the August payroll register. His compensation claim was subsequently settled, as a permanent disability. Given both the recall letter and the determination of his disability as permanent, Stiltner's employment status was ambiguous. His failure to respond to the recall letter, I believe, is sufficient to resolve that ambiguity and requires a conclusion that he was no

¹⁵The doctor's parenthetical notation following "Indefinite" read "(probably 6 months)." This might have referred to either a possible return to work after that much time or to an anticipated life expectancy. In fact, Lambert passed away in October 1992.

longer an active employee and/or that he had no reasonable expectation of returning to work as a laid-off employee.

The General Counsel would exclude from the unit two strike replacements whom Respondent counted as both unit members and card signers, Joe Cockerile and Clint Rayfield.

The record reveals that Cockerile worked until August 11. He was absent thereafter and, according to Respondent's records and Bishop's testimony, was placed on a medical leave of absence on August 14. He never returned to work and was terminated in June 1993 when it was discovered that he had taken other employment. The Union, however, contended, based upon an unsworn statement, that Cockerile had quit Respondent's employ in mid-July and asked that the record be held open for an additional day to take his testimony. That request was denied in view of this judge's opinion that the inclusion or exclusion of one more card signing employee would not affect the result in this case. Noted, too, was the conflict between Cockerile's statement and the Employer's records. That ruling is maintained and no conclusion as to Cockerile is made herein.

Rayfield was hired and began working as a strike replacement in late June. He had an extensive absentee record, including "no shows." He had called in on August 10 and was absent as a "no show" for some days thereafter. He did, however, return to work in August and remained employed at the time of this hearing. He was never terminated. He cannot be excluded from the list of eligible voters because he could or should have been discharged.

Accordingly, I find that Lambert and Kemp must be added to the list of eligible voters, bringing the total to 243 (242 if Cockerile were to be excluded, 244 or 245 if the additional strikers from the plant maintenance department are added in). The petition, bearing only 116 valid signatures (115 without Cockerile's) falls short of negating the Union's presumed majority support.

3. Good-faith doubt

Respondent contends that even if the Union had actually maintained its presumed majority support among those eligible to vote in the unit, the Employer had a good-faith and reasonably grounded doubt, founded upon a sufficient objective basis, of that majority status to warrant its withdrawal of recognition, citing *NLRB v. Curtin Matheson*, supra. In so arguing, Respondent asserts that it had a reasonable good-faith belief, supported by objective considerations as to each group of individuals who, it believed, were not in the bargaining unit. I must reject this contention.

In order to reach the conclusion that the Union was longer the majority representative, Respondent had to disenfranchise a sizable portion of that unit. Its conclusion that various persons were not eligible voters or employees, reached through faulty reasoning, does not support a claim of a reasonable good-faith doubt. *Hollaender Mfg. Co.*, 299 NLRB 466 (1990), enf. 942 F.2d 321 (6th Cir. 1991); *Superior Bakery*, 294 NLRB 256, 263-264 (1989); *Pioneer Flour Mills*, supra, enf. 427 F.2d 983 (5th Cir. 1970). Moreover, under the circumstances here, where Bishop ignored the lists and numbers prepared by his personnel manager immediately prior to the withdrawal of recognition, so as to reach a conclusion that there were fewer unit employees, one must question the good faith with which he approached the count.

The Union further contended that Respondent was not privileged to withdraw recognition when it did because it had recently entered into an informal settlement of 8(a)(5) charges. The General Counsel neither urged nor disavowed this theory of the case and the issue was fully aired at the hearing and upon briefs. I find that this matter was raised at the hearing, was fully litigated, and is thus before the Board notwithstanding that the General Counsel did not propound this theory. See *Electrical Workers IUE Local 444 (Paramax Systems)*, 311 NLRB 1031 fn. 5 (1993); *Castaways Hotel*, 284 NLRB 612 fn. 5 (1987).

The settlement was approved, without the Union's agreement, on March 12, 1992, and its notice was posted from about April to June. It provided that Respondent would not refuse to bargain with the Union by unilaterally changing its overtime policies, would bargain with the Union upon request with respect to all issues related to rates of pay, hours of employment, and other terms and conditions of employment and would sign an agreement reached in such bargaining if requested. Following approval of the settlement, Respondent met with the Union for collective bargaining until July 8. At that time, the Employer withdrew whatever proposals it had on the table and no further meetings were held before it withdrew recognition on August 14, canceling the meeting scheduled for that date. The Union argued, and I agree, that it was entitled to a reasonable time for bargaining which it was not accorded in this case. *King Soopers, Inc.*, 295 NLRB 35 (1989).

4. Conclusions as to the 8(a)(5) allegations

It follows from the foregoing conclusions that Respondent's withdrawal of recognition from, and its cessation of bargaining with, the Union violated Section 8(a)(5) of the Act.

As noted, supra, Respondent admitted that after it withdrew recognition, it changed the unit employees' terms and conditions of employment. Those changes involved work scheduling for ready-mix drivers, the scheduling and payment of overtime, wage rates for certain classifications, and restrictions on working out of classification. It also ceased making payments to the Union's health, welfare, and pension trusts. All of these changes, it admitted, involved mandatory subjects of bargaining. I find, as I must, that these unilateral changes violated the Section 8(a)(5) of the Act.

B. Section 8(a)(3)

As noted, supra, the complaint was amended to allege, as an 8(a)(3) and (1) violation, Respondent's failure to place the laid-off employees who joined the strike on the preferential rehire list. In response to that amendment, the Employer agreed to consider those laid-off employees who had joined the strike as entitled to preferential rehire. They were, of course, entitled to such consideration. *Rockwood*, supra.

Prior to the hearing, no preferential hiring list was ever assembled or published. No eligible employees have been offered recall and none have been refused recall to any available position. When the violation was alleged, it was immediately and publicly remedied with the acknowledgment that those employees would be considered as being entitled to preferential rehire if and when there were recalls. Moreover, this decision makes clear which employees are entitled to be

given preferential hire. If ever there was a situation calling for no formal remedial action, this is it. I shall, therefore, recommend that this allegation be dismissed.

CONCLUSIONS OF LAW

1. At all material times and continuing to date, the Union has been the exclusive collective-bargaining representative of all of Respondent's employees employed in the unit described below, which is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All mixer truck drivers, master electricians, ready-mix mechanics and mechanic helpers, equipment operators, tractor-trailer and ten wheel dump drivers, shop mechanics and welders, shop mechanic and welder helpers, tire maintenance men and helpers employed by Respondent at its operations in the City of Alexandria, and the counties of Arlington, Caroline, Fairfax, Loudoun, and Prince William, and elsewhere where the Union has organizing jurisdiction, excluding all other employees, executives, administrative, professional, office and clerical employees, guards and supervisors as defined in the Act.

2. By withdrawing recognition from and refusing to bargain with the Union as the exclusive collective-bargaining representative of the employees in the above-described unit, and by unilaterally changing terms and conditions of employment of the employees in that unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

3. Respondent's conduct did not, in any other manner as alleged by the General Counsel, violate the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I will recommend to the Board that the Respondent be required to recognize and bargain collectively and in good faith with the Union as the exclusive bargaining representative of the unit employees and that it be required, on agreement, to embody the terms of the agreement in a signed, written contract.

Having found that Respondent unlawfully and unilaterally changed the wages and other terms and conditions of employment, I find that it must be ordered to cease and desist from unilaterally changing wages and other terms and conditions of employment, to restore the wages and other terms and conditions of employment which were in effect as of August 13, 1992, make all employees whole for any loss of earnings, pension credits and all other benefits they may have suffered as a result of the unlawful changes, including reimbursement for any medical, dental or, other expenses resulting from Respondent's failure to make required contributions, *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), and make whole all fringe benefit funds for any losses they have suffered as a result of Respondent's unilateral modification of the terms and conditions of the collective-bargaining agreement. *Merryweather Optical Co.*, 240 NLRB 1213

(1979). Backpay is to be computed as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as set forth 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 recommended¹⁶

ORDER

The Respondent, Virginia Concrete Company, Inc., Springfield, Virginia, its officers, agents, successors, and assings, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain collectively in good faith with Drivers, Chauffeurs, and Helpers Local 639, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the employees in the above-described unit.

(b) Failing and refusing to bargain collectively in good faith with Drivers, Chauffeurs, and Helpers Local 639, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the employees in the above-described unit by unilaterally changing terms and conditions of employment of its employees without complying with the requirements of Section 8(d)(3) and without having first bargained to impasse with respect to the terms and conditions which it implemented.

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

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

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All mixer truck drivers, master electricians, ready-mix mechanics and mechanic helpers, equipment operators, tractor-trailer and ten wheel dump drivers, shop mechanics and welders, shop mechanic and welder helpers, tire maintenance men and helpers employed by Respondent at its operations in the City of Alexandria, and the counties of Arlington, Caroline, Fairfax, Loudoun, and Prince William, and elsewhere where the Union has organizing jurisdiction, excluding all other employees, executives, administrative, professional, office and clerical employees, guards and supervisors as defined in the Act.

(b) Restore, to the extent requested by the Union, all terms and conditions of employment which were in effect as of August 12, 1992, before the unilateral changes were made, as embodied in the collective-bargaining agreement.

(c) Make whole any employees who may have been detrimentally affected by the changes in terms and conditions of

¹⁶If 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.

employment, with interest on any monetary losses the employees may have suffered.

(d) Make whole all fringe benefit funds for any losses they may have suffered as a result of the unilateral modification of terms and conditions of the collective-bargaining agreement.

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

(f) Post at its office in Springfield, Virginia, and at its various cement plants in northern Virginia, copies of the attached notice marked "Appendix."¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

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

¹⁷If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

WE WILL NOT fail and refuse to recognize and bargain collectively in good faith with Drivers, Chauffeurs, and Helpers, Local 639, International Brotherhood of Teamsters, AFL-

CIO as the exclusive collective-bargaining representative of the employees in the following unit:

All mixer truck drivers, master electricians, ready-mix mechanics and mechanic helpers, equipment operators, tractor-trailer and ten wheel dump drivers, shop mechanics and welders, shop mechanic and welder helpers, tire maintenance men and helpers employed by Respondent at its operations in the City of Alexandria, and the counties of Arlington, Caroline, Fairfax, Loudoun, and Prince William, and elsewhere where the Union has organizing jurisdiction, excluding all other employees, executives, administrative, professional, office and clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to bargain collectively in good faith with Drivers, Chauffeurs, and Helpers, Local 639, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the employees in the above-described unit by unilaterally changing terms and conditions of employment of our employees without complying with the requirements of Section 8(d)(3) and without having first bargained to impasse with respect to the terms and conditions which it implemented.

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

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the above-described appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL restore, to the extent requested by the Union, all terms and conditions of employment which were in effect as of August 12, 1992, before the unilateral changes were made, as embodied in the collective-bargaining agreement.

WE WILL make whole our employees for any losses they may have suffered because of our changes in terms and conditions of employment, with interest on any monetary losses they may have suffered.

WE WILL make whole all fringe benefit funds for any losses they may have suffered as a result of our unilateral modification of terms and conditions of the collective-bargaining agreement.

VIRGINIA CONCRETE COMPANY, INC.