

**Meyer Waste Systems, Inc. d/b/a Able Disposal, a Division of Meyer Waste Systems, Inc., and Tri-Creek Disposal, a Division of Meyer Waste Systems, Inc. and Teamsters Local Union No. 142, a/w International Brotherhood of Teamsters, AFL-CIO.** Cases 25-CA-23916, 25-CA-23949, 25-CA-23999, and 25-CA-24143<sup>1</sup>

September 30, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

On May 15, 1996, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed limited cross-exceptions and an answering brief to the Respondent's exceptions.

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

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

We agree with the judge's conclusion that the Respondent applied its alleged policy against the wearing of insignia in an unlawfully discriminatory manner. The judge was not entirely clear, however, as to whether he also found that the Respondent did not show any "special circumstances" that would justify its prohibition against the wearing of union pins in any event. See *Meijer, Inc.*, 318 NLRB 50 (1995); *United Parcel Service*, 312 NLRB 596, 597 (1993), enf. denied 41 F.3d 1068 (6th Cir. 1994). We conclude that the Respondent did not show any such "special circumstances." Although the Board has held that such special circumstances may be present if the respondent can show that union insignia "may unreasonably interfere with a public image which the employer has established, as part of its business plan, through appear-

ance rules for its employees," *United Parcel Service*, supra at 597, it could not reasonably be concluded that the wearing of a small, inconspicuous pin such as the employees wore in this case could interfere with the Respondent's asserted need to maintain such an image. See *Id.* In addition, the Respondent's asserted concern for its customers cannot justify its prohibition, because the Board has consistently held that customer exposure to union insignia alone is not a special circumstance allowing an employer to prohibit display of union insignia. *Meijer*, supra at 50; *United Parcel Service*, supra at 597. Finally, although safety concerns could constitute such "special circumstances" (*id.*), we conclude that the Respondent has failed to show any legitimate safety concern that would justify its prohibition of wearing union buttons on all articles of clothing, including employee hats. For all these reasons, we conclude that the Respondent's prohibition of the wearing of union insignia in this case was a violation of Section 8(a)(1) regardless of whether the Respondent applied its asserted policy in a discriminatory manner.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Meyer Waste Systems, Inc. d/b/a Able Disposal, a Division of Meyer Waste Systems, Inc., and Tri-Creek Disposal, a Division of Meyer Waste Systems, Inc., Chesterton, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted 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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

<sup>1</sup> On July 29, 1996, the Charging Party requested withdrawal of the objections to the June 7, 1995 election filed in Case 25-RC-9474. By order dated August 1, 1996, the Board granted the Charging Party's request and severed Case 25-RC-9474 from the instant unfair labor practice cases.

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

<sup>3</sup> The General Counsel excepts to the judge's failure to set forth the name of the Charging Party Union in the notice to employees. We find merit to this exception and shall revise the recommended Order and notice accordingly.

WE WILL NOT instruct employees not to wear union buttons and threaten our employees with unspecified reprisals and suspension if they wear union buttons.

WE WILL NOT threaten employees with loss of benefits if they vote for Teamsters Local Union No. 142 a/w International Brotherhood of Teamsters, AFL-CIO.

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.

MEYER WASTE SYSTEMS, INC. D/B/A ABLE DISPOSAL, A DIVISION OF MEYER WASTE SYSTEMS, INC., AND TRI-CREEK DISPOSAL, A DIVISION OF MEYER WASTE SYSTEMS, INC.

Joanne C. Mages and Alan L. Zmija, Esqs., for the General Counsel.

Irwin J. Brown and Brenda Murphy, Esqs., of Chicago, Illinois, for the Respondent.

Larry Regan, William R. Staples, and David A. Born, Representatives, of Indianapolis, Indiana, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Valparaiso, Indiana, on March 18-20, 1996. The charges in Cases 25-CA-23916, 25-CA-23949, 25-CA-23999, and 25-CA-24143 were filed May 5 and 23, June 8, and August 18, 1995,<sup>1</sup> respectively. The consolidated complaint was issued February 23, 1996.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties on April 19, 1996,<sup>2</sup> I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

Able Disposal and Tri-Creek Disposal, divisions of Meyer Waste Systems, Inc. (Able, Tri-Creek, or the Respondent), a corporation, engages in residential and commercial waste collection, disposal, and recycling. Its primary facility is located in Chesterton, Indiana, and it operates satellite facilities in North Judson and Lowell, Indiana. 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 and that Teamsters Local Union No. 142, a/w International Brotherhood of Teamsters, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

<sup>1</sup> All dates are in 1995 unless otherwise indicated.

<sup>2</sup> The General Counsel has also filed a motion to correct transcript, which is granted. The Respondent filed a motion to reopen the record to accept some additional evidence with respect to terminations other than the two involved. This motion is also granted as the evidence was requested at the hearing and it was understood that it would be a late-filed exhibit. It is accepted into evidence as R. Exh. 13.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. Background and Issues for Determination

As noted above, the Respondent engages in commercial and residential waste collection and disposal and the collection and sorting of recyclable waste in a number of communities in northern Indiana. Its headquarters and primary facility is located in Chesterton, Indiana, and it also has two satellite offices, one in North Judson and the other in Lowell, Indiana. During the relevant timeframe, April through August, Respondent's president was Bill Meyer, its personnel manager was his wife, Gale Meyer, its general manager was Pat Curran, its operations manager was Wally Kempf, and its involved Chesterton supervisors were Greg Shaver and Roger Weltzin. Richard Warren was its supervisor at North Judson and Darrel Nichols was its supervisor at Lowell. Cindy Owen was its personnel specialist. All the named members of management except Owen are admitted supervisors within the meaning of the Act.

The Respondent's operations employees, as pertinent to this proceeding, are primarily drivers of waste collection and recycling collection trucks and their helpers, sorters, and mechanics. The Respondent employs about 70 operations employees at Chesterton, 8 or 9 such employees at North Judson, and about 5 such employees at Lowell. These employees had previously been represented by a union, which was decertified a few years ago. In March and early April, the Union began an effort to again organize these workers, and their initial efforts led to a meeting with employees on April 12 in Valparaiso, Indiana. At this meeting, employees attending signed authorization cards and were given buttons and bumper stickers which indicated support for the Union. Fourteen of the employees present signed what is called an "Open Letter to Management."<sup>3</sup> This letter identified the named employees as members of the union organizing committee. On the following day, the open letter was presented to management and a number of employees began wearing the union buttons at work.

A representation petition was filed on April 21, and an election was held pursuant to the petition on June 7 among the Respondent's employees in the following described unit:

All drivers, helpers, sorters, recyclers, and mechanics employed by the Employer at its Chesterton, North Judson, and Lowell, Indiana facilities; But excluding all dispatchers, all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.

The Respondent won in a close election, the margin of difference being 5 votes out of 79 ballots cast. In addition to the charges filed by the Union, it also filed objections to the election. The Regional Director ordered that three of these objections be considered along with corresponding unfair labor practice charges in this consolidated proceeding. He also directed that a finding be made with respect to certain actions allegedly committed by a person named Earl Davis at a union-sponsored meeting. No evidence was adduced in this case with respect to the Davis matter and the objection to this alleged objectionable conduct is dismissed. The com-

<sup>3</sup> This letter is referred to as the "open letter."

plaint and objections allege that the Respondent engaged in unfair labor practices and/or objectionable conduct by the following actions:

1. About April 24, the Respondent, by Bill Meyer, instructed its employees not to wear union buttons and threatened employees with unspecified reprisals if they wore union buttons.<sup>4</sup>

2. On an unspecified date in April, the Respondent, by Supervisor Roger Weltzin, instructed its employees not to wear union buttons.

3. About May 16, the Respondent, by Operations Manager Wally Kempf, threatened its employees with loss of benefits if they voted for the Union.<sup>5</sup>

4. About May 22, the Respondent, by Weltzin, at the Chesterton facility, instructed its employees not to wear union buttons and threatened employees with suspension if they wore union buttons.

5. About May 22, the Respondent, by Supervisor Richard Warren, at the North Judson facility, instructed its employees not to wear union buttons or hats.

6. About May 1, the Respondent discharged its employee, Ryan Hightshoe.<sup>6</sup>

7. About August 10, the Respondent discharged its employee, Anthony Bailey.

The General Counsel seeks a remedy that would involve a cease-and-desist order, posting of notice, reinstatement with backpay of Hightshoe and Bailey, and a rerun election. The Respondent denies that it has committed any unfair labor practice or objectionable conduct and seeks dismissal of the complaint and objections.

*B. Did the Respondent Violate Section 8(a)(1) of the Act as Alleged in the Complaint*

1. Did the Respondent's operations manager, Wally Kempf, threaten employees with loss of benefits if they supported the Union

Scott Head was employed by the Respondent as a driver at its Chesterton facility from August 1994 until he quit on June 17. He supported the union organizing effort and signed and presented the open letter to his supervisor, Greg Shaver, on behalf of the employees supporting the Union. Head testified that about a month after he presented the letter to Shaver, on about May 16, he had a conversation with Kempf. He believed the conversation took place after work in the breakroom of the Respondent's facility. According to Head, no one else was involved in this conversation, though the Respondent's general manager, Pat Curran, walked by during it.

Head testified that the conversation started when Kempf came up to him and asked how he was doing. Head testified that Kempf asked him why he wanted to be a supervisor and

Head told him and added that he also wanted to go to college. Kempf said that supervisors did not make much money and that going to college was hard. According to Head, Kempf asked him if he wanted the Respondent to pay for his education and Head said he did not. Kempf then said that because the employees were trying to get the Union in, Meyer was going to stop the 401(k) plan, stop making loans to employees, and cancel the Christmas party and other favors. Head became angry and walked away, saying nothing more. Head mentioned this conversation to another employee, Guy Kincheloe.

For his part, Kempf testified that he discussed the Company's benefit plans, including its 401(k) plan with employees, including Scott Head. He agreed that this conversation occurred in mid-May, but places its location in an open area of the Company's front office. According to Kempf, Head approached Kempf and asked if he could talk with him. The two went into General Manager Curran's office where Head asked what it would take to become a supervisor.<sup>7</sup> Kempf said he would take the matter under consideration. He then asked what he could do to better his chances, specifically mentioning obtaining a college degree. Kempf said he had not attended college and that hard work got him to a supervisor's position, adding, however, that college could not hurt his chances. According to Kempf, he then told Head that if a union came in there was a possibility he would not be able to participate in the 401(k) plan. He based his understanding in this regard on a portion of the the Respondent's 401(k) plan which describes employees eligible to participate in it. This portion reads: "The term 'employee' will not include employees covered under a collective bargaining agreement where retirement benefits were the subject of good faith bargaining between the Employer and Employee Representatives." Kempf testified that he was not sure whether his interpretation of this language was correct.

I find that the foregoing conversation between Head and Kempf constitutes a violation of Section 8(a)(1). Even if I credit Kempf's testimony that the conversation was started by Head in an effort to get promoted to a supervisory position, there is no denial that Kempf indicated in this conversation that employees might lose their existing 401(k) plan if the Union were to become their representative. There was no denial by Kempf of Head's assertions that other benefits might be lost as well. There is no showing that Kempf showed Head the provision of the plan he relied on at hearing to justify his warning that the 401(k) benefit might be lost. Kempf offered no basis for his warning that other benefits might be lost with the coming of unionization. There is no showing with respect to why the matter of potentially losing benefits came up in the conversation. This conversation is not akin to one in which a supervisor attempts to explain

<sup>4</sup>This alleged unfair labor practice corresponds to the Union's Objection 1, which alleges that on April 24 Meyer called union committee member John Alberts into his office and told him that he could not wear his union button.

<sup>5</sup>This alleged unfair labor practice corresponds to the Union's Objection 3, which alleges that on or about May 8, Kempf threatened that employees would lose their benefits (insurance, 401(k) plan, etc.) if they voted for the Union.

<sup>6</sup>This alleged unfair labor practice corresponds to the Union's Objection 2.

<sup>7</sup>Curran testified that he overheard part of the conversation between Kempf and Head. He placed the date of the conversation in late May and its place in his office. He went into his office and found Kempf and Head talking. He started to leave, but they asked him to stay. Kempf introduced Curran to Head and Head stated his interest in becoming a supervisor. Head expressed his belief that college was important and asked if the Respondent would be willing to pay part or all of his college expenses. This was all the conversation Curran heard as, according to him, the conversation ended at this point and Head left. Curran testified that he was never present for a conversation between Head and Kempf in the breakroom.

the give-and-take of the bargaining process, with the possibility that some benefits might be lost and others gained thereby. It is simply a threat that benefits might be lost because of unionization and is thus a classic violation of Section 8(a)(1) of the Act and I so find. I also sustain the Union's objection in this regard.

2. Did the Respondent's president, Bill Meyer, instruct employees to remove their union buttons and threaten reprisal if they did not

There is no question about the fact that the Respondent told its employees that they could not wear the buttons supplied by the Union or that it similarly stopped employees from wearing buttons that carried an antiunion message. It bases its actions in this regard on a written dress code that far predated the union organizing campaign. This dress code is embodied in its personnel policy manual which employees are expected to read on being hired. Section 8:BA of the manual provides:

Employees are expected to dress in a manner that is normally acceptable in business establishments. Clothing may not bear any emblem, logo, or inscription except that of Able Disposal or the clothing manufacturer.<sup>8</sup>

Meyer testified that when he became aware that employees were wearing prounion and antiunion buttons he told his supervisors to enforce the Company's dress code. Employees are made aware of this code and other company rules when hired. Meyer testified that new employees are all given a 2-day orientation which incorporates a tour of all the facilities. They are introduced to and work with various people within the office, recycling center, transfer station, and shop. They spend a day of training learning the company philosophy, which is set forth in a video which was shown at the hearing and is part of the record. This video, inter alia, stresses the importance of dressing professionally. The new employees are also shown videos with regard to blood borne pathogens and the potential for contracting Hepatitis B or HIV, along with training and operation in regards to proper lifting techniques. There are other videos covering specific training for specific tasks, which are shown as appropriate.

Kempf testified that the purpose behind the dress code is to maintain a professional appearance and to further safety concerns. Drivers and helpers work with equipment on their trucks which could catch loose clothing and cause injury. Drivers and helpers are required to wear pants, shirts, safety boots, leather gloves, safety glasses, reflective wear, and hats. Able supplies very professional uniforms bearing the company logo. The uniforms have reflective strips on them to make the employees more visible to motorists as the Respondent's employees often work in the public streets. The wearing of the company-provided shirts and hats is not required, though wearing of some company-provided reflective wear is required.

With respect to the Company's basis for the rule from an appearance standpoint, Meyer offered the reasoning behind it. He testified that the Company's first goal is to create a professional impression on customers and potential cus-

tomers. He testified that wearing clothing or buttons that carried a prounion or antiunion logo, the logo of another company, or the logo of a particular product or sports team, would all be against the code because they were not professional and raised the possibility of offending a customer or potential customer.<sup>9</sup> I do not question that this is one of the Company's goals and its uniforms indicate that it does make a serious effort in this regard. However, enforcement of the code was apparently hit and miss until the union organizing campaign.

The evidence reflects that employees often wear their own shirts and hats while working. Employee Scott Head testified that he wore his own T-shirts at work. According to Head, he wore T-shirts that advertised a rock band, a brand of soda, and a brand of tequila with his uniform. Head's affidavit given to the Board states that a former supervisor required him to turn the T-shirt advertising the soda brand inside out so the soda logo would not show. There is no showing that he was required to similarly turn inside out the tequila and rock band T-shirts. According to Head, the majority of employees wore company-supplied hats. He, on the other hand, wore a Notre Dame hat that was in the school's colors and had its name emblazoned on it. Head testified that he wore this hat regularly while working. Other employees wore hats that advertised certain brands of tools. According to Head, no one from management ever said anything to him about wearing his Notre Dame hat. Though Meyer indicated generally that he enforced the code before the organizing campaign by stopping violations of the dress code when he noticed them, Supervisor Greg Shaver admitted that Head regularly wore a sports hat while working. Employee John Alberts testified that Head did wear the rock band T-shirt and that Head and other employees wore hats with sports team logos on them or with sports team buttons affixed to the hats. Based primarily on the testimony of Head and the corroboration of that testimony by Supervisor Shaver and fellow employee Alberts, I find that both before and after the campaign started, the Respondent allowed employees to violate the dress code by wearing items of clothing and hats that carried a logo other than that of Able or the manufacturer of the clothing item. I further find that the only across-the-board enforcement of the dress code involved the campaign buttons of those for and against the Union.

Meyer and Kempf also testified the buttons were not allowed because of safety concerns. The union insignia in question in this case is a flat button 2-1/4 inches in diameter. It is secured to clothing by a sharp pointed pin 1 inch in length. Because of its size, it is conceivable that it could snag or catch on something if worn on a loose fitting shirt. It is also conceivable that the pin by which the union button is attached to clothing might puncture the skin of the person wearing the button. Meyer felt that employees could be injured by the pin which is used to attach the button to clothing. As the employees are handling waste, they are subject to blood borne pathogens and an open wound could have serious consequences. He asserts that the button could also

<sup>9</sup> Several witnesses testified that contact with residential customers was limited, generally occurring by chance or in a limited number of cases, with customers with special needs. They also testified that contact with commercial customers was more frequent and could occur for a variety of reasons.

<sup>8</sup> This provision is repeated in the Company's safety manual.

catch on some part of the equipment used by the employees and subject them to some injury.

The Company lets employees wear much smaller buttons, about half an inch in diameter, given by the Company as an award for customer compliments of individual employees. The company-provided buttons have a "clutch back" and have no exposed sharp points. Their size would also reduce the risk that they might catch on something.<sup>10</sup> According to Scott Head, these company buttons are allowed to be worn on employees' hats. Though I agree that the union buttons in question might pose some safety risk if worn on a shirt, I can find no reason why wearing the union button on a hat would pose a safety risk.

As the Company was shown to have selectively enforced its dress code with respect to campaign buttons as contrasted with other code violations, and as the wearing of the union button on employees' hats poses no safety risk, I find that the Respondent violated the Act by requiring such buttons to be removed. Though employees were referred to the company dress code when told to remove their buttons, there is no showing that anyone explained to them that wearing the button was not professional, might offend customers or potential customers, or that it somehow constituted a safety or health risk. I also find that with respect to the particular complaint allegation in question that Meyer in fact personally required an employee to remove his button and threatened him with reprisal if he did not remove the button.

John Michael Alberts was employed by the Respondent as a driver at its Chesterton facility from January 1994 until he was fired at the end of September. Alberts attended the union meeting on April 12 and signed the open letter to management. He was present for the presentation of the letter to Shaver by Head the next day. Alberts then put his union button on his jacket and went to work. At about lunchtime a few days later, he was walking to the breakroom when he passed President Meyer. Meyer stopped him and asked him to come to his office.<sup>11</sup> When they arrived, Meyer said that he noticed that Alberts was wearing a button on his uniform. Alberts said yes, and Meyer asked if he had read the employee handbook with respect to the employee dress code and suggested that Alberts reread the section on uniforms and appearance and abide by the rules.<sup>12</sup> According to Alberts, he added that if he did not abide by them, appropriate action would be taken. Alberts asked if Meyer was telling him he could not wear his union button and Meyer responded that he was not saying that, but again advised him to read the rule and abide by it. Alberts then apologized for wearing the button against policy and removed it. At the time he was also wearing a couple of the company award

pins on the collars of his jacket. Alberts testified that he did not think it right that Meyer could require him to remove his button and spread the word about the meeting with fellow employees.

Meyer testified about this conversation and his version is very similar to that given by Alberts. Though Meyer contends that Alberts was in his office for another reason, and I do not question that as a fact, he admitted that during the course of their discussion, he noted that Alberts was wearing a prounion button. Meyer testified that he asked him if he was indeed aware of the company policy in regards to uniforms and logos. Meyer remembers Alberts saying he was not. Meyer then asked him to refer to the policy on buttons, logos, and uniforms. Alberts asked if Meyer were asking him to remove the button and Meyer said, "No, I am asking you to refer to our Company policy." In response to questions from the General Counsel, Meyer admitted that it was true that Alberts could be disciplined for not following the company dress code and that it was possible that "appropriate action" could be taken in the circumstance that Alberts did not cease wearing the union button. I credit Alberts' version of the meeting with regard to the matter of the union button insofar as any credibility gaps exist. I also find disingenuous Meyer's contention that he did not tell Alberts to remove the offending button. Referring him to the company dress code which on its face prohibits the wearing of noncompany logos would lead only to the inference that he was telling Alberts to remove the button. Alberts clearly got the message and did remove his button.

The Board has held that a rule which curtails the right of employees to wear union insignia at work is preemptively invalid unless special circumstances are present which make the rule necessary. Special circumstances have included a variety of reasons including the need to maintain production or discipline or to ensure safety. *Kendall Co.*, 267 NLRB 963, 965 (1983). The Board has also ruled that presenting a general image to the public, under some circumstances, may also constitute a special circumstance. *United Parcel Service*, 195 NLRB 441, 449-450 (1972). A rule based on special circumstances, however, must be narrowly drawn to restrict the wearing of union insignia only in areas or under circumstances that justify the rule. *Sunland Construction Co.*, 307 NLRB 1036 (1992). Furthermore, any rule must not be discriminatorily enforced against union insignia. *Nestle Co.*, 248 NLRB 732 (1980). I have found above that the wearing of the union button in question on hats at work does not pose any discernible safety risk. I have also found that the Respondent tolerated the wearing of clothing and hats logos other than those of the Respondent and the clothing manufacturer both before and after the union campaign. Thus the professed concern about professional appearance appears only to apply to matters involving unions. I can see nothing less professional about wearing a union button on a hat at work than would exist by wearing a sports hat, or a T-shirt sporting the logo of a rock band or a brand of tequila. Because of the Respondent's failure to demonstrate why a union button is somehow more offensive to customers than the personal T-shirts and hats shown to have been allowed to be worn at work, I find that it has discriminatorily enforced its policy to discourage union support. Such conduct is exacerbated by accompanying threats of discipline if the offending buttons were not removed by employees. I find that both the instruc-

<sup>10</sup> Employee Ryan Hightshoe testified without contradiction that he had worn on his hat a button about the size of the company award button. This button advertised the United Way Campaign. According to Hightshoe, both of his supervisors had commented favorably about the button.

<sup>11</sup> There was a great deal of irrelevant testimony given about why Alberts came to be called into Meyer's office. Meyer contends that it was because of Alberts' driving practices that resulted in a customer complaint. However, why he was called into the office is not important. What is important is what happened in the meeting.

<sup>12</sup> Alberts testified that within a day or two of this meeting, the pertinent dress code provisions were posted on the company bulletin board.

tion to remove the union insignia and the threat of discipline if such instruction were ignored constitute violations of Section 8(a)(1) of the Act and conduct during the campaign which is objectionable.

3. Did Supervisor Roger Weltzin, in April and May, instruct employees not to wear union buttons and threaten them with suspension if they did not follow this instruction

Scott Head testified that he began wearing a union button on April 13, the day he presented the open letter to Supervisor Shaver. The following day, before beginning work, he was told by Supervisor Roger Weltzin that he could not wear the button at work and to take it off. Head went to the bulletin board where the Respondent had posted its rule on apparel and then took the button off. Employee Ryan Hightshoe started wearing his union button on his Able uniform jacket on the same day as Head. According to Hightshoe, he was running his route that afternoon when Supervisor Weltzin pulled up to his truck. Weltzin told him that Meyer had asked people in the yard to remove their buttons and had posted the Company's rules on the bulletin board. Weltzin told Hightshoe to remove his button before returning to the office. Hightshoe told Weltzin that if union supporters had to take off their button, then employees wearing antiunion buttons should be made to take off their buttons. Weltzin said he would take care of it and in fact, the wearing of buttons both prounion and antiunion was stopped. Hightshoe never wore his button after this.

Employee Charles Allan Huball was employed by Able for 1 year and 9 months ending in late November. He worked at the Chesterton facility. He attended the union organizing meeting on April 12 and supported the union effort. He also wore a union button on his shirt at work. About 2 weeks after he began wearing his button, Supervisor Weltzin pulled him aside in the drivers room at the office and told him he could not wear the union button with his Able button. Huball replied that the Union told him he had a legal right to wear the button. Weltzin said that he could not wear a vote no button, so Huball could not wear a vote "yes" button. Huball refused to take his button off. Weltzin then told him to take the button off or take the day off. At this point, Huball took off the button.<sup>13</sup>

Supervisor Weltzin testified that he has enforced the Company's dress code several times in the past few years. According to him, this generally involved ball caps with sports team logos and T-shirts with rock band logos.<sup>14</sup> He also enforced the rule in cases involving the wearing of prounion and antiunion buttons. He told all employees wearing these buttons to remove them as they were not allowed by the dress code. Although he denies threatening employees in this

<sup>13</sup> He also said Weltzin said the Union could affect the company in bad ways and the Union was not a very good organization and was dying out. He compared the Union to a pyramid set up where the people at the bottom put in money so the people at the top can have it and by the time Huball got to the top, the Union would be gone. Huball quit the employ of the Respondent voluntarily and was never disciplined. He signed the open letter to management.

<sup>14</sup> This testimony is contradicted by the testimony of Scott Head, John Alberts, and fellow supervisor Greg Shaver. I do not credit Weltzin in this regard.

regard, he admitted that he told employees he would not allow them to work unless they removed the buttons.

Based on the testimony of Hightshoe, Head, and Huball, and the admissions by Weltzin, I find that the Respondent, through Weltzin, did unlawfully require employees to remove their union buttons and did unlawfully threaten employees with suspension if they did not remove the buttons, for the reasons set forth above in regard to Meyer's similar actions.

4. Did Supervisor Richard Warren instruct employees at the North Judson facility to cease wearing union buttons and hats

Anthony Bailey was employed as a driver at the North Judson facility. He attended the April 12 union organizing meeting and was given a union button and bumper sticker. A few days later he was given a union ball type hat. Bailey wore the hat and button to work and put the bumper sticker on his pick up truck. He wore the hat and button on a daily basis until shortly before the election. Bailey did not wear a company supplied uniform, electing to wear blue jeans and a plain T-shirt. On an unspecified day about 2 weeks prior to the election, his supervisor, Warren, told Bailey in the drivers room that he could not wear the union hat and buttons on company property. After this occasion, Bailey stopped wearing the union hat, but affixed the button to his company hat and continued wearing it at work. Nothing was said about this practice.

Warren admitted that during the campaign he told employees that they were not to wear union hats and buttons or antiunion buttons or hats, on the Company's property and on the job. Bailey is one of the employees he told not to wear union insignia. The other employees Warren could recall giving this directive to were Ron McDaniel, Larry Troike, and Dan Boisselier.

Bailey's testimony about being instructed by Warren to cease wearing the union button and hat is corroborated by Warren's admission. Thus, I find that the Respondent, through Warren, violated Section 8(a)(1) of the Act by such instruction. There is no allegation nor is there any proof that Warren threatened any employee with reprisal for refusing to follow his directive. Indeed, Bailey's testimony indicates that he continued to wear his button on his hat until the election, without harassment or discipline.

*C. Did the Respondent Violate Section 8(a)(3) and (1) of the Act by Discharging Employees Ryan Hightshoe and Anthony Bailey*

The Respondent discharged union supporters Ryan Hightshoe and Anthony Bailey on May 1 and August 10, respectively. The General Counsel contends that the two discharges were discriminatorily motivated and thus unlawful under Section 8(a)(3) of the Act. The test for determining whether discharges are discriminatory and unlawful under the Act is set out in *Wright Line*, 251 NLRB 1083 (1980). There the Board held that in such cases the General Counsel must make a prima facie case on the issues of employer animus, the existence of protected activity, and the employer's knowledge of that activity. Proof of these elements by the General Counsel warrants at least an inference that the employees' protected conduct was a motivating factor in the adverse personnel action and that a violation of the Act has oc-

curred. The employer may rebut the General Counsel's prima facie case by showing that prohibited motivation played no part in its actions. If the employer cannot rebut the prima facie case, it must demonstrate that the same personnel action would have taken place for legitimate reasons regardless of the protected activity. In this regard, the employer has both the burden of going forward with the evidence and the burden of persuasion. It is not enough to articulate a legitimate nondiscriminatory reason. The employer must affirmatively produce evidence to persuade the Board that the challenged action would have taken place regardless of the employees' protected activity and the employer's antiunion animus. With these guidelines in mind, I will discuss each discharge.

### 1. The discharge of Ryan Hightshoe

#### a. *The Respondent's version of the incident over which Hightshoe was discharged*

Ryan Hightshoe was employed as a recycling truckdriver at the Respondent's Chesterton facility from October 1994, until his termination on May 1. Hightshoe attended the April 12 union organizing meeting and joined the employee organizing committee. His name appears on the open letter. He also wore a union button to work and, as noted above, was required to remove it by Roger Weltzin, one of his two supervisors, the other being Greg Shaver.<sup>15</sup> I believe it is clear and find that the Respondent had knowledge of Hightshoe's union support.

Hightshoe was discharged on May 1 following a 3-day suspension for the same offense for which he was fired. This disciplinary action stemmed from an incident that occurred on April 24. Though the testimony of various witnesses about the incident and subsequent relevant events varies on some significant points, the facts surrounding most of what happened are undisputed. On April 24, Hightshoe was running a recycling route with which he was unfamiliar. He was being assisted by another driver, Mike Patillo. Hightshoe turned into a dead end road and, while turning his truck around, struck a large tree limb, about 15 feet long and 6 inches in diameter at its widest point. As a result of the accident, Hightshoe's truck suffered minor damage to a clearance light at the end of the truck. Hightshoe and Patillo got out of the truck, surveyed the damage to the truck and pulled the limb to the side of the road. Although required to do so by company rules, Hightshoe did not immediately report the accident and he and Patillo continued to run the route to completion.<sup>16</sup>

<sup>15</sup>Prior to the start of the current union organizing drive, Hightshoe had a conversation with Shaver and Weltzin while they were taking a smoking break. According to Hightshoe, the supervisors said that there had been a union at Able, but it was voted out. Because of this event, they did not believe bringing a union in would be a wise idea.

<sup>16</sup>Respondent's policy manual, sec. 4:A. 8 reads:

If a traffic accident occurs involving a company-owned vehicle, the office must be notified immediately before moving the vehicle. The police must also be notified so that an accident report can be filed. In the event of an accident, employees are expected to cooperate fully with the authorities. However, employees should make no voluntary statement other than in reply to questions of investigating officers.

The owner of the property discovered the damage to the tree and went to Able's Chesterton office to complain. She reported the incident to Kempf. From this point on, Kempf began an investigation of the matter and prepared a written accident report which gives his version of what he learned. The report reads:

I was notified by Mrs. Halley, 21 Linden Ln, Dune Acres, who came into our office, that one of our trucks knocked off a large limb from her tree. Upon investigation at the site, I found a damaged tree and a large limb lying across a dead end portion of her turn around. Mrs. Halley said she heard a loud crack sometime between 11 am and 12 noon, but didn't realize anything until she went to town and saw the limb by the turn around. I checked with #216, Don Lewis, who was driving the garbage route if he had hit a tree limb at the address and he said he didn't. Ryan Hightshoe #454, was running recycle pickup in the area called in on the radio, and said that he and his passenger, Mike Patillo, saw the limb dangling so they pulled it down and set it off to the side.<sup>[17]</sup> I met and spoke with Ryan Hightshoe in the yard as I was heading out there who again stated that the limb was hanging, and he and Mike pulled it down and drug it off to the side.<sup>[18]</sup>

I spoke with a neighbor, Mrs. Strapon, at 17 Linden Lane, who said she witnessed the incident from her 2nd floor window. Mrs. Strapon said our truck was backing up and appeared to turn too sharply, struck the branch, and pulled forward. Then 2 men got out of the vehicle, looked at the damage, then dragged the limb off to the side and left. I took pictures of the scene.<sup>[19]</sup>

After I returned to the yard, I looked at the truck #454, and discovered the rear clearance light on the driver's side was dangling and there were light colored wood fibers mashed in the housing. I took a picture of this also.

I spoke with Mike Patillo on the telephone approximately 8:05 pm and told him I was investigating an accident and wanted to know what he knew about it. He said, 'Oh, Ryan told you about it!' I said yes, that I spoke briefly about it in the yard and wanted his

According to Kempf, this provision applies to any accident in which damage or injury has occurred. He also testified that each truck carries an accident pack, which includes an accident report form. This form has printed on one side: "In case you are involved in an accident, incident, injury, the following steps should be taken: 1. Notify dispatcher or supervisor, have them call police or ambulance if needed." Kempf testified that it is the driver's responsibility to call in an accident, not the helper's responsibility.

<sup>17</sup>According to Kempf, this call came about 45 minutes to an hour after Mrs. Halley filed her complaint about the tree limb. Kempf also testified that Hightshoe would have heard his conversation with Lewis as all the trucks are radio equipped.

<sup>18</sup>This is a significant point because Hightshoe was discharged not only for failing to report the incident immediately, but for dishonesty and lying. Part of the alleged dishonesty involves these denials to Kempf that he hit the tree limb. Hightshoe contends he never denied hitting the tree in any conversation with Kempf.

<sup>19</sup>There is varying testimony in the record with respect to the size of the limb. From pictures placed in the record, it appears about 15 feet long. Kempf testified that it was too large for him to move by himself.

(Mike's) side of the story, Mike said they were backing up and he asked Ryan if he wanted him to get out and guide him. Ryan said no, then "he's got it." Mike said they then hit the big tree limb. He asked Ryan if they should call it in, but that Ryan had told him, No! He said they set the limb off to the side.<sup>[20]</sup>

I called Ryan at home approximately 8:10 pm and asked him about the incident again and [he] related the same story as he told earlier in the day about the limb hanging and that he and Mike pulled it down and set it off to the side. I told him I had spoken with Mike Patillo and Mrs. Strapon and gotten a different version of the story.

A second version of Kempf's accident report about this incident was introduced in evidence. In this version, in addition to the information related in the first is a report of a meeting between Kempf and Hightshoe at the company office shortly after Kempf's telephone conversation with Hightshoe. This version, after tracking the first, states:

Ryan came to the office at approximately 8:25 pm wanting to know what was going on. I asked him what he meant. He asked about the accident. He said he called Mike Patillo after I had spoken with him to find out what was said and that Mike had agreed with him that the limb was hanging down. I asked him why he did not call it in and he related that he was involved in an incident where he damaged his fuel tank and was told to work with it and talk about it when he came in. He wanted to know what was going to come out of this incident and I advised that I hadn't decided completely but that it would probably entail a 3 day suspension. He said he wanted to start it Tuesday and would sign it now. I told him I hadn't gotten anything written up completely yet and that we would talk to him about it Tuesday when he got done and if this would be the case that it would be effective starting Wednesday. He was visibly upset and said he was going out to his truck to get his belt. When he was ready to leave, he stopped in and told me he would see me tomorrow.

On May 1, Kempf prepared another written report about the Hightshoe incident. It reads:

Mr. Hightshoe had been involved in an incident on 4/24/95 in which he caused minor property damage to his vehicle by knocking down a tree limb belonging to a residential customer. He did not report this damage at the time, nor did he report it later, at the end of the work day. When questioned about the incident after

<sup>20</sup> A day or two later, Patillo spoke with Cindy Owen about the incident at her request. He read Kempf's typed accident report and added some to it. The addition reads: "Mike Patillo said they were backing and hit tree limb. both got out to see what happen [sic] & noticed the limb had busted & fallen so they pulled it off & set it on the side of the road. Got back into the truck and Mike asked Ryan if he was calling it in & he said no." Patillo testified that he agreed with the remainder of the typed statement insofar as it relates to him. In Kempf's testimony about the incident he indicated that Patillo said that Hightshoe had said, "Fuck No," a contention Kempf also included in his affidavit to the Board. Patillo denies telling Kempf that Hightshoe used the word "Fuck."

customer notified us of the damage, Ryan denied causing damage. When his truck was inspected and a top rear taillight showed recent damage and there were bits of tree wood present, it was evident that Ryan was lying about the incident. Causing property damage, not reporting the damage as required, lying about having caused the damage, and later attempts to get his helper involved in the lie . . . this is very serious.<sup>[21]</sup> Deliberate dishonesty to cover mistakes is grounds for termination. In order to terminate an employee, I am required to discuss the circumstances with my superior, the Company President, Bill Meyer. At the time of this incident, Mr. Meyer was attending Waste Expo 95 and was out of town. I suspended Mr. Hightshoe for 3 days. Bill was supposed to be back at that time. When Bill returned, we sat down and discussed the specifics of the incident on 4/24/95. We agreed that deliberate dishonesty could not be tolerated and determined that Mr. Hightshoe should be terminated. (His work history over the period of his employment was not exemplary.) Immediately after this meeting, I discovered that Mr. Hightshoe was waiting to talk to me. I sat down with him to discuss our decision to terminate his employment, effective immediately. Before I told him of our decision, he announced to me that he was giving me 2 weeks notice of his intent to terminate his employment. I told him of our decision and he was terminated at that point.

b. *Hightshoe's version of the events of April 24*

Hightshoe had his own version of the events of April 24, which varies from that set out above primarily with regard to whether or not he admitted hitting the limb or whether he denied doing so. Hightshoe testified that he broke the tree limb and he and Patillo pulled it to the side of the drive. He then inspected the truck and saw that his clearance light had been jarred out of alignment, but that there was no major damage to the truck. According to Hightshoe, Patillo asked if he were going to call the incident in then. Hightshoe testified that he said no, he would take care of it when he returned to the office as there had been no damage. He testified that this was the entire conversation he had with Patillo about the limb.<sup>22</sup>

They finished the run and called into the office, and Hightshoe was dispatched to help on another route. Patillo was told to return to the office. Hightshoe did not mention the incident with the limb in this conversation with the dispatcher. According to Hightshoe, he did not report the inci-

<sup>21</sup> The matter of getting his helper involved in the lie relates to a purported statement by Patillo in an interview about the incident with Cindy Owen. She is the sole source of the information that Hightshoe tried to enlist Patillo in an effort to cover up the tree limb incident. This matter will be explored in more detail below.

<sup>22</sup> Patillo testified that after Hightshoe struck the tree branch, they inspected the truck and found only minor damage. Patillo told him that he should call in, noting that he had bumped a tree and did not call in, instead stopping a supervisor while continuing to run his route and had been suspended for failing to call in. According to Patillo, Hightshoe said he was not going to call in the incident, adding that it was just a little branch. Patillo then testified that Hightshoe took him to his own truck where he called in and was told to return to the office.

dent, because he had been told not to call in and stop unless there had been "total" damage to the truck. He testified that it was his intention to report the incident and the damage to his truck when he returned to the office at the end of the workday.

Hightshoe testified that after completing his last assignment, he returned to the office at about 4:30 p.m. He also testified that Kempf had called Don Lewis on the radio and asked Lewis if he had knocked down a limb in Dune Acres. Before Lewis could answer, Hightshoe got on the radio and told Kempf that he knocked it down. Hightshoe told Kempf he would speak to him about the matter when he returned and the conversation ended. After Hightshoe returned to the office and serviced his truck, Kempf came up in his truck and said that a customer had complained about the limb and Hightshoe testified that he admitted that he clipped the branch and that he and Patillo pulled it down. Kempf said he had to go out and check out the matter and would be back later, and left.

According to Hightshoe, Kempf phoned him at about 7 p.m. at his home and asked what had happened. Hightshoe testified that he told Kempf that it was the first time he had run the route and had entered a dead end road. He said he clipped the limb as he was turning around. Hightshoe testified that Kempf said he had spoken to a witness who saw two men hit the limb and then pull it down. Kempf mentioned he had spoken with Patillo and that Hightshoe's version of the incident did not match with Patillo's or the witness's version. Kempf then said he needed to finish his investigation and he would let Hightshoe know what was going to happen then.

Hightshoe then called Patillo and told him that Kempf had called him. According to Hightshoe, Patillo said Kempf kept asking if Patillo had offered to assist Hightshoe in backing out of the dead end road. He also wanted to know why they did not call in about the limb. Patillo also said that Kempf had told him that Hightshoe had said he did not hit the tree and Patillo said he did.

Hightshoe then went to the Respondent's office and met with Kempf to find out what was happening. Kempf told him that he did not believe Hightshoe was telling him everything. He added that he believed that Hightshoe hit the branch. Hightshoe testified that he said he did hit the branch and had written up a damage report on his damaged clearance light to get it fixed. Kempf then informed Hightshoe he was probably going to get a 3-day suspension. Hightshoe asked when the suspension would start and Kempf said Wednesday. Hightshoe suggested starting it immediately and Kempf said he would start it when he was ready. Hightshoe then told Kempf that he was going to get his sunglasses from his truck, as his intention was not to come back. Upon prompting by the General Counsel, Hightshoe recalled Kempf had informed him that he had not called in the incident. Hightshoe testified that he told Kempf, "I've called in other things and I've been told don't worry, you know, it's a waste, the only time I needed to call in was if something broke and that was I called in twice." According to Hightshoe, Kempf said calling in was a driver's discretion and if your truck can still move and you have not done major damage, you can finish your route and take care of the damage when you get to the office. Hightshoe testified that

he then told Kempf that he did not think the tree limb was worth calling in.<sup>23</sup> Hightshoe then left.

*c. Credibility resolutions between the conflicting versions of the events of April 24*

I credit Kempf's version of what happened on April 24 over that of Hightshoe.<sup>24</sup> Kempf appeared more credible than Hightshoe in demeanor and, more importantly, his version makes sense whereas Hightshoe's version has some internal conflicts. Hightshoe's testimony about his telephone conversations with Kempf and Patillo, and the later meeting with Kempf, contains repeated reference to Kempf telling him that Kempf believed Hightshoe had hit the tree. Hightshoe also testified that at no time did he deny hitting the tree limb to Kempf. Yet, Hightshoe did not testify that he pointed out to Kempf that he had told him from the outset that he did hit the tree. Had Hightshoe, as he contends, told Kempf over the radio that he had hit the tree or told Kempf when they talked in the yard a little later that he had hit the tree, then Kempf would not have had to call Patillo, and he would not have continued to question Hightshoe about the matter. I believe and find that Hightshoe did deny hitting the tree until at least the meeting between Hightshoe and Kempf on the night of April 24. Thus to this point, I agree with the Respondent's position that Hightshoe failed to report the accident as required by its rules and further attempted to lie about the incident until he learned that Patillo had confirmed that an accident had occurred.<sup>25</sup>

*d. Cindy Owen's contribution to Hightshoe's discharge*

Hightshoe reported to work on April 25 and ran his normal route. When he completed his route and returned to the office, Supervisor Weltzin presented him with an accident form and a disciplinary notice for a 3-day suspension. Hightshoe refused to sign the suspension notice, saying it was not correct because it misstated what he told Kempf. Weltzin asked what was incorrect about the notice and Hightshoe said he had told Kempf that he hit the limb. Hightshoe added that Patillo had never run to the truck asking if they should report the incident.<sup>26</sup> Weltzin then referred Hightshoe to Cindy Owen, the Respondent's personnel administrator. Hightshoe reported to Owen who asked why he would not sign the form. He told her that he had told Kempf that he hit the tree and Owen said she would make correc-

<sup>23</sup>In employee Scott Head's affidavit, he told the Board that knocking down tree limbs is not a cause for discharge unless it is not reported. He testified that the first requirement if a driver has an accident is to report it to his supervisor. Head defined an accident as something that does damage to the truck. The damage would have to be more than just a scratch or scrape to the truck's paint job. He also testified that he had on one occasion knocked down a tree limb that was 5 or 6 inches in diameter and about 8 feet long. He called this incident in to his supervisor.

<sup>24</sup>On brief, the General Counsel often asserts that Kempf's testimony was evasive. I did not find it so.

<sup>25</sup>The General Counsel on brief contends that it is not clear from the evidence what type of incident must be called in pursuant to the Respondent's rules. However, no one except Hightshoe seemed to have any doubt that an incident such as that involved herein should be called in.

<sup>26</sup>Weltzin testified and did not deny these assertions by Hightshoe and I credit them.

tions to the form. Hightshoe testified that he then told Owen that Patillo had told him that he did not tell Kempf what Kempf stated he was told by Patillo on the form. Owen then said she would speak with Patillo.

Owen testified that Hightshoe was discharged for being dishonest about the accident of April 24, stating that Hightshoe said he was not the one who caused the damage and asked Patillo to lie about it. With respect to her meeting post accident with Hightshoe, she testified that Hightshoe did not want to sign the accident report, saying it was not honest as written. Owen asked him to write his own version and Hightshoe declined. She testified that when he first came in to her office, and she asked him about the accident, he said the tree limb was broken and he and Patillo pulled it down. She understood him to mean that the tree limb was already broken and the two men merely pulled it down and put it aside. Later in their conversation, Hightshoe told her he did back into the tree, but did not think he had to report it right away. She told him that if he wrote his version of what happened, it would at least be on record for review. In response to Hightshoe's claim that Kempf was lying, Owen countered that she had never known Kempf to lie, but that she would interview Patillo to get his version of the incident. Although Owen appeared credible, it makes no sense to me that Hightshoe would continue to deny hitting the tree in their conversation. He had just finished admitting the fact that he did hit the tree to Weltzin, and as far as can be determined from the evidence, admitted it to Kempf the night before. I credit Hightshoe's version of his conversation with Owen.

Owen spoke with Patillo that same day. She had Patillo look over Kempf's accident report and asked him what happened. Patillo said he felt uncomfortable and did not want to be caught in the middle of the situation. She told Patillo he just need to tell the truth. She asked him to look over Kempf's statement and tell her anything he believed incorrect in it. He asked to make some changes which she did and he signed the changed report.<sup>27</sup> She testified that in her conversation with Patillo, he also told her that Hightshoe had called him on the night of the 24th and asked Patillo to say the same thing he was saying, that they did not break the limb.

Owen made notes of both her meeting with Hightshoe and Patillo on April 25. They read, as pertinent to this decision:

Roger and Ryan came to my office to give me a description of what happened in the accident. Ryan stated he didn't break the tree limb, and that Wally (Kempf) was lying about the fact that Mike told him that Ryan did back up and hit the tree limb. Then Ryan stated that he did hit the tree limb and was going to tell his supervisor when he came in. He didn't feel he had to radio in on every tree limb. I explained yes anytime you damage company property or other property you must notify dispatcher ASAP and personnel within 24 hours. Roger stated for minor tree limbs you don't have to as long as there is no damage.

I spoke with Mike Patillo. He stated Ryan had called him on the evening of the 24th and wanted him to say they didn't hit the limb. Mike said he asked if Ryan was going to radio it in and Ryan said no.

Driver terminated because of failure to follow company policy to report all accidents to dispatch immediately and trying to conspire with another employee to be dishonest about the accident.

As noted earlier in this decision, Patillo denied telling Owen that Hightshoe had asked him to go along with his story that they did not hit the limb, rather just pulled down an already broken limb. Owen contends Patillo is lying in this regard. I find this to be the most difficult credibility resolution in this record. Both Patillo and Owen appeared credible, though Patillo did not appear happy about testifying even though he is no longer employed by the Respondent. The General Counsel correctly points out that Owen did not include this statement in Patillo's corrections to Kempf's accident report, which Patillo signed. On the other hand, such a statement is consistent with the portion of the report that reads: "I spoke with Mike Patillo on the telephone approximately 8:05 pm and told him I was investigating an accident—wanted to know what he knew about it. He (Patillo) said, 'Oh, Ryan told you about it!'" I believe it is also consistent with the credited testimony of Kempf that Hightshoe denied at least in three conversations that he had hit a tree. Patillo was also very vague about his conversation with Hightshoe on the night of April 24, though he was able to remember his contemporaneous conversation with Kempf very well. Patillo also gave some rather incredible testimony about later conversations with Kempf. He contended that subsequently, when he turned his daily paperwork into Kempf, Kempf would comment, "It's not fair, Ryan should get three days off." Patillo speculated that Kempf was trying to make him say more than there was to say. This testimony makes no sense because Hightshoe was suspended for 3 days on April 24, and was on suspension beginning April 25. Thus, Hightshoe was already suspended for the 3 days when these alleged conversations occurred. After careful consideration, I credit Owen's testimony in this regard.

*e. The decision is made to fire Hightshoe*

Respondent's president, Meyer, testified that he was out of town for about a week in late April, and upon his return discussed with Kempf what had happened in his absence. Kempf told him of some personnel problems that had arisen and Meyer convened an ad hoc meeting of managers to discuss the matters. Kempf was new to his job and did not feel comfortable in making personnel decisions on his own nor did Meyer feel that Kempf was trained to make such decisions.<sup>28</sup> The meeting was held on May 1 and attended by Bill Meyer, Gale Meyer, Kempf, Weltzin, and Owen. Meyer testified that Hightshoe's accident was not a severe accident by any means; however, his failure to report the accident and the following attempt to cover up the accident created a dishonesty situation, in Meyer's mind. Meyer felt that Hightshoe was an employee that he could no longer trust. In support of the decision to discharge Hightshoe, Meyer testi-

<sup>28</sup> The General Counsel questions the truthfulness of Meyer and Kempf on why the meeting was called, noting that Kempf had signed the termination forms for two employees prior to this meeting. These terminations were not the subject of any testimony in this record and thus it is not known whether Kempf made the decision on his own, or after consultation with Meyer as Kempf indicated he did on all personnel matters of this magnitude.

<sup>27</sup> These changes are set out verbatim in fn. 20, infra.

fied that the trucks operated by the Respondent cost between \$130,000 to \$150,000 per piece of equipment. The recycling trucks, such as the one operated by Hightshoe cost between \$100,000 and \$120,000. Respondent spends \$2000 to \$3000 per truck per month for maintenance. Meyer considers honesty in employees essential because of the value of equipment entrusted to them and the potential danger of damage to property and persons inherent in the operation of trucking equipment.

Among the incidents discussed at this meeting, in addition to Hightshoe's accident, was a more serious accident involving employee Ryan Belstra. Belstra reported this accident, which involved him running into a bridge, causing several thousand dollars damage to the truck and bridge. Meyer testified that the committee discussed the accident, Belstra's work history, tenure with the Company and decided the appropriate action would be to remove him from a driving position, place him on probation and reduce his hourly wage. He was not terminated because he followed company policy with regard to the accident. The Company currently imposes a three-accident limitation and discharges employees if they have three accidents. Meyer testified that at the time of the meeting he was aware of Belstra's support for a union in a prior campaign.<sup>29</sup>

Meyer also indicated lack of knowledge about Hightshoe's support for the Union; however, I do not believe he could not have known of such support as Hightshoe's name is listed prominently on the open letter to management, which was given to Meyer by his supervisors.<sup>30</sup> In any event, Meyer denied that Hightshoe's union sympathies played any part in the decision to discharge Hightshoe. Kempf recommended that Hightshoe be discharged and Meyer agreed.

Respondent has three written documents which govern its labor relations. It maintains a policy manual, a safety manual and an employee handbook. Each of these documents was in effect in the period April through August. Section 8:A3I of the policy manual provides: "[The following conduct is prohibited and will subject the individual involved to disciplinary action up to and including termination:] Falsifying any Company record or report, such as an application for employment or a time card." Section 8:H3 of the manual provides: "In cases involving serious misconduct, such as a violation of law, the employee will be terminated. Kempf believes these two provisions, in addition to Hightshoe failing

<sup>29</sup> At the meeting the committee also discussed problems with employees John Shaffer and Guy Kincheloe. Kincheloe had an excessive absenteeism and tardiness record. The decision was made to have him sign an agreement and he was given another chance. Shaffer was a suspect in some accidents and had had an incident where he drove his truck pass a state weight scale and called in asking what to do. No decision was made as to discipline in the meeting with respect to Shaffer. Kincheloe signed the open letter and thus was a known union supporter. The union sympathies of Shaffer are not clear in this record.

<sup>30</sup> Meyer became aware of the union organizing campaign upon receipt of the open letter to management. In response, he had issued to employees a letter headed "UNION ORGANIZING EFFORT." It notes that the Union is again trying to organize the employees. It states that the matter should be taken seriously, that employees should investigate both sides of the Union issue, urges employees not to sign anything they do not understand, asks that any incidents of harassment be reported to management, and invites employees to direct questions they may have to their supervisors.

to report the accident, gave him the authority to fire Hightshoe." Hightshoe violated section 8:A3I by initially lying to Kempf about his involvement in the accident and his attempt to have Patillo help him cover up for the incident. Kempf also believed that failing to report an accident in which there was property damage, i.e., to the tree, is a violation of law.

The employee termination notice prepared in connection with this discharge gives as the reason for discharge:

Lying and conspiring concerning an accident which occurred 4/22/95 in Dune Acres.<sup>[31]</sup> Ryan's prior work history in regards to attendance was well below average. (11 days, 8 such are personal. 3 disciplinary, and had been on disciplinary probation twice during his 7 months of employment. Upon receiving this information, he stated that he was turning his notice in with last day to work 5-12-95.

The form indicates Hightshoe is not eligible for rehire. The portion relating to an exit interview states:

Ryan feels Wally is not being fair. He brought up past accidents, I explained honesty is very important and comp. policy has always been that all accidents are called in ASAP. Also he isn't going to be told someone else's business by management. Ryan stated he had given Greg his two weeks [sic] notice because he had received another job.

#### *f. Conclusions with respect to Hightshoe's discharge*

The General Counsel has shown that Hightshoe actively supported the Union. He signed the open letter, solicited support for the effort among fellow employees, and wore a union button until he was ordered to remove it. This support was obvious to management. Supervisor Weltzin was the supervisor who instructed Hightshoe to remove his button and Weltzin was present at the May 1 manager's meeting where the decision to terminate Hightshoe was made. President Meyer had read the open letter and had responded to it with a memo to employees. I find it inconceivable that he would not be curious enough about who supported the Union not to have read the names on the open letter. Kempf may or may not have known of Hightshoe's union sympathies. He expressed no knowledge about such sympathies one way or the other. Hightshoe testified that he had been told by Weltzin that Kempf did not know he supported the Union. On the other hand, though Kempf made the ultimate decision to terminate Hightshoe, it was only after receiving approval from Meyer in the meeting of May 1. Thus, the the General Counsel has established protected activity and knowledge of that activity by the Respondent's highest management official.

The issue of the Respondent's motivation is not so clear to me. Aside from the instructions to remove union (and antiunion) insignia and Kempf's threat that benefits may be lost by unionization, there is little evidence of any attempts

<sup>31</sup> On brief, the General Counsel questions whether Kempf had knowledge of the statement that Patillo gave Owen about Hightshoe's attempt to get Patillo to support his story that he did not hit the tree limb. This termination report clearly supports Kempf's contention that he possessed knowledge of the statement.

to discourage employees from selecting the Union as their representative. There are a very few instances noted in which supervisors indicated to employees that a union would not be in the employees' best interest, but these were not alleged in the complaint to be violations of the Act. Even the employees testifying on behalf of the General Counsel conceded that there were no instances of harassment, threats, or intimidation of known union supporters. I am not sure that even Hightshoe believes union animus was the reason for his discharge. He was asked if he believed his employment was terminated because of his support of the Union and answered he had never said that. He then amended this answer to say it had a part in it.

I believe that the Respondent terminated Hightshoe for the reasons it has given and not because of an unlawful motivation. Based on the credited testimony, Hightshoe violated the Respondent's rules by not calling in an accident and by lying about the incident to avoid blame. I also credit the Respondent's contention that it believed that Hightshoe had attempted to secure Patillo's participation in a coverup of the incident. Such behavior has resulted in at least one discharge of an employee that predated the Union's organizing campaign. Meyer testified that another employee, Bran Arney, was terminated for dishonesty in 1991. Arney was a forklift operator. The Company found unreported damage to a forklift and after investigation determined that the damage was caused by Arney, who had denied involvement. Arney was discharged for failing to report the damage and for dishonesty, that is, denying involvement. Kempf's immediate predecessor, Tony Sicari, was fired for dishonesty. In Meyer's absence from the facility, Sicari attempted to recruit employees from Able's staff to come with him to a new job with another employer.

Looking at the Respondent's actions against other known union supporters also bolsters its case. At the same meeting at which Hightshoe was discharged, the Respondent's management considered an absenteeism problem with another known supporter and signer of the open letter, Guy Kincheloe, and did not discipline him. In June, another signer of the open letter, Matthew Hendershot, damaged some equipment at a nearby state prison. He reported the damage to prison officials who told him they would take care of it. He left the prison without reporting the incident to the Respondent, however. Another driver reported the matter to Able's management. When questioned about the matter, Hendershot first denied that there had been any problems at the prison. Upon further questioning, he admitted having the problem. He then noted that he had recently reported other accidents in which he had been involved. Hendershot was suspended for 3 days. I cannot find anything about Hightshoe's union activity that would cause management to single him out for discharge.<sup>32</sup> If the Respondent were attempting to rid itself of union supporters, it could have discharged both Kincheloe and Hendershot, but did not. It could have disciplined Patillo for not reporting the accident, but did not. Further, employee Alberts, who testified about Meyer's instructions to him to remove his union button, also met with Meyer to discuss repeated complaints by a property owner that a truck driven by Alberts had come close to hitting a

building owned by the complainant. Meyer did not seize upon this chance to discipline Alberts. To the contrary, during the time of the organizing campaign, the Company allowed Alberts to drive with another driver on the transfer truck, which was a tractor-trailer, so he could obtain a class A commercial license. He received this license on August 21. This action does not seem consistent with antiunion animus.

For the reasons set forth above, I do not find that the General Counsel has made a prima facie case that Hightshoe was discharged even in part because of his protected activity. On the other hand, I find that Hightshoe was discharged for the legitimate business reasons advanced by the Respondent and would have been discharged even in the absence of any protected activity. I will recommend that the complaint allegation and objection to the election based on the discharge of Hightshoe be dismissed and overruled, respectively.

## 2. The discharge of Anthony Bailey

Anthony Bailey was employed by the Respondent as a driver/helper at its North Judson facility from April until his discharge on August 10. Bailey supported the Union and signed an authorization card. His union sympathies were known to the Respondent as he was told to remove a union button by his supervisor, Richard Warren. Warren was part owner of Complete Waste Management Company, which was sold to the Respondent on January 1, and became Able's North Judson operation. During the period April through August, there were about seven employees at the facility, including Warren. Warren also runs routes and does maintenance in addition to his duties as supervisor. During the timeframe material to this proceeding, Warren reported to Kempf.

With respect to the termination of Anthony Bailey, Kempf testified that he and Bailey's supervisor, Warren, jointly decided to terminate Bailey. It is Kempf's understanding that Bailey was terminated for refusing to finish a route on one day and thereafter refusing to finish it the next day.

Bailey's termination report reflects that the reason for termination was: "Doesn't want to do the required amount of work (left route unfinished), unhappy with the work conditions (rain). Has a depressive attitude affecting other employees."

Bailey was given a performance appraisal on July 6, at the end of his 90-day probationary period. He was given an overall appraisal of "above average."<sup>33</sup>

Warren terminated Bailey on August 10, after conferring with Kempf and Supervisor Darryl Nichols, who had on occasion supervised Bailey. According to Warren, Bailey was terminated for insubordination, specifically refusing to finish running a residential trash route when ordered to do so.<sup>34</sup>

<sup>33</sup> Bailey could not remember getting this performance appraisal, though he signed it.

<sup>34</sup> The Respondent's manual sec. 8:A2D reads: "The following conduct is prohibited and will subject the individual involved to disciplinary action up to and including termination. Insubordination . . . the refusal by an employee to follow management's instructions concerning a job-related matter." Sec. 2:E3A provides: "Route Employees (Drivers and Helpers) are expected to complete their daily assigned route and any additional work assigned to them by either their supervisor or by the dispatcher."

<sup>32</sup> There is nothing unusual about the Respondent terminating employees. The R. Exhs. 12 and 13 reflect over 25 terminations for one cause or another during 1995.

The story behind this alleged refusal is long and filled with minor variations. However, the only credibility determination of any consequence is whether Warren in fact ordered Bailey to finish a route he had been helping run and refused, as asserted by Warren, or whether no such order was given, as asserted by Bailey. I ultimately believe Warren is telling the truth and will find this issue in favor of the Respondent.

*a. Warren's version of the events which caused the discharge*

On August 9, Bailey was operating an assigned route that allowed him to finish about 2 hours before his 8-hour day was over. According to Warren, Bailey had finished his assigned route early and on the way back to office from the landfill encountered two other drivers, Ray Jacobs and Eugene Kohn. These two were running behind on their route because of some problems with their truck earlier in the day. They were taking their truck to the landfill to dump before continuing to run their route in a nearby town, Knox, Indiana. Bailey offered to help them finish the route. According to Warren, Bailey, on his own accord, volunteered to finish running the route with Jacobs in his own truck, while Kohn continued to the landfill. Warren testified that he had instructed Jacobs and Kohn to stop Bailey on the way to the landfill and have him take their truck to the landfill and dump it, and take Bailey's truck and finish their route. Bailey was to return to the office after dumping the other drivers' truck.<sup>35</sup> According to Warren, he was away from the office for a while after this instruction was given and was not aware that Bailey and Jacobs returned to the office before going to finish Jacob's route in Knox.

Warren testified that when Bailey and Jacobs arrived in Knox to run the route, it began raining. The rainfall was so severe that they were not able to proceed for about 15 or 20 minutes. Warren testified that he had been told by Jacobs that either while he and Bailey were waiting for the rain to subside or shortly thereafter Bailey told Jacobs he had to be back at the office at 4 p.m. and Jacobs made the decision to take Bailey back. Jacobs had previously secured permission to leave at 5 p.m. for personal reasons. Just prior to this time, Kohn had returned to North Judson with Bailey's empty truck and was sent to Knox, his home town, in his car to help Jacobs and Bailey finish the route. He did meet Jacobs and Bailey and was sent home by Jacobs when the decision was made to return to North Judson.

Bailey and Jacobs did return to the office at that time. When they arrived Warren congratulated them on finishing the route, but was informed by Jacobs that it was not finished. Bailey was standing nearby when Jacobs spoke with Warren. Warren also testified that at this time, Jacobs said he had to bring Bailey back. Jacobs then walked away and, according to Warren, he told Bailey that he needed Bailey

<sup>35</sup> According to Jacobs, Bailey was supposed to meet them enroute. Jacobs overheard Warren giving this instruction to Bailey on the radio. Warren had instructed Bailey to switch trucks with Jacobs and take their truck to the landfill and then return to the office. Jacobs and Kohn were supposed to take Bailey's empty truck to Knox. Jacobs testified that when they met Bailey he stated that he did not want to return to the landfill and wanted to go with Jacobs and finish the Knox route.

to go with him and finish the route. Bailey refused to do so. According to Warren, he then told Bailey to finish the Knox route the next morning before running his regular route and Bailey again refused. Warren testified that Bailey gave no reason for his refusal. Warren did not ask Jacobs to accompany him because of Jacobs' prior arrangement to leave at 5 p.m. Warren tried reaching Kohn in Knox, but he was not home. Warren estimated that at the time Jacobs and Bailey returned to the office it would have taken about 2 hours to complete the route in Knox.

Warren denies that Bailey ever made arrangements to leave early on this day as did Jacobs. Neither Kohn nor Jacobs received any discipline for their part in the incident. Warren testified that he did not discipline Jacobs because he had permission to leave early, and did not discipline Kohn because he had been released by Jacobs. Warren testified that it was important to finish the Knox route because it is a city contract job with a performance bond.

*b. Bailey's version of the events causing his discharge*

Bailey's version of the events of August 9 are similar to the description given by Warren with some significant differences. Bailey testified that the decision that he join Jacobs while Kohn went to the landfill was a joint decision of all three employees. He also testified that he volunteered to help as he was through early and needed a couple more hours of work to make 8 hours for the day.

One of the two major variances in the testimony of Bailey and Warren involves what happened next. According to Bailey, he and Jacobs first went to the office before heading to Knox. There, Bailey asked Warren if he could leave at 4 p.m. because he had things to do. It was about 2 or 2:30 p.m. at this point. According to Bailey, Warren said that would be fine if he helped Jacobs and Kohn for a couple of hours. According to Bailey, he told Warren that he wanted off early to say goodbye to his mother who was leaving that day on vacation.<sup>36</sup> Bailey did not recall Jacobs being present for this conversation.<sup>37</sup>

Bailey testified that at this point he and Jacobs left for Knox, with Bailey driving the truck. When they got to Knox, Jacobs began driving because he knew the route. About 3:30 or 3:45 p.m., they were stopped by rain. According to Bai-

<sup>36</sup> Bailey's affidavit was placed in the record. With respect to the events of August 9, it has some variations from Bailey's direct testimony. The affidavit states that after he had completed his personal assigned run, he returned to the office at about 2 or 2:30 p.m.

When I got back I told Warren I was done with the dumpster route. Warren then asked me did I mind going and helping Jacobs and Kohn in Knox because their truck had broken down and they were running behind. I told Warren that I would go help them for 2 hours but I had things to do later on that afternoon and I would help out until 4:30 p.m. and then I had things to do. I then told Warren my mom was leaving on vacation and I was going to see her and talk to her. That was about it. Warren said: "That's fine."

The affidavit then indicates that Jacobs and Kohn came to the office and he and Jacobs left for Knox.

<sup>37</sup> According to Jacobs, he and Bailey did return to the office in Bailey's truck and Kohn went to the landfill in the full truck. According to Jacobs, when at the office, Bailey ate his lunch and Jacobs refueled the truck. Jacobs could not remember if Bailey conversed with anyone at the office.

ley, the rain did not let up and they left Knox at 4:30 p.m.<sup>38</sup> While they were in Knox waiting for the rain to stop, Kohn radioed them from the office, saying he had emptied the other truck and had told Warren on the radio that he was going to drive his car to Knox. Bailey testified that this radio call came at about 4 p.m. When Knox arrived, Jacobs told him to go home because it was still raining too hard to make the pickups. Jacobs volunteered to clock Kohn out. According to Bailey, it was Jacobs who decided to go back to the office because of the weather conditions. Bailey testified that there were no other reasons why they returned at that time. On the other hand, he subsequently testified that he told Jacobs as they were driving to Knox that he needed to leave early. Bailey was not aware of what time Jacobs had to leave work that day.<sup>39</sup>

Bailey then testified that they got back to the office at 4:30 or 4:45 p.m. According to Bailey, when they arrived at the office, he promptly clocked out and left. He testified that when they arrived, Warren engaged Jacobs in a conversation and he did not speak with Warren. He testified that he heard Jacobs say that the route was not finished because of the rain.<sup>40</sup> Bailey testified that he did not hear from Warren until he reported for work the next day. He was preparing to clock in when Warren summoned him into his office. According to Bailey, Warren said they were letting him go because they could not leave the routes (unfinished). Bailey did not respond, testifying that he was dumbfounded and shocked.<sup>41</sup>

<sup>38</sup>This testimony is not correct because Bailey's timecard for the day reflects that he clocked out at 4:32 p.m.

<sup>39</sup>Jacobs concurred that a rainstorm curtailed their work in Knox, and noted that Bailey told him that he was not planning on working late because he wanted to see his mother before she left for vacation. Jacobs testified that he said that was fine because he had an appointment at 5 p.m. According to Jacobs, Bailey did not specify what time he was planning on leaving work. Jacobs testified that he had permission to leave at 5 p.m. Jacobs testified that Kohn arrived in Knox in his personal car, which was the agreement made when he took the full truck to the landfill. Kohn was supposed to assist Jacobs and Bailey until the route was run and then go home. When it appeared it was not going to stop raining, Bailey said, "I've had it, that's enough, you know." Jacobs further testified that Bailey said he was not going to do any more work that day. Jacobs concurred in this sentiment and told Bailey to tell Kohn to go home. At this point, Jacobs estimated it would have taken about 3 hours to complete the route. Jacobs could not recall whether he radioed in the message that he and Bailey were returning to the office.

<sup>40</sup>Jacobs testified that when he and Bailey arrived back at the office Warren approached him as he was servicing the truck. According to Jacobs, Warren asked him what happened and he explained that the weather conditions made it too dangerous to work, adding that Bailey had asked to be off and be brought back to the office. Jacobs told Warren that he was not going back to complete the route. Warren then told him he remembered that Jacobs was to be off at 5 p.m. and that was all right. Jacobs did not observe any conversations between Bailey and Warren though he was told that one occurred by someone.

<sup>41</sup>According to Warren, when he told Bailey that he was fired, Bailey seemed relieved. Warren spoke to Bailey again a week or two later and Warren asked him if he wanted his job back and Bailey said no. Both Warren and another supervisor, Darrel Nichols, testified that they had heard Bailey asking what it would take to get fired from the Respondent. Bailey denied making such a comment.

### c. *Conclusions with respect to the discharge of Bailey*

As was the case with Hightshoe, the General Counsel adduced credible evidence that Bailey engaged in union activities, attending a union meeting and wearing union insignia. As he was instructed by Warren to remove his union insignia, Warren was aware of Bailey's support. However, it is harder to find evidence of unlawful motivation in the case of Bailey than it was in the case of Hightshoe.

First, the discharge came over 2 months after the union election. In the interim, Bailey had been given a superior performance rating at the end of his probationary period. If the Respondent were looking for ways to rid itself of Bailey, it could have dismissed him at this point with a poor performance review. Warren's knowledge of Bailey's support for the Union predated the performance review. Prior to his termination, Bailey had received no discipline from the Company. Bailey testified that even after being told not to wear his union insignia he continued to wear his union hat up to the election, without being disciplined for it. During his employment, after his union support became known to Warren and though he was a junior employee, he was assigned a dumpster route when another employee left. He considered this route easier than others. Bailey also testified that there had been another occasion, occurring after the election, when he did not complete a route. He had a long route with which he was relatively unfamiliar and ran out of daylight before finishing it. He called in and Warren told him to come in. Warren finished the route for him the next day. Bailey received no discipline for this incident.

Given the Respondent's favorable treatment of Bailey after his support for the Union became known, I can find absolutely nothing in this record to explain why, on August 9, it suddenly decided to manufacture a reason to fire him.<sup>42</sup> The far more compelling reason for his termination is that asserted by the Respondent that Bailey refused a direct order from his supervisor and was fired for insubordination. I believed Warren when I heard his testimony and I believe him today.<sup>43</sup> I credit his testimony that he did not give Bailey permission to leave early on August 9, that he gave Bailey a direct order to finish the run with him on August 9 or the next morning, and Bailey refused. I find that Warren fired Bailey for this refusal and not for any discriminatory reason. I will recommend that this complaint allegation be dismissed.

### d. *Direction of a rerun election*

Having found that the Respondent engaged in objectionable conduct and unfair labor practices by threatening the loss of existing benefits if employees became represented by a union, and by requiring the employees to remove union in-

<sup>42</sup>The only argument that the General Counsel makes in support of Bailey's position in this case which seems to me to have any real merit is that with respect to whether Warren had time to request Bailey to run the route after he and Jacobs returned. Although the argument made by the General Counsel is plausible, there was still time in which Warren could have given the order to Bailey to finish the route. Based on all the evidence in this record, I cannot find that Warren concocted his story in an unlawful effort to get rid of Bailey.

<sup>43</sup>Warren testified without contradiction that while he was owner of the North Judson operation prior to Able's purchase of it, he fired three other employees for refusing his orders. His personality, as best as I could discern from observing him, appeared to support the proposition that Warren would not tolerate insubordination.

signia with an accompanying threat of reprisal if they did not, I find that the laboratory conditions which must be maintained in the critical period prior to an election have been compromised and that the Respondent has improperly interfered with the election process. I recommend that a second election be directed.<sup>44</sup>

#### CONCLUSIONS OF LAW

1. The Respondent, Meyer Waste Systems, Inc. d/b/a Able Disposal, a Division of Meyer Waste Systems, Inc., and Tri-Creek Disposal, a Division of Meyer Waste Systems, Inc., are employers within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Teamsters Local Union No. 142, a/w International Brotherhood of Teamsters, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following described unit of the Respondent's employees is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All drivers, helpers, sorters, recyclers, and mechanics employed by the Employer at its Chesterton, North Judson, and Lowell, Indiana facilities; But excluding all dispatchers, all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act.

4. Respondent has violated Section 8(a)(1) of the Act by:

(a) About April 24, by Bill Meyer, instructing its employees not to wear union buttons and threatening employees with unspecified reprisals if they wore union buttons.

(b) About April 14, by Supervisor Roger Weltzin, instructing its employees not to wear union buttons.

(c) About May 16, by Operations Manager Wally Kempf, threatening its employees with loss of benefits if they voted for the Union.

(d) About May 22, by Supervisor Roger Weltzin, instructing its employees not to wear union buttons and threatening employees with suspension if they wore union buttons.

(e) About May 22, by Supervisor Richard Warren, at the North Judson facility, instructing its employees not to wear union buttons or hats.

5. The unlawful conduct set out in paragraph 4, above, is conduct which adversely interfered with the election held June 7 in Case 25-RC-9474.

6. The conduct described in paragraphs 4 (a) and (c) above is conduct objectionable to the election and the Union's Objections 1 and 3 are sustained.

7. The unfair labor practices found to have been committed by the Respondent are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

<sup>44</sup>All the unfair labor practices found to have been committed by the Respondent except the April 14 unlawful order by Weltzin involving the removal of a union button occurred after the filing of the representation petition.

#### 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.

Respondent should be further ordered to post appropriate notice and a rerun election should be ordered in Case 25-RC-9474.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>45</sup>

#### ORDER

The Respondent, Meyer Waste Systems, Inc. d/b/a Able Disposal, a Division of Meyer Waste Systems, Inc., and Tri-Creek Disposal, a Division of Meyer Waste Systems, Inc., Chesterton, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Instructing its employees not to wear union buttons and threatening employees with unspecified reprisals and suspension if they wore union buttons.

(b) Threatening its employees with loss of benefits if they voted for the Union.

(c) In 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) Post at its facilities in Chesterton, North Judson, and Lowell, Indiana, copies of the attached notice marked "Appendix."<sup>46</sup> Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the the Respondent's authorized representative, shall be posted by the 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 the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the election conducted in Case 25-RC-9474 on January 7, 1995, be set aside and that the Regional Director for Region 25 conduct a second election at a time he deems appropriate.

<sup>45</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>46</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."