

**Basic Metal and Salvage Co., Inc. and Local 958,  
Waste Material Sorters, Trimmers and Hand-  
lers Union, AFL-CIO and Mark A. Holder.**  
Cases 29-CA-19324 and 29-CA-19597

November 8, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

The issues presented here are whether the judge correctly found that the Respondent committed several violations of Section 8(a)(1), (3), and (5) of the Act.<sup>1</sup> The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions<sup>3</sup> and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Basic Metal and Salvage Co., Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup>On June 21, 1996, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent filed exceptions, and the General Counsel filed an answering brief.

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

<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 findings.

<sup>3</sup>The Respondent did not except to the judge's conclusion that the allegations of par. 11 of the consolidated complaint, which alleges that the Respondent solicited employee signatures on an antiunion petition, were deemed admitted to be true.

*Diane H. Lee, Esq.*, for the General Counsel.  
*Irving Serota, Esq. (Kaufman & Serota)*, of New York, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Brooklyn, New York, on March 25 and 26, 1996. The consolidated complaint alleges that Respondent engaged in various violations of Section 8(a)(1), bypassed the Union and dealt directly with employees in violation of Section 8(a)(5), and laid off employee Mark Holder in viola-

tion of Section 8(a)(3) of the Act.<sup>1</sup> Respondent denies that it has engaged in any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent on April 30, 1996, I make the following<sup>2</sup>

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation, with its principal place of business in Brooklyn, New York, is engaged in recycling nonferrous materials for commercial customers. Annually, Respondent sells and ships from Brooklyn, New York, goods valued in excess of \$50,000 directly to customers located outside the State of New York. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 958, Waste Material Sorters, Trimmers and Handlers Union, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

On April 10, 1995, the Union was certified as the exclusive collective-bargaining representative of Respondent's employees in the following unit:

**INCLUDED:** All full-time and regular part-time drivers and laborers employed by the Employer at its Brooklyn facility.

**EXCLUDED:** All other employees, office clerical employees, supervisors and guards as defined by Section 2(11) of the Act.

B. Alleged Violations of Section 8(a)(1)

Paragraph 11 of the consolidated complaint dated December 8, 1995, alleges that:

On or about a date presently unknown either in the last week of February or in March 1995, at its Brooklyn facility, Respondent, by Irving Gellerstein, its President, solicited employees to sign a petition indicating they did not want the Union to represent them.

On September 14, 1995, Respondent filed its answer to the consolidated complaint which, inter alia, denied the allegations of paragraph 11. Thereafter, on March 5, 1996, Respondent filed an amended answer which made certain changes in Respondent's position. For example, the amended answer did not deny the supervisory status of Barry Greenfeder although the earlier answer had denied this allegation, and the amended answer denied the jurisdictional allegation, another change from its earlier admission of juris-

<sup>1</sup> The General Counsel withdrew par. 14 of the consolidated complaint in the brief.

<sup>2</sup> The record is corrected so that it shows that an Administrative Law Judge, and not a hearing officer, presided at the instant hearing; at p. 87, ll. 18-19, it should read "We still worked overtime five hours each week."

diction. Further, the amended answer did not deny the allegations of paragraph 11. Pursuant to Section 102.20 of the Board's Rules and Regulations, I find that the allegations of paragraph 11 are deemed admitted to be true. Thus, I find that Respondent, in violation of Section 8(a)(1) of the Act, solicited employees to sign a petition indicating that they did not want the Union to represent them.

Union Agent Derek Moon testified that he had two meetings with Respondent Comptroller Irene Greenfeder and Respondent President Irving Gellerstein in an attempt to negotiate a collective-bargaining agreement. The first meeting took place on July 6, 1995; at that time Moon presented the Union's standard initial demands. The Company responded that it did not want to provide medical insurance, holidays, sick days, or a wage increase. At the second meeting held on July 20, the Company again rejected the Union's proposals. According to Moon, there was no bargaining about wages nor medical benefits.

Machine operator Mark Holder testified that in June 1995 he was called to the company office where Owner Irving Gellerstein spoke to the employees. Gellerstein told the men that he was working on some medical benefits for them and that they would have to pay 75 percent of the cost of insurance. Holder told Gellerstein that this plan would not be acceptable. Later that day, according to Holder, Gellerstein again called Holder to the office and asked him which of the employees had voted for the Union. Holder replied that he could not give Gellerstein that information but that he personally supported the Union. Gellerstein told Holder that he was trying to get rid of the Union because he did not want a union to take over the family run business. Gellerstein said that if the men did not accept the package he was proposing he would try to get rid of the Union; if he could not get rid of the Union, Gellerstein said that he would get rid of everybody who supported the Union. Gellerstein emphasized that he would fight to the end to get rid of the Union because he did not want a union in his company.

Holder was given a raise of \$60 in early July 1995. This was the biggest raise he had ever received in his 6 years with the Company. Holder testified that in the past employees had been given raises of only \$10 to \$25 per week. According to Holder, the employees had been asking for raises in 1994 and 1995 but Gellerstein had refused, saying he could not afford it and that raises could only be given when business picked up. At the time Holder received his raise, he was in charge of the copper recycling machine in the absence of employee Oliver Wilson who usually ran the machine. When Wilson returned after 1 week, Holder continued to receive the higher wages. Other employees also received wage increases at this time.

Sometime later in July, Gellerstein spoke to Holder in the office and asked him to sign a paper which stated that the raise given to employees previously was in good faith and was not a bribe to remove the Union. Holder declined to sign the statement, telling Gellerstein that he would have to think it over. Gellerstein replied that Holder should think about it "because it's a tough world out there." Later that afternoon, Gellerstein again asked Holder to sign the paper. Holder signed it after noticing that all the other employees had apparently affixed their names to the document. Holder was not given a copy of this statement.

At the end of July, Holder testified, the employees met with Union Agent Derek Moon who gave them a report of his efforts to negotiate with Respondent. The meeting was held about 100 feet from the company facility at an outside location under the elevated roadway of the Brooklyn Queens Expressway. The meeting took place during the employees' breaktime. While the men gathered around Moon, Supervisor Barry Greenfeder stood in the doorway of a pet food establishment next to the plant and observed the meeting. The men called attention to his presence and expressed concern that he was watching them for the entire duration of the meeting. The next day Comptroller Irene Greenfeder asked Holder if there had been a meeting with the Union. When Holder confirmed that the employees had met with a union representative, she showed him a paper and said they were in big trouble because the Union had filed charges and that the Company might have to take back the raise.

Employee Oliver Wilson testified that on Friday, June 30, 1995, Irving Gellerstein informed him that he was laid off for the next week. When Wilson returned to see Gellerstein at the end of that week, Gellerstein said that he had been sent home for insubordination. Wilson retorted that the real reason for the layoff was that he had been a union observer at the election held in December 1994. Then, Gellerstein said that he had been trying to find out who had brought the Union in and that he initially believed that Wilson had been behind the effort. However, he had found out who was actually responsible for the organizing and he would pay Wilson his lost wages. Gellerstein told Wilson to "read between the lines." In addition to his lost wages, Wilson was given a \$50 per week raise by Gellerstein when he came back to work; Gellerstein said this was to cover medical benefits and that he would try to give Wilson more money at a later time. Gellerstein told Wilson, "remember we don't want a Union, let's just stay a family, we don't need a third party."

Wilson recalled that when the employees met with Union Agent Moon under the Brooklyn Queens Expressway during the week of July 10, they noticed that Barry Greenfeder was watching them. Sometime after this, Wilson was summoned to the office with a few other employees. Irene Greenfeder and Irving Gellerstein were there, and Greenfeder had a paper in her hand from "Federal Court" showing that the Union had filed charges about the recent raise. Greenfeder said that she knew the union agent had been there and that the only way they could get rid of the paper was to have the men sign a statement that the raise was not a bribe. Gellerstein said not to worry because the men would decertify the Union anyway. Gellerstein added, "I don't want any Union here . . . We don't want any 'F' Union." Later that week, a typed letter was placed on Gellerstein's desk and the men were called on the plant intercom to come and sign it. The document, on a company letterhead, stated that the recent raise had been due and was not a bribe. Wilson told Gellerstein that he could not sign it because he did not want to betray the men, but Gellerstein told him to go outside and tell the men to sign it; if they refused he would get rid of them.

Comptroller Irene Greenfeder testified that the Company has been in a poor condition for some time and working at a deficit. The decline in profitability began in 1994. Greenfeder gave detailed testimony concerning the wages paid to each employee and the work each man performed;

however, when she was called upon to recall figures or trends that would be helpful to the General Counsel she claimed ignorance.<sup>3</sup> Thus, she professed to be unable to answer a question relating to the percentage of Respondent's expenses attributable to employee wages. In addition, much of Greenfeder's testimony was given in response to leading questions posed by counsel for the Respondent. I find that much of her testimony is unreliable and slanted to favor Respondent and that she was uncooperative when questioned by the General Counsel.

Greenfeder testified that it is Respondent's policy to give raises annually but that due to the decline in the Company's condition it had not been able to adhere to this policy and instead it had hoped to give raises as soon as business picked up. Greenfeder testified that at the end of June 1995 Mark Holder was given a \$60 per week raise because he had not had any increase in 2 years. Greenfeder did not testify concerning Wilson's raise. Apparently all the employees were given raises at the same time as Wilson and Holder. Greenfeder denied asking the employees to sign a letter to the effect that the raises given to employees were not a bribe; she stated that Respondent had merely distributed a letter saying that the raises were being revoked. Irving Gellerstein testified that he has "a serious memory problem." He did not testify about any letters given to employees.

I credit the testimony of Holder, Wilson, and Moon, and I do not credit the testimony of Gellerstein and Greenfeder. Gellerstein told both Holder and Wilson that he wanted to get rid of the Union. Gellerstein told Holder that if the men did not accept his medical package he would get rid of the Union and Gellerstein told Wilson that he was giving him a \$50 raise to cover medical benefits. By expressing his hostility to the Union and telling the employees that he and not the Union would provide them with medical coverage, Gellerstein hoped to enlist the employees in his campaign to get rid of the Union. I find that Respondent, in violation of Section 8(a)(1) of the Act, promised employees medical coverage and a wage increase in order to induce them to abandon the Union. Further, Gellerstein's statement to Holder that he would fight to the end to get rid of the Union and his statement to Wilson that he did not want any "F" union unlawfully conveyed to employees the message that their efforts to obtain representation by the Union were futile and Respondent thus violated Section 8(a)(1) of the Act.

As discussed above, Greenfeder testified that it was Respondent's policy to give annual raises but that no raises had been given in 1994 and 1995 because of declining business. Then, at the end of June or beginning of July 1995, raises of \$50 and \$60 were given which the record shows were larger raises than had ever been received by the Company's employees in the past. There is no evidence that Respondent's business had picked up at this time; indeed, the record seems to indicate otherwise. Gellerstein made antiunion comments to Wilson when he informed him of the raise and Gellerstein told Holder that the Company's object was to rid itself of the newly certified union. It is significant that Respondent decided to give raises for the first time in 2 years just at the time when it was beginning to negotiate with the

Union for an initial contract. I find that Respondent, in violation of Section 8(a)(1) of the Act, granted a wage increase to its employees to induce them to abandon the Union. When the Union filed charges alleging that the wage increase was unlawful, Respondent further violated Section 8(a)(1) of the Act by forcing its employees, under threat of discharge, to sign a letter stating that the wage increase was legitimate.

The General Counsel alleges that Respondent engaged in surveillance of its employees' union activities when Supervisor Barry Greenfeder stood in the doorway of an establishment adjacent to the company premises and observed employees meeting with Union Agent Moon under the Brooklyn Queens Expressway. It is evident that the employees were openly meeting with the Union in an outdoor public location. There is no evidence that the Union and the employees sought to conceal their meeting from any onlookers. Under these circumstances, it would not be an unfair labor practice for an agent of Respondent to observe the meeting from a distance of 100 feet.<sup>4</sup> There is an exception to this rule where the supervisor engages in unusual activity; for example, standing very close to the union agent in order to interrupt the meeting as in *Carry Cos. of Illinois*, 311 NLRB 1058, 1073-1083 (1993). However, in the instant case, there is no evidence that Barry Greenfeder did anything out of the ordinary by standing outside during the employees' break-time. I cannot engage in a bare assumption that just because Greenfeder stood out of doors for the entire duration of the break this constituted an extraordinary occurrence. Thus, I do not find that the Company engaged in unlawful surveillance.

#### C. Layoff of Mark Holder

Comptroller Irene Greenfeder testified to a decline in Respondent's business beginning in 1994. She painted a bleak picture. However, she testified that at the end of June or beginning of July the Company raised its employees' wages. As discussed above, employees were given raises of \$50 and \$60 per week, which amounted to greater increases than they had been granted in the past.

Respondent did not furnish much of the financial information subpoenaed by the General Counsel. It did, however, provide a compilation of the Company's weekly receipts from April to December 1995, which shows that the receipts fluctuated from a high of \$91,659 for the week of July 17 to a low of \$31,467 for the week of October 2.<sup>5</sup> The average receipts for the 9-month period were \$57,411 per week.

Mark Holder was laid off on Friday, September 8, at the same time as employees Raul Williams and Christopher McKenzie. Holder testified that when she laid him off Greenfeder said that things were slow. Holder called Greenfeder on the following Friday to inquire about coming back to work and she asked that he call back on Wednesday. When Holder telephoned on Wednesday, Greenfeder said that things were still slow and Holder did not call back after that day. When she was first questioned about Holder's layoff, Greenfeder testified that Holder was selected for layoff

<sup>4</sup>In *Roadway Package System*, 302 NLRB 961 (1991), the Board held that, "where . . . employees are conducting their activities openly on or near company premises, open observation of such activities by an employer is not unlawful."

<sup>5</sup>This week would be expected to have a low production because the Company closed for the Jewish High Holy Days.

<sup>3</sup>Greenfeder did not produce certain records of Respondent that were subpoenaed by the General Counsel.

even though he worked on the highly important copper recycling machine because he earned more money than other employees.<sup>6</sup> Although Wilson earned even more money than Holder, he was not laid off because he was the person in charge of the recycling machine.<sup>7</sup> Greenfeder testified that some other employees who earned more than Holder were retained because they drove trucks or cranes.<sup>8</sup> Later in her testimony, Greenfeder stated that Holder was laid off because he was unhappy working for the Company; he did not smile and act in a pleasant manner. Greenfeder testified that she did not know who supported the Union when the decision to lay off Holder was made, but I do not credit her. As found above, she was not candid and she exhibited a selective memory. Irving Gellerstein testified that Holder was laid off because he was making more money than other employees, he did not take supervision, he was tardy, and he had an attitude problem. However, Gellerstein testified that Holder had never been disciplined for tardiness nor for any of the other purported failings. Gellerstein proclaimed his ignorance of Holder's support for the Union. As noted above, Gellerstein said that he had a serious memory problem and I shall not rely on his testimony. Gellerstein testified that he had informed the Company's labor counsel of his reasons for laying off Holder. Respondent's statement of position submitted to the Regional Office on November 10, 1995, says that the Company did not need the three laid-off employees to run the business and that Holder was one of the employees chosen for lay off because he was among the "least necessary" of the employees and the employees retained were "more competent and capable to fulfill the duties assigned to them."

Oliver Wilson, who was in charge of the copper recycling machine that Holder worked on, testified that three men were required to run the machine and that, after himself, Holder was the most knowledgeable about its operation. Normally, Wilson, Holder, and an employee named Emil Charles ran the recycling machine.<sup>9</sup> When Wilson was absent, Holder was put in charge. Wilson stated that he had not observed Holder make any mistakes on the machine and that Holder did not cause any problems. After Holder was laid off, Charles continued to operate the machine with Wilson; however, unlike Holder, Charles did not know how to fix the gears on the machine and he did not know how to operate its controls. After Holder was laid off, the third man assigned to the recycling machine was a new employee named Robert Kizer.<sup>10</sup> Irving Gellerstein instructed Wilson to teach Kizer all about the machine. According to Greenfeder, Kizer could not speak English very well. Wilson recalled that after Holder's layoff the men continued to work 5 hours of overtime a week just as they had immediately before Holder left. In October and November, they worked from 7 a.m. to 6 or 7 p.m. and averaged about 15 hours of overtime per week.

As is apparent, Respondent gave shifting reasons for Holder's layoff. Irene Greenfeder at first said only that Holder was selected for layoff because he earned more money than other employees. After some more questioning which may

have alerted Greenfeder to the fact that her explanation for selecting Holder was not entirely convincing, Greenfeder said that Holder was selected for layoff because he was unhappy and did not smile. Concerning Respondent's assertion that Holder was chosen for layoff because of his high wages, it is apparent that if Respondent wanted to save money by laying off three men who earned more than other employees, it could have chosen employees who were much higher paid than Holder. Greenfeder did not state that Holder could not have performed the work done by those higher paid men. Further, although Holder earned more money than some of the men retained, the two employees who were laid off with him were among the lowest paid identified by Greenfeder. I note that Raul Williams who earned \$250 per week was laid off, but Emil Charles who earned \$275 per week was retained. This choice, which calls into question the assertion that higher paid employees were laid off, was not explained by Respondent. Gellerstein also testified to "attitude" and discipline problems, but he acknowledged that Holder had not been warned or disciplined in all the years he worked for Respondent. Finally, Respondent's counsel, to whom Gellerstein communicated the reasons for Holder's layoff in November 1995, told the Regional Office that Holder was less necessary and less competent than other employees. The evidence does not support this assertion. Holder was the second in command on the copper recycling machine and he was put in charge whenever the number one man was absent. Further, Robert Kizer, the employee brought in to replace Holder on the machine was not competent at all; he had to be taught as a beginner on the machine and he could not speak English. I find that Respondent has given a series of shifting, false and implausible reasons for the selection of Holder during the September layoff. Holder testified that he had informed Gellerstein that he supported the Union and I credit him. I do not credit Gellerstein's and Greenfeder's denials that they were aware of the pronoun sentiments of their employees. The antiunion animus of Gellerstein and Greenfeder is well established by testimony in the record as is their determination to rid the Company of the Union. I find that Respondent selected Holder for layoff on September 8, 1995, because he supported the Union. I find that the reasons given by Respondent for selecting Holder were pretexts. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Even if I had not found that all the reasons given for Holder's layoff were pretexts, I would find that Holder's support for the Union was a motivating factor in his layoff. I would further find that Respondent has not met its burden of showing that it would have laid him off absent his union activity. *Wright Line*, supra. Respondent thus violated Section 8(a)(3) and (1) of the Act.

#### D. Bypassing the Union

It is undisputed that Respondent rejected the Union's proposal which contained a demand for a wage increase and other benefits and that Respondent never bargained with the Union concerning medical insurance and a wage increase. It is also undisputed that at the end of June or the beginning of July Respondent granted the employees a wage increase. Further, I credit Holder that Gellerstein promised the men a medical plan to which they would have to contribute and that Gellerstein told Wilson that a raise was given to cover the

<sup>6</sup> At the time of the layoff, Holder was paid \$315 weekly, Williams was paid \$250, and McKenzie was paid \$275.

<sup>7</sup> Wilson earned \$350 per week.

<sup>8</sup> These other employees earned from \$550 to \$375 weekly.

<sup>9</sup> Charles was paid \$275 per week.

<sup>10</sup> Kizer was paid \$250 per week.

cost of medical benefits. Respondent thus bypassed the Union and dealt directly with its employees in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

1. By soliciting employees to sign a petition indicating they did not want the Union, Respondent violated Section 8(a)(1) of the Act.
2. By promising employees medical coverage and a wage increase to induce them to abandon the Union, Respondent violated Section 8(a)(1) of the Act.
3. By conveying to employees that their efforts to obtain representation by the Union were futile, Respondent violated Section 8(a)(1) of the Act.
4. By granting employees a wage increase to induce them to abandon the Union and by forcing employees to sign a letter stating that the wage increase was legitimate, Respondent violated Section 8(a)(1) of the Act.
5. By selecting Mark Holder for layoff on September 8, 1995, because he supported the Union, Respondent violated Section 8(a)(3) and (1) of the Act.
6. The following employees of Respondent Basic Metal and Salvage Co., Inc., constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

**INCLUDED:** All full-time and regular part-time drivers and laborers employed by the Employer at its Brooklyn facility.

**EXCLUDED:** All other employees, office clerical employees, supervisors and guards as defined by Section 2(11) of the Act.

7. At all times material, Local 958, Waste Material Sorters, Trimmers and Handlers Union, AFL-CIO has been the exclusive representative of all employees within the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
8. By bypassing the Union and dealing directly with the employees, Respondent violated Section 8(a)(5) and (1) of the act.
9. The General Counsel has not proved that Respondent engaged in any other violations of the Act.

#### REMEDY

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

Having discriminatorily laid off an employee, the Respondent must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of layoff to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>11</sup>

<sup>11</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and rec-

#### ORDER

The Respondent, Basic Metal and Salvage Co., Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Soliciting employees to sign petitions indicating that they do not want the Union.
  - (b) Promising employees a wage increase and medical coverage to induce them to abandon the Union.
  - (c) Conveying to employees that their efforts to obtain representation by the Union are futile.
  - (d) Granting its employees a wage increase to induce them to abandon the Union and forcing them to sign a letter stating that the wage increase is legitimate.
  - (e) Selecting employees for layoff because they support the Union.
  - (f) Bypassing the Union and dealing directly with employees.
  - (g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
  - (a) On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.
  - (b) Within 14 days from the date of this Order, offer Mark Holder full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
  - (c) Make Mark Holder whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.
  - (d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
  - (e) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."<sup>12</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or cov-

ommended 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>12</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."

ered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 6, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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

#### APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT lay off or otherwise discriminate against any of you for supporting Local 958, Waste Material Sorters, Trimmers and Handlers Union, AFL-CIO, or any other union.

WE WILL NOT ask you to sign petitions indicating that you do not want the Union.

WE WILL NOT promise you a wage increase and medical coverage to induce you to abandon the Union.

WE WILL NOT tell you that your efforts to obtain representation by the Union are futile.

WE WILL NOT grant you a wage increase to induce you to abandon the Union.

WE WILL NOT force you to sign a letter stating that the wage increase is legitimate.

WE WILL NOT by pass the Union and deal directly with you.

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

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

**INCLUDED:** All full-time and regular part-time drivers and laborers employed by us at our Brooklyn facility.

**EXCLUDED:** All other employees, office clerical employees, supervisors and guards as defined by Section 2(11) of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Mark Holder full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Mark Holder whole for any loss of earnings and other benefits resulting from his layoff, less any net interim earnings, plus interest.

BASIC METAL & SALVAGE CO., INC.