

Bonham Heating & Air Conditioning, Inc. and Local 85, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO.
Cases 7-CA-39325(1), 7-CA-39325(2), 7-CA-39325(3), and 7-RC-20978

May 19, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND LIEBMAN

On September 23, 1997, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief.

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 brief and has decided to affirm the judge's rulings, findings,¹ and conclusions as modified² and to adopt the recommended Order as modified.³

The judge found that the Respondent violated Section 8(a)(1) of the Act by interrogating its employees about their intentions regarding union representation and by threatening to close its doors if forced to "go union." The judge additionally found that the Respondent violated Section 8(a)(3) and (1) by discriminatorily abolishing its plumbing business, slowing its bidding on other work, changing working conditions by changing locks and failing to reissue keys to some employees, and by

¹ 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.

² In his conclusions of law, the judge correctly found that the challenged ballots of employees Brain O'Dell and Fredrick Scott should be counted but erroneously stated that the counting of their ballots should cause the issuance of a certification of results. The latter statement is contrary to established Board procedure and is inconsistent with the judge's recommended remedy, which clearly envisions issuance of a certification of representative if the Union wins the election. In a case, such as this one, in which a *Gissel* bargaining order is issued and challenged ballots are to be opened and counted, the proper procedure is for the Regional Director to issue a certification of representative if the revised tally of ballots following the counting of the challenged ballots shows that a majority voted in favor of the Union. If, however, the revised tally of ballots does not show that a majority voted in favor of the Union, the results of the election should be set aside and the petition dismissed. In no case should a certification of results issue. Additionally, the *Gissel* bargaining order is given effect regardless of the outcome of the vote. See *F. L. Smith Machine Co.*, 305 NLRB 1082 (1992); *Glengarry Contracting Industries*, 258 NLRB 1167 (1981). We have modified the judge's conclusions of law accordingly.

³ We shall modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container, Inc.*, 325 NLRB 17 (1997), and also to set forth the appropriate unit for collective bargaining.

laying off employees James Schneider, Scott, and O'Dell because of and in retaliation for their engaging in union or other protected concerted activities. As part of the remedy for the Respondent's unfair labor practices, the judge recommended issuance of a *Gissel*⁴ bargaining order, as he found that the possibility of erasing the effects of the Respondent's unfair labor practices was slight.

We adopt the judge's unfair labor practice findings, as they are amply supported by the record. We further adopt, for the following reasons, his recommendation that a bargaining order is appropriate and warranted under *NLRB v. Gissel Packing Co.*⁵ In *Gissel*, the Supreme Court "identified two types of employer misconduct that may warrant the imposition of a bargaining order: 'outrageous and pervasive unfair labor practices' ('category I') and 'less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes' ('category II')." ⁶ The Court stated that in fashioning a remedy in the exercise of its discretion in category II cases, the Board:

can properly take into consideration the extensiveness of an employer's unfair [labor] practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future. If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue.⁷

In agreeing with the judge that a *Gissel* bargaining order should issue in this case, we find that the Respondent's course of misconduct, both before and after the election, clearly demonstrates that the holding of a fair rerun election would be unlikely and that the "employees' wishes are better gauged by an old card majority than by a new election."⁸ Because this case falls within *Gissel* category II, we have, in reaching this finding, examined the extensiveness of the Respondent's unfair labor practices and the likelihood of their recurrence in the future.

The Respondent's unfair labor practices in this case include "hallmark"⁹ violations such as discriminatorily terminating or laying off three union supporters in a unit of seven employees (more than 40 percent of the unit), as well as coercively threatening to close its doors if forced

⁴ *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

⁵ *Id.*

⁶ *Charlotte Amphitheater Corp. v. NLRB*, 82 F.3d 1074, 1078 (D.C. Cir. 1996) (quoting *Gissel*, 395 U.S. at 613-614).

⁷ 395 U.S. at 614-615.

⁸ *Charlotte Amphitheater Corp. v. NLRB*, 82 F.3d at 1078.

⁹ See *NLRB v. Jamaica Towing*, 632 F.2d 208, 212-213 (2d Cir. 1980).

to “go union” and actually closing a portion of its business. On October 29, 1996,¹⁰ five unit employees, attending an organizing meeting at employee O’Dell’s house, signed union authorization cards and a petition requesting union representation. Only 3 days later, on Friday, November 1, the Respondent’s president and owner, Dave Bonham, who had received a letter from the Union enclosing the employees’ petition and requesting recognition, called an employee meeting at the start of the workday. At the meeting, he displayed the union petition and repeatedly unlawfully interrogated employees by asking them “what is this all about” and where they intended to work “if this happens.” He further stated that he would close the doors before he would “go union,” adding “you know how bullheaded I can be.” After his interrogations and threat, Bonham additionally unlawfully announced that the Respondent, which performed plumbing, heating, and air-conditioning work, was going to get out of the plumbing business.

On the following Monday, Bonham followed through on his announcement and unlawfully discontinued his plumbing business, refusing to sign a previously bid and awarded plumbing job. He also unlawfully slowed down or stopped bidding on all work from November through December. On November 21, the Union filed an election petition, and an election was scheduled for December 19. On December 13, Bonham unlawfully changed the locks at the Respondent’s facility and on the service van that Scott and O’Dell used. Bonham then gave new keys to only three employees, even though previously all employees had had keys. On the same day, Bonham unlawfully terminated Scott and O’Dell, telling them that there was no more plumbing work to do.

The December 19 election resulted in two votes for the Union and three votes against, with two challenged ballots, those of Scott and O’Dell. On the following day, union supporter Schneider became involved in an argument about the election results with Mike O’Hare, an employee who had signed the union petition but had apparently voted against the Union. Bonham intervened and accused Schneider of harassing O’Hare. Bonham then unlawfully terminated Schneider, telling him that he was being laid off for lack of work. Bonham freely admitted that his stated reason for Schneider’s discharge was false.

The coercive effect of the Respondent’s unfair labor practices described above is readily apparent. These serious violations, which directly affected the entire unit, began as soon as the Union requested recognition and continued even after the election. Thus, at a meeting held shortly after receipt of the Union’s letter, the Respondent’s owner and president embarked on his unlawful antiunion tactics that peaked with the employee layoffs only 6 days before the election. Further, the day

after the election, the Respondent terminated Schneider, a key union supporter, for an admittedly pretextual reason. Thus, the Respondent’s unlawful terminations in approximately a 1-week period left employed only two of the original five employees who had signed the union petition.

The Respondent’s unlawful termination of three of the five employees who openly publicized their union support is conduct that “goes to the heart of the Act”¹¹ and is not likely to be forgotten. “Such action can only serve to reinforce employees’ fear that they will lose employment if they persist in union activity.”¹² The impact of this action was magnified by its proximity to the Union’s demand for recognition, the filing of the representation petition, and the election.¹³ This conduct by the Respondent sent employees “the unequivocal message that it was willing to go to extraordinary lengths in order to extinguish the union organizational effort.”¹⁴ It is reasonable to infer that such a message will have a lasting effect on the unit employees’ exercise of their right to organize.¹⁵

The severity of the Respondent’s misconduct is compounded by the direct involvement of its top official, Dave Bonham, its owner and president. Thus, it was Bonham himself who interrogated the employees about the Union’s recognition request, threatened to close the doors rather than “go union,” announced the discontinuance of the Respondent’s plumbing business, ceased the Respondent’s plumbing business and slowed down or stopped bidding on all other work, changed the locks and refused to issue new keys to certain employees, and terminated three of the five employees who had signed the union petition. “When the antiunion message is so clearly communicated by the words and deeds of the highest levels of management, it is highly coercive and unlikely to be forgotten.”¹⁶

Although the unlawfully laid-off or discharged employees are entitled to reinstatement and backpay, these remedies would not, in our view, likely erase the coercive effects of the Respondent’s antiunion conduct. The reinstated employees would not likely again risk incurring the Respondent’s wrath and another period of unemployment by resuming their union activities. Their coworkers likely would be similarly deterred from union activity, as the Respondent’s unlawful retaliation against union proponents was, no doubt, known to all the employees in this small unit. When Schneider arrived at work after the layoffs of O’Dell and Scott and com-

¹¹ *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

¹² *Consec Security*, 325 NLRB 453 (1998).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*; see *Electro-Voice*, 320 NLRB 1094, 1096 (1996); *America’s Best Quality Coatings Corp.*, 313 NLRB 470, 472 (1993), *enfd.* 44 F.3d 516 (7th Cir. 1995), *cert. denied* 515 U.S. 1158 (1995).

¹⁰ All dates are in 1996.

plained that they had unfairly been laid off, Bonham threatened that Schneider's job similarly "was in jeopardy." Employees John Booth, Shane Cornell, and Larry Decker all were aware of the argument between Schneider and O'Hare immediately preceding Schneider's discharge. Following Schneider's discharge, Booth asked Larry Bonham if Bonham wanted him to leave also.¹⁷ Moreover, it is noteworthy that the Respondent's misconduct continued even after the election, when the Respondent discharged union supporter Schneider, who had served as the Union's observer at the election. An employer's continuing hostility toward employee rights in its postelection conduct "evidences a strong likelihood of a recurrence of unlawful conduct in the event of another organizing effort."¹⁸

In this case, the Respondent makes no claim that a *Gissel* order is not appropriate because of the passage of time between the *Gissel* order and the unfair labor practices that justified it, or because of any purported intervening turnover of employees or management. Thus, these issues, which have concerned some courts in denying enforcement of our *Gissel* orders in other situations,¹⁹ have not been timely raised by the Respondent—indeed, they have not been raised at all—and are simply not presented by the evidence here.²⁰

In addition, the Respondent has presented no evidence or argument that would lead us to believe that it is now prepared to allow employees to freely exercise their Section 7 rights. To the contrary, the Respondent's conduct indicates that there is reasonable likelihood that the Respondent will continue to unlawfully thwart employee rights in the future. Thus, as noted above, the Respondent persisted in its unfair labor practices, unlawfully terminating union supporter Schneider even after the election was over. Moreover, the depth of the Respondent's disregard for employee rights is evidenced by the extreme measures it took to defeat the employees' organizational efforts. Not only did the Respondent unlawfully interrogate employees, coercively threaten them, and unlawfully terminate over 40 percent of its work force in response to the employees' organizing efforts, it also discontinued part of its business and slowed or stopped bidding on work in the remaining areas of business. Such drastic steps betray the Respondent's intense determination to unlawfully thwart the employees' exercise of their Section 7 rights. In this connection, particularly illuminating is the Respondent's president's state-

ment to employees, "You know how bullheaded I can be," when he announced that the Respondent would close its doors before it would "go union." Bonham's own words further demonstrate the tenacity of the Respondent's antiunion commitment. All these circumstances lead us to doubt that the Respondent would conform its conduct to the requirements of the law and permit a fair election among employees to be held in the future if the revised tally of ballots shows that the Union lost the December 19, 1996 election.

Thus, in concluding that a *Gissel* order is warranted, we have fully considered the inadequacy of other remedies.²¹ Further, as discussed below, we have given due consideration to the employees' Section 7 rights, another concern expressed by some courts.²²

In *Gissel*, the Supreme Court rejected the argument advanced by the employers that a bargaining order is a punitive remedy that "needlessly prejudices employees' Section 7 rights."²³ The Court stated that a bargaining order not only deters "future misconduct" but also remedies "past election damage."²⁴ The Court reasoned as follows:

If an employer has succeeded in undermining a union's strength and destroying the laboratory conditions necessary for a fair election, he may see no need to violate a cease-and-desist order by further unlawful activity. The damage will have been done, and perhaps the only fair way to effectuate employee rights is to reestablish the conditions as they existed before the employer's unlawful campaign.³³ There is, after all, nothing permanent in a bargaining order, and if, after the effects of the employer's acts have worn off, the employees clearly desire to disavow the union, they can do so by filing a representation petition. For, as we pointed out long ago, in finding that a bargaining order involved no "injustice to employees who may wish to substitute for the particular union some other . . . arrangement," a bargaining relationship "once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed," after which the "Board may, . . . upon a proper showing, take steps in recognition of changed situations which might make appropriate changed bargaining relationships." [395 U.S. at 612-613 (quoting *Franks Bros. Co. v. NLRB*, 321 U.S. 702, 705-706 (1944)).]

¹⁷ Booth testified that, as Bonham had let Scott, O'Dell, and Schneider go, Booth felt that he was next in line. He also had signed the union petition.

¹⁸ *Garney Morris, Inc.*, 313 NLRB 101, 103 (1993), enf'd. 47 F.3d 1161 (3d Cir. 1995).

¹⁹ See, e.g., *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d 1166, 1173 (D.C. Cir. 1998).

²⁰ *NLRB v. Charlotte Amphitheater*, 82 F.3d 1074, 1080 (D.C. Cir. 1996) (Board has no affirmative duty to examine employee turnover or passage of time if not timely raised).

³³ It has been pointed out that employee rights are affected whether or not a bargaining order is entered, for those who desire representation may not be protected by an inadequate rerun election, and those who oppose collective bargaining may be prejudiced by a bargaining order if in fact the union would have lost an election absent employer coercion. [Citation omitted.] Any effect

²¹ See, e.g., *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d at 1173.

²² *Id.*

²³ 395 U.S. at 612.

²⁴ *Id.*

will be minimal at best, however, for there “is every reason for the union to negotiate a contract that will satisfy the majority, for the union will surely realize that it must win the support of the employees, in the face of a hostile employer, in order to survive the threat of a decertification election after a year has passed.” Bok, *The Regulation of Campaign Tactics in Representation Elections Under the National Labor Relations Act*, 78 Harv.L.Rev. 38, 135 (1964).

This passage clearly shows that in approving the Board’s use of the bargaining order remedy in category I and II cases, the *Gissel* Court explicitly took into account the rights of both employees who favored union representation and those who opposed it. The Court stated that if an employer’s unfair labor practices have the tendency to undermine a union’s majority strength and destroy election conditions, then “perhaps the only fair way to effectuate employee rights” is to issue a bargaining order. In these circumstances, the right of those opposing the union to file a decertification petition pursuant to Section 9(c)(1) of the Act adequately safeguards their interests. On the other hand, if the facts of a case fall within category III, i.e., the employer committed only “minor or less extensive unfair labor practices” with only a “minimal impact on the election machinery,” then a bargaining order may not issue, notwithstanding the fact that a majority of employees signed authorization cards in support of the union.²⁵

In sum, the *Gissel* opinion itself reflects a careful balancing of employees’ Section 7 rights “to bargain collectively” and “to refrain from” such activity. Therefore, if a bargaining order has been adequately justified under the *Gissel* standards, then we respectfully submit that due consideration has been given to the employees’ Section 7 rights.

Accordingly, for all these reasons, we agree with the judge that a *Gissel* bargaining order remedy is appropriate and warranted in this case.

AMENDED CONCLUSION OF LAW

Delete paragraph 5 of the judge’s conclusions of law and insert the following.

“5. The challenged ballots of employees Brian O’Dell and Frederick Scott from the December 19, 1996 election should be opened and counted and a revised tally of ballots prepared. If the revised tally of ballots shows that the Petitioner won the election, a certification of representative should issue. If the revised tally of ballots shows that the Petitioner did not win the election, the results of the election should be set aside, the petition dismissed, and the proceedings in Case 7–RC–20978 vacated.”

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Bonham

Heating & Air Conditioning, Inc., Gladwin, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order, as modified.

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

“(d) On request, recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit concerning wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time heating and cooling employees, plumbers and pipefitters employed by the Employer at its facility located at 2441 West M-61, Gladwin, Michigan; but excluding office clerical employees, guards and supervisors as defined in the Act.”

2. Substitute the following for paragraph 2(f).

“(f) Within 14 days after service by the Region, post at its Gladwin, Michigan facility copies of the attached notice marked “Appendix.”²⁵ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. 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 November 1, 1996.”

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

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

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

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.

²⁵ 395 U.S. at 615.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of your rights guaranteed in Section 7 of the Act, by interrogating you concerning union sympathies or threatening to close our doors if forced to go union.

WE WILL NOT lay off or terminate you or otherwise discriminate against you in retaliation for engaging in union activities or other protected concerted activities.

WE WILL NOT abolish our plumbing business, slow bidding on other work, or otherwise change your working conditions in retaliation for engaging in union activities or other protected concerted activities.

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

WE WILL, within 14 days from the date of this Order, reestablish our plumbing business and resume other bidding practices at the level and manner of operation that previously existed and reestablish or correct any discriminatory changes in conditions of employment and offer Brian O'Dell, James Schneider, and Frederick Scott full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Brian O'Dell, James Schneider, and Frederick Scott whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Brian O'Dell, James Schneider, and Frederick Scott, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL, on request, recognize and bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning wages, hours, and other terms and conditions of employment, and, if agreement is reached, embody it in a signed agreement:

All full-time and regular part-time heating and cooling employees, plumbers and pipefitters employed by the Employer at its facility located at 2441 West M-61, Gladwin, Michigan; but excluding office clerical employees, guards and supervisors as defined in the Act.

BONHAM HEATING & AIR CONDITIONING, INC.

Dwight R. Kirksey, Esq., for the General Counsel.
Gary D. Patterson, Esq., of Saginaw, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Midland, Michigan, on June 4 and 5, 1997.

The proceeding is based on an initial charge filed December 26, 1996,¹ by Local 85, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. The Regional Director's consolidated complaint dated March 28, 1997, alleges that Respondent Bonham Heating & Air Conditioning, Inc., of Gladwin, Michigan, violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by coercively interrogate its employees concerning their union activities, sympathies, and desires and threaten its employees with the closing of its business if the employees selected union representation; by changing an employee's working conditions, partially closing its business by ceasing to bid any plumbing work and slowing its bidding of nonplumbing work in retaliation for its employees' support for and membership in the Union, and by discharging employees because they joined and assisted the Union and to discourage its employees from engaging in union activities.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the installation and service of heating and air-conditioning systems. It annually purchases and receives goods and materials valued in excess of \$50,000 from other enterprises in Michigan which have received these goods directly from points outside Michigan. In 1996 it derived gross revenues in excess of \$500,000 and it admits that at all times material is has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent performs residential and light commercial plumbing, heating and air-conditioning installation and maintenance work at locations in central Michigan generally located within commuting distance (60 miles) from its facilities in Gladwin. Owner and President Dave Bonham holds certain building licenses and employs persons who hold other building licenses. As a result, Respondent is able to obtain work permits required to perform plumbing, heating and air-conditioning work. Employee Fred Scott has a master plumbers license which allows him to "pull permits" in Respondent's name. During the fall of 1996, the Respondent had seven employees (plus clerical staff) and was working at approximately five or six jobsites, including Boyne City, Michigan, which is more than 60 miles from Gladwin.

At first, the Respondent was primarily a service-oriented business and then, as the business grew, expanded into the performance of installation work. Approximately 60 percent of the work Respondent performs is residential work while the remaining 40 percent is light commercial work performed primarily when requested to do so by a contractor for whom Respondent regularly sub contracts. While the work performed primarily involves the service and installation of heating and air-conditioning equipment, the Respondent began performing plumbing work approximately 4 years after it hired Scott (it paid for Scott's schooling for his Master Plumber's license).

¹ All following dates will be in 1996 unless otherwise indicated.

Of the seven employees, three performed service work, two performed installations and two performed plumbing work. The service employees were Larry Decker (who was called the service manager), Shane Cornell and Mike O'Hare, the installers were John Both and James Schneider and the plumbers were Brian O'Dell and Scott.

On October 29, 1996, a union organizing meeting was held at employee Brian O'Dell's house. In attendance were employees O'Dell, Schneider, Scott, O'Hare, Booth, and Union Representative Kris Shangle. All five employees signed union authorization cards and a "petition" requesting representation by the Union. A few days later on or on about October 31 the Respondent received a letter from the Union, which stated that the employees of the Respondent wanted to be represented by the Union. The letter attached the "petition" that the five employees signed.

In response to the letter, Bonham called a meeting of all employees on November 1, at 8 a.m. The five employees who signed the petition were in attendance as well as employee Decker. Bonham showed the employees the "petition" he received in the mail, and told the group, "I want to know what is this all about." When no one answered Schneider responded that the document spoke for itself. Bonham persisted and said he didn't know what it meant and he wanted he employees to tell him. Bonham then asked Schneider, "If this happens, where do you intend to work?" Schneider responded, "I'd like to stay here, in this job." O'Dell recalled that Bonham said he would close the doors before he would go union and then added "[Y]ou know how bull-headed I can be." Booth recalled that Bonham specifically said he would close his door and did not say he would be "forced to close" and he recalled that when someone said he could not do that, Bonham said he could and he then could open up latter under a different name.

Schneider recalled that Bonham said he "would close his doors if he was forced to go union" and that a small company would be run into the ground by a union. Someone spoke up and asked Bonham to keep an open mind and talk to representative Shangle and see what it really was about.

Bonham turned to the subject of plumbing work and told the employees that he was going to get out of the plumbing business. Scott replied that if that was what Bonham wants to do, "now would be a good time since there are no permits pulled right now." Scott said he was caught off guard by Bonham's declaration but felt that if plumbing work was a problem for Bonham, he would be willing to subcontract the work and buy some of the plumbing material and he volunteered to do so but Bonham responded that in his experience subcontracting did not work out. The meeting ended when the employees handed Bonham a list, supplied by the Union, of things a company can not do during an election campaign.

On and after November 4, the Respondent discontinued its plumbing business and it refused to sign a previously bid and awarded plumbing job. In addition, Respondent slowed down or stopped bidding on all work from November through December 1996. Beginning in January 1997, Bonham, who does all the job bidding for Respondent, resumed bidding on work (except plumbing) at its regular labor rates.

Prior to October 31, Booth (who was Respondent's second most senior employee), was in charge of every installation job and, if he was assigned to a one-man job, Bonham and Booth discussed all details of the job. After the November 1 meeting, Bonham told Booth only when and where a job was. Before

the "petition" Booth was in charge on every two-man job he went on, and either Schneider, Cornell, or O'Hare acted as helper. After the "petition," a two-man job that Booth was on was run by Cornell who was trained by Booth when he was hired. About 8 years ago, Bonham also designated Booth as shop foreman. Bonham never informed Booth that he lost that title.

The Union filed the petition in Case 7-RC-20978 on November 21, 1996. At the time the Union filed the petition, the proposed unit consisted of seven employees (five heating and cooling workers and two plumbers). An election was scheduled for December 19, in a unit of full-time and regular part-time heating and cooling employees, plumbers, and pipefitters.

On December 13, Bonham changed the locks on the doors to Respondent's facility, as well as the locks on the service van that Scott and O'Dell used. Bonham gave keys to the locks to employees Cornell, O'Hare and Decker, but not Schneider, Scott, O'Dell, or Booth. Booth had a key to the shop since he began work 11 years ago but he was not given any keys on December 13 when Bonham changed the locks. Booth testified that he now must wait for someone to arrive to let him in, and at night, someone must be there to lock up when Booth leaves.

Six days prior to the election Bonham told Scott and O'Dell that they were permanently laid off because there was no more plumbing work to do. O'Dell, who had done a substantial amount of boiler work, asked Bonham if there was any boiler work to do. Bonham said that there was not and that O'Dell could not be kept on to do boiler work because he did not have a license. A short while later Bonham approached O'Dell and Scott separately in the parking lot, as they were cleaning out their van, and told both, individually, that "some day" he would tell them the real reason why they were laid off.

When Schneider arrived at work and discovered that O'Dell and Scott were laid off, he approached Bonham and told him it was unfair and told Bonham that he felt like his own job was in jeopardy. Bonham responded that it "was in jeopardy," that he should start looking for another job, and that he had not bid any work since he received the "petition" from the Union on October 31.

On December 19, 1996, the election was held; the results were two "Yes" votes, three "No" votes, and two challenged ballots. Scott and O'Dell's ballots were challenged by Respondent and are determinative of the outcome of the election.

The day after the election, Schneider arrived at work and saw O'Hare (whose name had been on the "petition" sent to the Employer on October 31), and accused O'Hare of letting "us" down. O'Hare then said, "Don't start no shit with me" and Schneider walked away. O'Hare followed him and said, "I never meant to screw you guys in this deal." Schneider said, "It's too late, you already screwed us." Schneider again walked away and O'Hare followed him into the shop where their conversation escalated into what Schneider called a very "heated" argument. Schneider told O'Hare that the "union doesn't want you." O'Hare told Schneider that he should not have voted at all. Schneider responded, "I thought we could count on you for your vote." O'Hare told Schneider that he had changed his mind. "It's a free country, I can change my mind so don't give me your bullshit." Bonham came into the shop, after being told by employee Decker that O'Hare and Schneider were hollering at each other. Schneider testified that Bonham approached him and said, "Jim you can't harass my employees." When Schneider responded, "who am I harassing?" Bonham countered with,

“You’re laid off because I think you’re the instigator in all this.” Schneider questioned if that was the reason he was being laid off and Bonham said, “[N]o, I don’t have any work for you.”

Booth testified that he heard bits and pieces of an argument about the union vote and saw Bonham approach and say, “Jim, you’re harassing my employees and I can’t have that.” O’Hare testified that Bonham asked him if he was being “harassed” and he shook his head “yes” without saying anything. He said that when he started walking back to the office he heard Bonham tell Schneider he was laid off and to grab his tools. Bonham testified that Cornell told him Mike and Jim were having an argument and that Decker then told him it was “real serious,” that he should get out there, and that they were discussing the way Mike had voted. Bonham said everything went quiet when he stepped out back and that he turned to Jim and said, “I cannot harass you because of the way you voted and you cannot harass other employees.” Bonham then asserted that Schneider “started swearing and stuff” so he told Schneider to pick up his tools and go. He further asserts that Schneider then asked why he [was] being laid off and that he said because if [sic] lack of work, even though that was not the real reason. Latter, [sic] when examined by his own counsel, Bonham also added that when Schneider was walking out the door “he threatened me” by saying that “my lawyer will be contacting you.”

III. DISCUSSION

This proceeding involves the reactive behavior of a small business owner to the unexpected decision of five of its seven employees to sign a petition requesting union representation. Rather than contacting the union representative, owner Bonham immediately met with and asked his employees what was going on and then made certain statements about the future of his business. He thereafter stopped or slowed down its bidding of new work and permanently laid off two employees just 6 days before a representation election. It allegedly changed the working condition of another employee that same day and, on the day after the election it terminated the union election observer. It also challenged the ballots of the two employees it had laid off on December 13 thereby creating a situation where the challenged ballots are determined by the election results.

A. Alleged 8(a)(1) Violations

Witnesses Booth, O’Dell, Schneider, and Scott gave independent, consistent, and believable testimony describing owner Bonham’s reaction and statements to employees after he learned of their “petition” for union representation. In addition, Michael O’Hare was called as a witness by the Respondent (he is still employed as a service technician) and he was asked about the meeting of November 1 by Respondent’s counsel:

Q. And what did Mr. Bonham say?

A. He just asked where we thought we’d be working.

Q. And what was the response?

A. Everybody said right here at Bonham Heating.

Q. And what did Mr. Bonham say?

A. He said again that you won’t be working in Gladwin. “There is no commercial work in Gladwin.”

Q. And did he mention that there would be work in other cities?

A. Yes he did.

Q. And what did he say?

A. He said we’d be traveling a lot - a lot of distance to our jobs.

Q. Do you recall Mr. Bonham saying in that meeting that he absolutely would not go union?

A. I don’t recall them words, no.

JUDGE BEDDOW: What words do you recall?

THE WITNESS: That he would not go union.

Q. BY MR. PATTERSON: Do you recall him saying that he would close his doors before he went union?

A. No, I don’t recall that either.

Q. Do you recall any words to that effect?

A. I recall him saying that if he was union that he could be forced to close his doors.

Q. Okay, and did he elaborate on that?

A. No.

Bonham testified that on receiving the union letter on October 31 he was concerned that the intent of the employees identified in that letter was to leave their employment with Respondent and that if he would not be able to conduct his business. Bonham also claimed to be confused as the letter indicated that Union Representative Shangle had spoken with. Bonham in the past which he asserts was not true² and he was unsure of what the letter meant, as he had no prior experience with unions. Bonham admitted that he asked the employees where they wanted to work and they answered him. He explained his thoughts that he asked about locations because unions typically worked in bigger cities such as Saginaw, Flint, and Muskegon and because he also concerned that the company would not be able afford to operate in the Gladwin area which has traditionally lower wages and he explained that if Respondent had to raise its rates it could possibly lose some business in the area. Bonham said that he did not see how it would be financially possible to keep the Respondent’s business operating in the Gladwin area if Respondent became a union company but he denied saying that he would close his doors before he went union.

My evaluation of Bonham’s demeanor and the content and tenor of his testimony leads me to conclude that many of his answers are contrived, self serving, and after-the-fact rationalizations designed to place his actual words and action in a more favorable light.

It is well established that “the Board does not consider subjective reactions, but rather whether, under all the circumstances, a Respondent’s remarks reasonably tends to restrain, coerce, or interfere with employees’ right guaranteed under the Act.” *Sunnyside Home Care Project*, 308 NLRB 346 fn. 1 (1992). While interrogation of employees is not unlawful per se in determining whether or not an interrogation violates Section 8(a)(1) of the Act, the Board looks at all the circumstances, see *Rossmore House*, 269 NLRB 1176 (1984), and *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985). Under the circumstances here, including Bonham’s demeanor, I cannot credit his denial of the statement attributed to him by the General Counsel’s witnesses and I find the employees’ overall testimony about the context of the meeting is the most trustworthy and credible.

Here, the record shows that the owner of the Company persistently asked its employees to explain the meaning of a letter from a union representative, without first attempting to com-

² Respondent’s records appear to show that Shangle twice left messages that Bonham did not respond to.

municate with the author. He then launched into an obtuse discussion based on his own extremely speculative conclusions about what the employees request would lead to. This discussion include the clear threat that any success by the employees in collectively joining together in a union would result in the Company's closing its doors. This threat is a clear and serious violation of the Act and its pronouncement by the owner of the Company following his initial persistent interrogation of the employees constitutes conduct that is coercive in nature. Moreover, it subsequently was shown not to be an ideal threat as evidenced by the Respondent's sudden decision to stop or reduce bidding on new work and the resulting reduction or closing down of part of its business. Both, the interrogation and threat interfere with the employees Section 7 rights and I find that the Respondent's actions are shown to be unlawful and in violation of Section 8(a)(1) of the Act, as alleged.

B. Alleged Violations of 8(a)(3)

In proceedings involving changes in conditions of employment and disciplinary action against employees, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employees union or other protected concerted activities were a motivating factor in the employer's decision to change their conditions of employment or to discipline them. Here, the record shows that the Respondent clearly was aware of the employees' union activity, that it was aware of which employees supported the Union and that it specifically knew that each of the alleged discriminatees was a supporter of the Union. It also engaged in certain unfair labor practices, as discussed above, which included statements by the owner that clearly showed antiunion animus. Other indicia of record include the timing of O'Dell's and Scott's permanent layoff just 6 days before the election, and Schneider's discharge the morning after he acted as the Union's election observer and, under these circumstances, I find that the General Counsel has met his initial burden and made a showing sufficient to support an inference that the employees' union activities were a motivating factor in Respondent's decision to change the conditions of employment and to discipline or discharge certain of the employees who were among the active union supporters. Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980), see *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), to consider Respondent's defense and whether the General Counsel has carried his overall burden.

As pointed out by the Court, in *Transportation Management Corp.*, supra.

an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place in the absence of the protected concerted activity.

Here, the Respondent's owner made a coercive statement to the effect that the company would close its doors before it would go union. The Respondent their proceeded to complain about its plumbing work (usually performed by union supporters O'Dell and Scott) and then stated that he intentional, to get out of the plumbing business.

Bonham admittedly ceased his plumbing business and slowed down on bidding for work in general, after the "petition" and the meeting November 1 and I find that he deliber-

ately sought less work for the company until after the election was over.

Here, the Respondent makes a representation that because of the Union's letter Bonham believed that Scott, as master plumber, was not going to pull any more permits for Respondent and concluded that if Respondent did not have a master plumber "willing" to pull permits, the Respondent could not perform any plumbing work and that it was in the best interest of the Respondent to eliminate the plumbing aspect of its business. The decision to discontinue the plumbing aspect of its business, left it with 5 to 6 weeks of work left to complete on outstanding plumbing jobs, following which, on December 13, the Respondent permanently laid off Master Plumber Scott and Journeyman Plumber O'Dell. Bonham otherwise admits that Scott never was asked about and never refused or said he would not pull plumbing permits and I find that Bonham never attempted to exercise his authority as owner and manager of the Company to affirmatively preserve the Company's existing business or to gain regular future contracts and I find that his explanation that he was powerless in this respect to be incredulous, unbelievable and pretextual.

As noted above, at this stage of the proceeding it is the Respondent's burden to persuasively show by a preponderance of the evidence that it would have permanently laid off these two employees even in the absence of the union activity. Here, the Respondent's reasons are not even shown to be legitimate let alone persuasive and it is clear that its failure to pursue business in the normal course of events was deliberate and in direct response to the employees organizational attempts. The fact that it also conveniently was timed to coincide with a date shortly before the Board's election on December 19, allows an inference that its layoff and effective discharge of union supporters O'Dell and Scott also was pretextual.

Here, the records shows that in keeping with its threat to close its doors before it would go union, the Respondent deliberately abolished the plumbing side of its business and terminate two long time employees in an attempt to eliminate two union supporters from participation in the election. Accordingly, I find that the General Counsel has met his overall burden and I conclude that it is shown that the Respondent's actions in abolishing its plumbing business, slowing its bidding of other work and permanently laying off employees O'Dell and Scott all are in violation of Section 8(a)(1) and (3) of the Act, as alleged.

On the same day the Respondent ended O'Dell's and Scott's employment, it changed the locks on the door at its facility as well as those on the van that O'Dell and Scott had used. It gave new keys to the office secretary and employees Cornell and Decker (who were known to be against union organization) and to O'Hare. Although O'Hare initially had signed the union "petition" and an authorization card, he subsequently changed his mind, voted against the Union on December 19, and disclosed this to other employees. Union supporters Booth and Schneider were not given new keys even though Booth was a long time employee and leadman or foreman. Thereafter, Booth, although never specifically told he was not in charge when he was an installer on a two-man crew, was effectively bypassed in that roll on a job with employee Cornell when all job discussions with owner Bonham and the customer were handled by Cornell. The record shows that Booth was the Respondent's primary heating and sheet metal installer and I find the Respondent explanation that his job with Cornell was a

boiler job that had been started by Bonham and Cornell and therefore Cornell was familiar with the job when Bonham left (to do sales calls) and was replaced by Booth, displays a legitimate reason that is shown to likely have occurred regardless of Booth's and the other employees' union activities. Moreover, the record fails to show specific loss of authority in Booth's job duties and I am not persuaded that the General Counsel has shown a violation of the Act in this respect.

Otherwise, however, the Respondent clearly explained that Booth previously had a key to the shop and that he was responsible for fabricating all ductwork. Bonham then asserted that it was his "policy" to change locks whenever employees are terminated and that he decided only the three employees who performed service work and were sometimes on 24 hour call with a need for access when Bonham isn't available, actually needed to have keys. This reasons although seemingly legitimate, fails to explain why the long term job foreman and shop fabricator should suddenly be made dependent on others for access to his work area and, in view of the timing of the event just prior to the election (as well as the concurrent more favorable treatment to those who were not union supporters), I am not persuaded that Booth (and most of the other union supporters), would have been denied a key under these circumstance were it not for the employees' union activities and the Respondent union animus. Accordingly, I find that the Respondent's action in changing locks and denying Booth a replacement key is shown to be a change in working conditions that was made for discriminatory reasons and in violation of Section 8(a)(1) and (3) of the Act. as alleged.

The day after the election employee and union observer Schneider and employee O'Hare had a prework discussion about the election results which broke off, then escalated into a continued argument after O'Hare followed Schneider to the shop area. At this time the Respondent knew that O'Hare although originally a "petition" signer had joined with the two promanagement employees to provide the three to two vote against the Union (discounting the two ballots it challenged). As set forth above, several witnesses described the argument, Bonham's arrival on the scene and the discharge.

I credit Schneider's testimony (as corroborated in major part by both Booth and O'Hare), that he and O'Hare had stopped arguing when Bonham entered the shop, that Bonham immediately approached him and told him he couldn't harass Bonham's employees. Bonham sought no information or explanation from Schneider but merely asked O'Hare if he was being harassed and when O'Hare nodded his head "yes," Bonham told Schneider he was laid off and to grab his tools.

When examined by his own Counsel Bonham admitted that he had called Schneider the instigator of the argument and that he based his belief on "comments that the guys told me before I went in the back." Bonham also admitted that Schneider asked why he being laid off and that he untruthfully told him that it was because of lack of work.

Bonham also said he saw no need to reprimand O'Hare for his involvement in the argument and he otherwise admitted that he knew Schneider was the union observer at the election the previous day. In his trial testimony Bonham offered the gratuitous comment that when he told Schneider he couldn't harass other employees Schneider responded by "swearing and stuff." This is uncorroborated by any of the other witnesses who described the occurrence, and the Respondent otherwise did not tell Schneider he was being dismissed for violating a work rule

that provides for immediate dismissal for "fighting or abusive language." The Respondent also did not (until mentioned on brief) tell Schneider that he was terminated for violation of its harassment policy which provides:

If you feel you are being harassed or discriminated against, please see any company officer immediately. Should anyone be found to be using coercion or a company appointed position for harassment or discrimination, he or she will be reprimanded—which could include possible dismissal.

Here, I do not credit Bonham's belated testimony that Schneider "swore and stuff." In any event, there was no showing what actual "words" were abusive of that they constituted abusive language, or that Bonham relied on this at the time he told Schneider to leave. Moreover, although Bonham was told Schneider and O'Hare were arguing, the only direct information Bonham had about any "harassment" was his question to O'Hare and O'Hare's nonverbal "yes" response, a response that falls far short of showing that Schneider was using "coercion" or "a company appointed position" to inflict harassment as required by its rule.

Clearly, Bonham's additional and various explanations are false and pretextual, including his admitted false statement that Schneider was being laid off because of lack of work. Bonham made no actual investigation of the circumstances of the argument he heard about but did not observe, and he immediately seized on the opportunity to accuse Schneider of being the instigator without giving Schneider an opportunity to defend himself. Otherwise, the record shows that O'Hare, in fact, resumed and prolonged the argument by following Schneider to the shop area, yet Bonham saw no need to learn the facts or possible mitigating circumstance on Schneider's part and he saw no need to reprimand O'Hare for any joint responsibility he might have had for the event.

At the time he terminated O'Dell and Scott prior to the election, Bonham had prophetically warned Schneider that his own job was in jeopardy and it is clear that the Respondent jumped upon the first opportunity after the election to rid itself of one more union supporter. Its discriminatory selection of Schneider (and not O'Hare) for discipline, its pretextual reasoning and its imposition of discharge rather than some lesser disciplinary action does not show that it acted for a legitimate reason and it clearly is not shown that it would have occurred even in the absence of the employees' protected union activity. Accordingly, and I conclude that the General Counsel has met his overall burden and has shown that the Respondent's discharge of Schneider was in violation of Section 8(a)(1) and (3) of the Act, as alleged.

C. *The Challenged Ballots*

Here, I also find that as employees O'Dell and Scott were illegally terminated prior to the election and otherwise were laid off due to the Respondent's own illegal conduct in eliminating its plumbing business. Accordingly, they were eligible to vote in the election and I conclude that their ballots should be counted and that the Respondent's challenge to their ballots must be overruled.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating its employees about their intentions regarding union representation and threatening to close its doors if it was forced to go union, the Respondent has interfered with, restrained, and coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

4. By discriminatorily abolishing its plumbing business, slowing its bidding on other work, changing working conditions by changing locks and failing to reissue key to some employees and by laying off employees James Schneider, Frederick Scott, and Brian O'Dell because of and in retaliation for the employees' engaging in union or other protected concerted activities, the Respondent has violated Section 8(a)(3) and (1) of the Act.

5. The challenged ballots of employees Brian O'Dell and Frederick Scott from the election of December 19, 1996, should be counted, resulting in the issuance of a certification of results in Case 7-RC-20978.

6. Except as found here, Respondent is not shown to have engaged in other unfair labor practices as alleged in the complaint.

REMEDY

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

Inasmuch as I found that Respondent violated the Act by laying off three employees, I find it necessary to order that Respondent be required to reinstate these employees in order to restore the status quo ante existing prior to its commission of this unfair practice and to make all of them whole.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to reinstate the three named terminated employees to their former jobs or a substantially equivalent positions and to reestablish its plumbing business in a manner consistent with a level and manner of operation that existed on and prior to November 6, 1996, when it stopped or slowed bidding new jobs, see *Rebel Coal Co.*, 259 NLRB 258 (1981), and *Lean Siegler, Inc.*, 295 NLRB 857 (1989).

The reinstatement of the employees shall be without prejudice to their seniority or other rights and privileges previously enjoyed, and the Respondent shall make them whole for any loss of earnings they may have suffered because of the discrimination practiced against them by payment to them a sum of money to that which they normally would have earned from the date of the discrimination to the date of reinstatement, in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),³ and that Respondent remove from its files any reference to their layoff or termination and notify them in writing that this has been done and that evidence of the unlawful termination will not be used as a basis for future personnel action against them.

The record discussed above shows that the Respondent's course of misconduct emanated from upper level management, was swift and severe and persisted after the postelection period,

³ Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

and directly affected a substantial proportion of the unit employees. Accordingly, the possibility of erasing the effects of the Respondent's unfair labor practices is slight and I conclude that a *Gissel* bargaining order, as requested by the General Counsel, is appropriate in order to deter future misconduct and any reluctance to bargain with the Union.

This added remedy is valid even in the event that the Union wins the election inasmuch as certification alone does not serve to correct any unilateral changes which the employer may have instituted between the time when it was obligated to bargain and the time when a certification is issued and it is otherwise appropriate to order that both a certification of representative issue and a bargaining order issue as of the date that the Union achieved majority status, see *Glengarry Contracting Industries*, 258 NLRB 1167 (1981).

Because of the serious nature of the violations and because the Respondent's egregious misconduct demonstrates a general disregard for the employees fundamental rights, it is necessary that a broad order be issued requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act, *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, Bonham Heating & Air Conditioning, Inc., Gladwin, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, by interrogating employees concerning their union sympathies, and threatening to close its doors if forced to go union.

(b) Terminating or laying off any employees or otherwise discriminating against them in retaliation for engaging in union activities or other protected concerted activities.

(c) Abolishing its plumbing business, slowing bidding on other work, and otherwise changing employee working conditions in retaliation for the employees engaging in union activities or other protected concerted activities.

(d) In any other 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) Within 14 days from the date of this Order, reestablish its plumbing business and resume other bidding practices at the level and manner of operation that previously existed and reestablish or correct any discriminatory changes in conditions of employment and offer Brian O'Dell, James Schneider, and Frederick Scott full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Brian O'Dell, James Schneider, and Frederick Scott whole for any loss of earnings and other benefits suffered

⁴ 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 waived for all purposes.

as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Brian O'Dell, James Schneider, and Frederick Scott and within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

(d) On request, recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit concerning wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(e) 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, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Gladwin, Michigan facility copies of the attached noticed

marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) 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 the Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 7-RC-20978 be remanded to the Regional Director for Region 7 for such further action as is necessary based on the findings and conclusions here.

⁵ 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."