

Electrical Contractors, Inc. and Local 90, International Brotherhood of Electrical Workers, AFL-CIO.
Case 34-CA-8911

July 21, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND HURTGEN

On April 14, 2000, Administrative Law Judge Michael A. Marcionese issued the attached decision. The Respondent filed exceptions and a supporting brief, 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.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions 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, Electrical Contractors, Inc., Hartford, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.¹

Jennifer F. Dease, Esq., for the General Counsel.

Steven B. Kaplan, Esq. and *Christopher W. Huck, Esq. (Michelson, Kane, Royster & Barger, P.C.)*, for the Respondent.

Robert Corrado, Organizer, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. This case was tried in Hartford, Connecticut, on December 15, 1999.¹ The charge was filed by Local 90, International Brotherhood of Electrical Workers, AFL-CIO (the Union) on June 22, and amended on September 20. The complaint issued September 24 and was amended at the hearing. As amended, the complaint alleges that the Respondent, Electrical Contractors, Inc., violated Section 8(a)(1) of the Act on May 13 and 14 by soliciting its employees to sign letters drafted by the Respondent which were to be submitted to the State Commissioner of Labor and other public entities. The General Counsel alleges that the Respondent's statements and actions in connection with this solicitation was a form of interrogation and interfered with, restrained, and coerced the employees in the exercise of their Section 7 rights. The Respondent is also alleged to have impliedly threatened employees with unspecified reprisals on May 14, in connection with the same

¹ In a bow to comity, Member Hurtgen would modify the judge's proposed remedy and recommended Order to require the Respondent to "Notify the State Labor Commissioner, the State Department of Transportation, the Towns of Hamden and West Hartford and any other entities which the Respondent sent copies of the unlawfully solicited letters that those letters are null and void and should be given no effect by these parties." Member Hurtgen would make this change to avoid any suggestion that the Board is dictating to these entities what actions they should take.

¹ All dates are in 1999 unless otherwise indicated.

letter. The Respondent filed its answer on October 12 in which it denied the unfair labor practice allegations in the complaint.

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

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Hartford, Connecticut, is engaged in the business of providing electrical contracting services. The Respondent annually performs services valued in excess of \$50,000 directly for customers located outside the State of Connecticut. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent, in its answer, denied knowledge or information sufficient to form a belief as to the truth of the allegation that the Union is a labor organization within the meaning of Section 2(5) of the Act. In its brief, the Respondent argues that the complaint should be dismissed because the General Counsel did not satisfy her burden to prove that the Union is a labor organization. Corrado, the Union's organizer, testified without dispute that the Union is an organization made up of electricians and manufacturing employees that provides "people in construction and manufacturing a better opportunity through representation, contracts, wages, benefits and things of that nature." I find that this testimony is sufficient to satisfy the statutory definition of a labor organization. I shall also take administrative notice of prior Board decisions in which the union has been found to be a labor organization. See, e.g., *Electrical Workers Local 90 (Connecticut Const. Industries Assn.)*, 217 NLRB 644 (1975); *Electrical Workers IBEW Local 90 (SNET)*, 121 NLRB 1061, 1062 (1958). Accordingly, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent is a nonunion, merit shop electrical contractor in the construction industry. The Union has been attempting, without success, to organize the Respondent's employees since 1996. Corrado is the Union's principal organizer assigned to this campaign. Lou Bona Sr. is the Respondent's principal owner and president who essentially runs the Company. William Flynn Jr. is the Respondent's vice president of construction. Clifford Clauson is the Respondent's senior project manager and Michael Harrigan was, at all relevant times, the foreman on a project at Hall High School in West Hartford. The Respondent has admitted that Bona, Flynn, Clauson, and Harrigan are statutory supervisors and agents of the Respondent.

There is no dispute that, for some time prior to May 1999, the Union had been obtaining the names and home addresses of the Respondent's employees by making requests, under the State Freedom of Information Act (FOIA), for copies of the Respondent's certified payroll records on public projects. Under State and Federal prevailing wage laws, the Respondent was required to file certified payroll records with the State Commissioner of Labor to ensure compliance with the law. These records are then obtainable by anyone making a request under FOIA to the State Department of Labor or a municipality having a contract for a public works project valued above a certain limit. The Union used these certified payroll records to compile mailing lists and then sent prounion propaganda to the Respondent's employees. In addition, these mailing lists were used by a joint labor-management group

called the Connecticut Labor Management Cooperative Committee (CLMCC) to send letters to the Respondent's employees working on prevailing wage jobs informing them of the appropriate wage and benefit package for that job and advising them how to seek relief if they were not receiving the prevailing wage. Corrado admitted that he coordinated both the CLMCC and union mailings.

Daniel Larrivee was employed by the Respondent from June 1994 until he quit on June 30, 1999. He started as an apprentice and became a journeyman electrician and foreman during his tenure with the Respondent. There is no dispute that he left the Respondent's employ to take a job with a union contractor. At the time of the hearing, he was a member of the Union. In May, he was working for the Respondent as the foreman on a project at Output Technologies in South Windsor, Connecticut.² The Respondent had 10–12 journeymen and apprentice electricians working on that job at the time. Larrivee reported to Eric Young, the project's general foreman, who in turn reported to Project Manager Clauson.

Larrivee testified that, on May 13, while he and a group of eight employees were having lunch on the back of his pickup truck near the job trailer, Clauson approached them. According to Larrivee, Clauson said, "Here, I have this paper that I need you guys to sign for me." Larrivee began reading the paper, which was a two-page letter. Others simply signed and returned it to Clauson. One unidentified employee asked what the letter was for. Clauson responded, "It's a letter we're going to send to our lawyers to get the Union off our back." Larrivee was still reading the letter when Clauson handed out another paper and said, "I need you to sign this too. It just says that you weren't forced to sign the first letter." After reading both letters, Larrivee asked if he could make a copy. Clauson asked him why and Larrivee replied that he did not want to sign anything without keeping a copy. Clauson said, "[All right], but hurry up. I've got to get going." Larrivee signed both papers after making copies in the office trailer and returned them to Clauson. Larrivee testified that Clauson collected the signed documents from the employees and told them he was bringing them back to the office.

According to Larrivee, the first document handed out to the employees was a form letter addressed to the Connecticut Department of Labor Commissioner William Butler. The letters were identical with the exception of the first sentence, which identified the signatory as either a journeyman or apprentice electrician. The letters, multiple copies of which are in evidence, read as follows:

I am a licensed journeyman [or apprentice] electrician and a taxpayer of the State of Connecticut. I am writing to you to complain in the strongest possible way about the unauthorized and illegal disclosure by your department to third parties of my personal and confidential employment and financial information without my approval or consent.

I enclose a letter I recently received from an outfit calling itself the "CLMCC", a self-styled "organization for the betterment of the electrical industry." I believe that this outfit is simply a front for the electrical workers union. I am not a member of that union. I do not want to become a member of that union. I work for a merit shop, non-union

² None of the parties has alleged that Larrivee was a statutory supervisor.

contractor, by my free choice, and am very happy doing so. I consider the enclosed letter from the CLMCC to be nothing more than harassment, as well as an insult to my intelligence.

I also enclose a recent letter I received from the IBEW attempting to solicit my interest in the union. I also consider this letter to be nothing more than harassment.

Note that the PO Box on both letters is the same—PO Box 8145, New Haven. Obviously, the CLMCC is only an alphabet soup front for the union—and not a very clever one at that.

I am very concerned, and upset, that the union has received my personal and confidential employment and financial information—my social security number, my wages and payroll information, my address, and my place of employment—from the State Department of Labor or any of its agents. Neither I, nor my employer, have authorized the release of this personal and confidential information—which is set forth in the certified payrolls submitted by my employer for public construction projects—to any third party, let alone the electrical workers union. I do not believe that simply because I perform electrical work at a publicly owned building, the whole world is entitled to unlimited access to my personal information and papers, or my social security number, without any notice to me, or permission from me. I do not think I would have received these letters if your department hadn't disclosed this information to the union. It scares me that this information is being disclosed in this fashion.

Please be advised that I consider this action by your department to be a serious invasion of my rights of privacy and confidentiality. In the future, I want to be informed in writing before my personal and confidential employment information is released to anyone, and I do not want this information released to anyone without my written authorization.

UNDER NO CIRCUMSTANCES [SIC] DO I AUTHORIZE THE RELEASE OF THIS PERSONAL AND CONFIDENTIAL INFORMATION TO THE ELECTRICAL WORKERS UNION OR ANYONE ELSE FOR THAT MATTER.

I request your prompt attention to this matter. Please respond to this letter in writing as soon as possible. [Emphasis in original.]

As presented to the employees, the letter did not have either a return address or date. There is no dispute that these were added later by the Respondent's office personnel. In addition, the letters from the CLMCC and the Union, referred to in the letter as being attached, were not attached when the employees were asked to sign it.

According to Larrivee, the second document handed by Clauson to the employees at the Output Technologies job consisted of two pages. The cover page read as follows:

Gentlemen,

We need to get as many of these letters as possible signed—we are doing this in an effort to stop the D.O.L. and any one else from releasing *YOUR* personal information contained on the certified payroll forms to any one who asks for it.

Upon signature return to Jan—we will type in your names and addresses on the heading and forward them—in one big package to the commissioner.

We have got to put a stop to this.

Attached to this sheet was another document headed “NON-REPRISAL NOTICE,” which read as follows:

You do *not* have to sign and transmit the attached letter to the department of Labor.

There will be no reprisals if you choose not to sign and transmit the attached letter. Your position on this issue will not subject you to any reprisal from ECI, nor will your position result in any benefit being given to you by ECI.

Please sign and date one copy of this form to acknowledge that you have read and understand it. The second copy is for you to keep if you wish to do so.

Larrivee testified that he read and understood both the letter to the Commissioner of Labor and the “Non-Reprisal Notice” before signing them. Larrivee acknowledged having received a letter similar to the letter from the CLMCC that the Respondent later attached to the letter he signed on May 13. He did not recall receiving the letter from the Union that was later attached to his signed letter to the Commissioner.

Clauson testified for the Respondent and disputed Larrivee’s version of the May 13 incident. Clauson testified that both the letter to the Commissioner and the “Non-Reprisal Notice” were given out together as a set with the cover letter explaining their purpose. According to Clauson, this is the form in which he received them from Jan Berry, the Respondent’s office manager who maintains payroll and personnel records. Clauson testified that Berry gave him a package of these letters for each jobsite under his supervision. Each package contained the appropriate number of letters for journeymen and apprentices assigned to that job. When Berry gave him these packages, she told him, “We’re trying to get, to send out a petition to the Department of Labor. We want to send these out to each jobsite and see if we can get these signed.” According to Clauson, he received no other instructions from Berry, or anyone else, about how to get the letters signed. Although Clauson was not involved in the preparation of these letters, he was aware from talk within the office that the Respondent was preparing such a letter for the employees.

Clauson testified that at all but the Output Technologies job he simply left the package of letters with the foreman to hand out to the employees. Output Technologies was the only job where he spoke directly to the employees about the letters. Clauson corroborated Larrivee regarding the timing and location of the incident, but disputed his testimony regarding what was said. According to Clauson, as he passed out the letters and nonreprisal notices, he told the employees that the Respondent had put together a petition to send to the Commissioner of Labor and that it was self-explanatory. He asked them to read it and, if they agreed with it, to sign the letter. He told them if they did not agree to give it back to him and he would return it to the office. According to Clauson, he said nothing else. He specifically denied telling the employees that the purpose of the letter was “to get the Union off our backs.” Clauson also denied pressuring anyone to sign the letters or telling them to “hurry up.” He did not recall if any employees asked any questions about the letter, but he did recall that one employee refused to sign it. According to Clauson, he just told this employee to give it back to him. On cross-examination, Clauson

testified that he told the employees that, if they signed the letter to the Commissioner, they also had to sign the “Non-Reprisal Notice” to show that they weren’t forced to sign the letter. Clauson acknowledged that he could not recall the exact words that he used when he spoke to the employees. According to Clauson, as the employees signed the letters and nonreprisal notices they gave them back to him. He then took the signed documents back to the office and gave them to Berry. He denies telling Berry or anyone else who had signed or not signed the letters. Clauson testified that after he gave the letters back to Berry he had no further involvement until after the charge was filed.

Jose Oliveira was employed by the Respondent from May 7, 1991, until he quit on November 19, 1999. He is a journeyman electrician and worked primarily as a foreman in the telecommunications division. There is no dispute that he also left the Respondent to work for a union contractor. At the time of the hearing, he was working for a contractor in the geographic jurisdiction of another local of the IBEW. He was not a member of the Union, but had an application for membership pending. In May, Oliveira was working for the Respondent at Hall High School in West Hartford, Connecticut. This was a prevailing rate job. Oliveira was not the foreman on this job. The foreman was Harrigan. Clauson was the project manager for this job as well. Oliveira testified that there were usually about eight employees on the job at Hall.

Oliveira testified that, on May 14, when he signed in at the job trailer in the morning, Harrigan told him and the other electricians to return to the trailer at 9 a.m., the usual morning breaktime. When he and the others returned to the trailer at 9 a.m., Harrigan had two piles of papers on his desk. Harrigan told the employees, “Here’s some paperwork. We’d like you to read it. I’d like to have it signed so we can return it to the office by the end of the day.” In one pile was the same letter to the Commissioner of Labor that Clauson distributed at Output Technologies. In the other pile was the “Non-Reprisal Notice.” As at Output Technologies, the letters did not have the employees’ names and addresses or the dates typed in and there were no attachments to the letters that were on Harrigan’s desk.

Oliveira testified that he read the letter and refused to sign it. He specifically objected to the wording of the fifth paragraph dealing with the release by the Department of Labor of employees’ social security numbers. According to Oliveira, he didn’t believe that anyone could release an individual’s social security number. He felt that the paragraph was inaccurate and had nothing to do with the rest of the letter, which was a complaint about the Union. Oliveira testified that he voiced these objections to Harrigan, refused to sign the letter, and returned to work. According to Oliveira, Harrigan said nothing in response to his refusal to sign the letter. Early that afternoon, Clauson paged Oliveira on his company beeper. When he returned the page, Clauson asked him some questions about a punch list he was working on for a project at another high school in town. After Oliveira answered these questions, Clauson said, “Joe, you didn’t sign the paperwork this morning.” When Oliveira replied, “No, I didn’t,” Clauson said, “Well, just sign it.” After a pause, Oliveira said, “[O]r else, what’s going to happen to me?” Clauson answered, in a strong tone of voice, “Joe, just sign it.” Oliveira did not respond, but after talking to Clauson, he went to see Harrigan and asked if he had any more of the paperwork for Oliveira to sign. Harrigan told him that he had already sent it back to the office. Harrigan said he would try to get another one. Later that day, Oliveira was paged on a walkie-talkie and told to come back to the trailer to sign the

paperwork. Oliveira identified the letter and “Non-Reprisal Notice” he signed in the trailer that day. Oliveira acknowledged reading and understanding both documents before signing them.

Harrigan and Clauson disputed Oliveira’s testimony. According to Harrigan, Clauson dropped off a stack of letters and “Non-Reprisal Notices” at the job when he came for his daily walk-through. Harrigan testified that Clauson said to give it to the guys, have them read it and, if they agreed, to have them sign it, and bring the letters to the shop when he was done. Harrigan recalled that he handed out this paperwork at lunchtime. The letters and “Non-Reprisal Notices” were attached with the explanatory cover letter when he handed them out. He recalled asking the employees to read the letters and to sign if they agreed. He recalled that only Oliveira and his apprentice, Dan Murphy, refused to sign the letter. According to Harrigan, Oliveira said he wanted to bring the letter home to read it carefully so he would have a clear understanding what it was about. Harrigan testified that he told Oliveira that he didn’t care if he signed the letter or not, that it was totally up to him. Harrigan testified further that he dropped the letters off at the office the following day, telling Berry that two guys refused to sign. He did not recall if he identified the two by name. Harrigan denied reporting Oliveira’s refusal to sign to anyone. According to Harrigan, he had no further discussion about these letters with anyone until the charge was filed. Harrigan testified that he did not know if Oliveira or Murphy ever signed the letters. Murphy was still employed by the Respondent at the time of the hearing.³

Clauson corroborated Harrigan regarding the manner in which the letters and “Non-Reprisal Notices” were left at the Hall jobsite to be signed by the employees. He also corroborated Harrigan that the only instructions he gave were to pass them out to the employees to see if they wanted to sign them. He did not give Harrigan any instructions regarding what to do if someone refused. Clauson denied having any further discussion with Harrigan about these letters until a few days before the hearing in this case. Although Clauson acknowledged that Oliveira carried a company beeper and that he spoke to Oliveira regarding work issues around that time, he denied talking to him about the letter or his refusal to sign it. He specifically denied telling Oliveira to “just sign it.”

Flynn, the Respondent’s vice president of Construction, testified that, for several months in early 1999, anywhere from 12 to 24 employees voiced complaints to him and other management representatives about letters they were receiving at home from the Union and CLMCC. These complaints were expressed at a company party in February and in the course of casual conversations when employees came to the office to pick up their paychecks. Some employees also expressed fear about the Union being able to contact them by telephone. Flynn testified that, when employees asked him how the Union was able to learn their addresses and phone numbers, he told them it was probably by obtaining the certified payroll records from the State. According to Flynn, he discussed these complaints with Bona, the Respondent’s president, and suggested that the Respondent do something about the employees’ concerns. In response, Bona had the Respondent’s attorneys draft a letter that employees could use to try to prevent the release of information about them, which was contained on the certified payroll reports. The actual wording of the letter was the result of input from Bona to the attorneys.

³ A copy of the letter and the nonreprisal notice signed by Murphy are in evidence.

According to Flynn, there were several drafts of the letter, not all of them containing the sentences expressing employees’ noninterest in the Union. Flynn testified that it was Bona who made the final decision to put that in the letter. The “Non-Reprisal Notice” was prepared to document that employees were not under any pressure to sign the letters. Bona drafted the covering memo addressed, “Gentlemen.”

Flynn testified further that once the final draft of the letter was ready he and Berry were responsible for the mechanics of distributing the letters, collecting them from the employees and packaging them to send to the State Labor Department and other entities. Because Berry was familiar with the number of employees and classifications working at each job, she prepared packages for the project managers to take to the jobsites with the intent that the foremen would make them available to the employees to sign or not sign as they chose. Flynn then gave these packages to the project managers to distribute at the jobsites for which they were responsible. Flynn acknowledged that no written instructions were given, nor any meetings held, to advise the project managers and foremen how to go about soliciting employees to sign the letters and “Non-Reprisal Notices.”⁴ Flynn testified that all of the Respondent’s supervisors have been trained in the “do’s and don’ts” under the Act and know not to interrogate or threaten employees regarding the Union. As the signed letters and “Non-Reprisal Notices” came back to the office, he forwarded them to the attorney, who was then responsible for submitting them to the appropriate public entity. Flynn denied that he reviewed the letters to keep track of who had signed or not signed. According to Flynn, the Respondent did not even keep copies of the letters and “Non-Reprisal Notices.” Although no “scorecard” was kept, Flynn was able to testify that only 83 of approximately 100 field employees signed these documents.⁵ Flynn denied that any reprisals were taken against any employee for failing or refusing to sign a letter.

The record contains copies of letters from the Respondent’s attorney to the State Commissioner of Labor, the State Department of Transportation, the towns of Hamden and West Hartford, and several general contractors for whom the Respondent was working, enclosing copies of the letters signed by the Respondent’s employees. In this correspondence, the Respondent requests that the recipients redact the name, home address and social security number of the Respondent’s employees from copies of any certified payroll records they disclose to third parties who request them. In these letters, the Respondent objects in particular to the Union’s use of information obtained from its certified payrolls to contact its employees by letter and phone, characterizing such communications as harassment and an invasion of privacy. The Respondent’s efforts to prevent the disclosure of this information has met with mixed results. The Commissioner of Labor denied the request, citing Connecticut statutes that treat certified payroll records filed by contractors working on prevailing wage jobs as public records open to everybody. The town of Norwich initially

⁴ Although Flynn testified that he specifically instructed all project managers not to pressure anyone to sign the letters, Clauson did not corroborate him in this regard.

⁵ David Vertefeuille, the Respondent’s project manager for its traffic division, signed one of the letters to the Commissioner of Labor. He testified, however, that none of the 20 employees in his division signed the letter. Because Vertefeuille did not distribute the letters to any of his employees, it is more than likely they were not even asked to sign it. This could account for the less than 100-percent signing rate among the Respondent’s employees.

complied with the Respondent's request, but reversed course after the Commissioner of Labor intervened. More recently, the town of Hamden has complied with the Respondent's request, providing only redacted copies to the Union in response to a September 24 request. At the time of the hearing, the Union's complaint to the State's Freedom of Information Commission over this nondisclosure was still pending.

The complaint alleges that the Respondent's solicitation of employees to sign the form letters to the State Labor Commissioner violated Section 8(a)(1) of the Act in several respects. The General Counsel argues that the Respondent's solicitation and collection of these letters amounted to unlawful interrogation because the letters contained a statement that the signer was not a union member and had no interest in joining the union. By asking employees to sign these letters in the presence of their supervisors, the Respondent essentially asked them to openly declare their union sympathies. According to the General Counsel, the Respondent's conduct here is akin to those cases where an employer's solicitation of employees to wear antiunion buttons or insignia has been found unlawful by the Board. See, e.g., *Houston Coca-Cola Bottling Co.*, 256 NLRB 520 (1981); *Kurz-Kasch, Inc.*, 239 NLRB 1044 (1978). The General Counsel argues that the Respondent's actions are also unlawful because they interfered with employees' Section 7 right to communicate with the Union. The General Counsel analogizes this case to those where the Board has found unlawful employer assistance and encouragement of employees to revoke union authorization cards. See, e.g., *Adair Standish Corp.*, 290 NLRB 317, 318 (1988), enfd. in relevant part 912 F.2d 854, 860 (6th Cir. 1990). Finally, the complaint alleges specifically that Clauson's demand on May 14 that Oliveira "just sign" the letter constituted an implied threat of unspecified reprisals in violation of Section 8(a)(1) of the Act.

The Respondent argues that its actions were a lawful response to the complaints it received from employees about unsolicited communications they were receiving from the Union. According to the Respondent, it did nothing more than provide its employees with a vehicle to try to prevent the unwanted disclosure of their names, addresses, and social security numbers to the Union and other third parties through disclosure of the Respondent's certified payroll reports. Employees were free to sign or not sign and were given assurances that no reprisal would be taken if they chose not to sign the letter, as documented by the "Non-Reprisal Notices" distributed with the form letter to the Commissioner. According to the Respondent, the fact that some employees did not sign the letter and suffered no adverse consequences, and that none of the employees who did sign complained about doing so or requested to rescind their letters, proves that employees were "not restrained or coerced" by the Respondent. The Respondent contends that there was no "interrogation" because the Respondent did not keep copies of the signed letters and did not otherwise keep a "scorecard" of those who signed and did not sign. The Respondent argues that the allegation regarding Clauson's implied threat to Oliveira should be dismissed on credibility grounds.⁶

⁶ The Respondent also argued in its brief that even if the General Counsel's allegations were sustained the complaint should be dismissed because the General Counsel did not prove that these unfair labor practices "affected" interstate commerce as required by the Act. The Board has previously rejected such arguments where, as here, the respondent has admitted that it is an employer engaged in commerce within the meaning of the Act. See, e.g., *3 State Contractors*, 306 NLRB 711 fn. 3 (1992).

The law is well settled that the test for determining whether an employer's statements or actions violate Section 8(a)(1) of the Act is an objective one. The employer's intent or motive is irrelevant. Moreover, the Board does not require proof that employees were in fact coerced. Rather, the test is whether the Respondent's conduct "may reasonably be said to have a tendency to interfere with the free exercise of employee rights under the Act." *El Rancho Market*, 235 NLRB 468, 471 (1978), citing *American Freightways Co.*, 124 NLRB 146, 147 (1959). Accord: *Interstate Truck Parts, Inc.*, 312 NLRB 661 fn. 3 (1993). I agree with the General Counsel that the Respondent's conduct here meets this test.

I credit the testimony of Larrivee and Oliveira to the extent it conflicts with that of Clauson and Harrigan. Although their status as union members or prospective members might suggest some bias and motivation to favor the Charging Party with their testimony, Harrigan's status as the son-in-law of the Respondent's owner, and the fact that Harrigan and Clauson were part of Respondent's management team, could have a similar impact on their candor. Larrivee and Oliveira appeared to me to be testifying in an honest and forthright manner. They also appeared to have a much clearer recollection of the events of May 13 and 14 than the Respondent's witnesses. Clauson conceded that he could not recall the exact words he used when speaking to employees and that he could not even recall if any employees at Output Technologies asked any questions about the letters. Harrigan did not even recall whether there were any attachments to the form letter to the Commissioner and whether his return address were typed in when he signed the letter. Moreover, Harrigan and Clauson corroborated the General Counsel's witnesses in many respects, including the fact that Oliveira refused to sign the letter when first presented with it. Accordingly, to the extent there are any factual disputes, I credit the version advanced by the General Counsel's witnesses.

I agree with the General Counsel that the Respondent's conduct here may best be analogized to situations where an employer provides advice and assistance to employees who seek to revoke their union authorization cards. Although it is not unlawful for an employer to advise employees how to do so, and to assist them by drafting revocation documents, an employer transgresses the bounds of lawful conduct when it attempts to ascertain whether employees will avail themselves of the opportunity to revoke their authorizations or otherwise engages in conduct where employees would tend to feel peril if they refrained from doing so. *Adair Standish Corp.*, supra. Cf. *R. L. White Co.*, 262 NLRB 575, 576 (1982). Had the Respondent simply drafted and distributed a letter that employees could use to request that public authorities not disclose their personal information, it would not have run afoul of the Act's prohibitions. The Respondent, however, went further and crossed the line between permissible and impermissible communication with its employees. By distributing these letters at employees' worksites and asking them to sign in the presence of their supervisors and then by collecting the signed letters, the Respondent engaged in conduct that could reasonably have led employees to believe that they were at peril if they refrained from signing it. The fact that the "Non-Reprisal Notice" was given out at the same time, or shortly thereafter, did not negate the coercive circumstances. See, e.g., *American Linen Supply Co.*, 297 NLRB 137, 142 (1989), enfd. 945 F.2d 1428 (8th Cir. 1991); *Indiana Cal-Pro, Inc.*, 287 NLRB 796, 802 (1987), enfd. 863 F.2d 1292 (6th Cir. 1988). Moreover, the fact that the Respondent collected the letters from the employees indicates an attempt by the Respondent to determine whether the employees

chose to avail themselves of this opportunity to stop the "union harassment."⁷

The Respondent's conduct also went beyond permissible bounds by the inclusion in the form letters of a statement of nonmembership and noninterest in the Union. By asking employees to sign the letter to the Labor Commissioner, the Respondent in effect asked them to declare that they did not belong to the Union, that they had no interest in joining the Union, and that they regarded attempts by the Union to contact them as "harassment."⁸ These statements in the letter were unnecessary if the sole purpose of the letter were to stop the dissemination of employees' personal information to third parties generally. The inclusion of this language belies the true purpose behind the Respondent's conduct, i.e., to poll its employees to ascertain the extent of employee interest in unionization. The Board has routinely held that this type of conduct amounts to unlawful interrogation. *Houston Coca-Cola Bottling Co.*, supra; *Kurz-Kasch, Inc.*, supra. Accord: *A. O. Smith Automotive Products Co.*, 315 NLRB 994 (1994).

The cases cited by the Respondent applying "the *Bourne* factors"⁹ to determine whether an employer's questioning of an employee violates the Act are inapposite. Those cases involved the direct questioning of employees by supervisors and agents of their employer, not the surreptitious polling at issue here. Moreover, the Board recently reaffirmed its position that the *Bourne* factors were not to be mechanically applied. Rather, the Board looks to the totality of circumstances to assess the legality of employer interrogation. *Medcare Associates*, 330 NLRB 935 (2000). The totality of circumstances here convinces me that the Respondent's conduct in soliciting its employees to sign these letters would reasonably tend to coerce the employees in the exercise of their Section 7 rights.

Any doubt regarding the lawfulness of the Respondent's actions is resolved by the testimony of Oliveira. Oliveira apparently took the Respondent's nonreprisal notice at face value by choosing not to sign the letter to the Labor Commissioner when he was first asked to do so. Later, when his project manager paged him and questioned his refusal to sign the letter, Oliveira could reasonably believe he really did not have a choice. When Oliveira asked directly, "What's going to happen to me" if I don't sign, Clauson repeated, in a strong tone, "just sign it." The clear implication of this exchange is that there would be consequences if he chose not to declare his opposition to the Union by signing the letter. This implied threat was not only independently unlawful but shows that the "Non-Reprisal Notice" that employees were required to sign if they signed the letter was a sham.¹⁰

Accordingly, based on the above, and the record as a whole, I find that the Respondent violated Section 8(a)(1) of the Act as alleged in the complaint.

⁷ Although the Respondent may not have retained copies of the signed letters, it clearly was kept informed of which employees had signed by receipt of a copy of the attorney's correspondence to the Labor Commissioner and other entities to which these letters were attached. Moreover, Berry clearly had to be aware which employees had signed because she packaged the letters for the attorney, thereby communications from the Union.

⁸ The Respondent's opposition to union representation of its employees was well known to the employees because of letters it had mailed to them in response to the Union's propaganda.

⁹ *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964).

¹⁰ I also note that Murphy, the only other employee at Hall High School who refused to sign the letter in the job trailer on the morning of May 14, also ended up signing the letter.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

3. By soliciting its employees to sign letters expressing their opposition to being contacted or represented by the Union, the Respondent has interrogated its employees and interfered with, restrained, and coerced them in the exercise of their Section 7 rights, thereby engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

4. By impliedly threatening its employees with unspecified reprisals for failing to sign a letter expressing their opposition to being contacted or represented by the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) 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. Specifically, I shall recommend that the Respondent be ordered to notify the State Labor Commissioner, the State Department of Transportation, the towns of Hamden and West Hartford, and any other entities to which it sent copies of the unlawfully solicited letters that those letters are null and void and to be given no effect by these parties.

The General Counsel has requested that the Respondent also be ordered to reimburse the Union for any costs or expenses incurred as a result of the Respondent's "success" in utilizing the unlawfully obtained letters to block the Union's ability to obtain copies of the Respondent's certified payroll reports. I find no basis in this record to grant such an extraordinary remedy. The record reveals that only one town has denied the Union access to all the information contained on the certified payroll since the Respondent began using the unlawfully solicited letters. In response to this denial, the Union's organizer filed a complaint with the state's Freedom of Information Commission against the town. There is no evidence that doing so has cost the Union any money. Moreover, the record reveals that when another town withheld information from the Union, the Union was able to enlist the support of the State Labor Commissioner to get the information released.¹¹ Because the Commissioner has already agreed with the Union's position that this information is subject to public disclosure, the Union is unlikely to incur any extraordinary expense to get this information in the future. In rejecting the General Counsel's request for a special remedy, I also note that the Respondent's position taken in its correspondence with the various public entities was not a frivolous one and had the support of tribunals in other jurisdictions. The fact that the Respondent may have violated the Act in the manner in which it solicited its employees to sign these letters does not mean that it had no right to state its objections to the release of information regarding its employees by governmental entities.¹² Accordingly, I shall not recommend the extraordinary relief sought by the General Counsel.

¹¹ The record does not reveal whether this occurred before or after the Respondent solicited its employees to sign the letters to the Commissioner of Labor.

¹² The FOIA issue raised by the Respondent's objections based on its employees' privacy concerns is outside the scope of the Board's authority in this proceeding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹³

ORDER

The Respondent, Electrical Contractors, Inc., Hartford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating any employee about union support or union activities.

(b) Soliciting any employee to sign letters expressing his opposition to being contacted or represented by Local 90, International Brotherhood of Electrical Workers, AFL-CIO (the Union), or any other labor organization.

(c) Impliedly threatening any employee with unspecified reprisals for failing to sign a letter expressing his opposition to being contacted or represented by the Union.

(d) 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) Notify the State Labor Commissioner, the State Department of Transportation, the Towns of Hamden and West Hartford, and any other entities to which the Respondent sent copies of the unlawfully solicited letters that those letters are null and void and to be given no effect by these parties.

(b) Within 14 days after service by the Region, post at its facility in Hartford, Connecticut, copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Re-

¹³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁴ 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."

spondent 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 May 13, 1999.

(c) 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.

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 coercively question you about your union support or activities.

WE WILL NOT solicit you to sign letters expressing your opposition to being contacted or represented by Local 90, International Brotherhood of Electrical Workers, AFL-CIO (the Union) or any other labor organization.

WE WILL NOT impliedly threaten you with unspecified reprisals for failing to sign a letter expressing your opposition to being contacted or represented by the Union.

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 notify the State Labor Commissioner, the State Department of Transportation, the towns of Hamden and West Hartford, and any other entities to which we have sent copies of the unlawfully solicited letters that those letters are null and void and to be given no effect by these parties.

ELECTRICAL CONTRACTORS, INC.