

D & E Electric, Inc. and Local 1, International Brotherhood of Electrical Workers, AFL–CIO. Cases 14–CA–25491 and 14–RC–12015

August 15, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

On September 22, 1999, Administrative Law Judge Jerry M. Hermele issued the attached decision. The General Counsel and the Petitioner filed exceptions and supporting briefs, and the Respondent filed cross-exceptions and an answering and 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 briefs and has decided to affirm the judge’s rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted, the complaint is dismissed, and the objection in Case 14–RC–12015 is overruled and the case is remanded to the Regional Director for Region 14 to open and count the ballots of James Lysell, John Strasburger, and Thomas Paluczak. The Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification.

Lynette K. Zuch, Esq., for the General Counsel.
Randall Thompson and Terry L. Potter, Esqs. (Blackwell Sanders Peper Martin LLP), of St. Louis, Missouri, for the Respondent.

¹ The General Counsel and the Petitioner have 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 Drywall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d. Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Moreover, in adopting the judge, we note that on March 18, 1999, the Union filed objections to the election, challenging the ballots of three employees on the basis that the Respondent hired them as a part of a unit packing scheme.

In adopting the judge’s dismissal of the complaint and the recommendation to overrule the Union’s objections, Chairman Truesdale does not rely on the judge’s finding that the Respondent’s owner, Edward Hagelstein’s, remark that he “didn’t think [the employees] needed the union” is not evidence of union animus because it was protected speech under Sec. 8(c) of the Act. The Board has held that an employer’s antiunion comments, while themselves protected speech, may nevertheless establish animus toward its employees’ union activities. See *Ross Stores*, 329 NLRB 573 (1999); *Lampi LLC*, 327 NLRB 222 (1998). Although the Board has taken a contrary view in the cases cited by the Chairman, Members Hurtgen and Brame do not rely on remarks protected by Sec. 8(c) as evidence of animus. See their dissenting positions in *Ross Stores*, *supra*, fn. 17, and *Lampi*, *supra* at 223 fn. 7. In any event, Members Hurtgen and Brame note that this difference of position does not affect the adoption of the judge’s dismissal of the complaint in this case.

Stacey A. Meyers, Esq. (Schuchat, Cook & Werner), of St. Louis, Missouri, for the Charging Party.

DECISION

I. STATEMENT OF THE CASE

JERRY M. HERMELE, Administrative Law Judge. On March 12, 1999, the 14 employees of the Respondent, D & E Electric, Inc. (D & E), voted 6 to 5 in favor of being represented by Local 1, International Brotherhood of Electrical Workers, AFL–CIO (the Union). However, on March 18, 1999, the Union challenged the ballots of three employees—James Lysell, John Strasburger, and Thomas Paluczak—who were hired in early 1999, claiming that the Respondent “engaged in unit packing” in order to defeat the Union. Then on May 18, 1999, the General Counsel issued a complaint alleging that D & E violated Section 8(a)(1) of the National Labor Relations Act by packing the election unit.¹ And on May 21 the Regional Director for Region 14 of the National Labor Relations Board issued a report on the challenged ballots, consolidating that case with the General Counsel’s complaint. Finally, on June 30, 1999, an amended complaint was issued, alleging that a strike against the Respondent was due to its unfair labor practice of unit packing.

A 2-day trial was held on July 8 and 9, 1999, in St. Louis, Missouri, during which the General Counsel called 12 witnesses and the Respondent called three witnesses. All parties then filed briefs on August 12, 1999.²

II. FINDINGS OF FACT

D & E is an electrical contractor located in suburban St. Louis (Overland, Missouri). Its two owners, Edward Kirk Hagelstein, Jr. and David Westrich, founded the Company in 1995. Annually, the Company provides over \$50,000 in services to its customers (GC Exh. 1(f); Tr. 18, 101). In 1996, Hagelstein and Westrich started hiring employees via referrals from other people and from newspaper ads (Tr. 20, 35, 46, 88, 446). In 1996, D & E hired eight employees, in 1997 it employed 15 men, at various times throughout the year, and in 1998 it employed 12 men at various times. In August 1998 newspaper ads produced two new employees. While the tenures of some employees were of short durations, all employees from 1996 to 1998 were fulltime, averaging approximately 40 hours a week (GC Exhs. 2–4; Tr. 350–352, 380–382). Although Hagelstein characterized one of these employees, Jason Grizzle, as part-time summer help in 1996 (Tr. 36), Grizzle in fact averaged 38 hours a week from June to August 1996 (GC Exh. 2, pp. 9–10). Three of the employees hired in 1996 had no electrical experience, four of the employees hired in 1997 had no such experience, and one in 1998 was likewise inexperienced (Tr. 116, 444–446). Indeed, according to Hagelstein, it is difficult to find experienced employees in today’s labor market (Tr. 454). Moreover, because of the Company’s manpower needs, some employees would start immediately—i.e., the same day of their interview (Tr. 116, 461). Also, the Company has hired multiple employees at the same time before, other than at the initial hiring of employees in 1996. For example, in March

¹ The Union’s other objections to the election were withdrawn leaving only the unit packing objection.

² On July 13, 1999, all parties filed a joint motion to receive General Counsel Exhibit 8, a voluminous exhibit regarding employees’ timecards. This exhibit needed to be paginated after the trial. The unopposed motion will be granted.

and April 1997, three employees were hired within a few weeks (GC Exh. 3, pp. 21–25; Tr. 456).

McBride & Son Homes, Inc. (McBride), a residential home builder in the St. Louis area, was D & E's biggest customer, accounting for 60 percent to 70 percent of their business (Tr. 214, 467). December 1998 was a very busy month for D & E as the housing market was strong and McBride was finishing up many homes at the end of the year. In that connection, D & E employees could work an hour or two of overtime on Monday through Friday, without advance approval. Also, employees that wanted to often worked Saturdays (Tr. 106, 220, 363, 398, 418). And they did so on many Saturdays from July to December 1998 (GC Exh. 7).

James Lysell was a mechanic at Al's Service, where D & E had its vehicles repaired. Sometime in 1998, James Lysell's father, who knew Hagelstein and/or Westrich, asked about a job for his son at D & E. Lysell's father was told that there was no opening. Then in December 1998 Lysell talked with Hagelstein and/or Westrich directly and was told that there might be an opening soon (Tr. 57–65, 103, 105, 109, 146–152). Thomas Paluczak was a carpenter, whose father also talked with D & E's owners about a job change for his son, twice in 1998 (Tr. 72–73, 120–123, 173–176).

According to McBride's president, John Eilermann, Big Bend Crossings has been one of the most successful of McBride's projects (Tr. 214, 216). McBride's official, John Seulthaus, told Hagelstein and Westrich on approximately January 20, 1999, that he wanted D & E to perform the electrical work on these new homes. To that end, Hagelstein was shown McBride's planned 1999 construction schedule for its various projects, including Big Bend (R. Exh. 2, p. 1; Tr. 67, 221–223, 230, 235, 477, 481–482, 485). According to Hagelstein, this was the first time he learned about the magnitude of the project (Tr. 448). Westrich told Eilermann that D & E could "man the job" (Tr. 265). Eilermann estimated that D & E would do 50 percent more work for McBride in 1999 compared with 1998 (Tr. 227). But the McBride schedule also indicated that five of its 12 projects for 1999 would be completed during the first half of the year (R. Exh. 2).

On January 25, 1999, Greg Booth, the Union's organizer and business agent, visited D & E's office to meet with the owners. He told them that a majority of the Company's employees wanted to be represented by the Union and he asked them to recognize the Union voluntarily. Hagelstein and Westrich said they would think about it. Meanwhile, Booth immediately went to the local regional office of the National Labor Relations Board and filed a petition. An election was later set for March 12, 1999, in which all employees on board by February 6 could vote (GC Exh. 1(a); Tr. 278–283).

D & E's workload slowed down in January 1999 from December 1998's hectic pace (Tr. 313–314, 354, 396, 431). But Hagelstein knew that two McBride projects, Winghaven and Big Bend Crossings, were going to get busy soon. And D & E's other significant client, Riley Homes, had work scheduled later in the year. So, he decided to hire more employees (Tr. 446–447). Westrich called Lysell in late January 1999 and asked if he was still interested in a job. Lysell came to the office on Saturday, January 30 and said he wanted to work part-time to see if he liked it, inasmuch as he had no electrical experience. Lysell worked for 5 Saturdays: January 30, February 6, 13, 20, and 27, 1999, for 8 hours a day (GC Exh. 5, p. 15; GC Exh. 8, pp. 159–168; Tr. 68, 70, 74, 113–115, 142, 155–

156). Westrich also called Paluczak around January 21–25, 1999, to inquire whether he was still interested in working. Paluczak said he also wanted to try it out. To that end, Paluczak came in on February 6, filled out a job application, and started that day, working 5 Saturdays: February 6, 13, 20, and 27; and March 20 (GC Exh. 5, p. 19; GC Exh. 8, pp. 195–; Tr. 74, 124, 130–131). Finally, Glen Hackmeister, a friend of Hagelstein and Westrich, referred John Strasburger to D & E. Strasburger was unemployed and had a background in construction, and heating and air conditioning work. Strasburger called Westrich and interviewed on January 29. He started working on Friday, February 5 for 4 hours, and for 5 hours on Saturday, February 6. Strasburger was off from Monday, February 8 to Thursday, February 11. He remains employed with D & E (GC Exh. 5, pp. 29–30; GC Exh. 8, pp. 305–307; Tr. 79–81, 132–137, 189–193, 461). According to Hagelstein and Westrich, they intended to train Lysell, Paluczak, and Strasburger during their first few weeks on the job and they wanted Lysell and Paluczak to become fulltime employees by the end of March 1999 (Tr. 127, 452–453, 455, 476, 484). All three new employees started working on temp poles, which are used to supply electricity to new construction sites (GC Exh. 8; Tr. 143). Westrich considered Lysell and Paluczak to be good workers (Tr. 120, 132). With the hiring of these three new employees, D & E had its largest workforce ever at 14 (Tr. 464).

Hagelstein tightened up on overtime in January 1999, telling the employees that advance permission was needed to work more than 8 hours a day (Tr. 413). For example, Hagelstein told employee Tony Ryder not to work an extra 30 minutes to finish up a job on February 5 (Tr. 361). This policy remained in effect in March as well (Tr. 362, 398, 426). As for Saturday work, Hagelstein did not approve various February and March requests by employees Tony Ryder, Stephen Coffey, Jason Stavron, and Thomas Creamer because of insufficient work (Tr. 363–364, 398–399, 413–414, 429–430). Also according to employee Gregg LaBeau, too many men were working on one job on Saturday, February 20 (Tr. 316, 318).

Neither Hagelstein nor Westrich ever talked with the three new employees about the Union or the upcoming election. Indeed, Hagelstein and Westrich testified that they knew nothing about the views of any of these three new men about the Union (Tr. 165, 184, 204, 457, 468, 482). Moreover, Lysell testified that he didn't learn of the pending election until after he started working at D & E (Tr. 164–165).

Prorion employee LaBeau testified that on February 20, 1999, Hagelstein said he "didn't think we needed the Union" (Tr. 331–332). Employee Tom Creamer testified that around February 25, 1999, he asked Hagelstein how the three new employees would vote. According to Creamer, Hagelstein replied "we're not really that stupid that we would hire somebody . . . to . . . go . . . against the vote" (Tr. 427–428). Hagelstein denied saying this and he further denied ever talking with Creamer about how the three new employees would vote (Tr. 468–469).

On March 10, 1999, union organizer Booth visited a D & E jobsite where Strasburger and Tom Creamer were working. Booth already knew Creamer to be a union supporter. According to Booth, he asked Strasburger if he had any questions about the Union. Strasburger replied that he did not know how long he would be working and that he was at D & E "just . . . to help out the owners" (Tr. 283–284). According to Creamer,

Strasburger said he was “definitely not” interested in the Union, that he was not sure if he wanted to remain an electrician, and that he was “just here . . . to help Dave and Kirk out. . . .” (Tr. 428–429). Strasburger, however, testified that he merely told Booth that he was not interested in the Union and that he did not “know if I was going to stick in this trade or not.” Strasburger denied ever saying that he was employed to help out the owners (Tr. 200–201). Also in early March, employee Jason Stavron talked with Strasburger about the Union and Strasburger said that he was told to stay away from union activity by Glen Hackmeister, who originally told him about the job opening at D & E (Tr. 408–409). Further, in another conversation, with employee LaBeau sometime in March, Strasburger remarked that he might only stay with D & E for a “small period of time” (Tr. 330–331).

The election was held on March 12, 1999, with six employees voting for the Union and five against, plus the three unknown votes of Lysell, Paluczak, and Strasburger, which were challenged by the Union on March 18 (GC Exh. 1(h)). And on March 26, six employees, including Creamer, went on a strike, which continues through the present (GC Exh. 1(m); Tr. 285–286, 304).

Lysell last worked on March 5. On April 2, he took a leave of absence to race cars on weekends (GC Exh. 5, p. 15). He told the owners that he might return for weekends or on a full-time basis later. According to Lysell, he did not anticipate the race car opportunity when he started at D & E. Lysell also left his full-time job at Al’s Service in March for another fulltime car mechanic’s job, but he returned to Al’s shortly thereafter (Tr. 158–163). On April 5 Paluczak also quit, having last worked on March 26 (GC Exh. 5, p. 19). His fulltime employer gave him a pay raise after Paluczak revealed his weekend work with D & E. Paluczak testified that he left D & E because he was more comfortable with his carpentry trade (Tr. 181–182, 185–186). Work on the Big Bend Crossings project began to pick up for D & E in mid-March (GC Exh. 7, p. 286). But because of the loss of the six employees on strike, plus Lysell and Paluczak, D & E lost some of its work with McBride due to insufficient manpower (Tr. 226). To compensate, D & E hired a part-time employee in May 1999 (GC Exh. 8, pp. 127–132).

III. ANALYSIS

An employer violates Section 8(a)(1) of the Act when it “hires a substantial number of employees in order to ‘pack the unit’ and thereby dilutes a union’s strength in a Board-conducted election. . . .” *Sonoma Mission Inn & Spa*, 322 NLRB 898, 900 (1997). The General Counsel alleges that D & E’s hiring of the three new employees—James Lysell, John Strasburger, and Thomas Paluczak—in late January and early February 1999, in advance of the March 1999 election, was done for exactly this purpose. In order to prove its sole allegation, the totality of the circumstantial evidence in this case must be evaluated.³ *Golden Fan Inn*, 281 NLRB 226 (1986). But as

³ In its brief, the Respondent suggests that the unit packing issue be evaluated pursuant to the standards of *Wright Line*, 251 NLRB 1083 (1980), which usually deals with discriminatory discharges of employees. However, neither the General Counsel nor the Union request that this burden-shifting standard be applied. Also, the Board has apparently never applied *Wright Line* to a 8(a)(1) unit-packing case, dealing with the hiring of employees. Compare *North Atlantic Medical Services*, 329 NLRB 85 (1999) (affirming judge’s findings of 8(a)(1) and (a)(3) violations). So, the Presiding Judge will not do so either.

explained here, the presiding judge concludes that the preponderance of the evidence fails to support the General Counsel’s allegation.

First, there is absolutely no evidence of union animus by D & E’s two owners. The only blemish was Hagelstein’s innocuous February 20, 1999 remark to employee LaBeau that he “didn’t think [the employees] needed the Union.” But this opinion by Hagelstein was clearly speech protected by Section 8(c) of the Act inasmuch as it contained no threat against, or promise to, an employee.

Second, two other statements, alleged to have been made by Hagelstein and Strasburger, do not constitute evidence of an illegal unit-packing plan by the Respondent. The first of these alleged statements was made by Hagelstein in late February 1999 to employee Tom Creamer. Creamer testified that he asked Hagelstein how the three new employees would vote, and Hagelstein replied “we’re not really that stupid that we would hire somebody . . . to . . . go . . . against the vote.” Hagelstein, however, denied ever having such a conversation with Creamer. In deciding whether Hagelstein uttered this statement, the presiding judge found both Hagelstein and Creamer to be credible witnesses. But given the lack of any proof that either of D & E’s owners ever discussed the pending election with any other employee, it is concluded, by a preponderance of the evidence, that it is more likely that Hagelstein never had any such discussion with Creamer. As for the second statement, this one concerns a conversation between Strasburger and union organizer Booth on March 10, in which Booth alleged that Strasburger said he was at D & E “just . . . to help out the owners.” Creamer also testified that Strasburger said this. Strasburger, however, testified that he only told Booth that he was not interested in the Union and that he was unsure whether he wanted to continue in the electrical trade. The presiding judge accepts Booth’s version, however, because it was corroborated by Creamer and because other portions of the conversation were admitted by Strasburger. Even so, evidence of unit packing cannot be drawn from Strasburger’s remark. For one thing, the statement is so ambiguous that it is just as likely that Strasburger meant that he was “helping out” D & E with its ongoing business, as opposed to the alleged unit-packing scheme. See *Golden Fan Inn*, supra at 228. Also, Strasburger’s continued tenure at D & E, well beyond the March 12 election, belies any inference that he was working there simply to vote.

Third, there is absolutely no evidence that either Hagelstein or Westrich ever talked with any of the three new employees at any time before election day about the Union, their union sympathies, or the upcoming vote. Moreover, there is no evidence that the owners were likely to have known about the three employees’ union leanings, if any, based on their backgrounds. Compare *America’s Best Quality Coatings Corp.*, 313 NLRB 470, 485 (1993) (“precipitous hiring of several employees thought likely to be against the Union”). Although the fathers of both Lysell and Paluczak first asked D & E’s owners about jobs for their sons, there is no evidence about the union sympathies of either father. Indeed, it is unclear how well the owners knew the fathers of Lysell and Paluczak. As for Strasburger, he was referred to D & E by Glen Hackmeister, who cautioned Strasburger to stay away from union activity. But Hackmeister did not testify and his precise relationship with D & E’s owners is unknown. Compare *Einhorn Enterprises*, 279 NLRB 576, 596 (1986) (“it was apparent from the type of individuals hired,

they would not be prounion employees”). Thus, the General Counsel is simply wrong in contending that these three employees had a “long standing connection to the owners.” Accordingly, it is concluded that D & E’s owners hired the three new employees without any information or inclination about their union sympathies.

Fourth, it is true that the timing of D & E’s hiring of the new employees was suspicious. See *Plumbing & Industrial Supply Co.*, 237 NLRB 1124, 1127 (1978). Specifically, the cutoff date for voting eligibility in the March 12 election was February 6. And Lysell started work on January 30, Strasburger started on February 5 and Paluczak started on February 6. But the record is silent as to whether Hagelstein or Westrich knew of the February 6 cutoff date. Rather, the General Counsel has only established that Booth visited the two owners on January 25 with a request that D & E voluntarily recognize the Union. Also, the Union contends that Strasburger was nefariously hired on a Friday, while previous employees usually started on a Monday. But Strasburger was unable to work from Monday, February 8 through Thursday, February 11, albeit the record is silent as to why. So, it hardly seems unreasonable that Strasburger would have started one Friday earlier. Moreover, D & E waited 7 days after the interview to get Strasburger on board. In sum, it can hardly be concluded that the owners scurried to get three new employees on the payroll by February 6 much less three antiunion bodies on board by then.

Of even more significance, though, the Respondent has established a legitimate business reason for hiring the three new employees in early 1999. Specifically, the owners learned on approximately January 20 that D & E’s workload for the spring of 1999 would increase substantially because of the needs of its biggest customer, McBride & Son Homes, as evidenced by their receipt of McBride’s 1999 business projection. Further, McBride’s owner testified that D & E’s workload would increase by 50 percent in 1999. Although the General Counsel and the Union contend that D & E’s 1999 workload would decrease in other areas, thus, offsetting the projected increases for McBride’s Big Bend Crossings project, the Respondent is entitled to considerable latitude in judging the needs of its own business, which in this case involved a relatively small increase in its workforce from 11 to 14. *Plumbing & Industrial Supply Co.*, supra at 1127. Compare *Airborne Freight Corp.*, 263 NLRB 1376, 1378 (1982) (unit packing found where “[a]t no time in the previous 3 years . . . were so many new employees added . . . in so brief a period of time”), reversed on other grounds *Airborne Freight Corp. v. NLRB*, 728 F.2d 357 (6th Cir. 1984). *Trend Construction Corp.*, 263 NLRB 295 (1982) (increase in employees from 13 to 32 in 6 weeks).⁴ Finally, although the General Counsel correctly notes in its brief that D & E’s workload did not pick up in late March, the strike by half its workforce then certainly didn’t help. In any event, the key to analyzing this matter is whether D & E’s owners reasonably believed as of late January 1999 that the Company’s workload would increase significantly later in the spring. In that connection, the evidence shows that as of January 1999 work was

projected to pick up significantly and the three new employees were hired a few weeks in advance so that they could be trained.

Fifth, the Respondent did not significantly depart from its established practices when it hired the new employees. See *America’s Best Quality Coatings Corp.*, supra. Although none of the three new employees was hired pursuant to newspaper advertisements, D & E’s practice since 1996 was also to acquire new employees from referrals. Moreover, Hagelstein testified that newspaper ads were not a particularly useful means to acquire employees in today’s low unemployment labor market. Compare *Einhorn Enterprises*, 279 NLRB at 596 (Company’s unsupported assertion that newspaper ads were useless rejected). Next, D & E hired multiple employees at around the same time before 1999: three employees hired within one month in the spring of 1997. Also before 1999, D & E put new employees to work immediately after an interview, and sometimes the same day, just as it did with Lysell and Paluczak. As for the hiring of part-time employees Lysell and Paluczak, D & E parted with tradition. But in the presiding judge’s view, this departure was adequately justified. Specifically, Lysell and Paluczak both testified credibly that they wanted to try out D & E on Saturdays to see if they liked the electrical trade. Also, the owners testified credibly that they accepted these parttime offers in a tight labor market, with the expectation that Lysell and Paluczak would evolve into full-time employees by the time business was projected to increase in late March 1999. Lastly, D & E had hired several inexperienced employees before. Thus, the Union’s criticism that the three new employees only worked on temp poles—a rudimentary task—in the first few days of employment is unfair. So, again, there was nothing significantly out of the ordinary regarding the manner in which the three new employees were hired.

Sixth, the evidence does not warrant any conclusions adverse to the Respondent regarding the status of the three employees after the March 12 election. Indeed, Strasburger remains employed with D & E on a fulltime basis, at least through the date of the trial in this case in July 1999, and another part-time employee was hired in May to replace either Lysell or Paluczak. As for these two departed employees, the presiding judge concludes that Lysell and Paluczak left for reasons wholly unrelated to the March 12 election. The evidence establishes that Lysell was genuinely unsure about his vocational life, as he first tried out D & E in January 1999. Then, in March 1999, he traded his fulltime job at Al’s Service for another similar position elsewhere, and his part-time job at D & E for a stint at racing cars on weekends. Then in April, he returned to Al’s Service. And Paluczak conceded that he used his part-time job at D & E as leverage in bargaining for better pay and benefits with his fulltime carpentry employer. Thus, it was Lysell and Paluczak who manipulated D & E, as opposed to D & E manipulating the election with Lysell and Paluczak.

In summary, it was indeed suspicious that D & E hired three new and inexperienced employees on the eve of the March 12, 1999 union election, given that the votes of these three presumably provide the margin of the Union’s defeat. But the record contains no union animus by D & E’s owners and no evidence that they knew anything about how these three would vote. By contrast, the evidence establishes that the Respondent hired the three in early 1999 in preparation for a major upsurge in business and in a manner generally consistent with its past

⁴ Although, it is true that D & E’s workload had slowed somewhat in January and February 1999, that explains why D & E tightened up on overtime in January 1999, with employees needing advance approval to work more than 8 hours. As for the scarcity of Saturday overtime then, the arrival of Lysell and Paluczak, who worked only on Saturdays, necessarily meant no Saturday work for two other D & E employees for 2 months.

hiring practices. Finally, the Respondent was blameless for the departure of two of the three new employees shortly after the election. Accordingly, it is concluded that the Respondent did not violate Section 8(1) of the Act, and that the three employees' ballots should be counted in the March 12, 1999 election.

IV. CONCLUSIONS OF LAW

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

2. The Union, Local 1, International Brotherhood of Electrical Workers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate Section 8(a)(1) of the Act by hiring employees James Lysell, John Strasburger, and Thomas Paluczak with the intent of packing the election unit and defeating the employees' rights to be represented by the Union.

ORDER

Accordingly, IT IS ORDERED⁵ that the July 23, 1999 Joint Motion to Receive General Counsel Exhibit 8 is granted.

IT IS FURTHER ORDERED, that the objection in Case 14-RC-12015 is overruled and that the case is remanded to the Regional Director for Region 14 to open and count the ballots of James Lysell, John Strasburger, and Thomas Paluczak, to issue a revised tally of ballots, and to take such further action as then becomes appropriate. It is further ordered that the General Counsel's complaint and amended complaints are dismissed.

⁵ 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.