

Howard's Sheet Metal, Inc. and Sheet Metal Workers' International Association, Local Union 24.
Case 9-CA-37162

February 22, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND
WALSH

On June 20, 2000, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed answering briefs.

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 conclusions² 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, Howard Sheet Metal, Inc., Baltimore, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Eric J. Gill and *Andrew L. Lang, Esqs.*, for the General Counsel.

Jonathan P. Sturgill and *John D. Meyer, Esqs.* (*R. T. Blankenship & Associates*), of Greenwood, Indiana, for the Respondent.

Jerry A. Spicer, Esq. (*Snyder, Rakay & Spicer*), of Dayton, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Columbus, Ohio, on March 15, 2000. The

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), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent has also excepted to the judge's conduct at the hearing, asserting that it evidenced bias and prejudice. On our full consideration of the entire record, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated bias against the Respondent in his conduct at the hearing or in his analysis and discussion of the evidence.

² As to the discharge of employees Larry Manter and David Pope, Member Hurtgen believes that the General Counsel's *prima facie* showing of knowledge and animus is weak. However, he recognizes that there is evidence of both. Further, he finds that the Respondent's explanations for the discharges are not credible, and this factor assists the General Counsel in establishing the violation.

charge was filed November 4, 1999, and the complaint was issued January 31, 2000.

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

FINDINGS OF FACT

I. JURISDICTION

Respondent, Howard's Sheet Metal, Inc., a corporation, is a sheet metal contractor with a facility in Baltimore, Ohio, where it annually purchases and receives goods valued in excess of \$50,000 directly from suppliers outside of the State of Ohio. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Sheet Metal Workers' International Association, Local Union 24, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview

On Monday, November 1, 1999, Respondent terminated employees Larry Pope and David Manter. The General Counsel alleges that Pope and Manter were discharged for engaging in union activities. In its answer, Respondent denies that it discharged these two employees; it contends that it laid Pope and Manter off for lack of work. However, at the hearing, Respondent contended that it selected them for layoff because they were unsatisfactory employees. Moreover, it hired two new employees just prior to the alleged layoff and hired or recalled another several weeks later.

Respondent concedes that it was aware that Pope and Manter had talked to Union Organizer Scott Hammond prior to their layoff. However, it alleges that it was aware that many other employees had also talked to Hammond and that there was nothing that distinguished the union activity by Pope and Manter from that of other employees. Respondent contends that it was unaware of the fact that 6 days before their layoff Pope and Manter met with Hammond at a Bob Evans restaurant in Columbus, Ohio, and signed union authorization cards.

B. Chronology

1. Larry Pope's and David Manter's careers with Respondent

a. Larry Pope

Larry Pope worked for Howard's Sheet Metal on and off beginning in March 1989. Respondent concedes that he is an excellent mechanic. On the other hand, it has established that he is a very difficult person for other employees to work with. Indeed, a number of employees requested at various times that they not have to work with Pope. In 1990, Respondent laid Pope off for 9 months to a year because of his attitude. Respondent removed Pope from a jobsite in the summer of 1998, after Richard Halvorsen, a mechanical contractor, complained that Pope had been disrespectful and cursed at other individu-

als.² In May 1999, Howard's removed Pope from another jobsite after another contractor's project executive, Steve Bestard, complained that he found Pope working without his hardhat.

After these events, in June and early July 1999, Respondent performed written evaluations of its field employees. Although Pope's evaluation was not as good as some other employees, he was given a \$1-per-hour raise, without asking for one. Some employees with better evaluations received no pay increase; other employees also received a \$1 raise and still others received a 50-cent-per-hour increase. The raises appear to be based on Respondent's assessment as to whether the employee was underpaid, rather than being tied to his performance appraisal.

In October, 2 weeks before Pope was laid off, Respondent's operations manager, Mike Stanley, told him that he would be able to transfer to a project in Olentangy, Ohio, when it started.³ This job was closer to Pope's home than the projects on which he was then working. Respondent's work on the Olentangy project (also called the Oak Creek School) began prior to December 3, 1999.

b. David Manter

David Manter worked for Respondent as a sheet metal worker from April 1995 to November 1, 1999. During this period he was laid off for 2 months in 1996 and quit twice to accept jobs with another employer, Engineering Excellence. In 1998, Manter worked for Engineering Excellence for 1 month. In 1999, he worked for this company for 1 day. On both occasions, Manter was offered a salary increase of \$1 per hour to return to work for Respondent.

Manter has served as leadman on five to seven of Respondent's projects. On June 25, 1999, David Manter received a performance evaluation which rated his work as good in 11 areas and fair in 4 others. He was given a \$1-per-hour-salary increase, either from \$15 per hour to \$16 per hour, or from \$16 to \$17 (see Tr. 90. GC Exh. 6). Several employees, who continued working for Respondent after November 1, 1999, received less favorable ratings than Manter. Seth Held received good ratings in seven categories and fair ratings in eight. Ben Bukky received an excellent rating for attendance, but also seven good ratings and eight fair ratings. Steve Held and Bob Myers received 10 good ratings and 5 fair ratings.⁴

² I do not credit Halvorsen's testimony that Pope was removed from another Norris Air jobsite in 1999. His testimony in this regard is inconsistent with the testimony of Respondent's operations manager, Mike Stanley. Moreover, Halvorsen's recollection of the events regarding Pope was very hazy.

³ Pope's testimony regarding Stanley's discussion with him of the Olentangy project is uncontradicted.

⁴ Seth Held and Myers were both sheetmetal workers, as was Manter. Operations Manager Mike Stanley described Bukky as sheetmetal/pipefitter's helper. It is unclear as to how his duties differed from Manter's, if they did in any respect. Stanley described Steve Held as a HVAC service technician. However, Steve Held's evaluation lists him as "Field/sheetmetal" as does Manter's. Moreover, Held's timecards indicate that much of the work he performed was indistinguishable from the work performed by Manter. For example, the week ending October 3, 1999, Steve Held worked 25 hours at the Newark, Ohio library project. The week ending October 15, he worked 40 hours on

2. Union activity and the hiring of Ricky Lowe and Gerald Phillips

In September and October 1999, Local 24 Organizer Scott Hammond visited a number of Respondent's jobsites. On one project in September, Hammond approached Larry Pope and Seth Held. He gave them business cards and told them to call him if they had any questions about the Union.

Pope saw Hammond on another jobsite when he was there only with Operations Manager Stanley. Pope did not talk to Hammond on this occasion. That evening, Stanley told Pope that he was to advise Stanley if he saw Hammond on the jobsite.

In October, Hammond approached David Manter and about seven other employees while they were on break and handed them his business card. On Sunday evening, October 24, Manter spoke with Hammond on the telephone and arranged to meet with him at the Bob Evans Restaurant in Columbus on Tuesday, October 26. Hammond called Pope and asked him to join him and Manter on the 26th.

Pope told fellow employee Seth Held that he was going to meet with Hammond. Manter told fellow employee Jason Keel about the meeting after it occurred.⁵ The day before the meeting, October 25, Ricky Lowe, an experienced sheet metal worker, began working for Respondent on the Lakewood High School project with Manter. It has not been established that Respondent hired Lowe with the intention of replacing any employees who were still working for it on October 25. If Lowe was hired to replace anyone it may have been Joseph Applegate, who had worked for Respondent in the field and in its shop since May 1999. Applegate's employment with Respondent ended the week of October 18-22, 1999, for reasons that do not appear in the record. (See GC Exh. 7, Respondent's timecards).⁶

Respondent hired Lowe at \$17 per hour. Mike Stanley told Lowe that "if he proved to be everything he told me he was," Stanley would give him a raise after 60 days. On Friday, October 29, Respondent interviewed and hired Gerald Phillips, an employee with similar experience to Manter, at \$15 per hour. Phillips did not start work until November 8. On November 12, Travis Neff was either rehired or recalled to work by Respon-

sheet metal installation projects. The week ending October 22, Held performed 4 hours of warranty work, 8 hours of what appears to be laborer's work, and 20 hours of sheet metal installation.

⁵ Manter's testimony that he told Keel about the meeting is uncontradicted. Respondent contends at p. 11 of its brief that I should adversely infer from the General Counsel's failure to call Keel as a witness, that Keel did not tell Respondent about the meeting. There is no reason to assume that Keel, a rank-and-file employee who still works for Respondent, would be favorably disposed to the General Counsel and/or the charging party. Thus, drawing such an inference would be inappropriate, *Goldsmith Motors Corp.*, 310 NLRB 1279 fn. 1 (1993).

Moreover, assuming that Keel did not report Manter's meeting with the Union to management, Respondent may have learned of it from other rank and file employees—particularly since at least one employee, Seth Held, knew that Pope, who was not universally popular, was one of the employees meeting with Hammond.

⁶ The GC Br at p. 12 is incorrect in indicating that Applegate worked 40 hours for Respondent during the week ending October 29. There is no timecard for Applegate for that week.

dent. Neff had worked in the field for Respondent from late 1998 until February 6, 1999. He did not work for Howard's between February 6 and November 12, 1999. Beginning November 12, Neff worked for Howard's steadily through the week ending December 17, 1999, exclusively in the fabrication shop (see GC Exh. 7).

a. The layoffs

On Sunday evening, October 31, Pope called Operations Manager Mike Stanley and asked him where he was working the next day. Stanley told Pope there was no work for him because work was slow. When Pope pressed Stanley for an explanation, Stanley merely repeated that work was slow.

On November 5, Pope went to Respondent's shop to return some equipment and pick up his check. While he was there Pope again asked Stanley why he had been laid off. Stanley replied that work was slow. Pope responded that the explanation made no sense because Howard's had just hired Lowe. Stanley replied that Lowe had 23 years of experience.

Pope then pointed out that a number of other employees had less experience than he did. Stanley told him that he didn't owe Pope an explanation for the layoff and that he was aware that since the layoff Pope had been saying nasty things about him. When Pope asked how long the layoff would be, Stanley replied that it would be indefinite.

David Manter was unable to contact Stanley on October 31. He called Stanley on the morning of November 1, and was told that there was no work for him, and that he should call again the following Sunday. Manter drove out to the Lakewood High School project to ask Stanley why he had been laid off. Stanley replied to Manter's repeated inquiries by telling him that work was slow. Manter asked whether the layoff was permanent or temporary. Stanley replied that most likely it was permanent.

On the other hand, Stanley concedes that he indicated to Manter that he would recall him when work picked up. Moreover, in December 1999, during the investigation stage of this case, Respondent took the position that both Pope and Manter would be recalled when work permitted.

b. Respondent's proffered reasons for laying off Larry Pope and David Manter

Respondent's president, Howard Hatmaker, testified that he laid off Pope and Manter in November 1999, for the following reasons:

[W]e had wanted to improve our work force and we had determined that Larry and Dave weren't fit for our Company

And so we had an opportunity to hire two people that were, that we thought they were, and you take a chance or gamble on anyone you hire but is proven to be very successful, the move that we made and we have a responsibility to all the other employees, too, they have to make a living too. So, we can't let two people destroy it for them.

Tr. 229.

It is thus obvious from the record that Pope and Manter were not laid off; they were fired and replaced by other employees.⁷ Moreover, Hatmaker's explanation suggests that he fired Pope and Manter because of their union activities. While Pope had a long history of being difficult to work with, and was thrown off jobs in 1998 and May 1999, there is nothing in this record that even remotely suggests that Manter ever did anything that threatened to "destroy" anything for other employees—other than demonstrate interest in the Union.

While the Company vaguely suggests that Manter was emotionally unstable and had problems with other employees on occasion, it essentially claims it fired him because it became aware that he was looking for another job. Mike Stanley testified that:

Well, other employees had told me and I actually got a phone call from a company that Dave was trying to go to work for and I knew Dave was hunting a job and he had quit me twice right in, right in the middle of a job, when I needed him real bad. [H]e'd quit me before and, you know, I knew it was inevitable

Dave worked good with others...he's real high strung and I told him that he actually needed to get some professional help to try to deal with these emotions

Tr. 237.

I conclude that this proffered reason for Manter's termination is false. I credit Manter's testimony that he was not looking for another job at the time he was discharged. More importantly, I do not credit Stanley's testimony that he received an inquiry from another employer just prior to terminating Manter. Stanley's explanation is sparse on details, such as the name of the company and when he received the call. Moreover, it is belied by the fact that Stanley never asked Manter if he was seeking other employment prior to terminating him. Furthermore, when Manter asked him for an explanation for his termination on November 1, Stanley did not tell him that the reason was he had heard that Manter was looking for another job. Stanley merely told Manter that work was slow.

There is absolutely no evidence that Ricky Lowe, Gerald Phillips, or Travis Neff were superior employees to Manter. Respondent suggests it hired Lowe because of his years of experience in the sheet metal trade. However, both Hatmaker and Stanley made it clear that they were taking a chance by hiring Lowe. The only thing Respondent knew about Phillips was that Lowe knew him and knew he was looking for a job. The information of record about Neff is that he left Respondent's work force for 9 months in 1999. In the final analysis, there is no credible nondiscriminatory reason for Respondent's termination of David Manter.⁸ There is also no nondiscriminatory explanation for why Respondent recalled or

⁷ It may be that Pope and Manter were replaced by Phillips and Neff, rather than by Phillips and Lowe.

⁸ Respondent's timecards show some fluctuation in the hours worked by its employees in late 1999 and a slight drop in the number of hours worked in November compared with October 1999. However, this fluctuation does not establish an economic layoff in view of Respondent's hiring of Gerald Phillips and the hiring or recall of Travis Neff. Moreover, the number of hours worked each week in December 1999 was generally as great or greater than in October. In this regard the

explanation for why Respondent recalled or rehired Travis Neff on November 12, 1999, rather than recalling Manter.

b. Events after the termination of Pope and Manter

Union Organizer Scott Hammond continued to visit jobsites on which Respondent's employees were working through early 2000. On several jobsites he has been asked to leave by Respondent's employees. On two occasions since February 1, 2000, Seth Held told Hammond that he had been instructed to tell him to leave.⁹

Analysis

In order to prove a violation of Section 8(a)(3) and (1), the General Counsel must show that union activity has been a substantial factor in the employer's adverse personnel decision. To establish discriminatory motivation, the General Counsel must show union or protected concerted activity, employer knowledge of that activity, animus, or hostility toward that activity and an adverse personnel action caused by such animus or hostility. Inferences of knowledge, animus, and discriminatory motivation may be drawn from circumstantial evidence as well from direct evidence.¹⁰ Once the General Counsel had made an initial showing of discrimination, the burden of persuasion shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity. *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981).

In the instant case, Larry Pope and David Manter engaged in union activity. They talked to a union organizer, took his business card, met with the organizer and signed union authorization cards. Respondent concedes that it was aware that Pope and Manter had talked to the organizer, but denies that it was aware of the meeting or that they signed authorization cards. There is no direct evidence that Respondent was aware of the meeting or that the termination of Pope and Manter was discriminatorily motivated. Moreover, there is only a little direct evidence of antiunion animus. Mike Stanley told Pope to let him know whenever he saw the organizer on a jobsite and since about January 1, 2000, Respondent's employees have been instructed to tell the organizer to leave any jobsite on which they encounter him. However, Howard Hatmaker's assertion at trial that he terminated David Manter to prevent him from destroying his company strongly suggests antiunion animus in the absence of any legitimate nondiscriminatory concerns that could arise from Manter's continued employment with Respondent.

Moreover, I infer that Respondent knew or surmised that Pope and Manter were interested in the Union and may have known that Pope and Manter had met with the organizer on

total number of hours worked the week ending October 29 was 675 hours, rather than 715 hours as stated in the chart in the GC Br. at p. 13.

⁹ I credit Hammond's testimony in this regard. Held testified that he could not recall whether he had made such a statement. I conclude that Held would remember whether or not he made such a remark, particularly since Hammond testified that this occurred within the 6 weeks prior to the hearing.

¹⁰ *Flowers Baking Co.*, 240 NLRB 870, 871 (1979); *Washington Nursing Home, Inc.*, 321 NLRB 366, 375 (1966); *W. F. Bolin Co. v. NLRB*, (70 F.3d 863 (6th Cir.1995).

October 26. Also, I infer that the discharges were discriminatorily motivated.

Discriminatory motivation may reasonably be inferred from a variety of factors, such as the company's expressed hostility towards unionization combined with knowledge of the employees' union activities; inconsistencies between the proffered reason for discharge and other actions of the employer; disparate treatment of certain employees with similar work records or offenses; a company's deviation from past practices in implementing the discharge; and proximity in time between the employees' union activities and their discharge.

W. F. Bolin Co. v. NLRB, supra at 871.

Findings of antiunion animus and discriminatory motive may also be predicated on the pretextual reasons advanced for a personnel action. It is well settled that when a respondent's stated motives for its actions are found to be false, the circumstances may warrant an inference that the true motive is an unlawful one that the respondent desires to conceal. *Fluor Daniel, Inc.*, 304 NLRB 970, 971 (1991); *Fast Food Merchandisers*, 291 NLRB 897, 898 (1988), *Shattuck Denn Mining Corp.*, 362 F.2d 466, 470 (9th Cir. 1966).

Indeed, in a very recent case arising under the Age Discrimination in Employment Act, the Supreme Court reiterated the probative value of an employer's pretextual reasons for a personnel action in proving discrimination.

Proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive . . . In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the fact finder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt." . . . Moreover, once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision.

Reeves v. Sanderson Plumbing Products, 530 U.S. 133 (2000).

The instant case is somewhat unusual in the extent to which the General Counsel's case rests on pretext. However, I find that there is no credible nondiscriminatory explanation for the termination of David Manter. In determining Respondent's motivation for discharging Pope, it is appropriate to consider the discharge in the context of the unfair labor practice committed in discharging Manter on the same day, *NLRB v. DBM, Inc.*, 987 F.2d 540 (8th Cir. 1993); *Reeves Distribution Service*, 223 NLRB 995, 998 (1976). Having concluded that Respondent discharged Manter for union activities, I also find that it would not have discharged Larry Pope either—but for his union activities.

The fact that Ricky Lowe began working for Respondent on October 25, the day prior the meeting between Pope, Manter and the union organizer, cuts several ways with regard to Respondent's motivation in this case. Although at first blush it

suggests that the decision to fire Pope was made prior to October 26, this is not necessarily true. Respondent has not established that Lowe was initially hired to replace Pope. If that were the case, Pope would most likely have been laid off on October 25. If Lowe was hired to replace anyone, it is just as likely that he was hired to replace Joseph Applegate, whose employment ended the week ending October 22. Respondent knew very little about Lowe's qualifications—other than the fact that he had been a sheet metal worker for a long time. It's guarded approach to Lowe, i.e., the 60-day trial period, indicates that it had no basis for concluding that Lowe would be a superior employee to either Pope or Manter.

It has not been established that Respondent was planning any layoffs until October 31. Moreover, there is no indication that Respondent decided to lay off Pope and Manter until that date. The timing of the decision to discharge Pope and Manter so soon after their meeting with the organizer thus suggests discrimination. Discrimination is also inferred from the fact that two weeks before his discharge, Stanley was telling Pope he could work on the Olentangy job.

Pope's misconduct on jobsites provides no support for the decision to discharge him. The last specific incident occurred 6–7 months prior to the discharge and afterwards Respondent had given Pope a raise on its own initiative. The Company was obviously interested in retaining Pope as of July 1. As to Pope's abrasive personality, the record indicates that he has always been difficult to work with and that he was no more difficult to work with in November 1999, than he had been for the 10-1/2 years he had worked for Respondent.¹¹

In addition to the pretextual reasons proffered, Respondent's shifting explanation for the termination of Pope and Manter supports an inference of discrimination. The Board has long held that when an employer vacillates in offering a rational and consistent account of its actions, an inference may be drawn that the real reason for its conduct is not among those asserted, *Black Entertainment Television*, 324 NLRB 1161 (1997); *Sound One Corp.*, 317 NLRB 854, 858 (1995). In the instant case, Respondent denied in its answer that it discharged Pope and Manter and then essentially argued that they were replaced because they were unsatisfactory employees. Additionally, Howard's position during the investigation, that Pope and Manter were eligible for recall, is inconsistent with its position at trial, as well as its unexplained hire or recall of Travis Neff on November 12.

CONCLUSION OF LAW

Respondent violated Section 8(a)(3) and (1) in terminating the employment of Larry Pope and David Manter on November 1, 1999.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and

¹¹ Respondent also has a practice of calling problem employees into the office for a "closed-door" meeting with Hatmaker and Stanley. Neither Pope nor Manter had been summoned to such a meeting, nor had they been given any indication that their work or attitudes were unsatisfactory at any time proximate to their discharge.

desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Larry Pope and David Manter, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

ORDER

The Respondent, Howard's Sheet Metal, Inc., Baltimore, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Sheet Metal Workers' International Association, Local Union 24, or any other union.

(b) 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) Within 14 days from the date of this Order, offer Larry Pope and David Manter 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 Larry Pope and David Manter whole for any loss of earnings and other benefits suffered 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 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.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Baltimore, Ohio facility copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the

¹² 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.

¹³ 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 for the _____ Circuit."

Regional Director for Region 9, 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 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, 1999.

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

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

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

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.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Sheet Metal Workers' International Association, Local Union 24, or any other 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, within 14 days from the date of the Board's Order, offer Larry Pope and David Manter 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 Larry Pope and David Manter whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Larry Pope and David Manter and, WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

HOWARD'S SHEET METAL, INC.