

**Florida Wire & Cable, Inc. and United Steel Workers of America, Local 9292, AFL-CIO-CLC.** Cases 12-CA-19534, 12-CA-19587, and 12-CA-19711

February 26, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS  
LIEBMAN AND HURTGEN

On September 20, 2000, Administrative Law Judge Howard I. Grossman issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions, a supporting brief, and an answering brief to the Respondent's exceptions. The Respondent filed a reply to the 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,<sup>1</sup> and conclusions and to adopt the recommended Order.

AMENDED CONCLUSIONS OF LAW<sup>2</sup>

Substitute the following for paragraphs 7(b) and (c) in the conclusions of law.

"(b) Failing to reinstate timely to their former or substantially equivalent positions, William Carter, Randolph Cooke, Matthew Couitcher, Dwayne Cuthbert, Glenn Gray, Gladys Jackson, Vandell Johnson, Lau Letioa, Edward Norman, David Paquay, Raymond Proctor, Theron Ring, John Toothman, Curtis Walker, and James Walker.

"(c) Delaying the timely reinstatement of Keith Avinger, Anthony Beckett, Alvin Champion, Roy Crumpler, Calvin Gissentanner, Lloyd Goff, Larry Hudson, Rodney Jefferson, Eulie Johnson, Myron Kelly, Ray Lewis,

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Member Hurtgen agrees with the findings of the judge. He would, however, disavow any implication that departmental seniority is always the preferred standard to apply in recalling strikers. See his partial dissent in *Alaska Pulp Corp.*, 326 NLRB 522 (1998), enf. denied 231 F.3d 1156 (9th Cir. 2000).

<sup>2</sup> In accord with the General Counsel's exceptions, we will amend the conclusions of law to add the names of five former strikers that were inadvertently omitted in the judge's decision. We will also substitute the attached "Notice," containing the additional names and previously omitted standard remedial language, for that of the administrative law judge.

Randy Nelson, Charles Pettyjohn, George Turner, John Wheeler, and Charles Whitley."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Florida Wire & Cable, Inc., Jacksonville, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice shall be substituted for that of the administrative law judge.

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT solicit employees to resign from the Union.

WE WILL NOT tell employees that they have to resign from the Union in order to work past the expiration date of a current collective-bargaining agreement.

WE WILL NOT tell employees that they will never be reinstated to their former or substantially equivalent positions.

WE WILL NOT threaten to discharge employees unless they accept reinstatement to jobs that were not their former jobs or substantially equivalent positions.

WE WILL NOT discharge employees because they cease work concertedly and engage in a strike.

WE WILL NOT fail to reinstate timely to their former or substantially equivalent positions strikers who make unconditional applications for reinstatement.

WE WILL NOT delay the reinstatement of strikers who make unconditional applications for reinstatement.

WE WILL NOT confiscate picket signs from strikers and destroy them in the presence of employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the Act.

WE WILL, to the extent we have not already done so, reinstate to the same shifts on their former jobs or substantially equivalent positions Joseph Almond, William Carter, Randolph Cooke, Matthew Couitcher, Dwayne Cuthbert, Glen Gray, Gladys Jackson, Vandell Johnson, Lau Letioa, Edward Norman, David Paquay, Raymond Proctor, Theron Ring, John Toothman, Curtis Walker, and James Walker, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole, with interest, for any loss of earnings they may have suffered because of our failure or delay in doing so.

WE WILL remove from our records all references to our discharges of Joseph Almond, William Carter, Curtis Walker, and James Walker, and inform them in writing that this has been done and that the discharges will not form the basis for any future discipline of them.

WE WILL make whole Keith Avinger, Anthony Beckett, Alvin Champion, Ray Crumpler, Calvin Gissentanner, Lloyd Goff, Larry Hudson, Rodney Jefferson, Eulie Johnson, Myron Kelly, Ray Lewis, Randy Nelson, Charles Pettyjohn, George Turner, John Wheeler, and Charles Whitley for any loss of earnings they may have suffered because of our delay, in reinstating them to their former or a substantially equivalent position.

#### FLORIDA WIRE & CABLE, INC.

*Thomas W. Brudney, Esq.*, for the General Counsel.  
*Eric J. Holshouser and Timothy B. Strong, Esqs. (Coffman, Coleman, Andrews & Grogan, P.A.)*, for the Respondent.  
*Glen M. Connor, Esq. (Whatley Drake, L.L.C.)*, for the Charging Party.

#### DECISION

##### STATEMENT OF THE CASE

HOWARD I. GROSSMAN, Administrative Law Judge. The original charge in Case 12-CA-19534 was filed on June 17, 1998,<sup>1</sup> by United Steelworkers of America, Local 9292, AFL-CIO-CLC (the Union). The latter filed the original charge in Case 12-CA-19587 on July 22, the original charge in Case 12-CA-19711 on October 9, and a first amended charge in the latter case on January 29, 1999. A consolidated complaint issued on August 31, 1999. It alleges that Florida Wire & Cable, Inc. (Respondent or the Company), told employees on or about April 30 that they had to resign from the Union in order to work past midnight on April 30, when an existing collective-bargaining agreement (CBA) was scheduled to expire, and a strike was anticipated. At the same time, the complaint alleges, Respondent solicited employees to resign from the Union.

After a strike began on May 30, and after the employees later made an unconditional offer to return to work, on July 16, the complaint alleges, Respondent told strikers that they would never be returned to their former or substantially equivalent

jobs, and threatened to discharge strikers unless they accepted reinstatement to jobs that were not the same as or substantially equivalent to their former jobs.

As amended at the hearing, the complaint further alleges that Respondent discharged four employees<sup>2</sup> because they ceased work concertedly and engaged in the strike, and that Respondent failed to reinstate 14 employees<sup>3</sup> to their former or substantially equivalent positions. As amended at the hearing, the complaint also alleges that Respondent violated the Act by failing to reinstate 16 strikers<sup>4</sup> as early as it should have reinstated them.

Finally, the complaint alleges that Respondent, by its security guards, confiscated picket signs from strikers and destroyed them in the presence of employees.

This case was tried before me in Jacksonville, Florida, on January 24 and 25, 2000. Thereafter, the General Counsel, the Respondent, and the Charging Party filed briefs. On the basis of my observation of the demeanor of the witnesses and the entire record, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

Respondent is a Delaware corporation with a principle office and place of business in Jacksonville, Florida, where it is engaged in the manufacture and distribution of wire cable. During the 12 months preceding issuance of the complaint, Respondent purchased and received at its Jacksonville facility goods valued in excess of \$50,000 directly from points located outside the State of Florida. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

##### II. THE ALLEGED UNFAIR LABOR PRACTICES

###### *A. The Expiration of the CBA, the Strike, and Respondent's Alleged Statements that Employees had to Resign from the Union in Order to Continue Working, and Alleged Solicitation to Resign*

###### 1. Summary of the evidence

The most recent CBA was scheduled to expire on midnight of April 30. The parties had negotiated for a new agreement, without success, and a strike appeared to be imminent. Respondent had about 130 bargaining unit employees. At about 10 p.m. on April 30, Elaine Coffman, director of human resources, convened a meeting in the breakroom of 6 to 10 employees working that night. Calvin Gissentanner, an employee

<sup>2</sup> Curtis Walker, James Walker, William Carter, and Joseph C. Almond.

<sup>3</sup> William Carter, Glenn Gray, Ed Norman, James Walker, Randy Cooke, Gladys Jackson, Raymond Proctor Sr., Anthony Wright, Matt Couitcher, Vandall Johnson, Theron Ring, Dwayne Cuthbert, Lau Letioa, and Curtis Walker.

<sup>4</sup> John Wheeler, Myron Kelly, Calvin Gissentanner, George Turner, Rodney Jefferson, Lloyd Goff, Randy Nelson, Charles Pettyjohn, Keith Avinger, Roy Crumpler, Anthony Beckett, Euliu Johnson, Ray Lewis, Larry Hudson, Charles Whitley, and Alvin Champion.

<sup>1</sup> All dates are in 1998 unless otherwise stated.

and a strand and crew leader, testified that Coffman told the employees that in order to continue working, they would have to obtain a card and “get out of the Union.” They had to sign the card, give it to the Union, and give the Company one (presumably a copy).<sup>5</sup>

Coffman denied making this statement. Instead, she averred, she read a memorandum to employees.<sup>6</sup> Respondent’s counsel, on cross-examination of Gissentanner, asked him whether Coffman read from a memo when she was talking to employees about resigning from the Union. “She may have,” Gissentanner responded, “but I didn’t notice a document in her hand.” Counsel then read the memo to Gissentanner and asked him whether any of this sounded familiar. “Some of that sounds familiar,” the witness replied, “but I don’t know all that.”

Counsel pursued the issue, and asked the witness whether it was possible that Coffman could have read this and that Gissentanner simply did not remember. “I don’t remember all that,” he replied. “I remember about the card where we could get out of the Union, I know, and hand carry our copy of the card to the —,” Gissentanner finally agreed with counsel that he could not affirm that Coffman did not make the statements attributed to her.

<sup>5</sup> Gissentanner also testified that another company manager, Jerry Reimer, was present at the meeting.

<sup>6</sup> According to Coffman, the memo read as follows:

This is in response to your comments on \_\_\_, 1988, about reporting to work during a strike and/or resigning from the Union. If you cross a picket line and report to work during a strike, the Union Steelworkers Local 9292 may fine you, and these fines are enforceable in court. You can, however, report to work and avoid these fines. The following are your rights during a strike:

- (1) Employees have the right to resign from the Union at any time during a strike.
- (2) Employees have the right to work during a strike and earn their regular wages and benefits.
- (3) The Union cannot fine or otherwise penalize a member who resigns in writing and then reports to work during a strike.
- (4) Once the strike is over, the employee has the right to rejoin the Union.

If you wish to strike, that is also your right. The Company is not requesting that you resign from the Union in the event of a strike, nor is it saying that it will give you any additional benefits or pay if you decide to report to work. The Company, however, wanted to make you aware of all your rights including your right to resign so that you may continue to earn your full wages and avoid Union penalties during a strike.

If you decide to resign from the Union, you should take the following steps:

- (1) Date and sign three copies of a letter of resignation addressed to the United Steelworkers Local 9292, one signed copied (sic) to Florida Wire and Cable (you may use the attached sample).
- (2) Mail one signed copy of the letter to the Secretary/Treasurer of the United Steelworkers Local 9292, one signed copy to Florida Wire and Cable, and keep the third copy for your records.
- (3) The letter should be dated and hand delivered or sent by certified mail. The resignation will be effective the day the union receives the letter (i.e., you can begin working immediately if the letter is hand delivered).

If you have any questions about the above, please ask for supervisor or Elaine Coffman. R. Exh. 1.

Coffman also agreed that she left on the table a stack of sample letters to the Union indicating a member’s resignation. The letters had a “cc” at the bottom addressed to Coffman. Although she claimed that they were stapled together when she left the room, Coffman acknowledged that she later received some of them in the mail.

Jeff Jackson was one of the strikers. He testified that, about 3 weeks after the strike began, he called Coffman and asked her what he would have to do to come back to work. She replied that he would have to fill out a “resignation paper” and return it by certified mail. Jackson stated that he later received from the Company a letter to the Union identical with those which Coffman left on the breakroom table on April 30. Jackson signed and mailed the letter. On cross-examination, Respondent’s counsel asked Jackson whether the letter for the Union which he received from the Company came with a copy of the memo which Coffman left on the breakroom table. Jackson denied seeing any such memo.

Coffman agreed that she sent Jackson a blank resignation letter, and contended that she also sent a copy of the memo. She was asked on direct examination whether she said anything to Jackson which was “inconsistent with or different from” the memo, and denied that she did so. Coffman further testified that employees who resigned from the Union customarily brought copies of the letter to Coffman because the Union did not have an office, and Coffman had to know in order to stop deduction of union dues. However, Union President Ronald Register testified that there was a “Union hall,” and the record contains correspondence pertaining to union business between the Steelworkers District 9 at an office address in Orlando, Florida, including a letter to this address from Coffman.<sup>7</sup> In addition, the sample resignation letter which Coffman prepared for employees was addressed to “Local 9292” at an address in Jacksonville, Florida.<sup>8</sup>

## 2. Factual and legal conclusions

Respondent argues that Elaine Coffman was a more credible witness than those called by the General Counsel. She had tendered her resignation from the Company, had “no prospect of any ongoing relationship with” Respondent, and thus, had “no interest” in the outcome of the proceeding.<sup>9</sup> Coffman testified that she intended to leave Respondent at the time of the latter’s future sale to another company, would be employed by another employer not associated with Respondent, and thus, would have “no interest” in Respondent. The pleadings establish that Elaine Coffman, at the time of her testimony, was Respondent’s director of human resources and a supervisor within the meaning of the Act.

Respondent further argues that “all” of the General Counsel’s witnesses had “an interest” in the outcome of the case, particularly those for whom the General Counsel was seeking backpay.<sup>10</sup> However, Jeff Jackson is not listed in the complaint as an alleged discriminatee, and would not be entitled to back-

<sup>7</sup> GC Exh. 9.

<sup>8</sup> GC Exh. 10.

<sup>9</sup> R. Br. 22.

<sup>10</sup> R. Br. 23.

pay in this proceeding.<sup>11</sup> Jackson returned to his job by complying with Coffman's asserted requirement that he resign from the Union. Gissentanner was also an employee of the Company at the time of his testimony, and was a strand and crew leader. "The average employee involved in this type of action is keenly aware of his dependence upon his employer's good will but also for the necessary job references essential to employment elsewhere." *Wirtz v. B.A.C. Steel Products*, 312 F.2d 14, 16 (4th Cir. 1963). The Board has concluded that an employee in these circumstances is not likely to give false testimony against his employer. *Federal Stainless Sink*, 197 NLRB 489, 491 (1972).<sup>12</sup>

Respondent argues that "uncorroborated testimony of an interested party generally does not amount to substantial evidence."<sup>13</sup> Although Gissentanner and Jackson testified about statements made by Coffman at different times, both witnesses attributed identical statements to her. Respondent, on the other hand presented no witness to corroborate Coffman, although another manager (Jerry Reimer) was present during Coffman's April 30 discussion with employees, according to Gissentanner (whom I credit). Reimer was not called as a witness.

Finally, Coffman testified that an employee whom she named, called her prior to the April 30 discussion with employees and asked what would happen if he worked during the strike. However, Coffman agreed that she stated in her pretrial affidavit that she did not remember the name of any employee who had called with such an inquiry, but that later examination of timecards enabled her to recall this and other names. The General Counsel's witnesses, on the other hand, testified on cross-examination without such contradictions. Their manner of speaking and demeanor were more truthful than Coffman's.

The Board has stated:

Although an employer does not violate the Act merely by providing employees with information relating to union resignation, if it additionally creates a situation in which employees would tend to feel imperiled should they refrain from resigning, the employer's conduct constitutes the unlawful solicitation of resignation from union membership. [*Schenk Packing Co.*, 301 NLRB 487, 489 (1991).]<sup>14</sup>

Coffman's statement to employees that they had to resign from the Union in order to continue working obviously tended to make them feel imperiled if they failed to resign.

For the foregoing reasons, I find that Supervisor Coffman told employees that they would have to resign from the Union in order to work during the strike and that this constituted unlawful interference with the employees' Section 7 rights in violation of Section 8(a)(1).

The record also shows that Coffman gave advice to employees on how to resign from the Union, displayed sample resignation letters at the April 30 meeting with employees, and mailed such sample letters to employees (Jackson). I conclude that these actions constituted solicitation of employees to resign

from the Union, and also violated Section 8(a)(1). *Grondorf, Field, Black & Co. v. NLRB*, 107 F.3d 882 (D.C. Cir. 1997); enf. as relevant 318 NLRB 996 (1995); *Manhattan Hospital*, supra.

*B. The Alleged Confiscation and Destruction of Picket Signs by Security Guards*

1. Summary of the evidence

Union President Ronald Register testified that Respondent's facility had a front and back gate, and that the Union originally placed six pickets at each gate. After the Company obtained a state court injunction against the Union, the latter was limited to five pickets at each gate, and was required to place them no closer than 50 feet from the entrance. The Union prepared about 50 signs of various sizes, most of them 15 by 24 inches. Many were not in use at any one time, and the Union kept them in a tent across the street from Respondent's facility. The plant was surrounded by a fence and a gate about 75 feet from the building. There was a ditch outside the fence, and, next to it a public highway, Lane Avenue. Respondent's plant manager, Don Young, testified that the ditch was "between (Respondent's) property line" and Lane Avenue. According to Union President Register, some of the picket signs were placed in the ground in the ditch, and some were on chairs.

Register affirmed that the Company caused security guards to come to the plant after the strike began. They were dressed in uniforms and some of them carried video cameras. On the day that Respondent obtained the injunction, May 21, the security guards arrested three pickets. Ronnie Green, the president of another union (Teamsters) was present, and asked whether he could talk to the policemen. They agreed, and Green stepped over a "little yellow marker" which had been "sprayed." The guards then "cuffed him and took him too." One of the pickets called Register and said that the guards were "tearing up" the picket signs. Register testified that he saw guards take some of the signs and place them in a garbage can. Union members "yelled" at the guards that the signs were union property, but the guards kept placing them in the garbage can.

Respondent's plant manager, Don Young, gave a different version of these events. He denied that any security guards had been authorized to destroy picket signs. Young testified that a "police officer from JSO" said that an officer had nearly been struck by a truck leaving the property, and that his view of the exit had been obstructed by signs that the pickets were "holding up." The police officer then instructed the pickets that they would have to "get rid of" signs obstructing clear views of the exit. Upon receipt of these orders, the pickets "discarded" their signs on the road and into the ditch, which had "standing water." The signs became "wet and wrinkled," and the guards discarded them in the garbage. Pickets were across the street, but made no objection.

On cross-examination, Union President Register denied that the injunction had anything to do with obstructing views of the exit. He also denied that there was any water in the ditch, and denied that it had rained that day.

<sup>11</sup> GC Exh. 1(m).

<sup>12</sup> Accord: *Soltech, Inc.*, 306 NLRB 269, 271 (1992).

<sup>13</sup> R. Br. 23.

<sup>14</sup> Accord: *Manhattan Hospital*, 280 NLRB 113 (1986), enf. 814 sub nom. *NLRB v. Manh Eye Ear Hospital*, F.2d 653 (2d Cir. 1987).

## 2. Factual and legal conclusions

Respondent makes the same arguments concerning credibility that it made in the case of Coffman and the General Counsel's prior witnesses—Young had tendered his resignation, and “all” the General Counsel's witnesses had an interest in the proceedings, particularly those who anticipated backpay. Young stated that he intended to resign when the business was sold, but would stay on as a consultant during the “transition” phase. The pleadings establish that he was the plant manager and a supervisor at the time of his testimony. With respect to Register, he is not alleged as a discriminatee, and therefore has no right to backpay.

Respondent argues that the pickets had “abandoned” the picket signs before the security guards threw them in the trash.<sup>15</sup> This contention is implausible, as is Young's assertion that the pickets made no objection while the guards threw the picket signs into the garbage can. I do not credit Young's hearsay testimony about a police officer complaining that signs were obstructing the view of the exit from the plant. The signs were on chairs or in the ditch. Respondent does not contend that they were on company property. I credit Register's testimony that there was no water in the ditch, and that it had not rained. In sum, Respondent's evidence is a complete fabrication.

Young was present when the security guards put the picket signs into the garbage. He failed to disavow or prevent such action, and thereby condoned and adopted it. *Indiana Desk Co.*, 276 NLRB 1429 (1985). The Board has held that an employer's use of private guards to prevent picketing is a violation of Section 8(a)(1). *Holland Rantos Co.*, 234 NLRB 726 (1978), enfd. sub nom. *Eisenberg v. Holland Rantos Co.*, 583 F.2d 100 (3d Cir. 1978). Confiscation of picket signs, like outright prohibition of picketing, deprives employees of their Section 7 rights, and I find that Respondent's action violated Section 8(a)(1).

### C. The Employees' Offer to Return to Work, and the Company's Response

#### 1. Summary of the evidence

The Company hired replacement employees and continued to operate the plant. On July 16, operation's manager, Tom Twardzik, informed the Union that the Company's last pre-strike offer was still on the table. Staff Representative C. G. Lanham replied the same day by facsimile that the Union accepted the offer, was prepared to return to work immediately, and asked the company to give instructions to former strikers on “when and where” to report for work.<sup>16</sup>

On the next morning, July 17, Lanham arrived at the plant with about 60 employees. He asked a guard for permission to speak to a Company official. Plant Manager Young came out, but did not speak to Lanham. The latter then returned to the police lieutenant, and said that the strike had ended, and that he wanted to talk to an official. Lanham returned to the gate with the lieutenant, and Young came down and spoke with him. Lanham explained his communications with Twardzik, and

Young said that the Union's offer was denied. About an hour later, Twardzik arrived, and told Lanham that the Company had no current openings. He asked Lanham to submit a list of employees interested in returning. Lanham replied that they all wanted to return. The same day, July 17, Twardzik sent Lanham a letter stating that the Company was “fully manned” and had “no openings.” He again asked the Union to submit a list of employees willing to return, and stated that the Company would send them notices of a place and time where they could “positively indicate their interest in being recalled.” The Company would then start recalling them by “plant seniority” as openings occurred.<sup>17</sup>

On July 22 Lanham sent a letter to Twardzik repeating the Union's acceptance of the Company's final offer and requesting that the employees be recalled to work.<sup>18</sup> On the next day, July 23, Lanham filed a grievance on behalf of all the union members protesting the Company's failure to abide by the seniority provisions in “the new 1998 agreement.”<sup>19</sup> On July 27 Lanham wrote Twardzik that he had just received the latter's July 27 letter. He repeated the Union's offer, and enclosed a copy of the new agreement signed by the Union's officers.<sup>20</sup>

Lanham wrote to Respondent's director of human resources, Elaine Coffman, on July 30. He stated that the replacement employees hired by the Company were probationary employees, and that the Company was required by the contract to allow other employees to bump probationary and temporary employees during the strike.<sup>21</sup>

On July 31, Director of Human Relations Coffman responded to the Union's grievance of July 23 based on the Company's alleged failure to abide by the seniority provisions of the contract. Coffman stated that she had reviewed article 7 of “the current labor agreement in its entirety,” and concluded that the “Application of Seniority” provision applied to job vacancies, reductions in force plant layoffs, and recall and bumping. None of these events had occurred, according to Coffman, and the grievance was denied.<sup>22</sup> Nonetheless, about 2 weeks later, on August 6, Coffman wrote a letter to Union President Register stating that “review of the contract shows that plant seniority is the appropriate criteria to use in recalling personnel to the plant.” The letter enclosed the most recent “plant seniority” roster and stated that recall would begin August 10 in accordance with this list unless Coffman heard to the contrary from the Union.<sup>23</sup>

<sup>17</sup> GC Exh. 3.

<sup>18</sup> GC Exh. 4.

<sup>19</sup> GC Exh. 5.

<sup>20</sup> GC Exh. 6.

<sup>21</sup> GC Exh. 7. Sec. 7.1 of the contract provided that all employees were considered to be probationary employees during the first 90 days since the date of last hire, and that “such probationary employees shall not have the right to the grievance procedure nor the right to bid on any openings that may occur and those benefits to which all permanent Company employees are entitled.” Sec. 7.8.1.7 covered bidding for jobs. It states: “Probationary employees are not eligible to participate in the bid process.” GC Exh. 17.

<sup>22</sup> GC Exh. 9.

<sup>23</sup> Sec. 7.2 of the contract stated that plant seniority was the length of continuous service from the employee's last date of hire. Sec. 7.3 provided that departmental seniority was the length of continuous ser-

<sup>15</sup> R. Br. 33.

<sup>16</sup> GC Exh. 2.

As indicated above, Respondent continued to operate the plant with replacement workers during the strike. There were approximately 123 strikers.<sup>24</sup> Vacancies in the plant occurred during the strike. Respondent filled these vacancies by posting a job, and filling it with one of the replacement employees. The Union was not informed of the posting. The Company would then recall one of the strikers to the position vacated by the promoted replacement worker. As a result of this procedure, some strikers were not returned to their former jobs or one that was substantially equivalent. Coffman asserted that the job vacated by the replacement employee was the “truly open” position. She began the recall on about August 20, utilizing “plant seniority” as the selection process.

Prior to recalling strikers, Respondent began the transfer of replacement workers into vacant positions in response to bids from the replacement workers. On July 31, about 2 weeks after the strike began, vacancies appeared in the core processes department, and the Company granted bids by Richard Haller, Fredbert Tenchavez, and Benito Perez.<sup>25</sup> Respondent’s records show that Haller and Tenchavez each had a seniority date of June 8, 1998, and that Perez had a seniority date of June 17, 1998.<sup>26</sup> Accordingly, each received a job in response to a bid less than 90 days after his hiring date, at a time when he was a probationary employee.<sup>27</sup> Replacement employee Kelon Yown submitted a bid for a new job on August 3, 1998, and received it on August 6.<sup>28</sup> Yown’s seniority date was June 11, 1998.<sup>29</sup> Accordingly, he was also a probationary employee at the time he successfully bid for a new job. On August 17, 1998, Respondent moved replacement employee Abday Battle to a vacancy created by the departure of the incumbent.<sup>30</sup> Battle’s seniority date was June 10, 1998.<sup>31</sup> Battle was a probationary employee. James Harrelson’s seniority date was June 3, 1998, but he was awarded an electrician’s position on August 18, when he was a probationary employee.<sup>32</sup> All of the former strikers were then available for employment. The CBA provided that “[p]rovisionary employees are not eligible to participate in the bid process.”<sup>33</sup> Respondent continued to transfer replacement employees to open positions after beginning the recall of strikers.

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vice in the department where the employee was employed since the date of his entry into that department. Sec. 7.8, “Application of Seniority,” applied to “job vacancies, reductions in force, plant layoffs, recalling and bumping.” In any one of these circumstances, ability to perform the work and physical fitness were to be considered. If these factors were relatively equal in comparing job applicants, seniority, “departmental, then plant” was to be the “determining factor.” Sec. 7.8.1, entitled “Job Vacancies,” provided that jobs would be filled in accordance with the provisions of Sec. 7.8. GC Exh. 17.

<sup>24</sup> GC Exh. 20.

<sup>25</sup> GC Exh. 19.

<sup>26</sup> R. Exh. 3, p. 4, “Fabrication” seniority list.

<sup>27</sup> See fn. 21, *supra*.

<sup>28</sup> GC Exh. 19.

<sup>29</sup> R. Exh. 3, p. 4, “Fabrication” seniority list.

<sup>30</sup> GC Exh. 19.

<sup>31</sup> R. Exh. 3, p. 4, “Fabrication” seniority list.

<sup>32</sup> GC Exh. 19; R. Exh. 3.

<sup>33</sup> *Supra*, fn. 21.

## 2. Factual and legal conclusions

The parties agreed that the strikers were economic strikers.<sup>34</sup> In *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375 (1967), the Court held that an individual whose work ceases because of a labor dispute remains an employee unless he has since obtained regular or substantially equivalent employment, and that an employer who refuses to reinstate him must show legitimate and substantial justification for this refusal. The Court observed that an action of this nature was so destructive of employee rights that it was an unfair labor practice without reference to the employer’s intent or motivation.

In *Laidlaw Corp.*, 171 NLRB 1366 (1968), *enfd.* 414 F.2d 99 (7th Cir. 1969), the Board held that economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent employees are entitled to “full reinstatement” upon the departure of replacements unless they have acquired regular and substantially equivalent employment, or the employer can sustain his burden of proof that the failure to offer reinstatement was for legitimate and substantial business reasons.

A factual situation similar to that in the case at bar took place in *MCC Pacific Valves*, 244 NLRB 931 (1979). In that case there was a strike of 1 month’s duration after which the parties resumed negotiations, and the employer reinstated about two-thirds of the strikers. Thereafter, it began posting jobs for bidding by employees then on the payroll, including striker replacements and reinstated strikers. There remained unreinstated strikers to whom jobs were not offered, or who were offered jobs only if there were no bidders. Some strikers who were not offered the posted jobs were invited to bid on the jobs which arose as a result of a “so-called chain reaction” (*id.*, p. 931). An opening was posted for which employees in the plant placed their bids. As each employee whose bid was successful moved into his new job, his prior job became vacant, and bids were made to fill it. Jobs at the lowest end of the classification scale finally became open, and the employer invited remaining strikers to bid on these jobs, rather than the jobs which were first posted. The Board held that the employer was not entitled to prefer striker replacements then on the payroll to qualified strikers awaiting reinstatement. The employer could not bypass qualified unreinstated strikers by waiting to make a job offer to them only if there were no successful bidders from among the striker replacements, nor could it wait until the “chain reaction effect” had run its course before offering unreinstated strikers the initial job vacancies created by the departure of employees. By doing so, the employer violated Section 8(a)(1) and (3) of the Act (*id.* at 936).

In *Rose Printing Co.*, 304 NLRB 1076 (1991), the Board considered the issue of whether an employer must offer former strikers reinstatement to jobs which they are qualified to perform but which are not the same or substantially the same as their prestrike jobs. In *Fleetwood* the Court had stated:

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<sup>34</sup> Although I have found that Coffman’s speech to employees on the eve of the strike was an unfair labor practice, I make no finding at variance with the position of the parties.

The status of the striker as an employee continues until he has obtained "other regular and substantially equivalent employment." . . . *If and when a job for which the striker is qualified becomes available*, he is entitled to an offer of reinstatement. The right can be defeated only if the employer can show "legitimate and substantial business justifications."<sup>35</sup>

The Board, in *Rose Printing* stated that the Court in *Fleetwood* did not address the issue here. "Significantly, there was no discussion concerning the issue now under discussion, that is, whether strikers are entitled to any jobs for which they are qualified or whether the reinstatement obligation extends only to their former jobs or substantially equivalent jobs. There was no discussion of this issue because it was not before the Court. Hence, the Court's reference to a job for which a striker is qualified" cannot be viewed as a resolution of that issue. Concededly, Board, in striker reinstatement cases has sometimes used the *Fleetwood* phrase "jobs for which the striker is qualified." These cases, however, did not involve the issue of the kind of job to which the striker is entitled (cases cited) or make clear elsewhere in the opinion the underlying assumption that the positions at issue are the strikers' old jobs or equivalent positions.<sup>36</sup> The Board cites numerous cases in which the correct analysis is made.<sup>37</sup> "Although the Supreme Court has not resolved the issue under discussion in this case, the Board has done so." Its position in *Rose Printing* is summarized as follows:

In considering whether an employer should be required to offer a replaced striker reinstatement to a non-equivalent job which the striker is qualified to perform, we do not quarrel with the assertion that "a lesser job with less pay and/or reduced benefits may not be as attractive but it is better than no job at all." (citation) Our duty in defining a former economic striker's rights under *Fleetwood* and *Laidlaw*, however, does not entail consideration of strikers' economic needs. Our duty is to ensure that strikers who have unconditionally offered to return to work are to be treated the same as they would have been had they not withheld their service. They are therefore entitled to return to those jobs or substantial equivalents if such positions become vacant, and they are entitled to nondiscriminatory treatment in their applications for other jobs.

In addition, we note that a striker's acceptance of a position which is not the same as or substantially equivalent to that striker's prestrike position does not extinguish the statutory right to subsequent reinstatement to a vacant prestrike position or a substantially equivalent one. [Citation] Acceptance of the General Counsel's argument would therefore mean that a striker would have *two* reinstatement rights and that employers would have *two* correlative obligations. That is, a striker would have a right to reinstatement to any job which the striker is qualified to perform,

even if that job is not the same as or substantially equivalent to the striker's prestrike position. In addition, as soon thereafter as the striker's former job or a substantially equivalent one became available, the striker would have a right to transfer to that job. Similarly, even though an employer has acted lawfully in replacing a striker, the employer would be obligated to reinstate the striker to a vacant nonequivalent job which the striker is qualified to perform. The employer would also be required to transfer the striker to a prestrike job or to a substantially equivalent one when it became available and to hire another person to fill the vacancy left by the transferring striker. In our view, a striker is not entitled to such preferential treatment and an employer need not suffer such dislocation simply to preserve the striker's continuing employee status [id. at 1078].<sup>38</sup>

As set forth above, the strikers in the case at bar made an unconditional offer to return to work on July 16, and 60 of them showed up at the plant the next day. Respondent did not reinstate any of them at that time, and engaged until late August in the correspondence set forth above. In the meantime, it allowed replacement employees, including probationary employees, to bid for new jobs. This process continued after Respondent began recalling strikers, which it did by placing them in the vacancies created by the departure of replacement employees to other jobs in response to bids.

Respondent presents a series of arguments that its actions were lawful. Thus, the Company contends that *MCC Pacific Valves* is inapposite, as follows:

*MCC Pacific Valves* and similar cases are inapposite, however here (in the case at bar), while FWC's returning strikers were recalled to the first available position for which they were qualified, these same employees retained the contractual right to bid into their former position as soon as it became open. In contrast, the facts in *MCC Pacific Valves* and similar cases indicate that in those cases, recall to a different job operated to extinguish *Laidlaw* rights and potentially prevent a former striker from returning to his pre-strike job. Here (i.e., the case at bar), the former strikers received every bit of their *Laidlaw* rights i.e. the right to reinstatement to their former or equivalent job), as well as the added benefit of more senior strikers returning to work even sooner than they would have been able to had the Company made the employees wait until their position on an equivalent job came open.<sup>39</sup>

Respondent then proceeds to a discussion of *Rose Printing*. The Company agrees that the case holds that offering a non-equivalent position with the subsequent right to transfer into the employee's old position when it becomes available would create rights in the returning striker above and beyond *Laidlaw* rights. Respondent in fact quotes some of the language from

<sup>38</sup> Accord: *Towne Ford, Inc.*, 327 NLRB 193 (1998). The Board found that the employer violated the Act by failing to reinstate strikers to substantially equivalent positions.

<sup>39</sup> R. Br. 39. Some repetitive language in the above quotation, an obvious clerical error, has been eliminated.

<sup>35</sup> 388 U.S. 26, 34 (1967). (Emphasis added.)

<sup>36</sup> *Rose Printing Co.*, 304 NLRB, 1077 at fn. 4 (1991).

<sup>37</sup> *Ibid.* *New Era Electric Corp.*, 217 NLRB 477 fn. 1 (1975); *Certified Corp.*, 241 NLRB 369 (1979); *Highlands Medical Center*, 278 NLRB 1097 (1986); and *Oregon Steel Mills*, 291 NLRB 185 (1988).

*Rose Printing* cited above in support of its position, and continues as follows.

FWC's former strikers with higher plant seniority were more than just reinstated; they were given a preference to return to work as soon as possible. The undisputed facts show that the returning employees were placed back to work by seniority in the first position that became available for which they qualified. To the extent that a former striker was not reinstated to his previous position or another position which he desired, he contractually retained the right to bid into a desired position as soon as that job became available. Therefore, his *Laidlaw* rights were never extinguished, and he was no worse off than if the Company waited until his former position was open to recall him. Such action indeed provided the more senior returning strikers better treatment than they would have received under the recall procedure the NLRB claims FWC should have utilized.<sup>40</sup>

Respondent's arguments are not supported by the evidence or by Board law. Its contention that a recall to a different job extinguishes the striker's *Laidlaw* rights is flatly contradicted by the language from *Rose Printing* quoted above. The Company's reasoning that the striker is getting better treatment under its recall program than the method mandated by the Board is indistinguishable from the argument considered and rejected by the Board in *Rose Printing*. The Company's recall method here is subject to the same criticism, which the Board stated in *Rose Printing*. Respondent's reliance on that case is inexplicable, and its argument based upon it is an extended nonsequitur. The Company claims that it had a "legal obligation" to reinstate strikers to positions for which they were qualified, and cites cases with opinions, contrary to *Rose Printing*.<sup>41</sup> Those prior decisions are explained in *Rose Printing*.

Respondent's argument that its recall of strikers was pursuant to their seniority rights under the CBA is similarly without merit. To begin, Human Resources Director Coffman's letter to the Union dated July 31, states that article 7 of the CBA ("Seniority") does not apply to the facts in this case.<sup>42</sup> One week later, on August 6, Coffman wrote to the Union that, under section 7.12 of the CBA, "plant seniority was the appropriate criteria to use in recalling personnel to the plant."<sup>43</sup> Section 7.12 of the CBA, cited by Coffman, covers the Company's posting of a seniority list, not recall itself. The prior section, 7.11.2, provides that "[I]n all cases of job vacancies, [r]ecalls to the plant will be on the basis of plant seniority, recalling the senior plant employee first in keeping with the provision of Article 7.8." Section 7.8 ("Application of Seniority") provides that, in all cases of job vacancies, reductions in force, plant layoffs and bumping, in the event competing applicants for a job are relatively equal in ability to perform and physical fit-

ness, "Seniority (*departmental, then plant*) . . . shall be the determining factor." . . . In the event that there is no qualified applicant according to the ability to perform and physical fitness criteria, "*then departmental seniority followed by plant seniority shall be the deciding factor*" (emphasis added).<sup>44</sup>

Despite these provisions, the Company used plant seniority in recalling strikers. This procedure was contrary to the plain language of the contract. Coffman argued at the hearing that the contract does not refer to "strikes" (with one exception not relevant), nor "strikers." However, the CBA repeatedly uses the phraseology, "*In all cases of job vacancies*" preceding the procedure for recall. It is obvious that the issues involved in this case are job vacancies—the Company posted them. The contract language does not exclude applicants returning from a strike—it says, simply "in all cases of job vacancies." The Company's procedure ignored this plain language. Further, as definitively set forth in section 7.8 ("Application of Seniority"), recalls shall be based first on departmental, then on plant, seniority Respondent also ignored this contractual provision.

In addition, the Company allowed probationary employees to bid on new jobs, contrary to section 7.8.1.7 of the CBA.<sup>45</sup>

The complaint alleges that Respondent's failure to reinstate the strikers to their former or substantially equivalent positions, absent substantial and legitimate justification, violated Section 8(a)(3). This view is sustained in *Towne Ford, Inc.*, 327 NLRB 193 (1998). Accordingly, consideration of the circumstances of individual strikers is warranted. Since the complaint alleges additional unlawful statements by Human Resources Director Coffman, and unlawful discharges, it will be convenient to consider these issues together.

#### *D. The Recall of Strikers, Discharges, and Alleged Unlawful Statements*

##### 1. The discharges

###### *a. Curtis G. Walker*

Curtis G. Walker was employed in 1967, and was a "wire drawer" on the day shift at the time of the strike in 1998. He went on strike, and after its conclusion, on August 17, received a call from Human Resources Director Coffman offering him a job in "galvanizing (galli)" on the nightshift. Walker replied that, during a prior strike in 1980, all the strikers went back to their prior jobs at the end of the strike. "Galvanizing" was different from "wire drawing." Coffman replied that she had only one job to offer, and that Walker would be terminated if he did not accept. Walker told her to send his vacation pay, and Coffman sent him a letter with vacation pay terminating him on August 23, 1998. The letter stated that he was being terminated because he rejected the job which had been offered and that no further position would be offered to him.<sup>46</sup> In February 1999, Coffman called him and asked whether he would like to go back to wire drawing. Walker accepted.

<sup>40</sup> *Ibid* at 49.

<sup>41</sup> R. Br. 38. *Toledo 5 Auto/Truck Plaza v. NLRB*, 933 F.2d 1010 (6th Cir. 1991); *NLRB v. American Olean Tile Co.*, 826 F.2d 1498 (6th Cir. 1987); *Arlington Hotel Co. v. NLRB.*, 785 F.2d 249 (8th Cir. 1986); and *Foote & Davies*, 278 NLRB 72 (1986), in which I wrote the ALJ decision.

<sup>42</sup> GC Exh. 9.

<sup>43</sup> R. Exh. 31.

<sup>44</sup> GC Exh. 17.

<sup>45</sup> *Ibid*.

<sup>46</sup> GC Exh. 11.

*b. James E. Walker*

James E. Walker was employed by Respondent in 1968 and was a storeroom clerk at the time of the strike in 1998. He received a call from Coffman on August 17, in which she offered him a job in “galvanizing (galli).” Walker had previously worked at this job, and told Coffman that he could not accept it because the lead and zinc made him sick. Coffman replied that he would be terminated if he did not accept the job, and sent him a letter dated August 26, 1998, confirming this and stating that no further position would be offered to him.<sup>47</sup> On May 12, 1999, Coffman called and said that she had a job in “galli.” Walker accepted because he needed the money. He was later transferred to his old position as a storeroom clerk. Walker denied that his plant or departmental seniority had been restored at the time of his return, although he believed that he received this later.

*c. William B. Carter*

William B. Carter was hired in 1974 and was a maintenance craftsman on the dayshift at the time of the strike in 1998. He was not a member of the Union, but joined the strike in sympathy.

After the strike ended, Carter received a telephone call from Human Resources Director Coffman. They differ on the details of this conversation, principally on the sequence in which several topics were discussed. According to Coffman, she offered Carter recall to a position as a “stranding rewinder.” Carter replied that he was working at a “good job” as an engineer, and did not know whether he wanted to return to the Company. Coffman told him that he had to make a decision, and that the Company would not offer him any other position. Carter replied that he was happy where he was, and did not want to come back. Coffman added that Carter did inquire about the availability of a position as a maintenance craftsman, and Coffman replied that there was no opening. Coffman then sent Carter a letter, dated September 5, 1998, summarizing her version of this conversation and terminating Carter.<sup>48</sup>

Carter testified that Coffman offered him a job as a “strander rewinder” and told him that he would be terminated if he did not accept. He could later apply to be rehired as a new employee, in which event he would lose his seniority. Carter denied that he told Coffman he was happy working at another job, or that he did not want to come back to Respondent. He told her that he would come back to a job in maintenance.

Almost a year later, on July 12, 1999, Coffman called Carter and offered him his old job as a maintenance craftsman at the same pay. He accepted.

Coffman acknowledged that Carter asked about the availability of his old position during her first conversation with him. It is unlikely that Carter would first say that he did not want to come back to the Company, and then inquire about the availability of his old job. I conclude that he did ask about his old job, and told Coffman that he would be willing to come back to it. His action about a year later accepting the job is consistent with this version of the conversation.

<sup>47</sup> GC Exh. 12.

<sup>48</sup> GC Exh. 13.

*d. Joseph C. Almond*<sup>49</sup>

Joseph C. Almond was employed in 1989 and was in the “galli” department on the first shift at the time of the strike in 1998. He testified that, after the strike, “about November 10, or somewhere about mid-November,” he received a call from Coffman offering him a job in “wire drawing” on the nightshift. This process, according to Almond, is where “the different grades of wire begin.” Almond testified that he was not familiar with this work, and that the machinery “intimidated” him. Further, he was disturbed by the fact that the work was on the nightshift. After considering the matter, he called Coffman and said that he could not take the job. If Coffman had offered him his old job, he would have accepted. However, he decided to pursue attempts to make his own living, in music, and lawn mowing. Accordingly, he called Coffman back after considering the matter, and told her that he could not accept the position which she had offered. He denied that he told Coffman he did not want to return to the Company. She replied that she would have to terminate him, and sent him a letter dated November 10, 1998, stating that he had “voluntarily resigned.”<sup>50</sup>

Respondent submitted a document entitled “1998 Job Bid Log.” It shows that on August 20, October 31, November 12, December 11 and 29, 1998, Respondent posted jobs in “galli,” or “galvanizing,” and that it filled some of these jobs with replacement employees.<sup>51</sup> The Company’s refusal to return Almond to a job which he wanted, and which it was having difficulty in getting other employees to accept, is inexplicable.

In September 1999, about 10 months after he had rejected Coffman’s first job offer, Almond called Coffman and later visited her in her office. He asked for employment, and she offered him a job in “stranding” on the nightshift. Almond had not been successful in the private work he had attempted, “swallowed his pride,” and accepted Coffman’s offer. On cross-examination, Almond was asked why he accepted the “stranding” job in 1999 after having rejected the “wiredrawing” job in 1998. Although “wiredrawing” and “stranding” were in the new “core processes” department, they utilized “entirely different machines,” according to Almond.

Coffman testified that, during her first conversation with Almond (1998) she offered him a job in “stranding.” He replied that he was playing with a band, and doing yard work, and rejected the offer. Coffman asserted that she had no idea that Almond would have accepted if she had offered him his old job in the “galli” department.

<sup>49</sup> The complaint does not list Joseph C. Almond as an alleged discriminatee. At the hearing, the General Counsel moved to include his name in par. 12 of the complaint. The General Counsel affirmed that he had received Almond’s name from discharge letters submitted to the General Counsel by Respondent, and that the circumstances were the same as in the cases of other alleged discharges. Respondent opposed this motion. The General Counsel pointed to para. 11, alleging the Company’s refusal to reinstate named employees and others “similarly situated.” I granted the motion on the ground that there was no showing that Respondent had been prejudiced and suggested an appeal from my ruling. There was no appeal.

<sup>50</sup> GC Exh. 14.

<sup>51</sup> GC Exh. 19.

The record shows that a position in “galli” was available throughout 1998 including mid-November, and that Almond had worked in this department when the strike began. Instead of offering this position to Almond, Coffman offered it to replacement employees. I conclude that Coffman’s offer to Almond of a job in wire drawing after the strike was not to a substantially equivalent position and was on a different shift.

*e. Factual and legal conclusions*

The employees listed above were economic strikers. They continued to be employees unless they had acquired “other regular and substantially equivalent employment.” *Fleetwood Trailer*, supra. There is no such evidence in the cases of Curtis or James Walker, or William Carter, and the evidence pertaining to Joseph Almond shows that his other employment was neither regular nor substantial.

These employees were not required to accept reinstatement to a position which was not the same as or substantially equivalent to their former jobs, and refusal to accept such an offer did not eliminate their reinstatement rights. *Rose Printing*, supra. The evidence shows that the jobs which were offered to them were not the same as or substantially equivalent, in part because the offers were for jobs on a different shift. *Harvey Engineering Corp.*, 270 NLRB 1290 (1984). I conclude that Respondent’s failure to reinstate them to their former or substantially equivalent jobs violated Section 8(a)(3) and (1) of the Act, as did its discharge of them for their refusal to accept the proffered jobs. *Towne Ford, Inc.*, supra, Coffman’s statements to them that she would have to terminate them for failure to accept the proffered jobs were independently violative of Section 8(a)(1).

The fact that the Company later employed them does not constitute repudiation of its unlawful discharges of them, in part because in the cases of James Walker and Joseph Almond they were still not reinstated to former or substantially equivalent jobs, and for the reason that Respondent has not complied with the requirements of *Passavant Memorial Hospital*, 237 NLRB 138 (1978). Its actions were not timely, unambiguous, specific in nature, or free from other unlawful conduct.

*E. The Alleged Failure to Reinstate Strikers to the Same or Substantially Equivalent Positions*

1. Gladys Jackson

Gladys Jackson had been employed for 3 years, and was in the fabrication department at the time of the strike. Her rate of pay was \$9.61. Coffman called her at the end of January 1999, and said that the Company had openings in stranding and the galli. Jackson had previously tried the stranding position without success, and accepted the galli job after the strike. Her rate of pay was \$9.61. A vacancy in fabrication appeared, and Jackson bid on the job. She received it, but her departmental seniority was not restored at the time. The Company restored it about a week before the hearing.

2. Theron Ring

Theron Ring started working for Respondent in 1985, and was a maintenance mechanic at the time of the strike in 1998. He received a call from Coffman in October. She offered him a job in stranding. Ring testified that he asked about a job in

maintenance, and that Coffman replied that he would never go back to maintenance. Ring called her back after some delay, and said that he would accept the stranding position. He then thought it over again, and decided not to accept the job. Ring testified that he was not familiar with operating the machines in stranding, and that the Company did not give adequate training. Although he had received a reporting date, he did not appear, and did not inform the Company that he was not accepting the job.

Coffman did not deny that Ring asked about a maintenance job. However, she denied that she told him he would never be in maintenance. Ring’s testimony that he asked about a maintenance job is unrebutted, and Coffman’s testimony is an incomplete recital of the conversation. Ring was truthful in appearance, and his claim that he asked about his former job is very probable and consistent with the requests of the other strikers. Ring was a current employee at the time of his testimony, a fact which under current Board law makes it unlikely that he would testify falsely about his employer. I credit his account of his conversations with Coffman, including her statement to him that he would never be back in maintenance. Ring’s failure to report did not constitute abandonment of his reinstatement rights since stranding was not an equivalent position. *Alaska Pulp Co.*, 326 NLRB 522, 532 (1998).

3. Randolph Cooke

Randolph Cooke was hired in 1980, and was a die shop operator on the dayshift at the time of the strike in 1998. His pay scale was \$9.78. The function of this position was to order dies and keep supplies for the employees in the wiredrawing department. Although the die shop position was not a part of the wiredrawing department, Cooke interacted with the employees in wiredrawing, and on occasion engaged in special projects in that position. This occurred three or four times a year, and lasted about half an hour on each occasion.

Coffman called Cooke after the strike, and offered him a job in stranding on the nightshift. He asked whether there were any available jobs in the die shop. Coffman replied that there were none, and that Cooke’s rejection of this offer “would be considered a termination.” Cooke accepted the job at a pay scale of \$9.45. There was more lifting and pushing in the stranding job than there had been in the die shop position, and the work was dirtier. It was the “difference between day and night,” according to Cooke. His departmental seniority was not restored.

Cooke was next transferred to wiredrawing, at a pay scale of \$10.20. About a year before the hearing, i.e., about January 1999, Coffman told Cooke that she had a job in the die shop. He bid for and received this position. However, Cooke did not get his departmental seniority until about a week before the hearing.

Coffman’s testimony on these matters is difficult to understand. She testified that the die shop was part of wiredrawing, that this job had been placed in “core processes.” Asked whether Cooke worked in the same job before the strike as he did after the strike, Coffman replied, “Same department.” This was based on her contention that the die shop was a part of wiredrawing, and that the latter had been subsumed in core processing. Asked why, under this theory, Cooke had not im-

mediately received his departmental seniority, Coffman agreed that the failure to do so was a mistake.

In lieu of disentangling Coffman's testimony, I credit Cooke's simple and straightforward account. He was offered a job in stranding, and this job was more difficult and dirtier than the job as a die operator. The job was on the nightshift, compared to Cooke's prestrike job on the dayshift. He was told that failure to accept the job would be considered a termination. His pay rate was less than his prestrike pay, and he did not receive his departmental seniority.

#### 4. Vandell Johnson

Vandell Johnson was hired in 1970, and was a warehouseman and inventory clerk at the time of the strike in 1998. Coffman called him in August, and said that she had a job available on the nightshift in the galli at an hourly rate of \$9.45. Johnson had heard from other employees that they had received letters from the Company stating that they would be terminated if they did not accept the Company's offer. He accepted the job.

Johnson testified that his job in galli was entirely different from his prestrike job. In the latter, he drove forklifts and helped with inventories. He characterized the galli work as a "labor job."

Johnson was later transferred to his prestrike job, but the date is uncertain. He did not receive his departmental seniority at this time. It was given to him about a week before the hearing in this matter.

Johnson's testimony is uncontested and is credited.

#### 5. Matthew Couitcher

Matthew Couitcher was employed in 1988 and was a fabrication machine operator on the dayshift at the time of the strike in 1988. After the strike, he received a letter from Coffman dated November 2, advising him that she had a position for him in core processes on the nightshift. If she did not hear from Couitcher within 7 days, she would terminate him and he would not be offered any<sup>52</sup> further openings. Couitcher called her and said that this was not his old job. According to his testimony, Coffman replied that he could take it or be fired. He accepted.

A month or 2 after he returned to work, Couitcher bid on an opening on his prestrike job, and was awarded it. However, he refused to accept it, and testified that the reason was Coffman's statement to him that he would be the "junior" employee in the department. Couitcher testified that this meant he would be the first to be laid off in the event of a layoff, and that he would have the last choice of shift.

Later, in March 1999, another opening in Couitcher's prestrike job appeared. He bid on it and was awarded the job on the dayshift. However, Couitcher still does not have his departmental seniority.

Coffman testified that Couitcher told her during the first conversation that the Union had informed Couitcher that, in the event of a victory in the case before the Board, only those employees who had not bid back into their original departments would have their seniority restored. Coffman agreed that any

such position was "unreasonable" and "ridiculous," and Couitcher denied it.

I note that Coffman claimed that, a week before the hearing, she had restored the departmental seniority of all strikers who had bid back to their original positions. Couitcher bid back to his original position but testified under oath a week later that his departmental seniority had not been restored, and that he was close to being the most junior employee in the department. I credit Couitcher's testimony that Coffman told him he would be the junior employee in the department if his first bid for the job was successful.

#### 6. Lau Letioa

Lau Letioa was hired in 1981, and was a maintenance mechanic at \$11.86 hourly on the dayshift at the time of the strike. On October 17, Coffman sent Letioa a letter offering him a position in core processes, and advising him that he would be terminated if she did not hear from him within 7 days, and that no other employment offer would be made.<sup>53</sup> Coffman also called Letioa, and said that the job was in wiredrawing at a rate of \$9.45. Letioa asked about his prestrike maintenance job, and Coffman replied that he would have to accept the wiredrawing job and bid on the maintenance job. Letioa asked whether he could stay at home and bid on the maintenance job from there, but Coffman rejected this procedure. About 2 weeks later, Letioa was allowed to bid on a maintenance job, and received it at his old wage rate. However, his departmental seniority was not restored until the week before the hearing. Letioa's testimony is uncontested and is credited.

#### 7. Dwayne B. Cuthbert

Dwayne B. Cuthbert was hired in 1988, and was a high-speed rewinder in the fabrication department on the dayshift at the time of the strike in 1998. The wage rate was \$9.61. Coffman called Cuthbert, and offered him a job in the stranding department on the nightshift at a rate of \$9.45. Cuthbert accepted the position. After about 3 months, a position in Cuthbert's old department was posted, and Cuthbert received the award. However, it was for the nightshift, unlike Cuthbert's prestrike job. Cuthbert testified that the Company had a dayshift position available, but added, "They had their favorite people they wanted to put on the dayshift." After a few weeks on the nightshift, a dayshift position was posted, and Cuthbert received it. However, Cuthbert did not have his departmental seniority, there was a reduction in force, and he was compelled to go back to the nightshift. Cuthbert affirmed that his departmental seniority had not been returned on the date that he testified. His testimony is credited.

#### 8. Edward Norman

Edward Norman was employed in 1975 and was doing inventory control work in the storeroom at a rate of \$9.93 at the time of the strike in 1998. After the strike, Coffman called and had a conversation with Norman's wife.<sup>54</sup> Coffman said that there was an opening in the galli. Mrs. Norman asked whether

<sup>52</sup> GC Exh. 22.

<sup>53</sup> GC Exh. 23.

<sup>54</sup> Respondent did not object to the hearsay nature of Coffman's conversation with Norman's wife.

there was an opening in the storeroom. Coffman replied that the storeroom did not exist as it had previously, and that the only opening was in the galli. If Norman rejected this offer, he would be terminated. Norman accepted at an hourly rate of \$9.45.

There were one or two postings for a job in the storeroom for which Norman did not bid. His reason was the fact that the employees in the department were being trained to do other jobs, and Norman did not want to do other work. He finally bid on a job which he thought was similar to his prior job, but acknowledged that he will still have to learn other jobs. He has not received his departmental seniority.

#### 9. Glen Gray

Glen Gray was hired in 1988 and was a fabrication operator on the nightshift at the time of the strike in 1998. Coffman called on December 28, and said that she had a position on the nightshift in the galli. Gray asked whether any other position was available, and Coffman replied that there was none. Gray described the work in the galli as much heavier, and dangerous with molten metal. The employees had to move reels of wire weighing hundreds of pounds.

Gray accepted because, he said, he had no other choice. On his bid he stated that he intended to seek restoration of his plant and departmental seniority. On January 12, 1999, a job was posted for a fabrication operator on the nightshift. Gray bid for the job and received it. He testified that he did not receive his departmental seniority until about a week before the hearing. However, he was transferred to the dayshift before this took place.

After Gray was transferred to the dayshift, the Company requested a volunteer for overtime work. Gray did not want the job, but was compelled to accept it because the other machine operator did not want it. The other employee had departmental seniority over Gray, having acquired it when he was hired during the strike. As Gray put it, "I've worked there for 11 years, and the other employee had been there since the strike." The CBA requires the Company to offer mandatory overtime work plantwide before compelling a departmental employee to do the work.<sup>55</sup> There is no evidence that the Company did so on this occasion.

#### 10. Raymond Proctor

Raymond Proctor was hired in 1966 and was a senior maintenance mechanic on the dayshift at the time of the strike in 1998. Coffman called and asked him whether he knew how to run a strander. Proctor replied that it had been 25 years since he had done so, and asked whether he could go back to maintenance. He testified that Coffman told him that he would never be back in maintenance. He, therefore, accepted the strander position on the nightshift at \$9.45. His wage rate as a senior mechanic had been \$11.69.

The Company transferred Proctor to fabrication after about a month on the strander. An opening in maintenance was posted, but Proctor did not bid on it. He stated that he thought the Company was trying to make fun of him. He acknowledged

that Coffman asked him whether he was going to bid on the job, but denied saying that he was happy in fabrication. Another opening in maintenance was posted in April 1999. Proctor bid on it at this time, and received it at a wage rate of \$12.05.

Coffman's testimony is consistent with Proctor's, except for her denial that she told him that he would never be back in maintenance. She had made similar threats in the past. Proctor, on the other hand, was an employee of the Company at the time of his testimony. I credit his account on this issue.

#### 11. Flozell Perkins

Flozell Perkins was hired in 1988, and was in the fabrication department at the time of the strike in 1998. Perkins joined the strike, but called Coffman and said that he wanted to return to work. He testified that he told the Company that he wanted to go back to fabrication, but was informed that the only opening was in the galli. Perkins accepted this. He testified that the job in galli was different from his job in fabrications. He testified that there were "plenty of openings" in fabrication because a lot of people had quit." Perkins affirmed that other employees who had less seniority received those jobs. He testified that he had no opportunity to bid for one of these jobs until late in 1998. He did so because he was having trouble with a co-worker on the galli.

Respondent's job bid log shows openings in fabrication for the months of August, October, and November, and that Perkins was transferred to fabrications on November 22.<sup>56</sup> Coffman testified that she asked Perkins on several occasions to bid for a job in fabrications, and that he did not do so until November.

#### 12. John Toothman

John Toothman was hired in 1973 and was a yardman at the time of the strike in 1998. Coffman called him after the strike and asked him to report for work. She did not state the nature of the job. Toothman reported on September 2, and Plant Manager Don Young assigned him to the galli. After about 5 months, the Company told him that a job was available in the yard on the nightshift. He bid for and received this job. The employee on the dayshift later transferred to another job, and Toothman was changed to the dayshift.

Coffman contended that material handling positions were available, and that if Toothman had bid on one of these, he would have been doing essentially the same thing as he was before the strike. Coffman stated that she explained this to Toothman, but that he refused her advice.

#### 13. David Paquay<sup>57</sup>

David Paquay was a fabrication operator on the dayshift at the time of the strike in 1998. After the strike, Coffman called

<sup>56</sup> GC Exh. 19.

<sup>57</sup> David Paquay is not alleged as a discriminatee in the complaint. Nonetheless, the General Counsel elicited testimony from him, Respondent cross-examined him and Director of Human Resources Coffman testified concerning him. I conclude that the issues concerning Paquay were fully litigated. *Montgomery Ward & Co.*, 316 NLRB 1248 (1995).

<sup>55</sup> GC Exh.. 17, art. 20.3.

and offered him a job in wiredrawing at night. Paquay's wife was ill and required his assistance during the day, but he needed the job and accepted. He testified that another employee and the Union informed him that his seniority would not be restored if he bid back into his old job and the Union won its case before the Board. He related this to Coffman, who did not believe it. Paquay took the wiredrawing job at night, but threatened to quit, and was then offered 12-hour shifts days for 2 months, then the same shift at night for 2 months. He wanted to work only days, and accepted a job in quality assurance, outside the bargaining unit. The Company told him that he could not return to the bargaining unit.

Paquay was never offered his former or an equivalent job, and retains his statutory rights to his former job despite the Company's statement to him that he had lost all such rights.

#### 14. Factual and legal conclusions

I have concluded above that a proper construction of the CBA, indeed, its plain language, required Respondent to use departmental seniority in filling "all cases of job vacancies." Although Coffman announced to the Union her intention to use plant seniority, there is no evidence that the parties ever discussed the matter, nor any clear and unmistakable evidence that the Union waived its statutory rights. Coffman claimed that one employee had been recalled on the basis of plant seniority, rejected the job, and was discharged for this reason. However, one example does not establish a prior practice, and there is no evidence that the Union knew anything about this.

The Board has had occasion to consider the relative merits of a recall procedure based on departmental seniority, as contrasted with a different method utilized by the employer. The Board stated:

[W]e find that departmental seniority is the most accurate method for determining the order in which strikers would have been reinstated pursuant to a lawful plan. Seniority has been traditionally used as the basis for many job actions, e.g., promotions. Thus, this method has the virtue of being the procedure which the Respondent, prior to the unfair labor practices, agreed to apply to the bargaining unit, including the affected individuals, and which it chose to apply during and after the strike to determine job priorities among nonstrikers, crossovers, and permanent replacements. [*Alaska Pulp Corp.*, 326 NLRB 522, 523 (1998).]

Respondent's job bid log shows that many positions identical with strikers' former jobs, or which may be shown to be equivalent, became available after the strikers' applied for reinstatement.<sup>58</sup> Most of these jobs were offered to replacement re employees including some probationary employees. The departmental seniority dates of replacement employees necessarily were later than those of the strikers, many of whom were employees of long standing. The failure of the Respondent to offer such jobs to unreinstated strikers violated Section 8(a)(3). *Towne Ford, Inc.*, supra. Some have still not been fully reinstated, and Respondent's assertion that it restored all departmental seniority rights about a week before the hearing is chal-

lenged by the testimony of several former strikers. Although the order in which violations occurred depends on the departmental seniority dates, this determination can be postponed to the compliance stage of this proceeding. *Waterbury Hospital v. NLRB*, 950 F.2d (7th Cir. 1991), enfg. 300 NLRB 992 (1990). The General Counsel agrees that the record evidence is insufficient to determine the sequence in which two or more employees would have been recalled, and concurs with this procedure.<sup>59</sup>

Finally, I credit the testimony of Theron Ring that Coffman told him he would never go back to his former job in maintenance of Randolph Cooke that Coffman said that Cooke's rejection of a stranding job would mean termination; and of Matthew Couitcher that Coffman told him that he could either accept a different job or be fired, and that he would be junior in the department. All these statements violated Section 8(a)(1).

#### *E. Strikers Recalled to Former Jobs, But Allegedly Later Than They Should Have Been*

The General Counsel cites evidence that strikers were delayed in being reinstated to their former jobs because other strikers, who had not worked in those jobs, were placed in them. Thus, Raymond Proctor was reinstated to a strander position. Coffman testified that absent this assignment, Rodney Jefferson would have been reinstated to this job utilizing departmental seniority as the criterion. Instead, Jefferson's reinstatement was delayed. Similarly, the recalls of Matthew Couitcher, Dwayne Cuthbert, Lau Letioa, and Pete Sutton to positions which were not the same as or equivalent to their former positions caused delays in reinstatement to other strikers. This evidence is augmented by Respondent's records—the job bid log, and the seniority dates of some of the employees.

In similar circumstances, the Board has stated that "the delay in the reinstatement of maintenance department employees caused by the Respondent's improper reinstatement of leadmen was not inconsequential. The minimum delay any striker would have experienced was 2 weeks." *Alaska Pulp Corp.*, supra, 326 NLRB at 325. I conclude that the delay in reinstatement of the strikers listed above in footnote 4, plus David Paquay was caused by improper reinstatement of the strikers listed above in section E, and violated Section 8(a)(3).

In accordance with my conclusions above, I make the following

#### CONCLUSIONS OF LAW

1. Respondent Florida Wire & Cable, Inc., is an employer engaged in commerce within the meaning of Section 2(5) of the Act.

2. United Steelworkers of America, Local 9292, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All production and maintenance employees, truck drivers and crew leaders employed by Respondent at its Jackson plant at

<sup>58</sup> GC Exh. 19.

<sup>59</sup> GC Br. 41.

825 North Lane Avenue, but excluding all office and clerical employees, professional employees, salespersons, guards, quality control and scheduling departments, and supervisors as defined in the Act.

4. At all times since May 1, 1995, the Union has been the certified exclusive collective-bargaining representative of the unit described above, and has been recognized as the exclusive representative by Respondent. This recognition has embodied in a series of collective-bargaining agreements the two most recent of which were effective from May 1, 1996, to April 30, 1998, and from July 17, 1998, to April 30, 2000.

5. From about April 30 to about July 16, 1998, certain employees of Respondent in the unit described above ceased work concertedly and engaged in a strike.

6. Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct.

(a) Telling employees that they had to resign from the Union in order to work past the expiration of a current collective-bargaining agreement.

(b) Soliciting employees to resign from the Union.

(c) Telling employees that they would never be reinstated to their former or substantially equivalent positions.

(d) Threatening to discharge striking employees unless they accepted reinstatement to jobs that were not their former jobs or substantially equivalent positions.

(e) Confiscating picket signs from strikers and destroying them in the presence of employees.

7. Respondent violated Section 8(a)(3) of the Act by engaging in the following conduct.

(a) Discharging Curtis Walker on August 19, James Walker on August 22, 1998, and William Carter on September 4, 1998, because they ceased work concertedly and engaged in the strike, and Joseph Almond on November 10, 1998, because he joined the strike and refused to be reinstated to a job which was not his former or a substantially equivalent job.

(b) Failing to reinstate timely to their former or substantially equivalent positions, William Carter, Randolph Cooke, Matthew Couitcher, Dwayne Cuthbert, Glenn Gray, Gladys Jackson, Vandell Johnson, Lau Letioa, Edward Norman, Raymond Proctor, Theron Ring, Curtis Walker, and James Walker.<sup>60</sup>

(c) Delaying the timely reinstatement of John Wheeler, Roy Crumpler, Charles Whitley, Rodney Jefferson, Larry Hudson, George Turner, Keith Avinger, Calvin Wissentanner, Charles Pettyjohn, Ray Lewis, Randy Nelson, Eulie Johnson, and Myron Kelly.

8. The unfair labor practices described above affect commerce within the meaning of Section 3(6) and (7) of the Act.

#### REMEDY

It having been found that Respondent engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

<sup>60</sup> The inclusion of William Carter, Curtis Walker, and James Walker is not redundant. The evidence in compliance proceedings may show that Respondent should have reinstated them prior to its unlawful discharges of them.

I have found that Respondent unlawfully discharged 4 strikers. Curtis Walker was discharged on August 23, 1998. Although Coffman in January 1999, offered him the same job (wiredrawing) he had before the strike, it is unclear whether this was the dayshift (which Walker had before the strike), and whether all his rights, departmental seniority in particular, were resorted. It is also unclear whether he should have been reinstated prior to his discharge. To delay his entitlement to backpay until this has been ascertained in compliance proceedings would be an unwarranted deprivation of Walker's rights. Accordingly, I shall recommend that the beginning period for Walker's backpay start on August 23, 1998, and that the amount found to be due using this date, be increased, or that he later receive a supplemental amount, in the event that the evidence in compliance proceedings shows that Respondent should have reinstated him on an earlier date. I shall therefore recommend that Respondent be required to offer him immediate reinstatement to his former position to the extent it has not already done so, including an assignment to the dayshift, and all his rights and privileges including plant and departmental seniority. In addition, Respondent should be required to make Walker whole for any loss of earnings which can currently be ascertained by paying him a sum of money equal to the amount he would have earned from the time of his discharge to the date of full reinstatement, less net earnings during such period to be computed in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>61</sup> I shall also recommend an expunction order.

James E. Walker was discharged on August 26, 1998, later accepted a nonequivalent job, and still later was returned to his prior job as a storeroom clerk. It is unclear whether he was returned to the same shift, and whether his plant and departmental seniority were restored. Respondent should be required to offer him his old job on the same shift, with all benefits including this previous plant and departmental seniority. The Company should also be required to make him whole in the same manner as described above in the case of Curtis Walker, with James E. Walker's backpay period beginning either on August 26, 1998, or on an earlier date if the evidence elicited in compliance proceedings shows that this is warranted.

William F. Carter was discharged on September 5, 1998, and was returned to his former job on July 23, 1999, although it is unclear whether he went back to his old shift, and whether his plant and departmental seniority were restored. The Company should be required to offer him full reinstatement to the extent that it has not already done so, including plant and departmental seniority, and backpay beginning either on September 5, 1998, or an earlier date if evidence elicited during compliance proceedings shows that this is warranted, in the same manner as that described in the case of Curtis Walker.

<sup>61</sup> Under *New Horizons*, interest if computed at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment), shall be computed as in *Florida Steel Corp.*, 281 NLRB 651 (1977).

Joseph C. Almond was discharged on November 10, 1998, and was later returned to a nonequivalent job, but has not been reinstated. Respondent should be required to offer him full reinstatement, including all his seniority rights, and backpay beginning November 30, 1998. Although the General Counsel moved to amend the complaint to add an allegation that Almond had been unlawfully discharged, the second motion alleging “late” reinstatement of employees did not include Almond’s name. Therefore, an earlier backpay date would not be available for Almond.

A determination of the proper remedy for the 13 strikers listed in Conclusion of the Law 7(b) requires evidence of their prestrike departmental seniority dates. Although the Company submitted a purported list of plant and seniority dates, most of the dates are in 1998 and the list is obviously incomplete.<sup>62</sup> From the plethora of records which Respondent produced, it is inconceivable that it does not have prestrike records showing the date when each striker began to work in a particular department, and some evidence may be available from the testimony of witnesses.

The Company’s combine four departments into one called “core processes.” The four departments were wiredrawing, stranding, stress relief, and house cleaning. There is some evidence suggesting that the employees were also required to work at different jobs. Coffman’s testimony and the testimony of the employees about the jobs they had prior to the strike warrant a conclusion that “core processes” was formed after the strike began. This action affected the reinstatement rights of the strikers and took place during Respondent’s unlawful conduct. I conclude that Respondent is not entitled to alter obligations created by that conduct. The strikers are entitled to their former or substantially equivalent jobs.

Respondent should be ordered to give full reinstatement, including all rights and benefits, to the employees listed in Conclusion of Law 7(b) to the extent that it has not yet made such reinstatement. The Company should be required to make them whole in the manner described above in the case of Curtis Walker. Their backpay dates from the date that there was an opening for their prestrike job, and their place on the prestrike department as seniority list. The backpay period ends when they have received full reinstatement. Employees who accepted jobs which were not equivalent received wages—usually less than their prestrike wage—and these amounts should be considered as interim earnings to be deducted from gross backpay due.

The strikers listed in Conclusion of Law 7(c), whom Respondent delayed in reinstating, are entitled to be made whole for their loss of earnings from the time they are determined in compliance proceedings to have been entitled to reinstatement to the time of actual reinstatement. Backpay is to be computed in the manner described above in the case of Curtis Walker.

Upon these findings of fact and conclusions of law I issue the following recommended<sup>63</sup>

<sup>62</sup> R. Exh. 3.

<sup>63</sup> 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

#### ORDER

The Respondent, Florida Wire & Cable Inc., Jacksonville, Florida, its officers, agents, successors, and assigns shall

1. Cease and desist from
  - (a) Soliciting employees to resign from the Union.
  - (b) Telling employees that they have to resign from the Union in order to work past the expiration of a current collective bargaining agreement.
  - (c) Telling employees that they would never be reinstated to their former or substantially equivalent positions.
  - (d) Threatening to discharge striking employees unless they accept reinstatement to jobs that are not their former jobs or substantially equivalent positions.
  - (e) Discharging employees because they ceased work concerted and engaged in a strike.
  - (f) Failing to reinstate timely to their former or substantially equivalent positions employees who engaged in a strike and made unconditional applications for reinstatement.
  - (g) Delaying the reinstatement of employees who engaged in a strike and made unconditional applications for reinstatement.
  - (h) Confiscating picket signs from strikers and destroying them in the presence of employees.
  - (i) In any other like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 8(a)(1) 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, to the extent it has to already done so, reinstate the employees listed in Conclusions of Law 7(a) and (b) to the positions and shifts which they had before the strike, including all benefits and privileges and plant and departmental seniority, and make them whole subsequent to a compliance proceeding in the manner set forth in the remedy section of this decision.

(b) Subsequent to a compliance proceeding, make whole the employees listed in Conclusion of Law 7(c) in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its records all reference to the discharges of Curtis Walker, James Walker, William Carter, and Joseph Almond, and inform each of them in writing that this has been done, and that the aforesaid actions will not be used as the basis of any future discipline of any of them.

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

(e) Within 14 days after service by the Region, post at its Jacksonville, Florida facility, copies of the attached notice marked “Appendix.”<sup>64</sup> Copies of the notice, on forms pro-

adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>64</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judge-

vided by the Regional Director for Region 12, after being signed by 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

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

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 Respondent since April 30, 1998.

(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.