

**Donald Sullivan & Sons, LLC and John Ceraldi and Brian Ostrowski.** Cases 34–CA–8799–1 and 34–CA–8799–2

January 18, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND WALSH

On October 6, 2000, Administrative Law Judge Margaret M. Kern issued the attached bench decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Donald Sullivan & Sons, LLC, Plantsville, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

BENCH DECISION

STATEMENT OF THE CASE

MARGARET M. KERN, Administrative Law Judge. This case was tried before me in Hartford, Connecticut, on September 18, 19, and 21, 2000. On October 19, 1999,<sup>1</sup> a consolidated complaint was issued based upon unfair labor practice charges filed on April 7, and amended charges filed on August 27, by John Ceraldi and Brian Ostrowski against Donald Sullivan & Sons, LLC (Respondent). On January 26, 2000, Ceraldi and Ostrowski requested conditional withdrawal of their charges on which the consolidated complaint was based as a result of a non-Board settlement they had reached with Respondent. Conditioned upon Respondent's full and continual performance with the terms of the non-Board settlement, on January 31, 2000, the Regional Director for Region 34, issued an order approving the withdrawal. Respondent failed to comply with the terms of the non-Board settlement, specifically the payment of an agreed-on backpay amount, thereby violating the terms of the non-Board settlement agreement. On April 19, 2000, the Regional Director revoked the conditional approval of the

<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.

<sup>1</sup> All dates are in 1999 unless otherwise indicated.

withdrawal of the charges and reissued the consolidated complaint.

It is alleged that on February 12, 1999, Respondent discharged Ceraldi and Ostrowski because they had applied for membership in the Union. Respondent defends this allegation on the ground that the employees were not discharged but voluntarily quit. For the reasons set forth herein, I find Respondent violated the Act as alleged.

At the conclusion of the hearing, I issued a bench decision pursuant to Section 102.35(a)(10) of the National Labor Relations Board's Rules and Regulations. I certify that my decision was accurately reproduced at pages 404 through 422 of the transcript, attached as Appendix A.<sup>2</sup>

On the entire record, I issue the following recommended<sup>3</sup>

ORDER

The Respondent, Donald Sullivan & Sons, LLC, Plantsville, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they join or apply to join a union or otherwise support or engage in union activities.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer to John Ceraldi and Brian Ostrowski full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent 20 positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make John Ceraldi and Brian Ostrowski whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of John Ceraldi and Brian Ostrowski, and within 3 days thereafter notify them in writing that this has been done and that their discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records 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 Plantsville, Connecticut facility copies of the attached notice

<sup>2</sup> I have corrected the transcript by making physical inserts, cross-outs and other obvious devices to conform to my intended words without regard to what I may have actually said in the passages in question. [Transcript corrections have been noted and corrected.]

<sup>3</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 adopted by the Board and all objections to them shall be deemed waived for all purposes.

marked "Appendix B."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 12, 1999.

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

#### APPENDIX A

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JUDGE KERN: Good morning everyone. This is a continuation in the hearing in the matter of Donald Sullivan and Sons, L.L.C., case numbers 34-CA-8799-1 and -2. Let the record reflect that all counsel are present. I am prepared to issue my decision in this matter.

This case was tried before me in Hartford, Connecticut on September 18, 19 and 21, 2000. On October 19th, 1999, a consolidated complaint was issued based upon unfair labor practice charges filed on April 7, and amended charges filed on August 27, by John Ceraldi and Brian Ostrowski against Donald Sullivan and Sons, L.L.C., herein called Respondent. All dates that I refer to are in 1999 unless otherwise indicated.

On January 26, 2000, Ceraldi and Ostrowski requested conditional withdrawal of their charges on which the consolidated complaint was based as a result of a non-Board settlement they had reached with Respondent. Conditioned upon Respondent's full and continual performance with the terms of the non-Board settlement, on January 31, 2000, the Regional Director, Region 34, issued an order approving the withdrawal. Respondent failed to comply with the terms of the non-Board settlement, specifically the payment of an agreed-upon back pay amount, thereby violating the terms of the non-Board settlement agreement.

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On April 19, 2000, the Regional Director revoked the conditional approval of the withdrawal of the charges and reissued the consolidated complaint.

On the entire record, I make the following findings of fact and conclusions of law.

<sup>4</sup> If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

Respondent admits and I find that the Plumbers and Pipefitters Union, Local 777, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

Respondent is engaged as a plumbing contractor in the construction industry performing residential and commercial construction. Its principal place of business is located in Plantsville, Connecticut, herein called the facility. Three brothers, Arthur, Martin and Barton Sullivan are the owners of this business founded by their father 40 years ago. To avoid confusion, I will refer to each brother by their first name. Arthur manages the business and works primarily at the facility bidding on jobs, preparing estimates and handling financial payroll and employee matters. Martin works on job sites as a plumber.

Respondent admits that Arthur and Martin are supervisors and agents of Respondent within the meaning of the Act.

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During the period of time relevant to this case, Respondent employed approximately 18 journeymen plumbers and apprentices. According to Arthur, there has never been an organizing effort and this case is the first time Respondent has ever been confronted with employees who sought to join a union.

Ceraldi has 28 years experience as a journeyman plumber. He was first employed by Respondent in July 1996. He reported to Arthur and worked primarily on residential projects. He was regularly assigned to the same pick-up truck which was stocked with company-owned power tools and inventory. Ceraldi, as the other journeymen plumbers, provided his own hand tools. He earned \$20 an hour.

Ostrowski was first employed by Respondent in November 1996 as an apprentice. Approximately one and a half years later, he got his plumber's license and was promoted to the position of journeyman plumber with a concomitant raise in pay from \$15 to \$17 per hour. Ostrowski reported to Arthur, Martin and Barton depending on the job he was assigned and he worked primarily on commercial projects.

On Tuesday, January 26, Ceraldi, Ostrowski and a third employee, apprentice Matthew Pearsall, were working at the Laurel Gardens job site in Orange, Connecticut. During a break, they discussed the fact that work was getting slow and that Arthur had cut their wages for time spent driving to and from job sites. Ostrowski said that he heard the union might be

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hiring to which Ceraldi said he might check it out. All three men expressed an interest in contacting the union and they agreed to meet the next day to go to the union hall. Other employees were also working at the Laurel Gardens job site that day but none were in the immediate vicinity of this conversation.

On the morning of Wednesday, January 27, Ceraldi had a doctor's appointment. Following the appointment, he, Ostrowski and Pearsall drove to the union hall where they met with Tom Oberle who was then the union's business agent. Ceraldi and Ostrowski filled out applications for membership.

Pearsall was told that he had to get in touch with the administrator of the apprentice program. Oberle told Ceraldi and Ostrowski that there would not be any jobs coming up for at least four to six weeks, or maybe longer, as it was wintertime and the industry was slow. According to all four witnesses present during this meeting, Oberle, Pearsall, Ceraldi and Ostrowski, there was no suggestion or discussion of Ceraldi and Ostrowski leaving their employment with Respondent.

On Thursday, January 28, Ceraldi reported for work and found that his regularly assigned truck had been stripped of all company-owned materials, such as power tools, fittings, pipes and blueprints. Neither Ceraldi nor Ostrowski had ever witnessed a truck being emptied of all of its contents during their employment at Respondent. Ceraldi was not given a reason why

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his truck was emptied by anyone from management, nor did he ask. He suspected it was because he had gone to the union and he did not want a confrontation. Ceraldi and Ostrowski took the truck and reported to the Laurel Gardens job site. Arthur testified that the reason Ceraldi's truck was stripped was because several months previous, Ceraldi had lost a company-owned power tool. He had replaced the tool but then allegedly told other employees that when he left Respondent's employ he was going to take the tool with him. Arthur testified that he emptied the truck so as to ensure that Ceraldi did not misappropriate any of the company's property. He did not offer an explanation as to why he waited several months to take this precautionary measure.

On Monday, February 1st, when Ceraldi and Ostrowski arrived to work, they found that Ceraldi's regularly assigned truck, the one that had been emptied the previous Thursday, had already been taken out by another employee. He and Ostrowski were assigned to another truck and they reported to the Laurel Gardens job site. That same morning, according to the testimony of Pearsall, he and employee John Trella were at the facility getting ready to join Ceraldi and Ostrowski at the job site. Arthur pulled them aside and told them to "Stay away from those union boys. Fuck 'em. They're going to be gone anyway." Arthur added that unions were no good. Following this exchange, Pearsall and Trella reported to the job site and Pearsall repeated Arthur's statements to Ceraldi and Ostrowski and warned

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them that they were going to be fired.

At the end of the work day, Thursday, February 4, Ceraldi returned to the facility and was standing by the first floor time clock. According to Ceraldi, Barton approached him and asked him if he had a problem. Ceraldi said no and asked if Barton had a problem. Barton said he didn't know what Ceraldi's problem was, but that Ceraldi was "dragging Brian down" with him. At that point in the exchange, Ostrowski entered the area and overhearing Barton's statement told Barton, "don't even go there." He told Barton that Ceraldi was not bringing him down. Ceraldi punched out and left work as he did not want any further confrontation. Barton did not testify.

On the morning of Friday, February 5, Ceraldi went to Arthur's office on the second floor and asked him which truck he should take. According to Ceraldi, Arthur asked him what was going on, to which Ceraldi responded that Arthur knew what was going on. Arthur then stated in substance, "So, you're going to go into the union." Ceraldi said all he did was fill out an application. Arthur then asked Ceraldi why didn't he just leave. Ceraldi said he did not have another job. Arthur continued that Ceraldi was not doing Ostrowski any favors and that he was hurting Ostrowski, because all he would be doing on a union job is hang pipe on a lift. Arthur added that Ostrowski should at least rough one house before he joined the union. During the course of this exchange, Arthur and Ceraldi walked

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down the stairs to the first floor, where Ostrowski was punching in. Arthur then accused both men of having taken a three-hour lunch on a previous job in Hamden. Both denied taking the extended lunch. The conversation ended and Ceraldi and Ostrowski reported to the Laurel Gardens job site. Arthur in his testimony denied that this conversation ever took place.

At the end of the workday on Friday, February 5, Ceraldi and Ostrowski returned to the facility to pick up their pay checks. When they arrived, they observed that the checks were not in their time card slots, the usual place where pay checks are left. They went upstairs to Arthur's office where Arthur and others were present. Arthur handed them their checks and told them to wait downstairs because he wanted to talk to them. While waiting for Arthur, Ceraldi saw that he had not been paid sick pay for January 27. Ceraldi testified that when Arthur joined them, he inquired about the sick pay. Arthur's response was that he was not going to pay Ceraldi sick pay when he knew that was the day he went to the union hall. Ceraldi insisted that he had in fact gone to see a doctor that day and that he had a receipt attesting to that fact. Arthur told him to give the receipt to Lynda, an office employee.

Arthur then said, "Why don't we stop arguing. Why don't you guys work one more week and then leave. Ceraldi said he wanted a pink slip and Arthur said he doesn't give out pink slips. Ostrowski's version of this conversation is similar to Ceraldi's

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version. According to Ostrowski, when Arthur came downstairs he asked them, "What's this about?" Ostrowski said, "What's what about?" Arthur said that they had joined the union. Ostrowski said they had applied to the union. Arthur then told them they should consider this their one week's notice. Ostrowski said he was not quitting, he didn't even have a job. Arthur's version of this conversation is that at the end of the day, Ceraldi and Ostrowski came to him, told him that they had joined the union and that they quit. He responded that he would consider this their one week's notice.

Ceraldi and Ostrowski worked the following week at the Laurel Gardens job site.

Friday, February 12, was the last day of work for Respondent at this site and the job was over. At the end of the workday, Ceraldi and Ostrowski returned to the facility. According

to their testimony, Martin approached them and asked Ceraldi for his pager, gas card and phone card. Martin told them that they had given their notice. Both protested that they had not given notice and both said they were not quitting. Martin's response was, "You joined the union, you're done."

Ceraldi denies that he ever resigned or quit his employment despite Arthur's invitations to him to leave. He testified that he had a mortgage and car payments to keep up and that he would never have left a good-paying job when he did not

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have immediate employment elsewhere. Ostrowski similarly testified that he has a house and two children to support and that he would not quit a job before he had another one. It was not until approximately nine weeks later, in late April, that Oberle called Ceraldi and Ostrowski and told them that he had jobs for them. During that nine-week period, Ceraldi and Ostrowski received unemployment compensation. Respondent contested the granting of unemployment benefits to them by asserting that they had not been discharged but had quit. The referee for the State of Connecticut resolved this issue in favor of both Ceraldi and Ostrowski which determinations were upheld on appeal.

During the course of their employment, neither Ceraldi nor Ostrowski had ever been disciplined or reprimanded for any reason.

That concludes the factual recitation.

Resolution of the factual issues in this case turns largely on credibility. Witnesses for the General Counsel and Respondent presented irreconcilable versions of the same events. Without hesitation, I credit the testimony of the General Counsel's witnesses over Respondent's witnesses.

I discredit Martin Sullivan's testimony as he contradicted himself on critical matters. In his first version of his conversation with Ceraldi and Ostrowski on February 12, Martin testified that after he took Ceraldi's keys, phone and gas

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cards, both Ceraldi and Ostrowski told him that they were expecting to report for work on Monday. Martin explained in his testimony, "Well, it seemed funny to me that they were unquitting, so I thought it kind of odd, but I knew that was their last day." When pressed as to what made him think they were "un-quitting" Martin testified it was because they looked surprised. When pressed further on what they said, beyond looking surprised, he testified that they didn't say anything. His fourth version was that Ostrowski mumbled something which he could not hear.

Martin testified that some time after February 12, he told Arthur that both Ceraldi and Ostrowski had denied to him that they were quitting. Later on in his testimony, however, Martin backtracked and said, these were not his exact words. He then backtracked even further and said that he never made such a statement to Arthur. Martin's testimony on this point directly contradicts the testimony of his brother, Arthur. Arthur testified that Martin did in fact make such a statement to him.

Martin testified that it was common knowledge in the shop in the weeks leading up to February 12 that Ceraldi and Os-

trowski had applied to join the union. He further testified that Matt Pearsall and John Trella specifically told

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him that they had applied to the union and that they told him this prior to February 5. Arthur, on the other hand, testified that the first time he knew anything about a union was on February 5 when Ceraldi and Ostrowski told him that they had joined the union and were quitting.

It is inconceivable to me that Martin learned of Ceraldi and Ostrowski's union activities days before February 5, but never shared this information with his brother.

I finally note that Martin was frequently unresponsive to questions posed to him on cross-examination.

For all of these reasons, I discredit Martin Sullivan's testimony.

I also discredit the testimony of Arthur Sullivan. He denied any knowledge of Ceraldi and Ostrowski's union activities prior to February 5. As already noted, Martin was aware of their union activities prior to February 5 and I conclude that Martin did in fact share that information with Arthur. This finding is supported by the fact that in a written statement given to Unemployment three weeks after Ceraldi and Ostrowski's discharge, Arthur stated that he approached Ceraldi on February 5 to ask him about rumors he had heard that he was joining a union.

It is not in dispute that after Ceraldi and Ostrowski were discharged Respondent had enough work to hire replacements. Under cross-examination Arthur admitted that his brother,

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Martin, told him that Ceraldi and Ostrowski had denied quitting. Arthur was then asked why then, if he had enough work, did he not recall them back to work. His response was that Ceraldi and Ostrowski were unhappy employees who had alienated themselves from management as well as their fellow employees and he was fearful that they would sabotage work being performed.

The flaw in Arthur's reasoning is that if I were to accept his testimony, I would have to find that Ceraldi and Ostrowski quit on February 5. If that were the case, it is illogical, given Arthur's sabotage theory, that he would have allowed them to continue working for another week. As Arthur testified, once an employee quits, he quits and "the window is broken." If, in fact, Ceraldi and Ostrowski quit on February 5, it is clear that Arthur would not have allowed them to remain employed an additional week. The fact is that they did not quit on February 5, or on any other day and Arthur's testimony to the contrary is not credible.

Finally, Arthur conceded under cross-examination that there was an "incompatibility" between an employee belonging to a union and working in his non-union shop. For all these reasons I discredit the testimony of Arthur Sullivan.

I credit the testimony of Ceraldi and Ostrowski. Both witnesses testified in a straightforward manner and their testimony was not only internally consistent but consistent with each other. Moreover, their testimony was logical and

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consistent with the overall evidence in this case.

I found Matthew Pearsall to be a particularly credible witness. Pearsall continued to be employed with Respondent until July 1999, six months after these events. He left Respondent's employ on good terms and I consider him to be an objective believable witness.

Finally, the testimony of Oberle was consistent with the other witnesses and not contradicted by any of Respondent's witnesses.

In all cases alleging a violation of Section 8(a)(3), or violations of 8(a)(1) turning on employer motivation, the General Counsel is required, in the first instance, to make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision. Once this is established, the employer has the burden to demonstrate that the same action would have taken place even in the absence of the protected conduct. *Wright Line a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), enforced 622 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

The General Counsel has presented a strong prima facie case. On January 27, Ceraldi and Ostrowski applied for mem-

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ship in the union. By all accounts of those present at that meeting, they were told by the business agent that it would be at least four to six weeks, maybe longer, before a job would be available through the union. Ceraldi and Ostrowski credibly testified that each had significant financial obligations and I find their argument that they would never quit one job before having another job persuasive.

Both Martin and Arthur testified that as many as four or five different employees told them that Ceraldi and Ostrowski were disgruntled employees who were openly stating that they were going to quit. None of these witnesses testified to substantiate this hearsay claim.

Ceraldi and Ostrowski were good employees who had each worked approximately three years for Respondent without incident. Neither had ever been disciplined or reprimanded for any reason. The day after they applied to the union, Ceraldi's truck was stripped of tools. Respondent's proffered reason for this was that months before, an employee told Arthur that Ceraldi had threatened to take a power tool which Arthur considered company property and Arthur wanted to ensure the safety of his equipment. Even if true, Arthur did not act on this threat for several months and only acted on it the morning after Ceraldi and Ostrowski applied to the union.

Five days after they went to the union, Arthur Sullivan

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reassigned the truck that Ceraldi had been driving for at least a year and a half. That same morning, Arthur told Pearsall and Trella to "stay away from those union boys, they're going to be gone anyway." Pearsall promptly reported these words to Cer-

aldi and Ostrowski and told them that Arthur was going to fire them. Eight days after they went to the union, Barton Sullivan, one of the owners, told Ceraldi that he was dragging Brian down with him.

Nine days after they went to the union, on the morning of February 5, Arthur told Ceraldi that he was aware that he was going to go with the union. Ceraldi pointed out that he had only filed an application. Arthur asked Ceraldi to leave the company, to quit. Ceraldi indicated that he would not quit because he didn't have another job. Arthur reiterated Barton's earlier comment that Ceraldi was hurting Ostrowski.

At the end of the workday on February 5, Arthur told Ceraldi that he was not going to pay him sick pay for January 27, because he knew that was the day Ceraldi had joined the union. He suggested to Ceraldi and Ostrowski that they work one more week and, again, asked them to quit. They did not quit. Ostrowski unequivocally stated that he was not quitting because he didn't have another job.

On February 12, Martin Sullivan relieved Ceraldi of the company's possessions and told both Ceraldi and Ostrowski that they had given their notice. They immediately protested that

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they had never given notice and that they were not quitting. Martin's response was, "You joined the union, you're done."

After three years of unblemished service, Ceraldi and Ostrowski were fired two weeks and two days after they applied for union membership. Such timing between the exercise of protected conduct in relation to a discharge is strong evidence of an unlawful motive for the termination. *Grand Central Partnership*, 327 NLRB No. 172 [966] (1999); *Trader Horn of New Jersey, Inc.*, 316 NLRB 194, 198 (1995). Indeed, timing alone can be sufficient to establish that anti-union animus was a motivating factor in a disciplinary decision. *Sawyer of Napa, Inc.*, 300 NLRB 131, 150 (1990).

In addition to the proximity of their discharges in relation to their union activity, Pearsall's credible testimony establishes that Ceraldi and Ostrowski's union activities were the express reason for their discharge. Arthur told Pearsall in no uncertain terms that the Laurel Gardens job was going to be their last job. He also Pearsall to stay away from "those union boys." Martin Sullivan's words to Ceraldi and Ostrowski on February 12 fully summarizes Respondent's motivation in this case: "You joined the union, you're done."

Thus I find that the General Counsel presented a strong prima facie case. I will now consider Respondent's defenses.

First, Respondent claims that Ceraldi and Ostrowski quit their employment. I find that this claim is against the weight

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of the credible evidence for the reasons already set forth.

Second, Respondent argues that in the absence of the words, "you're fired, you're terminated," that a finding of discharge cannot be made. I disagree.

In *MDI Commercial Services*, 325 NLRB 53 (1997), the Board set forth the standard that is to be applied under these circumstances:

The test for determining “whether [an employer’s] statements constitute an unlawful discharge depends on whether they would reasonably lead the employees to believe that they had been discharged” and “the fact of discharge does not depend on the use of formal words of firing. It is sufficient if the words or actions of the employer would logically lead a prudent person to believe his tenure had been terminated.”

There is no question that Ceraldi and Ostrowski perceived themselves to be terminated and that perception is rooted firmly in the facts of this case.

The morning after they joined the union, Ceraldi’s truck was emptied of company property. On February 1st, the truck was reassigned. That same day, Arthur told Pearsall to stay away from those union boys. They’re going to be gone anyway. Pearsall, who I consider to be the most objective of all the witnesses who testified, perceived Arthur’s statements as an indication that he was going to terminate Ceraldi and Ostrowski and he told them that.

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On February 4, Barton told Ceraldi that he was “dragging Brian down with him.” On the morning of February 5, Arthur asked Ceraldi why he didn’t just leave. Later that afternoon, on February 5, Arthur again asked both employees, Why don’t you guys work one more week and then leave. Finally, on February 12, when Martin relieved Ceraldi of his company-owned possession, he told Ceraldi and Ostrowski, “You joined the union, you’re done.”

Any reasonable person under these circumstances would conclude that they were being discharged.

Finally, Respondent argues that the findings of the Unemployment Board are not controlling in this case. I agree. I have drawn no inference for or against any party to these proceedings based upon the findings of the State of Connecticut in connection with the unemployment proceedings.

I have considered Respondent’s remaining arguments and find them to be without merit.

Based upon all the evidence in this case, I find that by discharging Ceraldi and Ostrowski on February 12, 1999, Respondent violated Section 8(a)(3) and (1) of the Act.

The following are the conclusions of law.

1. Respondent is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and, has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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

3. Respondent violated Section 8(a)(3) and (1) of the Act on February 12, 1999, by discharging John Ceraldi and Brian Ostrowski.

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

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

That concludes my decision in this case. It will be followed up by a written recommended order and notice.

The hearing is closed. Off the record.

(Whereupon, the hearing was adjourned.)

#### APPENDIX B

#### 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.

WE WILL NOT discharge or otherwise discriminate against employees because they join or apply to join Plumbers and Pipefitters Union, Local 777 or any other Union, or otherwise support or engage in union activities.

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

WE WILL, within 14 days from the date of this Order, offer to John Ceraldi and Brian Ostrowski full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make John Ceraldi and Brian Ostrowski whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board’s Order, remove from our files any reference to the unlawful discharge of John Ceraldi and Brian Ostrowski, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that their discharges will not be used against them in any way.

DONALD SULLIVAN & SONS, LLC