

**Dattco, Inc. and Civil Service Employees affiliates
Local 760M, SEIU, AFL-CIO.** Cases 34-CA-
8596 and 34-CA-8658

September 27, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On January 14, 2000, Administrative Law Judge Raymond P. Green issued the attached decision.¹ The Respondent filed exceptions and a supporting brief, and the General Counsel filed a cross-exception and brief in support of the exception and otherwise in support of the judge's decision. The Respondent filed answering and reply briefs.

The National Labor Relations Board has reviewed the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found, among other things, that the Respondent was a successor employer and that it violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union. We find that the unit in which bargaining was requested was not an appropriate unit and that the Respondent did not violate the Act in this respect.²

Unit Appropriateness and Successorship

For a number of years, Laidlaw, Inc. has provided general schoolbus transportation services for the city of Hartford. During the 1997-1998 school year, Laidlaw also provided schoolbus transportation for children in Hartford under Project Concern, a local school desegregation program. The Union was certified as the exclusive bargaining representative of the schoolbus drivers and monitors at Laidlaw's Hartford facility on February 2, 1998.³ At that time, it represented approximately 100 monitors and 180 drivers at Laidlaw's Hartford facility.⁴

¹ The judge issued an errata on January 21, 2000.

² In the absence of exceptions, we affirm the judge's finding that the Respondent threatened applicant Lawrence Clayton with bodily harm in violation of Sec. 8(a)(1) of the Act and refused to hire him in violation of Sec. 8(a)(3), (4), and (1). We also agree that Clayton should be offered reinstatement and backpay. As explained below, however, we disagree with the judge's determination regarding when the backpay period should begin. Hence, we have included a new Order that corrects the description of the backpay period. Our Order also includes the remedial language required by the Board's decisions in *Ferguson Electric Co.*, 335 NLRB 142 (2001), and *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

³ All dates are in 1998 unless otherwise stated.

⁴ Approximately 25 of Laidlaw's drivers, but no monitors, were assigned to the Project Concern routes, as opposed to the regular schoolbus routes.

In January, the Respondent acquired a facility in Hartford to use as a bus terminal. Thereafter, it bid on and in May was awarded the contract to provide schoolbus transportation for the upcoming 1998-1999 school year for children in Hartford and suburban-Hartford under Project Choice, a statewide racial, ethnic, and economic balancing school program that replaced Project Concern. Laidlaw retained the general schoolbus transportation contract for Hartford when the Project Choice contract was awarded to the Respondent.

In August, the Respondent began hiring schoolbus drivers and monitors, many of whom previously worked for Laidlaw. By late October, it had hired a representative complement of employees at the Hartford terminal, i.e., approximately 59 drivers and monitors. On October 23, the Union faxed to the Respondent a demand for recognition as the representative of the Respondent's drivers and monitors and an attendant request for bargaining. The Respondent refused, asserting then and now that its Hartford terminal is a functionally integrated part of its statewide operations and is not an appropriate unit for bargaining.

The judge found that, with respect to its Hartford operations, the Respondent was Laidlaw's successor and that it violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union. As explained below, because we agree with the Respondent that the unit encompassed by the Union's October 23 demand was not an appropriate unit, we reverse the judge's finding that the Respondent's refusal to recognize the Union and bargain was unlawful.⁵

The judge accurately set forth the test that the Board uses in assessing whether an employer is a legal successor with an obligation to recognize and bargain with a union. Citing *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987), the judge stated that "a purchasing employer is required to recognize and bargain with a union representing the predecessor's employees when there is 'substantial continuity' of operations after the transaction and if a majority of the new employer's work force, *in an appropriate unit*, consists of the predecessor's employees when the new employer has reached a 'substantial and representative complement.'" (Emphasis added.) See also *Banknote Corp. of America v. NLRB*, 84 F.3d 637, 642-643 (2d Cir. 1996) ("Subsections 8(a)(5) and 9(a) of the Act, read together, only require a successor to bargain with the representative of an 'appropriate' bargaining unit").

⁵ In view of our dismissal of the 8(a)(5) charge on this ground, we find it unnecessary to pass on the other successorship issues raised in this case.

Although the judge analyzed most of the successorship factors, he did not independently assess the appropriateness of the unit. Rather, he relied on two earlier cases involving the Respondent where the Board found that single-facility units at other locations were appropriate. *Dattco, Inc.*, 324 NLRB 323 (1997) (Clinton terminal); *Dattco, Inc.*, 325 NLRB No. 138 (1998) (not reported in Board volumes) (North Branford terminal).⁶ He found that the Respondent's operations at the Hartford terminal were not materially different from the operations at the Clinton and North Branford terminals, and believing that he was bound by those cases, he found that the Hartford terminal constituted an appropriate unit. For the reasons set forth below, we disagree.

It is well settled that a single-facility unit is presumptively appropriate for collective bargaining, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *New Britain Transportation Co.*, 330 NLRB 397 (1999), citing *J & L Plate*, 310 NLRB 429 (1993). To determine whether the presumption has been rebutted, the Board considers such factors as central control over daily operations and labor relations, including the extent of local autonomy; degree of employee interchange; similarity of skills, functions, and working conditions; and bargaining history, if any. *J & L Plate, Inc.*, supra; *D & L Transportation, Inc.*, 324 NLRB 160 (1997). Each case must be assessed on its own facts, even where, as here, the Board has made previous determinations about other facilities of the same employer. See generally *Dunbar Armored, Inc. v. NLRB*, 186 F.3d 844 (7th Cir. 1999). We find that the Respondent has rebutted the single-facility presumption and demonstrated that the Hartford terminal is not an appropriate unit standing alone.

The Respondent operates nine terminals in eight cities and towns in Connecticut—one each in New Britain, Westport, Middletown, Hartford, Plainville, Avon, and Cheshire, and two in New Haven. From these terminals, drivers are dispatched to drive school, commuter, and charter routes in many adjacent towns. Each terminal is headed up by a terminal manager or dispatcher who has authority to explain local rules to drivers, tell them where to park buses, and issue initial oral warnings for attendance and tardiness.

The Respondent's headquarters is located in New Britain near the terminal there. All of the terminals are located within 55 miles of New Britain. All bus service and charter contracts are negotiated or booked by headquarters. Administratively, the statewide operation is

divided into northern and southern districts, each with a district manager. The district managers spend much of the workday on the road, monitoring routes and drivers. They also investigate all accidents. These individuals work at headquarters in New Britain, as does the vice president of operations. Each district has a safety supervisor who is primarily responsible for hiring.

The formulation of schoolbus routes and assignments is done at headquarters by computer. Each afternoon at 4, dispatchers at each terminal contact headquarters to report the terminals' personnel and resource needs for the following morning, and each morning at 10 the dispatchers contact headquarters to report their needs for the afternoon routes. Every day the Respondent assigns drivers out of their base terminals to satisfy the requirements of contractual schoolbus routes. These drivers are shuttled from their base terminals to a receiving terminal at the beginning of the day, and shuttled back to their base terminals at the end of the workday.⁷ Thus, 24 of the drivers and monitors based at the Hartford terminal are assigned on a regular basis to drive bus routes that begin and end at other terminals. The managers or dispatchers at the receiving terminals supervise the drivers sent to them even though the drivers are based elsewhere.

All wages and benefits are corporatewide and are determined by headquarters.⁸ All accounting, payroll, personnel, and records functions are carried out at headquarters.⁹ Paychecks are generated by and issued from headquarters. All employees are subject to the same corporatewide policies and rules, and only headquarters personnel may issue written warnings, suspend, or terminate employees.

Neither Hartford Terminal Manager David Madison nor any of his counterparts at other terminals hires employees or grants time off. Although applicants for driver positions may pick up applications at local terminals, their applications are forwarded to the Respondent's New Britain headquarters where hiring is done by the district safety supervisors.¹⁰ A driver applicant must report to New Britain for a physical examination and drug screen prior to being hired. District safety supervisors investigate the applicant's driving history and back-

⁷ Drivers who are assigned out of their base terminals are paid during this shuttle time.

⁸ Wages are higher only at the Westport terminal, where municipal law governs the hourly wage paid to the drivers.

⁹ No personnel records are kept at the Hartford terminal.

¹⁰ Presumably, this process applies to monitors as well. Although most of the testimony on the subject of hiring concerned drivers, nothing in the record refutes the Respondent's assertion that "all hiring" was done by headquarters. Only 8 of the 72 employees of the Hartford terminal during the 1998–1999 school year were monitors. The vast majority of the employees at Hartford are and were drivers.

⁶ The Clinton and North Branford terminals have since closed.

ground.¹¹ All drivers, irrespective of the terminal to which they are hired, must possess a class B commercial drivers license with passenger and schoolbus endorsements. If an applicant does not already have the requisite license and certifications, he or she is given the time and training necessary to procure one prior to being hired. Mandatory monthly and yearly safety seminars for all drivers and monitors are conducted at the New Britain headquarters.

New Britain and Middletown are the only terminals that have repair shops, so the drivers take buses from all terminals there for service. All bodywork on buses is performed at the Middletown terminal.

On this record, we are constrained to conclude that the drivers and monitors at the Hartford terminal do not constitute a unit appropriate for collective bargaining. The record demonstrates highly centralized control over daily operations, and uniform working conditions, functions, and skills. All bus routes are coordinated by computer at the Respondent's headquarters, and the staffing needs for the routes are reported twice a day to, and coordinated by headquarters. Hiring, written discipline and suspension, and termination decisions are made at headquarters. Time off is granted by managers at headquarters. Payroll and personnel functions are carried out at headquarters. All benefits, wages, rules, and policies are uniformly set and applied. All drivers operate school, commuter, or charter buses, and monitors ride along to watch and assist students on the schoolbuses. All drivers are required to have a class B license with passenger and schoolbus endorsements, and all drivers must undertake the same training.

In the prior cases relied on by the judge, the Board found that single-facility units were appropriate at the Respondent's now-closed Clinton and North Branford terminals, despite the highly centralized operations and labor relations and the uniformity of skills and terms and conditions of employment, which also exist here. In those cases, the Board found that the terminal managers and dispatchers exercised a high degree of autonomy over day-to-day operations, including assignment, dispatch, and minor discipline, and that there was only minimal interchange of drivers between the facilities in issue and the Respondent's other terminals.

Here, by contrast, the employee interchange is substantial and the terminal manager at Hartford exercises much less authority over drivers based at the terminal. Specifically, 24 Hartford-based drivers are shuttled out to other terminals *daily* to service routes at those terminals. They

¹¹ If the safety supervisor discovers something questionable about an applicant, such as a speeding ticket, the district manager makes the hiring decision.

are supervised by the managers of their receiving terminals *daily* in the performance of their work, and not by the Hartford terminal manager. In other words, unlike the Clinton and North Branford terminals in previous litigation, the Hartford terminal is a labor pool that regularly supplies a significant amount of manpower to other terminals. We cannot find that the drivers and monitors at the Hartford terminal constitute a viable unit when fully one-third of the employees there do not actually work in the unit on a regular basis and are separately supervised by terminal managers elsewhere. This level of interdependence and interchange is significant and, with the centralization of operations and uniformity of skills, functions, and working conditions, is sufficient to rebut the presumptive appropriateness of the single-facility unit.¹²

Because the Hartford terminal does not constitute an appropriate unit within the Respondent's operation, we find the Respondent is not a successor under Board law, and that it had no obligation to recognize and bargain with the Union. Accordingly, we shall dismiss the 8(a)(5) allegations.

Remedy for the Discrimination Against Lawrence Clayton

On November 30, 1998, former Laidlaw busdriver and union adherent Lawrence Clayton applied for a driving position at the Respondent's Hartford terminal. There are no exceptions to the judge's finding that Clayton was threatened with bodily harm in violation of Section 8(a)(1) and discriminatorily denied employment in violation of Section 8(a)(3), (4), and (1). An issue is presented, however, as to his backpay remedy.

At the time of the discrimination against him, Clayton did not have a class B driver's license, which the Respondent requires of all busdrivers.¹³ As indicated above, however, it was the Respondent's practice to train applicants and allow them time to procure the necessary license and certifications in anticipation of hiring them—a

¹² In this respect, this case is similar to *Novato Disposal Services*, 328 NLRB 820, 820 (1999), in which among other things, the Board relied on the "significant degree of . . . temporary interchange" between petitioned-for drivers and drivers from other of the employer's companies.

See also *Budget Rent A Car Systems*, 337 NLRB 884 (2002), in which the Board found that the single-facility unit presumption had been rebutted. There, branch managers at the two petitioned-for stores had little or no input into hiring, terminations, serious discipline, wages, benefits, or scheduling overtime; control of labor relations was centralized; there was substantial functional integration and employee contract among all the stores; and job functions and terms and conditions of employment were identical from store to store.

¹³ Laidlaw did not require that all employees have a class B license. At Laidlaw, Clayton drove smaller schoolbuses for which a class C license was required.

process which took an average of 2 to 4 weeks. In directing the Respondent to offer employment to Clayton and make him whole, the judge found that the backpay period should run from the date Clayton received or receives the appropriate credentials to the date the Respondent offers him employment. The General Counsel has excepted to the backpay remedy and argues that Clayton should be awarded backpay from the date of the discrimination against him until the Respondent offers him employment. We disagree with both the judge and the General Counsel.

The fundamental purpose of Board remedies is to “undo the effects of violations of the Act.” *NLRB v. Seven-Up Bottling Co.*, 344 U.S. 344, 346 (1953). The Board’s customary remedy for a discriminatory failure to hire is to direct reinstatement and backpay, with interest. The purpose of the remedy is to make the victim of the discrimination “whole”—that is (as nearly as possible), to put him in the position, employment-wise and monetarily, that he would have been in had no discrimination occurred. *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 194 (1941).

Clearly, neither the judge’s recommended remedy nor that proposed by the General Counsel would accomplish this purpose. The judge’s remedy would effectively deny Clayton backpay for at least part of the period from the date of the unlawful conduct toward him until the date he is offered employment. The remedy requested by the General Counsel would give Clayton more than he would have earned had he been treated lawfully and been given the time and training necessary to obtain the class B license. Accordingly, we reject both of these approaches.

To restore Clayton to the position he would have been in absent the unlawful discrimination, we shall impose a remedy based on the Respondent’s own hiring practices. As stated above, the Respondent’s practice was to offer applicants employment conditioned on their obtaining the license, then to train them so that they could meet licensing and certification requirements, and finally to employ them once they received the license. Consistent with that practice, we find that the backpay period should begin on the date after November 30 (the day he applied for employment) that Clayton would have obtained the required license had he not been treated unlawfully.

Of course, we can only speculate about the amount of time it would have taken him to obtain the class B license and certifications in 1998 had he been offered employment and received appropriate training. We think it reasonable to assume, however, that the length of time that it actually takes him to acquire the license (or that it took him if he has since gotten the license) is the same

amount of time it would have taken him to do so in 1998.¹⁴

More precisely, to determine the date the backpay period should begin, we shall add the length of time that it takes, or took, Clayton to apply for and receive the requisite class B license to the date that he was discriminatorily refused employment, November 30. To illustrate, if Clayton applied for and received the appropriate license in 15 days, the backpay period should begin on December 15, 1998. And if Clayton has not obtained the license but does so within a reasonable period of time after being offered employment by the Respondent, and if, for example, it takes him 22 days to receive it, then the backpay period should begin on December 22, 1998.¹⁵

ORDER

The National Labor Relations Board orders that the Respondent, Dattco, Inc., Hartford and New Britain, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire applicants for employment because of their affiliation or support for the Union or because they have participated or given evidence in a prior unfair labor practice proceeding.

(b) Threatening bodily injury to job applicants or employees because they are members or supporters of the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to 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 of the date of this Order, offer Lawrence Clayton, as may be appropriate to the circumstances, entry to its training program or employment as a busdriver.

(b) Make Clayton whole with interest, for any loss of earnings he may have suffered in the manner described above.

(c) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place desig-

¹⁴ We disavow the judge’s suggestion that Clayton’s entitlement to backpay should be limited because he did not obtain a class B license when he worked at Laidlaw. Clayton had a class C license, which was required to drive the smaller buses that Laidlaw operated. More importantly, as stated above, the Respondent gave other applicants the opportunity to get the class B license.

¹⁵ If Clayton did not obtain the license and fails to do so within a reasonable period, we shall assume that he would not have done so in 1998 either, and therefore would not have been employed by the Respondent. In such circumstances, Clayton would not be entitled to backpay.

nated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."¹⁶ 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 November 30, 1998.

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

APPENDIX

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

¹⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT refuse to hire applicants for employment because of their affiliation or support for the Union or because they have participated or given evidence in a prior unfair labor practice proceeding.

WE WILL NOT threaten bodily injury to job applicants or employees because they are members or supporters of the Union.

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

WE WILL, within 14 days of the date of this Order, offer Lawrence Clayton entry to our training program or employment as a busdriver, whichever is appropriate under the circumstances.

WE WILL make Lawrence Clayton whole, with interest, for any loss of earnings he may have suffered as a result of our discrimination against him.

DATTCO, INC.

Jennifer Dease, Esq., for the General Counsel.
George E. Obrien Jr. and Deborah Dehart Cannavino, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was heard by me in Hartford, Connecticut, on September 28-30, 1999. The charge in Case 34-CA-8596 was filed on November 18, 1999, and the charge and amended charge in Case 34-CA-8658 were filed on January 14 and May 13, 1999. A complaint was issued in Case 34-CA-8596 on July 28, 1999, and a complaint in Case 34-CA-8658 was issued on June 22, 1999. In substance the complaints alleged as follows:

1. That on February 2, 1998, the Union was certified by the Board as the exclusive collective-bargaining agent of certain employees of a company named Laidlaw Transit, Inc., in a unit consisting of all schoolbus drivers and bus monitors employed by the employer at its Hartford Connecticut facility; but excluding all other employees, mechanics, dispatchers, maintenance employees, office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

2. That in August 1998, the Respondent, Dattco, Inc., obtained a contract from the State of Connecticut pursuant to which it replaced Laidlaw and continued Laidlaw's business in basically unchanged manner and employed as a majority of its (Dattco's) employees at the Hartford facility, a majority of the individuals previously employed by Laidlaw. That as a consequence of such actions, Dattco became a successor to Laidlaw having an obligation to bargain with the Union.

3. That since on or about October 7, 1998, the Respondent, as a successor to Laidlaw, has refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the unit described above.

4. That on or about November 30, 1998, the Respondent, by its manager, David Madison, threatened employees with bodily harm if they engaged in union activities.

5. That on or about December 7, 1998, the Respondent by Madison told employees that they would not be hired because of their union activity and refused to hire Lawrence Clayton for such unlawful reasons.

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

FINDINGS OF FACT

I. JURISDICTION

The parties agree and I find that the Respondent, an employer, engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also is agreed and I find that the Charging Party, Civil Service Employees, affiliates, Local 760, SEIU, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

A. *The Successorship Issue*

On February 2, 1998, the Union was certified as the bargaining representative of the busdrivers and monitors who were employed by Laidlaw at a facility located at 2909 Main Street, Hartford, Connecticut. The employees, then employed by Laidlaw at this facility, were working pursuant to a contract between Laidlaw and the city of Hartford for the transportation of public school students. This contract, which was overseen by the Hartford Board of Education, provided transportation of students within the city of Hartford (intracity routes) and transportation from Hartford to some of the suburban school districts surrounding Hartford. The latter function was undertaken pursuant to "Project Concern" designed in an attempt to desegregate the public school system of Hartford. The Project Concern transportation was overseen by Mary Carroll.

In performing the Hartford contract, Laidlaw employed about 180 busdrivers and 100 monitors. (Monitors are people who go along with the bus and tend to the children when needed.) Of the total unit consisting of about 280 people, there were about 25 busdrivers assigned to Project Concern routes. There were no monitors who were employed by Laidlaw for these routes.

In 1997, the State of Connecticut enacted a new desegregation program which was called "Project Choice." This was to be implemented in the 1998-1999 school year. Like its predecessor, the new Project Choice was designed to foster desegregation of various areas in Connecticut including the Hartford city schools by affording city students an opportunity to enroll in suburban school districts. (The program also theoretically provided transportation options for suburban students to enroll in inner city schools.) Under the new program, which was regional in nature, three sending districts were designated; these being Hartford, New Haven, and Bridgeport. Additional educational services were also provided, but for our purposes, we remain focused on busing. For the Hartford area, an entity called the Capitol Regional Education Counsel (CREC) was set

up and Mary Carroll moved from Project Concern to the Hartford area administration of Project Choice.

In May 1998, bids were solicited by CREC for the schoolbus routes related to Project Choice in Hartford. Laidlaw and Dattco, each submitted competing bids for this work. Dattco turned out to be the successful bidder and was awarded the Project Choice routes for the 1998-1999 school year. Laidlaw ceased to perform this work in late spring of 1998. Nevertheless, Laidlaw retained the intracity routes for Hartford which, as noted above, constituted the bulk of its work in the Hartford area.

Unlike Laidlaw which is a publicly owned corporation operating throughout the United States and Canada, Dattco is a private, family owned business, headquartered in New Britain Connecticut and principally doing business in that State.

In January 1998, Dattco leased a property in Hartford which it used as a bus terminal. At that time, it transferred from New Britain, a few routes in Hartford unrelated to the Hartford public schools. These were a shuttle service for the University of Hartford and bus service for two private schools. In August, Dattco moved more buses and increased its rented space at the Hartford facility to take care of the Project Choice contract. Dave Madison was transferred from New Britain to be the Hartford terminal manager and Yolanda Carabello was hired to be the Hartford dispatcher. Dattco also transferred some maintenance people to Hartford. Prior to his employment by Dattco, Madison had been a supervisory employee of Laidlaw at its Hartford facility.

The physical facility at Hartford consists of a garage with three bays, a drivers' room, a dispatch office, and the terminal manager's office. It also has space to park buses.

Beginning in mid-August 1998, Dattco commenced hiring drivers and monitors for Hartford. Although most of these people would be hired to work on Project Choice routes, some were utilized for other work as well. In any event, this hiring process began around August 13, 1998, and continued throughout the year. The largest group of new hires took place in August and smaller numbers of new hires occurred in September, October, and thereafter. The school year commenced in early September 1998, presumably soon after Labor Day, and by September 8, 1998, Dattco had assigned a total of 58 people to be drivers and monitors at the Hartford facility. By the end of September, Dattco had hired about 60 drivers and monitors for the Hartford facility. By the end of the 1998-1999 school year, the number of drivers and monitors employed at this facility reached about 72 or 73. At the beginning of the 1999-2000 school year and despite an expansion of the Project Choice program, the number of such employees was in the range of between 69 to 73 employees. (An Appendix A to this decision describes who was hired and when.)

By letter dated October 6, 1998, the Union made a demand for recognition.¹ This was followed up by a telephonic demand occurring in or about mid-November 1998. There is no dispute

¹ The Employer in an appendix to its brief offered to show, by way of a cover fax sheet, that the demand was not actually sent until October 23, 1998. Even if this is so, I don't think it would have any effect on the outcome of this case.

as to the fact that the Respondent has refused to recognize the Union.

In order to put the evidence in context, it is useful at this point to focus on the theories of the respective parties. The General Counsel argues (1) that Dattco's Hartford facility constitutes a single and separate appropriate unit and (2) that a majority of the employees hired for this facility had been employed by Laidlaw in the certified bargaining unit. Contending that Dattco is engaged in essentially the same business as Laidlaw (driving schoolbuses); that there was continuity of operations when Dattco replaced Laidlaw in this portion of Laidlaw's Hartford business; and that a majority of Dattco's Hartford work force consisted of former Laidlaw unit employees, the General Counsel argues that Dattco is a successor having a legal obligation to bargain with the Union.

The Respondent contends that the Hartford unit is not a separate appropriate bargaining unit inasmuch as Dattco's statewide operations are highly integrated and centralized. It argues among other things, that employees at all of its facilities receive the same level of wage and benefits; that they work under the same employee rules and regulations; that the distribution of routes is determined at its central headquarter facility; and that there is a significant degree of regular employee interchange among the Respondent's several Connecticut facilities. Accordingly, it argues that the smallest appropriate unit would have a statewide unit consisting of at least 800 employees and therefore, the Hartford/Laidlaw employees who have been integrated into its centralized operations, would comprise only a small fraction of the work force. Moreover, the Respondent argues that even if the Hartford facility were held to be a separate appropriate unit, the former Laidlaw employees would not make up a majority of its work force as of the date that recognition was granted and when the number of employees reached a "representative complement."

The General Counsel and the Respondent differ as to how to count people who had worked for Laidlaw but who left that Company at a point in time well before the transition was made to Dattco.

There has been considerable prior litigation at the Hartford Regional Office, in the context of representation cases, regarding Dattco and the question of appropriate units. This has led to a number of decisions on this issue which are summarized below.

In 1994, in Case 34-RC-1290, the Regional Director concluded that a proposed unit of drivers at Dattco's North Branford, Connecticut facility was not appropriate. Consequently, in December 1994, a representation election was conducted in a statewide unit of busdrivers which resulted in a certification of results. (The Union lost.)

In 1996, Local 443 IBT filed a petition in Case 34-RC-1431 in relation to drivers at a Dattco facility in Clinton, Connecticut. Once again the Regional Director concluded that the proposed unit was inappropriate. Local 443 appealed to the Board which reversed the Regional Director, and relying on *D&L Transportation*, 324 NLRB 160 (1997), found that the Clinton facility constituted a separate appropriate unit. *Dattco Inc.*, 324 NLRB 323 (1997). When the employer refused to bargain, in order to test the certification in the court of appeals, the Board

issued its decision after summary judgment holding that Dattco refused to bargain. 325 NLRB No. 138 (1998) (not reported in Board volumes). That matter is still pending, as is another case involving Dattco's North Branford facility, where the Board denied the Respondent request for review of the Regional Director's conclusion that a single facility unit is appropriate.

As the operations of the Respondent were not materially different at the time of the present hearing, it seems to me that the Board's decision, finding that single-facility units are appropriate for Dattco, is binding on me.² I note parenthetically, that if it is ultimately concluded that the Hartford unit is not appropriate and that a multifacility unit is the only appropriate unit, then no successorship could be found in this case and the Respondent clearly would not have an obligation to bargain with the Union.

The basic case defining successorship is *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987). In that case, the Supreme Court held that a purchasing employer is required to recognize and bargain with a union representing the predecessor's employees when there is a "substantial continuity" of operations after the transaction *and* if a majority of the new employer's work force, in an appropriate unit, consists of the predecessor's employees when the new employer has reached a "substantial and representative complement."

If majority status exists in the new unit (meaning more than half of the new unit consists of the predecessor's employees), then an obligation to bargain via successorship will be found even where the new bargaining unit has changed to some extent. *NLRB v. Winco Petroleum Co.*, 668 F.2d 973 (8th Cir. 1982) (purchaser consolidated the predecessor's three service stations with four others). A purchaser can be a successor even if it takes over a fragment of the seller's unit, where the new unit can exist on its own as an appropriate unit. *Stewart Granite Enters.*, 255 NLRB 569 (1981). An extreme example of this is illustrated by *Bronx Health Plan*, 326 NLRB 810 (1998), where a Board majority concluded that a new entity was a successor even though it was engaged in a somewhat different type of business and where the new unit consisted of less than 6 percent of the predecessor's existing unit. Thus, in the present case, the fact that Dattco's Hartford facility and the routes run from that facility constitute only a portion of Laidlaw's preexisting unit, would not negate a successorship finding.

Successorship will not be found in the event that the new employer substantially changes the nature of the business and thereby disrupts the continuity of the enterprise. *CitiSteel USA, Inc., v. NLRB*, 53 F.3d 350 (D.C. Cir. 1995). In *School Bus Services*, 312 NLRB 1 (1993), the Board held that with respect to continuity, the questions to be answered are (1) whether the business of both employers was essentially the same; (2) whether the employees of the new company are doing the same

² I note that the Respondent spent a good part of its brief discussing its contention that all of the Company's facilities are functionally integrated and have a significant amount of employee interchange. I mean no disrespect to the Respondent or its counsel in not discussing the evidence on this point. But as the Board has already ruled against Dattco's unit position on facts which have not significantly changed, Respondent's reargument of its position, more appropriately must be made either to the Board or to a reviewing court.

jobs in the same working conditions, under the same supervisors; and (3) whether the new entity has the same production process, produces the same products and basically has the same customers. On the issue of continuity, see also *Sierra Realty Corp.*, 317 NLRB 832, 836 (1995); *Systems Management*, 292 NLRB 1075 (1989), *enfd.* in part 901 F.2d 279 (3d Cir. 1990); *Steward Granite Enterprises*, 255 NLRB 569, 573 (1991); and *Spruce-Up Corp.*, 209 NLRB 194 (1974).

In the present case, I would conclude that there is substantial continuity between the Hartford operations of Laidlaw and the Hartford operations of Dattco, despite the fact that Dattco took over only a portion of the schoolbus routes that Laidlaw had previously performed in the area. Most of the routes run by Dattco were routes which previously had been run by Laidlaw. Dattco's local terminal manager, Dave Madison, had also been the terminal manager for Laidlaw. And many, but not all of new employees of Dattco, had been employed by Laidlaw during the preceding school year. The services being performed by Dattco are essentially the same as those performed by Laidlaw and the manner in which the employees do their work is not, in my opinion, significantly different. (Let's face it, the work from an employee's point of view, consists of driving a schoolbus on a predetermined route set by Dattco. This involves arriving on time in the morning, taking a bus out on the run and returning it to the facility when the route is concluded. Although I would characterize this as a highly responsible job, it cannot, in my judgment, be called a job which affords a great deal of latitude in the means of its performance.)

Inasmuch as the Board has already concluded that for Dattco a single facility unit is appropriate, the remaining question is whether or not, at an appropriate period of time, a majority of Dattco's Hartford work force consisted of former employees of Laidlaw.

The record indicates to me that Dattco reached its normal operations at Hartford in mid-September 1998, or at the very latest, by the end of October 1998. After that, employees came and went as a result of normal turnover and although there was some expansion of the work force during the 1999–2000 school year, this did not involve a significant increase in employee numbers and was speculative at the beginning of the 1998–1999 school year. Because Dattco hired people in August, September, October, and to a lesser degree in the ensuing months, it is difficult to pinpoint a precise date when it reached a representative complement. I therefore have tried to evaluate the numbers over a period of time.

In tallying the numbers, I have included persons who appear on General Counsel's Exhibits 19 and 20 which are computer runs made by Dattco of the drivers and monitors assigned to the Hartford facility payroll. I have also used General Counsel's Exhibit 16 which is a payroll record from Laidlaw plus a number of Dattco application forms which were put into evidence by both the General Counsel and the Respondent. The applications indicate what the job applicants listed as their previous employments when they applied for jobs at Dattco. Thus, combining the application forms with General Counsel's Exhibit 16, I was able to ascertain which people on General Counsel's Exhibits 19 and 20 had previously worked for Laidlaw/Vancom and when they worked for the predecessor.

General Counsel's Exhibit 19 is a computer printout that was run on September 29, 1999, and lists the people employed in order of date of hire. If an employee left Dattco's employ before September 29, 1999, the date is listed; otherwise it is assumed that the individual was employed from the start date shown to the date of the computer run. (9/29/99.) I should note that there are several names which have a start date and termination date which are identical. When this occurs, this means that the individual never actually showed up for work and those individuals are not counted. General Counsel Exhibit 19 lists individuals who were employed from January 9, 1998, to September 21, 1999. (The latter date would be in the second year of Dattco's Hartford operation.)

General Counsel's Exhibit 20 is a printout of Dattco's employees that was run on March 10, 1999. It lists the employees in alphabetical order and I assume that it lists all persons who became employed by Dattco at the Hartford facility since its names on General Counsel's Exhibit 20 who do not appear on General Counsel's Exhibit 19. Obviously this would include people hired after September 21, 1999. But it also includes a few people who were apparently hired much earlier. (For example, Maria Rupert listed on General Counsel's Exhibit 20 as being hired on January 9, 1998, is not listed on General Counsel's Exhibit 19.)

The combination of General Counsel's Exhibits 19 and 20 shows that the majority of Dattco's hiring took place in August 1998, with 30 people hired on August 19 and 20. By the end of August 1998, and still before the start of the school year, Dattco employed at this facility, exclusive of the terminal manager and dispatcher, 44 drivers and monitors. Additional people were hired in September and October 1998. And more people were hired thereafter. By my count, Dattco employed 54 drivers and monitors by September 14, 1998 (soon after the school year began); 59 by September 21, 1998; 60 by September 28, 1998; and 59 by the end of October 1998. (By the end of October 1998, seven employees had left their employment during October and were replaced.) I should note that the combination of General Counsel's Exhibits 19 and 20 should list all unit category people who were on the Hartford facility payroll including those individuals who arrived at this facility in the morning and who were shuttled to other terminals.³

To determine which employees of Dattco at the Hartford facility had previously been employed by Laidlaw, I reviewed Laidlaw's payroll records and the employment applications of the people hired by Dattco. Because as a matter of industry practice many (perhaps most) of the Laidlaw drivers were laid off at the end of the school year (at the end of May or in June), I counted as a former Laidlaw employee any person thereafter hired by Dattco who was employed by the predecessor up to late May 1998 or thereafter. That is, if the evidence indicated that an individual was employed by Laidlaw on or after late

³ I can see no reason to exclude from the count any individuals who were employed by Dattco during an appropriate period of time because they may also have worked for Laidlaw at the same time. Assuming this to be the case, there is no reason to exclude from a bargaining unit, people who work regular part-time jobs for two employers at the same time.

May 1998, I counted that person as being a predecessor employee who should count toward the Union's majority status. On the other hand, if the evidence indicated merely that an individual had worked at one time for Laidlaw, but who was not employed by Laidlaw at or shortly before the end of the 1997-1998 school year, I did not count that individual as being a predecessor employee. Thus, if for example, an individual had worked for Laidlaw or Vancom but had an intervening employer before becoming employed by Dattco, that individual was treated as if he was a new employee who should not be counted toward the Union's majority status. In this regard, the Respondent cited a General Counsel memorandum on this subject which supported its view of the law and which is persuasive to me. In General Counsel's memo, November 2, 1999; NLRB Press Release (R-2347) the General Counsel stated:

We initially found that there was substantial continuity between operations of the predecessor and those of the successor. However, we also found that various employees whose employment relationships with the predecessor had been severed and who had then been hired by the successor, should not be included in determining whether a majority of the bargaining unit had been union-represented predecessor employees at the time of the predecessor's cessation.

In our view, those employees had severed their employment relationships for reasons unrelated to the cessation of the predecessor's operations. WE thus found distinguishable such cases as *Derby Refining*, 292 NLRB 1015, (1989) enf. 915 F.2d 1448 (10th Cir. 1990) and *Cincinnati Bronze*, 286 NLRB 39 (1987) where employees who had previously terminated their relationship with the predecessor were counted in the successor's bargaining unit. In those cases, however, the employees had been terminated as a consequence of the shift in operations from the predecessor to the successor. In such circumstances, there was no reason to believe that the employees would have ceased their employment but for the predecessor's cessation of operations. In our case, the predecessor employees in question had terminated their employment or had been terminated for unrelated reasons. Therefore, they were not to be counted in determining the union's majority status. Absent those employees, the union lacked majority status, and we decided to dismiss the Section 8(a)(5) charge.

In counting the number of Dattco employees at various times and determining whether a majority came from Laidlaw, I assumed that a single facility unit in Hartford, Connecticut, is appropriate and assumed that all employees who reported to that facility (whether or not working on Hartford routes), should be included in the unit. Where there are situations which are ambiguous, I have given the Respondent the benefit of the doubt on the theory that it is the General Counsel who has the burden of proving majority status. Thus, for example, I have not counted as part of the Union's majority, Elizabeth Jenkins, Jesus Fernandez, Teresa Rodriguez, and Lydia Ferrer because neither the Laidlaw records nor their Dattco employment applications clearly indicated when they ceased working for Laidlaw

before going to work for Dattco. I have also concluded that the company reached normal operations and had a representative complement no later than the end of September 1998, although I have included in Appendix A all hires (and terminations), from January 1998 through October 31, 1998. The count is as follows:

As of August 31, 1998, there were 44 employees in unit jobs of whom 27 had been employed by Laidlaw in the working period immediately preceding their hire by Dattco.

As of September 14, 1998 (right after the start of the 1998-99 school year), there were 54 employees in unit jobs of whom 31 had been employed by Laidlaw in the working period immediately preceding their hire by Dattco.

As of September 21, 1998, there were 59 employees in unit jobs of whom 36 had been employed by Laidlaw in the working period immediately preceding their hire by Dattco.

As of September 28, 1998, there were 60 employees in unit jobs of whom 36 had been employed by Laidlaw in the working period immediately preceding their hire by Dattco.

As of the end of October 1998, there 59 employees in unit jobs of whom 37 had been employed by Laidlaw in the working period immediately preceding their hire by Dattco.

Accordingly, as a majority of the Dattco Hartford unit at any given time from the end of August until the end of October 1998, contained a majority of employees who had worked for Laidlaw during the immediately preceding working season, I conclude that Dattco was a successor, having an obligation to bargain with the Union upon its request to bargain.

B. Lawrence Clayton

Clayton was employed from 1991 to 1996 as a busdriver for Laidlaw/Vancom. During that period he drove a type 2 small schoolbus which required a commercial driver's license with a C endorsement. Other people drove larger schoolbuses requiring a B endorsement which Clayton did not have. He resigned in December 1996.

In January or February 1997, Clayton began assisting the Union in its attempt to organize the Laidlaw/Vancom employees in Hartford. He distributed union literature outside the facility and solicited employees to join the Union. At this time, Dave Madison, who later became the terminal manager for Dattco, was the manager of the Hartford facility for Laidlaw.

In March 1997, Clayton told Madison that he wanted to resume his job as a driver. He credibly testified that Madison asked him about his involvement in the Union and that he told Madison that his involvement should be obvious inasmuch as he could be seen each day outside the facility handing out literature. Clayton told Madison that he was one of the lead union organizers but that he wasn't there to talk about the Union; he was there to ask for a job.

Thereafter, Clayton met with Laidlaw's operations manager who told him that he would not be hired because he did not have the C endorsement on his license and that the Company was only hiring people who could drive both small and large schoolbuses. (Requiring a B endorsement.)

The Union filed an unfair labor practice alleging that Laidlaw unlawfully refused to hire Clayton. After an investigation, that Company entered into a settlement agreement pursuant to

which it agreed to hire Clayton. As a condition of hire, Clayton agreed that after he started working, he would complete the necessary training to get a B endorsement thereby enabling him to drive the big buses. Notwithstanding this agreement, Clayton, although rehired in September, did not complete the training, did not obtain the license endorsement, and again left Laidlaw's employment in June 1998. Among other things, Clayton told Madison that he was tired of driving schoolbuses.

In the meantime, the Union's organizing drive culminated in an election which resulted in it being certified on February 2, 1998. The Union and Laidlaw thereupon commenced collective bargaining and Clayton was on the Union's negotiating committee. When Clayton left his job at Laidlaw, he was hired by the Union as an organizer.

On or about November 30, 1998, Clayton visited the facility and asked Madison if he could be employed by Dattco. Clayton credibly testified that while giving him an application, Madison said, "[Y]ou're not going to put a union in here, because some bodily harm might come your way this time, not by me of course, but there will be some bodily harm."

Madison testified that right after Clayton's visit, he called his superior, Phil Johnson, who is Dattco's director of operations for the Northern District. According to Madison, he told Johnson that he knew Clayton as a union organizer when they both worked at Laidlaw and that he didn't think that Clayton's application was serious. Madison testified that he told Johnson that Clayton did not have an up-to-date license and that he had some kind of ticket on his record. Clayton also testified that he told Johnson that Clayton's personality wouldn't fit in with the people currently working, that Clayton could be very argumentative over any subject and that he didn't think that Clayton would work very well with the people who were working. Madison recommended that Clayton not be hired, although he testified that he also told Johnson that if they did not hire Clayton, they would likely be faced with an unfair labor practice charge. Johnson testified that he decided not to hire Clayton based solely on Madison's recommendation. He also testified that based on Clayton's report to him, he felt that Clayton would be a "skunk in the woodpile."

In relation to the refusal to hire Clayton, a number of things should be noted. First, the Company's witnesses testified that at that time (November 1998), there was a severe shortage of schoolbus drivers in Connecticut and as a consequence, it was willing to make a lot of allowances in terms of a person's qualifications. The record shows that a considerable number of other drivers were hired by Dattco despite having various speeding and other tickets on their records. These included Wayne Bryce, Isaac Giles, Francis Matthews, Kevin McKinnis, Miguel Cordero, Sherwood Dickson, Dwayne Foster, and others. Indeed McKinnis, who had two speeding tickets listed on his employment application, was hired soon after Clayton applied for a job.

Second, the fact that Clayton had let his commercial driving license lapse (for nonpayment), is also irrelevant. In this regard, the Company's procedure is to agree with prospective employees to train them (without pay), and if an applicant obtains the proper license, then employ that person after completion of the training. As such, many people are put into the

Company's training program and ultimately hired who do not have a commercial driver's license to begin with, much less the C or B endorsements. In Clayton's situation, he clearly could have renewed his commercial driver's license and no doubt, with the training afforded to any other prospective employee, could have obtained the B endorsement necessary to operate a full sized schoolbus.

In sum, I conclude, in accordance with the Board's decision in *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), that the General Counsel has met her burden of showing that a reason for refusing to hire Clayton was because of his union activity at Laidlaw, which Madison assumed would also occur at Dattco if Clayton was employed there. Further, I conclude that the General Counsel has made out a strong prima facie showing that Madison's recommendation, relied on by Johnson, to not hire Clayton, was based on the fact that Clayton had been involved in a previous unfair labor practice case which involved Madison in that situation as well. The reasons put forward by Dattco's management for refusing to hire Clayton, were, in my opinion, not convincing and I therefore conclude that the Respondent has not met its burden of showing that it would not have hired Clayton for reasons unrelated to his union activity or unrelated to the previous unfair labor practice in which he was involved.

I also conclude, based on the credited testimony of Clayton, that on November 30, 1998, the Respondent violated Section 8(a)(1) of the Act, when Madison threatened Clayton with bodily harm.

CONCLUSIONS OF LAW

1. The Respondent Dattco, Inc., as a successor to Laidlaw, has violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with Civil Service Employees affiliates, Local 760, SEIU, AFL-CIO.

2. The Respondent violated Section 8(a)(1), (3), and (4) of the Act by refusing to hire Lawrence Clayton because of his union activity and because of his participation in a previously filed unfair labor practice.

3. The Respondent has violated Section 8(a)(1) by threatening Clayton with bodily harm.

4. The violations found herein effect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

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

With respect to Clayton, I shall recommend that the Respondent offer to admit him immediately to its training program and *if* he obtains the proper license with a B endorsement, offer him employment as a busdriver. If however, he has obtained his license with the B endorsement, I shall recommend that the Respondent offer him employment as a driver.

There is a problem however with respect to backpay inasmuch as Clayton, without a commercial driver's license and without a B endorsement, would not have been hired. How-

ever, had the Company offered to employ him, he easily could have had his license renewed by paying the \$40 fee that he owed. Also, it doesn't seem that obtaining a B endorsement should be much of a problem assuming, however, that the individual sticks with the training program. The problem here is that Clayton didn't do this when he was reinstated at Laidlaw as a result of the prior settlement and this raises a substantial doubt as to whether he would have repeated this pattern at Dattco.

Although there is a presumption that backpay is owed when there is an illegal discharge or refusal to hire, I shall recommend, in the circumstances of this particular case, that backpay should start from the date that Clayton obtains the proper license and a B endorsement and that backpay run until such time as the Respondent either offers to enroll him in its training program or offers him employment.

Interest on any backpay owed shall be computed on a quarterly basis, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 890 NLRB 289 (195), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]

APPENDIX A

Name	Dattco employment ⁶	Laidlaw employment ⁷
1. Maria Rupert	1/9/98	No
2. Maria Angle	1/9/98	No
3. Mabel Vega ⁸	8/1/98	No
4. Ronald Woods	8/13/98–10/2/98	8/27/97–5/22/98
5. Tomas Matos	8/19/98	In 1995
6. Celso Ortiz	8/19/98	8/23/96–10/2/98 ⁹
7. Antonio Rivera	8/19/98–12/13/98	8/29/96–10/5/98
8. Justin Alabre	8/20/98	11/5/97–10/5/98

⁶ Unless otherwise stated, an employee listed was employed from the date listed to at least 9/24/99, which is the date that GC Exh. 19 was run. If an employee had an identical start and end date on GC Exh. 19 this means that the employee did not actually go to work for Dattco and therefore is not listed on the exhibit. Also not listed is the dispatcher, Yolanda Caraballo and any mechanics assigned to this facility.

⁷ Information regarding the dates of employment at Laidlaw/Vancom are taken from Laidlaw's payroll records and from job applications that employees filled out and submitted to Dattco.

⁸ The record indicates that Mabel Vega worked in the office but acted from time to time as a substitute driver.

⁹ A number of employees are shown on Laidlaw's records as having terminated from that company in September or October 1998, after they had started working for Dattco. I surmise that this simply means that the person didn't work during the summer for Laidlaw and that Laidlaw, after being advised that the employee in question was not returning, put a date on its records for termination.

9. Wayne Bryce	8/20/98	7/25/96–10/5/98
10. Sylvester Burke	8/20/98	9/2/97–8/27/98
11. Maritza Serrano	8/20/98–10/27/98	1995–1998 ¹⁰
12. Rodney Baylor	8/20/98	No
13. Shirley Scott	8/20/98	No
14. Henry Bussey	8/20/98	1996–1997 ¹¹
15. Edselso Ibis	8/20/98–12/14/98	1/6/98–10/5/98
16. Samalich Garcia	8/20/98	9/2/97–10/5/98
17. Jose Navarro	8/20/98	8/23/96–10/2/98
18. Elizabeth Jenkins	8/20/98–6/22/99	10/8/96–98 ¹²
19. Heriberto Quintana	8/20/98	8/28/96–10/2/98
20. Michael Alamo	8/20/98	5/11/98–9/17/98
21. Maria Bosque	8/20/98	9/19/95–10/23/98
22. Maria Nunez	8/20/98	8/20/97–9/3/98
23. Joseph Millington	8/20/98–2/8/99	2/6/97–8/30/98
24. Justin Alabre	8/20/98	11/5/98–10/5/98
25. Crystal Brown/Byrd	8/20/98	8/28/96–10/5/98
26. Jesus Fernandez	8/20/98	8/10/93–? ¹³
27. Phillip Lewis	8/20/98	2/10/94–1/22/98
28. Julio Reyes	8/20/98	1/24/97–10/30/98
29. Aleida Serrano	8/20/98	8/23/96–1/2/97
30. Isaac Giles	8/20/98	9/89–9/98
31. Teresa Rodriguez	8/20/98–6/29/99	10/9/97–1998 ¹⁴
32. Everton White	8/20/98	10/1/97–10/30/98
33. Reginald Meyers	8/20/98	3/5/97–10/5/98
34. Sundel Ormsby	8/26/98–12/11/98	3/16/92–10/2/98
35. Rebecca Ramsey	8/27/98	No
36. Joann Gordon	8/27/98	9/23/96–10/5/98
37. Damaras Rodriguez	8/27/98–5/7/99	No
38. Laren Wilson	8/27/98	10/8/96–9/21/98

¹⁰ The Laidlaw records show that she was employed in 1999 and the records I have don't indicate her prior dates of employment. She testified however that she was laid off by Laidlaw at the end of the 1997–1998 school year.

¹¹ Bussey's job application lists last job before Dattco as being a cab driver.

¹² Laidlaw's records show that Jenkins started on 10/8/98 but they do not indicate her termination date. Her application to Dattco states that she worked for Laidlaw until 1998 when laid off by that company.

¹³ Laidlaw's records do not indicate a termination date and there is no other evidence in the record to indicate if or when he left Laidlaw.

¹⁴ Laidlaw's records list Teresa Rodriguez as starting on 10/9/97 but do not give her termination date. Her application to Dattco states that she worked from 11/97 to 1998 and does not indicate her termination date.

39. Verna Melius	8/27/98– 10/1/98	No	52. Ernest Bosh	9/14/98	Last worked 11/1/96
40. Francis Mathews	8/27/98	No	53. Ana Declet	9/14/98	Last worked 7/97
41. Sopheis Harrell	8/27/98– 4/16/00	6/95–7/97	54. Melissa Leggett	9/21/98	9/16/91–10/5/98
42. Ivy McKinley	8/27/98– 6/24/99	Last worked Dec. 1996	55. Sheila Davis	9/21/98	7/11/97–10/5/98
43. Joseph Kitchens	8/27/98	10/9/96–10/5/98	56. Limaris Cumba	9/21/98– 6/18/99	8/13/97–10/21/98
44. Cornelle Flythe	8/31/98	9/4/96–10/5/98	57. Sherwood Dickson	9/21/98– 5/19/99	10/20/97–10/5/98
45. Junior Martell	9/3/98	8/14/97– 9/17/98 ¹⁵	58. Mary Brown	9/21/98– 6/21/99	10/9/96–10/1/98
46. Lissette Sostre	9/3/98	8/19/97–10/5/98	59. Francisco Ramos	9/21/98	No
47. Lydia Ferrer	9/3/98	? ¹⁶	60. Mark Williams	9/28/98– 10/16/96	8/23/96–10/31/97
48. Catherine Williams	9/9/98– 4/15/99	1/20/95–5/22/98	61. Carolyn McCray	10/5/98– 6/24/99	9/4/96–10/23/98
49. Dwayne Foster	9/11/98	No	62. Bahadur Singh	10/6/98– 6/18/99	No
50. Noe Roman	9/14/98– 10/22/98	4/10/97–10/15/98	63. Jose Del Rio	10/13/98– 10/28/98	1/7/97–4/9/97
51. Braswell White	9/14/98	No	64. Luis Ingles	10/19/98	4/10/97–10/29/98
			65. Lourdes Contreras	10/22/98– 10/28/98	7/97–7/98
			66. Melissa Howard	10/22/98– 10/26/98	12/26/96–6/19/98

¹⁵ Laidlaw's records list two employment periods for Martell; August 14–15, 1997, and July 27–September 17, 1998. His job application also lists other employers during the same year. This indicates to me that he probably worked for Laidlaw during the summer of 1997 and 1998.

¹⁶ The Laidlaw records in evidence show her as being employed from August 27–December 3, 1998.