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**Jeffrey A. Swardson, an Individual d/b/a Swardson Painting Co. and Painters District Council No. 3.**  
Cases 17–CA–20795 and 17–RC–11892

September 15, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER  
AND WALSH

On February 16, 2001, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a limited exception, a supporting brief, and an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions only to the extent consistent with this Decision and Order.<sup>2</sup>

The Respondent has excepted only to the judge's findings that it violated Section 8(a)(1) of the Act by threats to close its shop and to discharge employees who engaged in union activity; that it violated Section 8(a)(1) by instructing a union representative to leave its jobsite; and that it violated Section 8(a)(3) by discharging employees Tommie A. Maddox and Charles E. Simpson. We affirm the findings of unlawful threats for the reasons set forth in the judge's decision. With respect to the other findings, discussed below, we agree that the instruction to the union representative was unlawfully overbroad because the Respondent has no exclusionary property interest to assert. However, we reverse the judge and find that the Respondent did not, in fact, discharge Maddox and

<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>2</sup> Par. 1 of the judge's recommended Order is now divided into lettered sections so as to exclude the discharge allegations dismissed in this Decision. We shall also substitute a new notice in accordance with *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001).

The General Counsel, in his limited exception, requests that the Respondent be required to reimburse the alleged discriminatees "for extra federal and state income taxes that would result from a lump-sum backpay award." In view of our disposition of this case, we find it unnecessary to pass on this issue.

Simpson and, it therefore committed no 8(a)(3) violation with respect to them.

1. On June 22, 2000,<sup>3</sup> Union Business Representative Mark Wolfe visited the Respondent's jobsite at the Heaton Bowman Funeral Home, where the Respondent's employees were working. The Respondent's owner, Jeffrey A. Swardson, said, "Mark, I thought I told you not to come on my f—ing job and bother my men. If you want to picket me, picket me; but get off my f—ing job."

The judge reasoned that Swardson's admonition to Wolfe violated Section 8(a)(1) because it "tended to restrain and coerce employees as an overly broad restraint on Union activity." In its exceptions, the Respondent argues, inter alia, that Swardson's statement to Wolfe was not an overly broad restraint on the employees' union activities because Swardson did not forbid the union from contacting employees when they were not at work. As further explained below, we agree with the judge's conclusion that Swardson violated Section 8(a)(1).

An employer who denies nonemployee union representatives access to private property for purposes related to the exercise of employees' Section 7 rights bears a threshold burden of establishing that, at the time it denied access, it had a property interest that entitled it to exclude individuals from the property. See *Indio Grocery Outlet*, 323 NLRB 1138, 1141–1142 (1997), enfd. 187 F.3d 1080 (9th Cir. 1999), cert. denied 529 U.S. 1098 (2000). If the employer fails to meet this threshold burden, there is no actual conflict between private property rights and Section 7 rights, and its actions therefore will be found to violate Section 8(a)(1) of the Act. *Id.*

These principles apply to a contractor working on a client's property. Thus, in *Ambrose Electric*, 330 NLRB 78 (1999), the Board held that an electrical contractor failed to establish an exclusionary property interest in its jobsites and therefore violated Section 8(a)(1) by insisting that union representatives stay entirely off those jobsites. The Board reasoned that, absent an exclusionary property interest, the employer was only entitled to insist that the union representatives not touch or interfere with its equipment and not approach employees while they were working. *Id.* at 79. Accordingly, the Board found that the employer went too far—and hence violated Section 8(a)(1)—by insisting that union representatives stay off its jobsites entirely, and away from employees, even during break and lunch periods. *Id.* at 79–80.

As in *Ambrose Electric*, the Respondent did not have an exclusionary property interest in the Heaton Bowman jobsite where its employees were working. The Respondent argues that it had the right to instruct Wolfe to leave

<sup>3</sup> All dates herein are in 2000, unless otherwise noted.

the jobsite because Wolfe's presence would have distracted its employees and interfered with the performance of their duties. Respondent clearly had a right to insist that Wolfe not talk to employees while they were working, or otherwise do anything that would have distracted them or interfered with their work. But, like the employer in *Ambrose Electric*, the Respondent went too far in insisting that Wolfe stay entirely away from the job site and away from employees, even during break and lunch periods. Therefore, we conclude that the Respondent violated Section 8(a)(1) by instructing Wolfe to leave the jobsite.

2. The judge found that the Respondent violated Section 8(a)(3) and (1) by discharging Maddox and Simpson because of their participation in a protected concerted walkout and/or because of their union activities. Although we agree with the judge's finding that Maddox and Simpson engaged in protected activities, we disagree with her finding that they were discharged.

On July 26, Maddox, Simpson, and employee Michael Shaw<sup>4</sup> walked off the job to protest the fact that they were earning lower wages than a newly hired employee. Later that day, a series of phone conversations took place between Swardson and the three employees. Shaw spoke for his coworkers, who listened in the background. Shaw informed Swardson that the employee trio walked off the job to protest the discrepancy in wages. Swardson said that he was planning on giving Shaw and Simpson a raise, but that now they were going to get nothing. Swardson ultimately offered Shaw a \$1 hourly raise if he would return to the job. With respect to Maddox and Simpson, however, Swardson said, "F--- them other two guys." Swardson also said that if Maddox and Simpson wanted to quit, he would replace them, and they could "go on down the road." When Simpson called Swardson back a few minutes later, Swardson called Simpson a "backstabbing a--- h---" and hung up on him. Following this incident, Maddox and Simpson never attempted to return to work for the Respondent.

"The Board has held that the fact of discharge does not depend on the use of formal words of firing. *Hale Mfg. Co.*, 228 NLRB 10, 13 (1977), *enfd.* 570 F.2d 705 (8th Cir. 1978). It is sufficient if the words or action of the employer 'would logically lead a prudent person to believe his [her] tenure has been terminated.' *NLRB v. Trumbull Asphalt Co.*, 327 F.2d 841, 843 (8th Cir. 1964)." *North American Dismantling Corp.*, 331 NLRB 1557 (2000).<sup>5</sup> In addition, "in determining whether or not a striker has been discharged, the events must be

viewed through the striker's eyes and not as the employer would have viewed them." *Brunswick Hospital Center*, 265 NLRB 803, 810 (1982).

Applying these principles here, we disagree with the judge's finding that Swardson's statements to Maddox and Simpson following the walkout could reasonably have led them to believe that they had been discharged. In their July 26 telephone conversations, Swardson and the employees were discussing terms for returning to work. Swardson offered a \$1 raise to Shaw alone. He did not offer a raise to the other two. However, this is not the same as discharging the other two. As to them, they could quit, presumably because they were not getting a raise.<sup>6</sup> If they chose to quit, they could "go on down the road" in search of another job. In short, their choices were to return to work without a raise, continue their work stoppage, or quit. They were *not* discharged.

Nor do we think that there could have been any confusion on the part of Maddox and Simpson. If they wanted to quit, that was their choice. Finally, even if there was an ambiguity, it could easily have been tested. They could have shown up for work.<sup>7</sup>

In view of the foregoing, we find that the General Counsel has failed to establish by a preponderance of credible evidence a prima facie case that Maddox and Simpson were discharged. Accordingly, we reverse the judge's finding that the Respondent violated Section 8(a)(3) and (1) by discharging them, when it did not in fact do so, and we dismiss these allegations.

In light of our finding that no discharges occurred and our dismissal of these allegations, we shall sever Case 17-RC-11892 from the instant case and remand it to the Regional Director to determine the challenged ballots of Maddox and Simpson. Specifically, the Regional Director should determine the voter eligibility of Maddox and Simpson, who were not discharged, and issue the appropriate certification for the September 6, 2000 election based on his determination.

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Jeffrey A. Swardson, an Individual d/b/a Swardson Painting Co., Clarksdale, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

<sup>6</sup> There is no contention that the quitting would be a constructive discharge.

<sup>7</sup> Contrary to our colleague, we are *not* implying that the employees had a "responsibility" to resolve any such ambiguity by showing up for work. We are simply saying that they *could have done so* and could thereby have eliminated any ambiguity.

<sup>4</sup> The allegations pertaining to Shaw were withdrawn.

<sup>5</sup> See also *Ridgeway Trucking Co.*, 243 NLRB 1048, 1049 (1979), *enfd.* 622 F.2d 1222 (5th Cir. 1980).

(a) Instructing representatives of Painters District Council No. 3 (Union), or any other union, to leave a jobsite in which it has no exclusionary property interest.

(b) Threatening to close the shop if there is any more talk about the Union.

(c) Threatening to discharge employees for talking to the Union or taking cards from the Union.

(d) Interrogating employees regarding union activities.

(e) Threatening to discharge employees because they attend a union meeting.

(f) Informing employees that they will be denied wage increases because of their support for the Union.

(g) Telling employees that they are “backstabbers” because they walk off the job with other employees in protest of their rate of pay and/or because of their support for the Union.

(h) Maintaining a rule that prohibits employees from discussing their wages, hours, and terms and conditions of employment.

(i) Threatening to deny a wage increase to an employee because he engaged in protected concerted activity by walking off the job to protest wages and/or because of his Union activities and to discourage other employees from engaging in this or other protected concerted activities.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

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

(a) Within 14 days after service by the Region, post at its facility in Clarksdale, Missouri, copies of the attached notice marked “Appendix.”<sup>8</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, 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

<sup>8</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

employees employed by the Respondent at any time since June 22, 2000.

(b) 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.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that Case 17–RC–11892 is severed from Case 17–CA–20795 and that it is remanded to the Regional Director for Region 17 for action consistent with this Decision.

Dated, Washington, D.C., September 15, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER WALSH, dissenting in part.

I agree with my colleagues in all respects except their finding that the General Counsel has failed to establish by a preponderance of credible evidence that alleged discriminates Tom Maddox and Charles Simpson were discharged.

*Facts*

The events culminating in the discharges of Maddox and Simpson on July 26, 2000,<sup>1</sup> began about a month earlier. On June 22, Maddox observed Respondent Owner Jeffrey Swardson violate Section 8(a)(1) of the Act at one of the Respondent’s jobsites by telling Union Representative Mark Wolfe “not to come on my fucking job and bother my men,” and to “get off my fucking job.” The next day, Swardson again violated Section 8(a)(1) by interrogating Maddox and other employees about whether Wolfe had returned and spoken to any of the employees. Swardson then violated the Act again by warning Maddox, Simpson, and other employees that if they talked about the Union, he would close the business and the employees would all be out of jobs. On this same occasion, Swardson violated the Act yet again by telling these employees that he would fire them if they took cards from, or even spoke to, union representatives.

<sup>1</sup> All dates are in 2000, unless otherwise stated.

About 3 weeks later, on July 12, Swardson resumed his unlawful conduct by calling Maddox at home in the evening and asking him if he knew anything about the union meeting that had been scheduled for that evening, and specifically whether Simpson and employee Mike Shaw were attending the meeting. Maddox admitted that they were, and Swardson unlawfully told Maddox that Shaw and Simpson were “back-stabbing son-of-a-bitches” who he would fire the next morning.

The next day, Swardson again violated Section 8(a)(1) by interrogating Simpson about why he had attended the union meeting the night before, and why he had not notified Swardson that he was going to attend the meeting. Swardson then unlawfully told Simpson that he had planned to give him a 50-cent pay increase, but because of his union activity he would not get it.

About 2 weeks later, on July 26, Maddox, Simpson, and Shaw discovered that they were being paid less than newly hired employee Gary Russel, who had just started working for the Respondent that morning. They decided to walk off the job until they could “see about pay.” They called leadman Gary Holland to let him know that they had walked off the job in protest over being paid less than Russel. Swardson spoke with Shaw by telephone later that day, with Maddox and Simpson able to hear the conversation. Swardson told Shaw that he would give him a \$1 wage increase if he returned to work immediately. He did not, however, offer Maddox and Simpson an opportunity to return to work at all. Instead, Swardson told Shaw, with Maddox and Simpson able to hear, “Fuck them other two guys,” that they could “go on down the road,” and that if they wanted to quit, he would replace them. Upon hearing this, neither Maddox nor Simpson returned to work. Simpson did, however, call Swardson shortly thereafter, but Swardson told him he was “nothing but a back-stabbing asshole” and hung up the phone before Simpson could talk to him.

Maddox testified that after being told to “go down the road,” he thought that he and Simpson had lost their jobs. Simpson testified that he thought he was fired because Swardson offered Shaw a dollar more per hour, but said “Fuck them other two guys.”

#### *Analysis and Conclusion*

There are no exceptions to the judge’s findings that Maddox and Simpson were engaged in protected concerted activity on July 26 when they walked off the job in protest over being paid less than newly hired employee Russel, and that the Respondent knew that that was the reason why they walked off the job. Nor are there any exceptions to the judge’s findings that the Respondent knew about Maddox’s and Simpson’s union activities and harbored animus against them because of

those activities; that Swardson told Maddox that he and Simpson were “back-stabbing son-of-a-bitches,” and threatened to fire them the next morning because they attended a union meeting; that Swardson retracted a planned wage increase for Simpson because he attended the union meeting on July 12; and that he subsequently retracted another planned wage increase for Simpson and called him a “back-stabbing asshole” because he walked off the job on July 26 in protest over his and Maddox’s pay rates.

The Respondent does, however, except to the judge’s conclusion that it discharged Maddox and Simpson in violation of Section 8(a)(3) and (1) because of their protected concerted walkout in protest of their wage rates and their support for the Union. The Respondent excepts to this conclusion, though, only on the ground that the record does not establish that it discharged Maddox and Simpson, but that it instead establishes that they quit.

My colleagues have correctly set out the principles that govern the question of whether Maddox and Simpson were discharged. 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. The fact of the 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 has been terminated. *Ridgeway Trucking Co.*, 243 NLRB 1048, 1048–1049 (1979), *enfd.* 622 F.2d 1222 (5th Cir. 1980), citing *NLRB v. Hilton Mobile Homes*, 387 F.2d 7, 9 (8th Cir. 1967), and *NLRB v. Trumbull Asphalt Co. of Delaware*, 327 F.2d 841, 843 (8th Cir. 1964). In determining whether or not a striker has been discharged, the events must be viewed through the employee’s eyes and not as the employer would have viewed them. The test is whether the acts reasonably led the strikers to believe that they were discharged. If those acts created a climate of ambiguity and confusion that reasonably caused strikers to believe they had been discharged or, at the very least, that their employment status was questionable because of their strike activity, the results of that ambiguity fall on the employer. *Brunswick Hospital Center, Inc.*, 265 NLRB 803, 810 (1982); *Friday Canning Corp.*, 255 NLRB 323, 326 (1981); *Pennypower Shopping News*, 253 NLRB 85 (1980), *overruled in other part* (discharge of supervisor), *Serendipity-Un-Ltd.*, 263 NLRB 768 fn.5 (1982), *enfd.* in pertinent part *Pennypower Shopping News v. NLRB*, 726 F.2d 626 (10th Cir. 1984).

Applying these principles, I find that the Respondent’s conduct would have reasonably and logically lead Maddox and Simpson to believe that they had lost their

job, or, at the very least, that their employment status was questionable, because of their strike activity.

The precipitous events of July 26 unraveled against the backdrop of the Respondent's explicitly hostile and unlawful antiunion activity starting a month earlier, when the Respondent openly evicted Union Representative Wolfe from a jobsite. The next day, the Respondent interrogated Maddox and other employees about whether Wolfe had returned and spoken to any of them, and then threatened Maddox, Simpson, and other employees that the Respondent would discharge them and shut down the Respondent's business if they spoke to—or even *about*—the Union. The Respondent exhibited its antiunion hostility again about 2 weeks later. Still focusing on Maddox and Simpson, and now also fellow employee Shaw, the Respondent told Maddox that Simpson and Shaw were “back-stabbing son-of-a-bitches” for attending a union meeting, and threatened Maddox that he would fire Simpson and Shaw the next morning. The next day, the Respondent told Simpson that, because of his union activity, he would not be getting a planned wage increase.

Finally, after Maddox, Simpson, and Shaw walked off the job on July 26 in protected protest of their wage rates, the Respondent openly offered Shaw immediate reinstatement and a pay raise, but, conversely—and just as openly—did *not* offer Maddox and Simpson reinstatement at all. Indeed, expressly to the contrary, the Respondent demonstrated its total disregard for Maddox and Simpson as employees, and made clear its thorough aversion to retaining them. Swardson told Shaw, as heard by Maddox and Simpson, “Fuck them other two guys,” they could “go on down the road.” Swardson subsequently put an even finer point on that message by telling Simpson that he was a “back-stabbing asshole,” just before Swardson summarily and abruptly terminated what understandably turned out to be Simpson's final call to the Respondent.

Under these circumstances, I find that Maddox and Simpson could (and did) quite reasonably and logically conclude that their employment, in direct comparison to Shaw's, had in fact been terminated. All of the Respondent's statements to and conduct toward Maddox and Simpson, in open contrast to the Respondent's statements to and conduct toward Shaw, could reasonably have led Maddox and Simpson to the logical deduction that, unlike Shaw, they had lost their jobs. Thus, in light of the Respondent's conduct and statements to Maddox and Simpson on July 26, against the backdrop of the Respondent's month-long attack on their Section 7 rights, Maddox and Simpson could not reasonably be expected, without any further ado, simply to show up for work on July 27, with any reasonable expectation at all that the Respondent

would take them back. To the contrary, they reasonably believed that they no longer had jobs to report to.

Moreover, the message conveyed in the Respondent's unusually harsh display of hostility toward Maddox and Simpson in the face of their July 26 work stoppage, coupled with its offer of reinstatement only to Shaw and not to Maddox and Simpson, all in the context of the Respondent's month-long series of unlawful antiunion acts and statements, created, *at a minimum*, a climate of ambiguity and confusion which reasonably caused Maddox and Simpson to believe either that they had been discharged or that their employment status was at least questionable because of their strike activity. And, as seen in the discussion of the applicable principles, the Respondent bears the burden of the results of any confusion it created for Maddox and Simpson about whether they had lost their jobs because they went on strike in protest of their wages.<sup>2</sup> The fundamental result here of the Respondent's conduct and statements was that Maddox and Simpson believed that they had lost their jobs. But, in any event, an alternative and equally unlawful result of the climate of confusion created by the Respondent is that Maddox and Simpson reasonably did not know whether they still had their jobs. And Swardson's adamant and hostile refusal even to speak to Simpson to resolve any such confusion even more forcefully puts the burden of that confusion squarely on the Respondent.

For all of these reasons, I find, in agreement with the judge, that the Respondent discharged Maddox and Simpson in violation of Section 8(a)(3) and (1) because of their protected concerted walkout in protest of their wages and their support for the Union.

Dated, Washington, D.C., September 15, 2003

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Dennis P. Walsh,

Member

NATIONAL LABOR RELATIONS BOARD

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 I violated Federal labor law and has ordered me to post and obey this notice.

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<sup>2</sup> My colleagues go against this principle by implying that it was the employees' responsibility to resolve any such confusion by showing up for work.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with me on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

I WILL NOT instruct representatives of Painters District Council No. 3 (Union), or any other union, to leave our customers' jobsites where I have no property right permitting me to exclude them.

I WILL NOT threaten to close the shop if there is any more talk about the Union.

I WILL NOT threaten to discharge you for talking to the Union or taking cards from the Union.

I WILL NOT interrogate you about your union support or activities.

I WILL NOT threaten to discharge you because you attend a union meeting.

I WILL NOT inform employees that they will be denied a wage increase because of their support for the Union.

I WILL NOT tell employees that they are "backstabbers" because they walked off the job with other employees in protest of their rates of pay and/or because of their support for the Union.

I WILL NOT maintain a rule which prohibits employees from discussing their wages, hours, and the terms and conditions of employment.

I WILL NOT threaten to deny a wage increase to an employee because he engaged in protected concerted activity by walking off the job to protest wages and/or because of his union activities and to discourage other employees from engaging in this or other protected concerted activities.

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

JEFFREY A. SWARDSON, AN INDIVIDUAL D/B/A SWARDSON PAINTING CO.

*Francis Arnold Molenda, Esq.*, for the General Counsel.

*Ronald Reed, Jr. Esq.*, of St. Joseph, Missouri, for the Respondent.

*Mark Wolfe, Business Representative*, of Raytown, Missouri, for the Charging Party.

## DECISION

## STATEMENT OF THE CASE

MARY MILLER CRACRAFT, Administrative Law Judge. Jeffrey A. Swardson, an Individual, d/b/a Swardson Painting Co. (Respondent) is alleged to have made statements or taken ac-

tions in violation of Section 8(a)(1) of the Act,<sup>1</sup> and to have discharged Tommie A. Maddox and Charles E. Simpson because of their concerted activities and/or their activities on behalf of Painters District Council No. 3 (the Union) in violation of Section 8(a)(3) of the Act.<sup>2</sup>

This case was tried in Overland Park, Kansas, and St. Joseph, Missouri, on November 28 and 29, 2000.<sup>3</sup> All parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue the merits of their respective positions. On the entire record, including my observation of the demeanor of the witnesses,<sup>4</sup> and after considering the briefs submitted by counsel, I make the following

## FINDINGS OF FACT

## I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent Jeffrey A. Swardson is an individual doing business as Swardson Painting Co., a State of Missouri sole proprietorship, with an office and place of business in Clarksdale, Missouri. Respondent is engaged in commercial and residential painting. Respondent annually purchases and receives at its facility, goods and services valued in excess of \$50,000 from other enterprises located in the State of Missouri, including Sherwin Williams Co., each of which other enterprises receive these goods directly from points outside the State of Missouri. 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 stipulates and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

<sup>1</sup> Sec. 8(a)(1) of the Act prohibits employers from interfering with, restraining or coercing employees in their exercise of the Sec. 7 right, inter alia, to organize. The specific allegations of 8(a)(1) conduct include instructing union representatives to leave jobsites, prohibiting employees from engaging in union activities, telling employees they would be terminated if they talked to union representatives and threatening to close operations if employees selected the Union, interrogating employees, threatening discharge of employees, denying a wage increase to employees because of their union activities, telling employees they were "backstabbers" because of their support for the Union, and maintaining a rule prohibiting employees from discussing problems among themselves.

<sup>2</sup> The charge, first, second and third amended charges in Case 17-CA-20795 were filed by the Union on August 9, September 22, September 26, and October 11, 2000, respectively. The complaint was issued October 13, 2000, and was amended on October 19, 2000.

<sup>3</sup> All dates are in 2000 unless otherwise specified.

<sup>4</sup> Credibility resolutions have been made based upon a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

## II. ALLEGED UNFAIR LABOR PRACTICES

A. *Alleged Instruction to a union representative to Leave the Food-for-Less Jobsite in or Around Early 2000*<sup>5</sup>

Mark Wolfe, business representative for the Union, was generally aware of Respondent's operation as a nonunion residential painting contractor. In February, Wolfe observed Respondent's employees performing commercial painting operations at a Food-for-Less jobsite in St. Joseph, Missouri. Swardson was present, observing water blasting of an overhang. Wolfe said hello to Swardson, who responded, "Mark, I don't appreciate you coming on my jobsites and handing your cards out to my men."<sup>6</sup> Wolfe retorted, "Jeff, that's my job."

Swardson and Wolfe agree that Swardson told Wolfe he did not appreciate Wolfe coming on his jobsites and handing out cards to his men.<sup>7</sup> Counsel for the General Counsel asserts that Swardson's admonition prohibited employees from engaging in union activities, including talking to a union representative. Respondent argues that Swardson's statement did not reasonably tend to restrain or coerce employees because it was merely an expression of preference and was made in the context of disturbing employees who should be working. I agree with Respondent. Given that Swardson expressed a personal opinion without any threat and given all the surrounding circumstances, I find that the statement did not reasonably tend to interfere with employee's Section 7 rights.

B. *Alleged Instruction to a Union Representative to Leave the Heaton Bowman Jobsite—June 22*<sup>8</sup>

On June 22, Wolfe and union organizer Jim Alderson observed Respondent's employees performing commercial painting, this time at Heaton Bowman funeral home in St. Joseph. The union representatives spoke to Respondent's employees. Swardson arrived at the jobsite and said, "Mark, I thought I told you not to come on my fucking job and bother my men." Swardson volunteered that the Union could picket him if it wanted, adding that he could use the publicity. Swardson agreed that Wolfe accurately testified regarding the conversation explaining,

I pulled up, all my men were stopped work, the ladders were there, paint buckets all sitting around the building and my employees weren't working and Mark's standing there with a, passing his business cards out to the employees. And, so I got out of the truck and I did say what he said I said because he—and I told him, if you want to take him home, talk to him after work, fine. You know, anything like that, you do what you

<sup>5</sup> This allegation is contained in complaint par. 5(a).

<sup>6</sup> On a previous occasion in April or May 1999, Wolfe gave his cards to Respondent's employees who were working at a Thrifty Nickel jobsite. Swardson was not present when this occurred.

<sup>7</sup> Counsel for the General Counsel relies on the testimony of employee Simpson to the effect that Swardson told Wolfe he could not come on the jobsite and could not talk to his employees or hand out union cards. Upon prompting, Simpson recalled that Swardson told Wolfe to "get the fuck off his job." Given Wolfe and Swardson's agreement to a tamer version of this conversation, to the extent that Simpson's testimony is slightly different, I discredit it.

<sup>8</sup> This allegation is contained in complaint par. 5(c).

want; but, leave my men alone on the job because I'm paying them and you're not.

There is no dispute that Swardson told Wolfe, in the presence of his employees, "not to come on my fucking job and bother my men." Counsel for the General Counsel argues that this statement is unlawful. Counsel relies on *Domsey Trading Corp.*, 310 NLRB 777, 793 (1993), *enfd.* 16 F.3d 517 (2d Cir. 1994). In *Domsey*, Respondent verbally attacked strikers, calling them monkeys and telling them they should go back to Haiti and that they had AIDS. The Board characterized these comments as racial and sexual degradation. *Id.*, 310 NLRB at 780, and affirmed the judge's finding that such comments reasonably tended to discourage employees from engaging in Section 7 activities. Counsel for Respondent notes that Swardson only prohibited Wolfe from disrupting work and did not forbid Wolfe from contacting employees when they were not at work. Accordingly, counsel argues that Swardson validly prohibited union activities on his premises during working hours, citing *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956); *Lechmere v. NLRB*, 502 U.S. 527 (1998); *Valley Feed & Supply Co.*, 135 NLRB 778 (1962).

Even if Swardson elucidated his initial remark, "not to come on my fucking job and bother my men," by telling Wolfe that he was free to contact the employees at home, under the totality of the circumstances, I find that Wolfe's admonition tended to restrain and coerce employees as an overly broad restraint on union activity.

C. *Alleged Prohibition of Employees from Engaging in Union Activities Including Talking to a Union Representative, at the Heaton Bowman Jobsite on or about June 23; Alleged Threat of Termination If Employees Talked to Union Representatives and Alleged Threat of Cessation of Business Operations If Employees Selected the Union on or about June 24; Alleged Interrogation of Employees About Their Union Activities and Alleged Threat to Discharge Employees for Talking with Union Representatives on or About June 27*<sup>9</sup>

On the following day, Swardson approached employees Shaw, Maddox, and Watson. According to Maddox, Swardson asked if Wolfe had come back and talked to any of them. Swardson also warned employees that if there was any union talk, he would close the shop and the employees would all be out of jobs. Swardson did not refute this testimony. Simpson recalled that Swardson told the crew that he did not want them talking to the Union or taking cards from the Union or they would be fired. Swardson denied this.

It is undisputed that Swardson asked employees if Wolfe had come back and talked with any of them. He also warned employees that if there was any union talk, he would close the shop and all the employees would be out of jobs. According to Simpson, who I credit, Swardson told the crew that he did not want them talking to the Union or taking cards from the Union or they would be fired. Counsel for the General Counsel argues that these violations strike at the very heart of protected activities and hammer employees with threats of plant closure and discharge. Counsel relies upon *Dlubak Corp.*, 307 NLRB 1138,

<sup>9</sup> These allegations are contained in complaint pars. 5(b), (d), and (e).

1143, 1152 (1992)(statements of plant closure unrelated to economic necessity or objective facts not protected speech).

Counsel for Respondent argues that Swardson's denial of Simpson's testimony should be credited because no other employees corroborated his testimony. Moreover, Respondent notes that no employee was ever fired or lost work or pay for supporting the Union. Despite the fact that Respondent did not carry out its threat to close or to fire employees, I find nevertheless that Respondent threatened to close the shop if there was any more talk about the Union. Respondent also threatened to discharge employees for talking to the Union or taking cards from the Union. Finally, Respondent interrogated employees regarding whether union representative Wolfe had come back and talked to any of them.

*D. Alleged Interrogation About Union Activities and Threat of Discharge on July 12<sup>10</sup>*

There was a union meeting on July 12. Maddox did not attend the meeting. Around 6 or 6:30 p.m., Swardson called Maddox at home and asked him if he knew anything about the union meeting. Maddox replied that it was being held at Holt's Place Bar & Grill. Swardson asked if Shaw and Simpson were attending. Maddox replied affirmatively. Swardson said, "Those back-stabbing son-of-a-bitches," and told Maddox that Shaw and Simpson would be dismissed the next morning. Swardson's testimony was somewhat ambiguous regarding whether a telephone conversation with Maddox occurred. For example, in response to, "Did you talk to Tom Maddox that night," Swardson replied, "Not that I remember." In response to, "Do you remember telling him any of the things that he said you said that you were going to fire anybody," Swardson replied, "No. I didn't fire anybody." Swardson agreed that leadman Holland called him on the evening of the union meeting and told him that Maddox, Simpson and Shaw were having a meeting with the Union.

Although Respondent argues that Swardson denied this allegation, I disagree and I credit Maddox' testimony regarding his July 12 telephone conversation with Swardson. Accordingly, I find that during this conversation, Swardson asked whether Maddox knew of a union meeting that evening, asked whether employees Shaw and Simpson were attending the meeting, and upon learning that they were attending, told Maddox that they were "back-stabbing son-of-a-bitches" and would be fired the next morning. Counsel for the General Counsel argues that Swardson's statements violated the Act, relying upon *Dauman Pallet, Inc.*, 314 NLRB 185, 186 (1994); *Perdue Farms*, 323 NLRB 345, 346 (1997), enf. in relevant part 144 F.3d 830 (D.C. Cir. 1998). Based upon Maddox's testimony, I find that Swardson interrogated him about other employees' union activities and threatened to discharge those employees because they attended a union meeting.

*E. Alleged Threat to Close the Facility and Cease Business if Employees Continued to Support the Union, Allegedly Informing Employees That They Were Denied a Wage Increase Because of Their Support for the Union, Inviting Employees to*

<sup>10</sup> These allegations are contained in complaint par. 5(f).

*Quit Work if They Desired Union Representation, Alleged Discharge of Simpson on July 13<sup>11</sup>*

On the following day, none of the employees was discharged. However, according to Simpson, Swardson questioned him asking why he went to the union meeting and why Simpson did not tell Swardson that he was going. Swardson also told Simpson that he had anticipated giving Simpson a 50-cent raise until Simpson "pulled this stunt." Now, according to Simpson, Swardson said Simpson would have to earn his trust back. Swardson denied this.

There is no evidence of a July 13 threat to close the facility and to cease doing business if employees continued to support the Union. Similarly, there is no evidence that Respondent invited employees to quit work if they desired union representation. There is, however, credible evidence that although Swardson did not discharge Simpson, he nevertheless told Simpson that he had planned to give him a fifty-cent pay increase but was withholding it because of Simpson's union activity. Based upon this evidence, I find that Respondent informed an employee that he was being denied a wage increase because of his support for the Union. I do not find evidence that Simpson was actually discharged on July 13.

The following evidence was introduced as background: On July 21, Alderson called Swardson and asked for voluntary recognition of the Union. Swardson declined to do so citing his inability to pay union scale. He told Alderson that he had spoken to his men and they understood. Swardson also stated that if Wolfe kept following employees home, Swardson would get an injunction.

*F. Alleged Denial of Wage Increase, Allegedly Telling Employees They Were "backstabbers" because of Their Support for the Union and Discharging Maddox and Simpson Because of their Support for the Union and/or Their Protected Concerted Walkout on July 26<sup>12</sup>*

On July 26 at about 7 a.m., before work commenced, Simpson and Swardson discussed insurance and pay raises. All employees were present during this discussion. Swardson explained that he could not pay any more and could not put together an insurance package. A new employee, Gary Russel, was assigned to work with Simpson that day. Simpson asked Russel how much he was earning. Russel replied that he was being paid \$10 per hour. Simpson, who was earning only \$9.50 per hour, conferred with Shaw and Maddox, who were also working on the same site. Shaw and Maddox were also earning less than \$10 per hour. Shaw verified Russel's earnings, which were more than any of the more senior employees. Russel recalled that upon verifying his rate of pay, Shaw said, Well, I'm ready to go fishing. I'm going fishing." In any event, Shaw, Simpson, and Maddox walked off the job.<sup>13</sup>

Swardson returned to the job after Shaw, Maddox, and Simpson had left. He asked employee Gary Watson what had hap-

<sup>11</sup> These allegations are contained in complaint pars. 5(g) and 6(c).

<sup>12</sup> These allegations are contained in complaint par. 5(h) and 6(e).

<sup>13</sup> These three also called leadman Gary L. Holland to let him know they had walked off the job because they found out Russel was making more money than they were.

happened. Watson told him that Shaw, Maddox, and Simpson had questioned Russel about his rate of pay and then handed in their timesheets saying that they were quitting. Swardson also questioned Holland, who told him the same thing as Watson. When Swardson questioned Russel about what had happened, Russel explained that the three employees had walked off the job after questioning him about his rate of pay. Swardson responded, "Well, they've been talking with the Union and been trying to get a Union in here any way."<sup>14</sup>

Swardson spoke to the three employees via Shaw. There is some dispute regarding who initiated the call. Swardson recalled that he spoke with Shaw and asked what had happened. Shaw explained that because Swardson had hired Russel for more money than they were making, they walked off his job. According to Maddox, who could hear Swardson's voice, Swardson responded that he had planned to give Shaw and Simpson a raise but now they were going to get nothing. According to Swardson, he said he would give Shaw and Simpson a 50-cent raise if they would come back. Shaw asked about Maddox and, according to Swardson, he refused to give Maddox an increase citing his skill level. Swardson could hear Simpson "hollering" that fifty cents was not enough. He suggested to Shaw that he would call back in 15 minutes. Swardson eventually called back and agreed to give Shaw a \$1-per-hour raise if he would immediately return to work. He decided not to give a raise to Simpson or Maddox and said if they want to quit, he would replace them.<sup>15</sup> Upon hearing this, neither Simpson nor Maddox returned to work. Simpson testified that he called Swardson back and Swardson said, "You know, you're nothing but a back-stabbing asshole," and hung up before Simpson could say anything else. Swardson denied this.

It is clear that Respondent knew that Shaw, Maddox, and Simpson walked off the job on July 26 because they were upset about their wages. It is also clear, based upon the credited evidence, that Swardson was aware of the union activities of Shaw, Maddox, and Simpson and harbored animus toward Shaw, Maddox, and Simpson because of these union activities. Although Respondent asserts that the General Counsel failed to prove that Respondent stated that employees were denied a wage increase because of their union support or protected activity, General Counsel's evidence, which I credit, establishes that when Shaw telephoned Swardson after the walkout, Swardson said that he had planned to give Shaw and Simpson a raise but because they walked off the job, they would not get it. Simpson attempted to call Swardson immediately after Swardson spoke with Shaw. When Simpson identified himself, Swardson called Simpson a "backstabbing asshole" and hung up. Counsel for the General Counsel avers that these statements tended to interfere with employees' rights to organize citing *Dauman Pallet*, supra.

I find that Respondent denied a wage increase to Simpson because he engaged in protected, concerted activity of walking off the job over a wage dispute and because he attended a union

meeting. I find that Respondent told Maddox he was a backstabber because of his support for the Union and his support for the concerted activity of walking off the job over a wage dispute. I find that the General Counsel has proven that Respondent discharged Maddox and Simpson because of their support for the Union and/or their protected concerted walkout on July 26. I find that Respondent has failed to prove that it would have discharged them in any event.

#### G. Alleged Unlawful Rule<sup>16</sup>

In June and July, Respondent maintained a rule stating, "Any employee having problems with management shall air their problems with owner ONLY! Any complaining or causing problems will be reason for discharge." Swardson explained that employees tended to "bitch" and complain about problems to other employees and thus cause work to slow down and employee morale to dip. The rule was put into place so that employees would bring their problems to him rather than to other employees.

The parties agree that Respondent maintained a rule which instructed any employee having problems with management to air the problems with the owner "ONLY." The rule further admonished employees that complaining or causing problems would be reason for discharge. Counsel for the General Counsel asserts that this rule reasonably tended to restrain and coerce employees, citing *Lafayette Park Hotel*, 326 NLRB 824 (1998); *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218 (1995), enf. denied in relevant part 81 F.3d 209 (D.C. Cir. 1996).

The rule prohibits employees from conferring with each other regarding matters directly relating to their terms and conditions of employment and thus it interferes with, restrains and coerces employees in the exercise of their statutory rights. By maintaining the rule, Respondent violated Section 8(a)(1).

#### H. Representation Case

On July 27, the Union filed a petition for representation in Case 17-RC-11892. Pursuant to a stipulated election agreement, a secret ballot election was held on September 6. The tally of ballots indicated that there were three ballots cast for representation, three cast against representation, and two determinative challenges: Simpson and Maddox. By order of October 20, the Regional Director consolidated Case 17-RC-11892 with Case 17-CA-20795 in order to resolve the determinative challenges at the same time the alleged unlawful discharges were resolved. Because I have found that Simpson and Maddox were discharged in violation of Section 8(a)(1) and (3) of the Act, I overrule the challenges to their ballots. The representation case is severed and remanded to the Regional Director to open and count the ballots of Simpson and Maddox and to prepare and serve on the parties a revised tally of ballots and issue the appropriate certification.

#### CONCLUSIONS OF LAW

1. By instructing union representatives to leave the Heaton Bowman jobsite; threatening to close the shop if there was any

<sup>14</sup> Russel did not specifically testify that he told Swardson about Shaw's fishing statement.

<sup>15</sup> Simpson recalled that Swardson said he and Maddox could "go on down the road."

<sup>16</sup> This allegation is contained in the amendment to the complaint, par. 5(i).

more talk about the Union; threatening to discharge employees for talking to the Union or taking cards from the Union; interrogating employees regarding union activities; threatening to discharge employees because they attended a union meeting; informing an employee that he was denied a wage increase because of his support for the Union; telling an employee that he was a "backstabber" because he walked off the job with other employees in protest of their rate of pay and/or because of his support for the Union; and maintaining a rule which prohibits employees from discussing their wages, hours, and terms and conditions of employment. Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By threatening to discharge Charles E. Simpson on July 12, 2000, denying a wage increase to Simpson on July 13, 2000, and discharging Maddox and Simpson on July 26, 2000, because they engaged in concerted activities by walking off the job to protest their wages and/or because of their union activities and to discourage other employees from engaging in this or other concerted activities, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 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. Counsel for the General Counsel requests a reinstatement remedy for Charles E. Simpson and for Tommie A. Maddox. At the time of hearing, Simpson was incarcerated at the Western Reception Diagnostic and Correctional Center. He testified that he was incarcerated due to a parole revocation. At the time he was hired by Respondent, he was on parole and Respondent was aware of this when it hired him. In *Auburn Foundry, Inc.*, 284 NLRB 242 (1987), relied upon by the General Counsel, the employer argued that even had it offered reinstatement to a discriminatee, he would have subsequently been terminated because he was incarcerated. The Board rejected this contention as speculative and remote. Accordingly, the discriminatee was entitled to an offer of reinstatement even though incarcerated. See also, *ABC Automotive Products Corp.*, 319 NLRB 874, 877 (1995), cited by counsel for the General Counsel, in which the administrative law judge noted that a period of incarceration was a setoff against backpay but did not cause a forfeit of the standard Board remedies. Based upon these decisions, I find that Respondent must offer reinstatement to Simpson. Respondent having discriminatorily discharged Simpson and Maddox, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>17</sup>

#### ORDER

The Respondent, Jeffrey A. Swardson, an Individual d/b/a Swardson Painting Co., Clarksdale, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from instructing union representatives to leave the Heaton Bowman jobsite; threatening to close the shop if there was any more talk about the Union; threatening to discharge employees for talking to the Union or taking cards from the Union; interrogating employees regarding union activities; threatening to discharge employees because they attended a union meeting; informing an employee that he was denied a wage increase because of his support for the Union; telling an employee that he was a "backstabber" because he walked off the job with other employees in protest of their rate of pay and/or because of his support for the Union; and maintaining a rule which prohibits employees from discussing their wages, hours, and terms and conditions of employment; threatening to discharge Charles E. Simpson on July 12, 2000, denying a wage increase to Simpson on July 13, 2000, and discharging Maddox and Simpson on July 26, 2000, because they engaged in concerted activities by walking off the job to protest their wages and/or because of their union activities and to discourage other employees from engaging in this or other concerted activities; or in any like or related manner, interfering with, coercing or restraining employees in the exercise of their Section 7 rights.

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 Tommie A. Maddox and Charles E. Simpson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Tommie A. Maddox and Charles E. Simpson whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

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

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

<sup>17</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.

(e) Within 14 days after service by the Region, post at its facility in Clarksdale, Missouri, copies of the attached notice marked "Appendix."<sup>18</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, 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 June 22, 2000.

(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.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, San Francisco, California February 16, 2001

#### APPENDIX

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

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

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection

<sup>18</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

To choose not to engage in any of these protected concerted activities.

WE WILL NOT instruct Painters District Council No. 3 union representatives to leave our jobsite.

WE WILL NOT threaten to close the shop if there is any more talk about the Union.

WE WILL NOT threaten to discharge you for talking to the Union or taking cards from the Union.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT threaten to discharge you because you attended a union meeting.

WE WILL NOT inform an employee that he was denied a wage increase because of his support for the Union.

WE WILL NOT tell an employee that he is a "backstabber" because he walked off the job with other employees in protest of their rate of pay and/or because of his support for the Union.

WE WILL NOT maintain a rule which prohibits employees from discussing their wages, hours, and terms and conditions of employment.

WE WILL NOT threaten to discharge Charles E. Simpson, deny a wage increase to Simpson, and discharge Tommie A. Maddox and Simpson because they engaged in concerted activities by walking off the job to protest their wages and/or because of their union activities and to discourage other employees from engaging in this or other concerted activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer Tommie A. Maddox and Charles E. Simpson 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 Tommie A. Maddox and Charles E. Simpson whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

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

JEFFREY A. SWARDSON, AN INDIVIDUAL D/B/A  
SWARDSON PAINTING CO.