

**Tuv Taam Corp. and Oscar Palacios and Local 1102,
Retail & Wholesale Department Store Union,
United Food & Commercial Workers Union,
AFL-CIO, CLC.** Cases 29-CA-24329, 29-CA-
24375, and 29-CA-24553

September 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

Upon charges filed by Charging Party Oscar Palacios and by the Union,¹ the General Counsel of the National Labor Relations Board issued an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing in Cases 29-CA-24329 and 29-CA-24375 against Tuv Taam Corp., the Respondent, alleging that it has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the Act. On December 27, 2001, the General Counsel issued a Complaint and Notice of Hearing in Case 29-CA-24553 alleging that the Respondent has engaged in additional unfair labor practices, as well as an Order further consolidating these cases.

Subsequently, on March 26, 2002,² the Regional Director for Region 29 approved an informal settlement entered into by the Respondent and the Charging Parties providing, *inter alia*, for the payment of specified amounts of backpay to the employees named in the agreement. The agreement also contained the following further provisions:

Performance by the Charged Party with the terms and provisions of this agreement shall commence immediately after the agreement is approved by the Regional Director . . .

Approval of the Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response. In consideration for the settlement of the complaint in this matter, the Respondent agrees that in the event it fails to comply with all the terms of the settlement, it will be given seven (7) days from the default to cure said default. Respondent further agrees that in the event Respondent fails to cure said default within the seven (7) day period, then the General Counsel will move for summary judgment before the National Labor

Board on all allegations in the complaint and that Respondent will waive its right to file an answer to the re-issued complaint and further waive all defenses to the allegations in the said complaint.

The agreement did not provide for liquidated damages in the event of default.

By telephone the week of May 20, the General Counsel requested the Respondent to comply with the terms of the settlement agreement and advised the Respondent that if it did not comply, a written demand would issue requesting the Respondent to cure the default. The General Counsel further advised the Respondent that absent cure, the Regional Director would revoke the settlement agreement, re-issue the complaints, and move for summary judgment on all allegations of the complaints, as provided by the default provision of the settlement agreement. By letter dated May 29, the General Counsel informed the Respondent that, in view of the Respondent's continued noncompliance, it was in default of the settlement agreement. The letter further advised the Respondent that it had 7 days to cure the default and that, absent cure, the General Counsel would move for summary judgment on all the allegations in the complaints. By letter of May 30, the Respondent requested a delay so that it could seek new counsel. On May 31, the General Counsel advised the Respondent that its decision to change counsel did not justify its failure to comply with the settlement agreement reached with the assistance of counsel. The General Counsel further advised the Respondent that, absent cure of the default by June 5, the General Counsel would move for summary judgment. At no time has the Respondent complied with the provisions of the settlement agreement.

Accordingly, on June 19 the General Counsel filed with the Board an Order revoking the settlement agreement and re-issuing the consolidated complaints, and a Petition for Summary Judgment and Issuance of Decision and Order. On July 3 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. In its response to the Notice to Show Cause, the Respondent did not deny that it has defaulted on the settlement agreement. The allegations of the motion and the re-issued complaint are therefore undisputed. The Respondent raised issues regarding the remedy and the applicability of the Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 122 S.Ct. 1275 (March 27, 2002), which we address in the Remedy section of this decision.

¹ Oscar Palacios filed the charge in Case 29-CA-24329 on July 9, 2001. The Union filed the charge in Case 29-CA-24375 on July 31, 2001; and it filed a first amended charge in that case on October 2, 2001. The Union filed the charge in Case 29-CA-24553 on October 23, 2001.

² All dates hereafter are 2002 unless otherwise indicated.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from the service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

Here, according to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent entered into a settlement agreement in which it agreed that if it failed to comply with the settlement, the Respondent will waive its right to file an answer to the re-issued complaints and further waive all defenses to the allegations in the complaints. Such noncompliance has occurred. We therefore find, pursuant to the settlement agreement, that all the allegations of the complaints are true.³

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board Makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a domestic corporation with its principal office located at 502 Flushing Avenue, Brooklyn, New York (Brooklyn facility), has been engaged in the wholesale sale and distribution of kosher food products. During the year prior to issuance of the consolidated complaint, which period is representative of its annual operations generally, the Respondent, in the course and conduct of its operations, purchased and received at its Brooklyn facility, goods and materials valued in excess of \$50,000 directly from suppliers located within the State of New York, which entities, in turn, purchased said goods and materials from suppliers located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Local 1102, Retail Workers and Department Store Union, United Food & Commercial Workers International Union, has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, Local 404, United Electrical, Radio and Machine Workers of America, has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Commencing on or about March 2001, the Respondent's employees engaged in protected concerted activities on behalf of the Workers of Tuv Taam, an organization formed by the Respondent's employees. Commencing on or about July 21, 2001, the Respondent's employees began organizing and seeking representation by Local 404, and subsequently Local 1102.

1. The Respondent has engaged in the following conduct, as alleged in chronological order in the reissued complaint:

On or about mid to late April 2001, mid May 2001, and late May to early June 2001, the Respondent, by its representative, Manager Abraham Spitzer, a statutory supervisor, at the Brooklyn facility, engaged in surveillance of its employees to discover their union or protected concerted activities. On or about mid May 2001, the Respondent, by its representative, Manager Laser, a statutory supervisor, at the Brooklyn facility, engaged in surveillance of its employees to discover their union or protected concerted activities. On or about mid May 2001, the Respondent, by its representative Manager Kallman Moscovicz, a statutory supervisor, at the Brooklyn facility, engaged in surveillance of its employees to discover their union or protected concerted activities.

On or about dates presently unknown commencing in mid-May 2001, the Respondent, by its representatives Laser, Moscovicz, and Spitzer, at the Brooklyn facility, more closely supervised Oscar Palacios.

On or about July 1, 2001, the Respondent, by Spitzer, in the office of Manager and statutory supervisor Abraham Stenger at the Brooklyn facility, created the impression that employees' union or protected concerted activities were under surveillance.

On or about July 1, 2001, the Respondent, by Spitzer, in Stenger's office at the Brooklyn facility, interrogated employees about the union or protected concerted activities of other employees.

On or about July 1, 2001, the Respondent, by Spitzer, in Stenger's office at the Brooklyn facility, promised employees a bonus to report to the Respondent regarding other employees' union or protected concerted activities.

On or about July 2, 2001, the Respondent, by Spitzer, in the loading area of the Brooklyn facility, interrogated employees about the union or protected concerted activities of other employees.

On or about July 3, 2001, the Respondent, by its representative Sam Nutovics, outside the Brooklyn facility, videotaped employees engaged in picketing.

On or about August 31, 2001, the Respondent, by Manager Pincus Tam, supervisor Eli Miller, and Agent Bluma Kind, all statutory supervisors and/or agents of

³ See *Ernest Lee Tile Contractors, Inc.*, 330 NLRB No. 61 (2000) (not reported in Board volumes), and cases cited there.

the Respondent, at the Polish American Legion in Brooklyn, New York, engaged in surveillance of its employees to discover their union activities.

On or about late August 2001, mid-September 2001, and November 2001, the exact dates being unknown, the Respondent, by Spitzer, at the Brooklyn facility, promised to grant employees wage increases if they ceased from engaging in activities on behalf of the Union and in support of the Union.

On or about September 2, 2001, and in November 2001, the exact date being unknown, the Respondent, by Spitzer, at the Brooklyn facility, interrogated employees about their union activity.

On or about unknown dates commencing in mid-September, 2001, the Respondent, by Spitzer, at the Brooklyn facility, told its employees that the Respondent would not give them wage increases because of their union activities.

On or about unknown dates in November 2001, the Respondent, by Spitzer, outside of the Brooklyn facility, created the impression that employees' union activity was under surveillance.

On or about December 5, 2001, the Respondent, by Manager Hesskie, a statutory supervisor, at the Brooklyn facility, threatened not to give employees wage increases unless they abandoned their support for and activities on behalf of the Union.

On or about December 5, 2001, the Respondent, by Hesskie, at the Brooklyn facility, promised to grant employees wage increases if they ceased from engaging in activities on behalf of the Union.

By the conduct described above, the Respondent has been interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. The Respondent engaged in the following conduct set forth below because of its employees' support for, and activities on behalf of, a labor organization, and because they engaged in protected concerted activity, and to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection. By this conduct, the Respondent has been discriminating in regard to the hire or tenure or terms of conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

In or about May 2001, the Respondent reduced the hours of employee Jose Luis Arellano; in or about the beginning of June 2001, the Respondent imposed more onerous working conditions on Arellano; on or about

June 7, 2001, the Respondent discharged Arellano; and since on or about June 7, 2001, the Respondent has failed and refused to reinstate, or offer to reinstate, Arellano to his former position of employment.

On or about July 2, 2001, the Respondent discharged employee Palacios and, since that date, has failed and refused to reinstate, or offer to reinstate, Palacios to his former position of employment.

On or about July 3, 2001, the Respondent's employees ceased work concertedly and engaged in a strike to protest the Respondent's discharges of Arellano and Palacios. The strike, from its inception, was an unfair labor practice strike. On or about July 19, 2001, the Respondent threatened its striking employees that they would be permanently replaced if they did not make unconditional offers to return to work by July 26, 2001. On or about July 26, 2001, all the Respondent's striking employees made an unconditional offer to return to their former positions of employment. From July 26, 2001, until the dates appearing next to their names, the Respondent refused to reinstate the following striking employees:

Juan Contreras	August 20, 2001
Hugo Cruz	August 15, 2001
Jose Munos	August 7, 2001
Jaime Cortezano	August 6, 2001
Alberto Garcia	August 2, 2001
Hugo Vaquero	August 7, 2001
Rosalio Ruiz	August 20, 2001
Alejandro Lopez	August 5, 2001
Sandro Salas	August 7, 2001
Abraham Henry	August 5, 2001
Ismael Cortezano	August 19, 2001

Since on or about July 26, 2001, the Respondent has refused to reinstate or offer to reinstate to their former positions of employment, unfair labor practice strikers Rangel Lucero, Esteban Sanchez, Gonzalo Cruz, Hugo Cruz, and Juan Jorge.

Since on or about August 26, 2001, the Respondent has reduced the wages of its employees, including the following:

Juan Contreras
Ismael Cortezano
Jaime Cortezano
Jesus Diaz
Miguel Estaban
Alberto Garcia
Abraham Jorge
Alejandro Lopez
Ricardo Martinez
Benjamin Perez
Jose Manuel Romero Gomez

Roberto Romero
 Pablo "Rosalio" Ruiz
 Sandro Salas
 Hugo Vaquero

The unfair labor practices of the Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. In addition, the Respondent has been discriminating in regard to the hire and tenure, or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) of the Act. The Respondent has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative actions designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated the Act by discharging employees Jose Luis Arellano and Oscar Palacios, and by failing or refusing to reinstate Arellano and Palacios, we shall order the Respondent to offer the employees 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. Having found that the Respondent has failed and refused to reinstate or offer reinstatement to certain employees named above who were unfair labor practice strikers, we shall order the Respondent to reinstate or offer to reinstate them. Further, we shall order the Respondent to make each of these employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, with interest. Similarly, having found that the Respondent has violated the Act by reducing Arellano's work hours, we shall order the Respondent to make him whole for wages lost because of this reduction. Having found that the Respondent unlawfully reduced the wages of certain of the above-named employees, we shall order the Respondent to make them whole for lost wages attributable to this unlawful wage reduction.

Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB

1173 (1987). The Respondent shall also be required to expunge from its files and records any and all references to the unlawful terminations, and to notify the employees in writing that this has been done.

The Respondent, in its response to the Notice to Show Cause, seeks a Board Order denying summary judgment based on "newly discovered evidence," that is, the U.S. Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, supra, which issued on March 27, 2002, the day after the Regional Director approved the settlement agreement at issue here. We deny the Respondent's request as lacking in merit.

In *Hoffman*, the Court ruled that immigration law and policy foreclose the Board from requiring the payment of backpay for "work not performed" to employees who are undocumented aliens, notwithstanding that the employees were discharged in violation of the NLRA.⁴ The Court explained, "awarding backpay to illegal aliens runs counter to policies underlying [the Immigration Reform and Control Act of 1986]." *Hoffman*, 122 S. Ct. at 1283. According to the Respondent, under its interpretation of *Hoffman*, the Board should issue an order "maintaining the settlement agreement in effect," pending the conduct of what it calls a "*Hoffman* hearing" to determine the immigration status of the discriminatees, before the Board can decide, at the merits phase of this unfair labor practice proceeding, that a backpay award is an appropriate remedy.⁵

We find no merit in the Respondent's contentions, which are based on a misunderstanding of both the status of the settlement agreement at this point in these pro-

⁴ The Court did not preclude awarding compensation for undocumented workers for work previously performed under unlawfully imposed terms and conditions. We thus agree with the General Counsel's interpretation of *Hoffman* in this respect. See General Counsel Memorandum 02-06, 2002 WESTLAW 1730518, *3 (July 19, 2002). Other Federal agencies and courts have interpreted *Hoffman* the same way in cases arising under other Federal statutes. See, e.g., U.S. Department of Labor, Employment Standards Division, Wage & Hour Division, "Application of U.S. Labor Laws to Immigrant Workers: Effect of *Hoffman Plastics* decision on laws enforced by the Wage and Hour Division" (Fact Sheet No. 48) (August 14, 2002); *Zeng Liu v. Donna Karan Int'l.*, 207 F.Supp. 2d 191 (S.D.N.Y. 2002) (Fair Labor Standards Act); *Flores v. Amigon*, 233 F.Supp. 2d 462 (E.D.N.Y. 2002) (same); *Flores v. Albertsons, Inc.*, 2002 WL 1163623 (C.C. Cal. 2002) (same).

⁵ The Respondent has not addressed, in its response, the appropriateness of another traditional remedy for an unlawful discharge or failure to reinstate, that is, a reinstatement order. For substantially the reasons discussed below, this matter is one to be resolved at the compliance phase. *A.P.R.A. Fuel Oil Buyers Group, Inc.*, 320 NLRB 408, 415-417 (1995), aff'd. 134 F.3d 50 (2d Cir. 1997) (where employee who has been unlawfully discharged has not previously provided valid immigration documents establishing eligibility to work in the U.S., Board will issue order requiring reinstatement and backpay, conditioned on the discriminatee's production of proof of employment eligibility).

ceedings, and the effect of the *Hoffman* decision at the merits, or liability, phase of this case. Thus, we issue a remedial order containing, among other provisions, a conditional backpay award. As we explain below, our decision and order are consistent with *Hoffman*.

As we have found, the Respondent defaulted on the March 2002 settlement agreement. In accordance with the default provisions of that agreement, the Regional Director revoked the agreement and reissued the complaints. Thus, the settlement agreement is null and void and, accordingly, cannot be “maintained in effect.” As further provided by the default provisions of the settlement agreement, we have found that all allegations in the reissued complaint are true. All that is left for the Board to do now is to issue conclusions of law and order an appropriate remedy for the unfair labor practices we have found. We will order the Board’s standard remedies for the violations we have found, including the customary backpay remedy.⁶

Contrary to the Respondent’s contention, the Board is not foreclosed by *Hoffman* from awarding a backpay

remedy on the basis of the Respondent’s bare assertion that the discriminatees might be undocumented workers.

As an initial matter, we note that the Respondent has not adduced any legally cognizable evidence regarding the immigration status of the discriminatees.⁷ It would be unusual if the Respondent had done so at the liability phase of this unfair labor practice proceeding. Typically, an individual’s immigration status is irrelevant to a respondent’s unfair labor practice liability under the Act. Questions concerning the employee’s status and its effect on the remedy are left for determination at the compliance stage of a case. See, e.g., *A.P.R.A. Fuel Oil Buyers Group, Inc.*, *supra*; *Intersweet, Inc.*, 321 NLRB 1, fn.1 (1996), *enfd.* 125 F.3d 1064 (7th Cir. 1997). *Hoffman* does not require a change in this procedure. Here, the immigration status of the discriminatees (much less the Respondent’s mere suspicion about that status) does not bear on whether the Respondent engaged in the unlawful conduct alleged in the reissued complaints. Nor does it bear on the remedy to be ordered at this stage of the proceedings for the unlawful conduct found.

Accordingly, we shall leave to the compliance phase of these proceedings the determination whether any of the discriminatees are legally “unavailable” for work and whether, thus, the accrual of backpay must be tolled during any period when the discriminatees were not “lawfully entitled to be present and employed in the United States.” *Hoffman, supra* at 1281, citing *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984).⁸ We recognize that the effect of *Hoffman*, in the compliance case, could be to disqualify some discriminatees, on the basis of their immigration status, from receiving backpay that they would

⁶ As noted above, the breached settlement agreement did not contain a liquidated damages provision. It provided that in the event of default, the General Counsel would move for summary judgment on the original complaint and that Respondent waived its right to file an answer or raise any defenses to the complaint allegations. Thus, the default process specified in the breached agreement contemplates issuance of an uncontested decision and the usual further process, as is necessary and appropriate, including compliance proceedings. Compare *Henry’s Refrigeration, Heating & Air*, 339 NLRB No. 83 (2003) (Board’s traditional remedies not awarded because noncompliance clause of breached settlement agreement provided that the specified liquidated damages were “a full remedy as specified in the Complaint”); *Bartlett Heating & Air Conditioning*, 339 NLRB No. 131 (2003) (liquidated damages specified in breached agreement); and *L. J. Logistics, Inc.*, 339 NLRB No. 84 (2003) (backpay not limited to backpay amount specified in breached settlement agreement because the agreement provided that in the event of noncompliance, the Board could issue an Order “providing a full remedy for the violations so found as is customary to remedy such violations, not limited to provisions of this Settlement Agreement”).

Member Liebman and Member Walsh emphasize that the General Counsel expressly takes the position that he does not seek to enforce the monetary terms of the breached settlement agreement and, indeed, that the settlement agreement has now been revoked. It follows, in these circumstances, that the General Counsel ordinarily will issue a compliance specification setting out the amounts of backpay allegedly owed to the discriminatees. The Respondent will then have the opportunity to file an answer and to raise defenses to the specification. Because these remedial issues will be addressed at compliance, it is appropriate to permit the Respondent to raise a “*Hoffman* defense” at the compliance stage. Member Liebman and Member Walsh note that this is not a case in which liquidated damages are sought as a full remedy in the event of noncompliance. Compare *Henry’s Refrigeration, Heating & Air*, *supra* (liquidated damages), to cases where the Board’s standard and customary remedies are to be considered at a compliance proceeding. See *L. J. Logistics*, *supra*. Cf. *Bartlett Heating & Air Conditioning*, *supra* (Member Liebman dissenting in part).

⁷ For its allegation of immigration “fraud,” the Respondent relies on a letter from the U.S. Social Security Administration (SSA), received several months after the date of the settlement agreement, and while these proceedings were pending, identifying discrepancies between SSA records and the Respondent’s reports and submissions on behalf of 13 named employees, all of whom are discriminatees in the instant case. The SSA letter explains that “this letter makes no statement about your employee’s immigration status” and, further, cautions that the letter “does not imply that you or your employee intentionally provided incorrect information . . . [and] is not a basis . . . for you to take any adverse action against the employee, such as laying off, suspending, firing, or discriminating against any individual who appears on the list.” The letter further warns that such misuse of the letter may violate state or Federal law.

⁸ Our decision here is consistent with the Board’s well-established policy of deferring to compliance questions regarding the specifics of the relief granted, including mitigating circumstances. See, e.g., *TNS, Inc.*, 309 NLRB 1348 (1992) (ineligible for reinstatement and backpay because of strike misconduct); *Douglas Electrical Contracting*, 337 NLRB No. 47 (2001), and *Bauer Communications*, 337 NLRB No. 50 (2002) (interim earnings deducted from backpay); *Wolfe Electric Co.*, 336 NLRB 684 (2001), *enfd.* 314 F.3d 325 (8th Cir. 2002) (order and job placement of reinstated employees). See generally *F.W. Woolworth*, *supra*.

otherwise be entitled to receive on account of the Respondent's unfair labor practices. *Sure-Tan*, supra at 904.

Under well-settled legal principles, in the compliance proceeding, the General Counsel will bear the burden of proving the amount of gross backpay due. Once the General Counsel has met his burden, the burden will shift to the Respondent to establish facts in support of its contention that any discriminatee is not lawfully entitled to be employed in the United States and, thus, that backpay should be tolled during any period of ineligibility. *Minette Mills, Inc.*, 316 NLRB 1009, 1010 (1995), relying on *Florida Tile Co.*, 310 NLRB 609 (1993), and *Arlington Hotel*, 287 NLRB 851 (1987), enfd. on point 876 F.2d 678 (8th Cir. 1989).

We do not hold here that a party may never adduce evidence of an employee's immigration status at the merits phase of an unfair labor practice hearing. Certainly, there could be cases in which an employee's status could be relevant to the merits of the specific unfair labor practice alleged, for example, where an unlawful failure to hire an applicant is alleged, and is defended on the basis of the applicant's immigration status. In such cases, it would be appropriate, in accordance with the Court's decision in *Hoffman*, for the Board to determine both the liability of the employer for the unfair labor practice and the ineligibility of an undocumented worker to receive backpay that he would otherwise be due.

However, this is not such a case. We simply find that here, where immigration status has no bearing on whether the Respondent did, in fact, commit the unfair labor practices of which it has been accused, questions regarding employee status must be litigated at compliance, and cannot insulate the Respondent from a decision on the merits of the complaint allegations or the consequences of its unlawful conduct.

ORDER

The National Labor Relations Board orders that the Respondent, Tuv Taam Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Engaging in surveillance of employees because of, or in order to discover, their union or protected concerted activities.

(b) More closely supervising employees because of their union or protected concerted activities.

(c) Creating the impression that employees' union or protected concerted activities are under surveillance.

(d) Interrogating employees about their union or protected concerted activities.

(e) Promising employees a bonus to report to the Respondent regarding other employees' union or protected concerted activities.

(f) Videotaping employees engaged in picketing.

(g) Reducing the work hours and rates of pay of its employees because of their union or protected concerted activities.

(h) Imposing more onerous working conditions on employees because of their union or protected concerted activities.

(i) Discharging employees because of their union or protected concerted activities, and failing and refusing to reinstate them.

(j) Failing and refusing to reinstate, or offer reinstatement to, unfair labor practice strikers who have made an unconditional offer to return to work.

(k) Promising employees wage increases if they cease from engaging in activities on behalf of, and in support of, the Union.

(l) Threatening to withhold wage increases from employees because of their union or protected concerted activities.

(m) Threatening to withhold wage increases from employees unless they abandoned their support for the Union.

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

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

(a) Within 14 days from the date of this Order, offer Jose Luis Arellano and Oscar Palacios 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 Jose Luis Arellano and Oscar Palacios whole for any loss of earnings and other benefits suffered as a result of the unlawful discharges and failure to reinstate or offer to reinstate them.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Arellano and Palacios, 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) To the extent it has not already done so, reinstate the following unfair labor practice strikers: Juan Contreras, Hugo Cruz, Jose Munos, Jaime Cortezano, Alberto Garcia, Hugo Vaquero, Rosalio Ruiz, Alejandro Lopez, Sandro Salas, Abraham Henry, and Ismael Cortezano; and make them whole for any loss of earnings

and other benefits suffered as a result of the failure to reinstate them, in the manner set forth in the remedy section of the decision.

(e) Reinstate, or offer to reinstate, the following unfair labor practice strikers: Rangel Lucero, Esteban Sanchez, Gonzalo Cruz, Hugo Cruz, and Juan Jorge; and make them whole for any loss of earnings and other benefits suffered as a result of the failure to reinstate or offer to reinstate them, in the manner set forth in the remedy section of the decision.

(f) Make whole the following employees for any loss of earnings and other benefits suffered as a result of its unlawful reduction of their work hours and/or rates of pay, in the manner set forth in the remedy section of the decision: Jose Luis Arellano, Juan Contreras, Ismael Cortezano, Jaime Cortezano, Jesus Diaz, Miguel Estaban, Alberto Garcia, Abraham Jorge, Alejandro Lopez, Ricardo Martinez, Benjamin Perez, Jose Manuel Romero Gomez, Roberto Romero, Pablo "Rosalio" Ruiz, Sandro Salas, and Hugo Vaquero.

(g) 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 designated 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.

(h) Within 14 days after service by the Region, post at its facility at Brooklyn, New York, copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 on or about mid-April 2001.

⁹ 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."

(i) 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

WE WILL NOT engage in surveillance of employees because of, or in order to discover, their union or protected concerted activities.

WE WILL NOT more closely supervise employees because of their union or protected concerted activities.

WE WILL NOT create the impression that employees' union or protected concerted activities are under surveillance.

WE WILL NOT interrogate employees about their union or protected concerted activities.

WE WILL NOT promise employees a bonus to report to us regarding other employees' union or protected concerted activities.

WE WILL NOT videotape employees engaged in picketing.

WE WILL NOT promise employees wage increases if they cease from engaging in activities on behalf of, and in support of, the Union.

WE WILL NOT threaten to withhold wage increases from employees because of their union or protected concerted activities.

WE WILL NOT threaten to withhold wage increases from employees unless they abandon their support for the Union.

WE WILL NOT reduce the work hours and rates of pay of employees because of their union or protected concerted activities.

WE WILL NOT impose more onerous working conditions on employees because of their union or protected concerted activities.

WE WILL NOT discharge employees because of their union or protected concerted activities.

WE WILL NOT fail and refuse to reinstate, or offer reinstatement to, unfair labor practice strikers who have made an unconditional offer to return to work.

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 Jose Luis Arellano and Oscar Palacio 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, and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL reinstate to the extent we have not already done so the following unfair labor practice strikers: Juan Contreras, Hugo Cruz, Jose Munos, Jaime Cortezano, Alberto Garcia, Hugo Vaquero, Rosalio Ruiz, Alejandro Lopez, Sandro Salas, Abraham Henry, and Ismael Cortezano; and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of our

failure to reinstate them, in the manner set forth in the remedy section of the decision.

WE WILL reinstate, or offer to reinstate, the following unfair labor practice strikers: Rangel Lucero, Esteban Sanchez, Gonzalo Cruz, Hugo Cruz, and Juan Jorge; and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of our failure to reinstate them, or offer to reinstate them, in the manner set forth in the remedy section of the decision.

WE WILL make whole the following employees for any loss of earnings and other benefits suffered as a result of our unlawful reduction of their work hours and/or rates of pay, in the manner set forth in the remedy section of the decision: Jose Luis Arellano, Juan Contreras, Ismael Cortezano, Jaime Cortezano, Jesus Diaz, Miguel Estaban, Alberto Garcia, Abraham Jorge, Alejandro Lopez, Ricardo Martinez, Benjamin Perez, Jose Manuel Romero Gomez, Roberto Romero, Pablo "Rosalio" Ruiz, Sandro Salas, and Hugo Vaquero.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Arellano and Palacios, 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.

TUV TAAM CORP.