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**Tri-Tech Services, Inc. and United Steelworkers of America, AFL-CIO.** Case 15-CA-16177-1, 15-CA-16196, and 15-CA-16289

September 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

On August 8, 2002, Administrative Law Judge Jane Vandevanter issued the attached decision. The Respondent filed exceptions and a supporting brief. Counsel for the General Counsel filed an answering brief, and the Respondent filed a reply brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified and set forth in full below.

The judge found that the Respondent violated the Act by laying off 24 employees in retaliation for selecting the Union as their bargaining representative, and by implementing the layoff without providing the Union with an opportunity to bargain about it. The Respondent denies that the layoff was motivated by antiunion animus and asserts that it was under no obligation to bargain with the Union over the layoff. For reasons discussed below, we affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) by unilaterally implementing the layoff. We find it unnecessary to pass on her finding that the Respondent violated Section 8(a)(3) by using the layoff to retaliate against employees' selection of the Union.<sup>2</sup>

I.

The Respondent is a manufacturer of various metal products, including rotary container transporters (RCTs),

<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), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> There were no exceptions to the judge's finding that the Respondent violated the Act by interrogating and threatening employees who engaged in protected activity, and by disciplining employee Eddie Shepherd because of his union activities.

which are used in the airline industry to move containers between the aircraft and the baggage room. Although the Respondent generally manufactures only those items for which it has received advance orders, between January and May 2001<sup>3</sup> the Respondent manufactured RCTs in anticipation of future orders from Delta Airlines, relying on predictions of future orders by Delta representative, Tim Wix. According to Respondent President Larry Whitehead, Wix told him in January that if the Respondent manufactured eight RCTs per day, things would be "good through June."

The Respondent received orders for RCTs from Delta in January and March. On April 17 sales manager Calvin Bowie e-mailed Wix to inform him that the Respondent had built up an inventory of RCTs and to inquire when Delta might place another order. Wix did not respond to the e-mail. Several weeks later Whitehead inquired about future orders in an e-mail to Wix. Wix replied that orders were still in the approval process. The Respondent continued to manufacture RCTs throughout this period.

The Union began its organizing activity at the Respondent's plant in late March. A representation petition was filed on April 9, and an election was held on May 17. The Union won the election by a vote of 26-16. There were no objections to the election. The Board issued a certification of representative on May 30.

The Respondent's witnesses testified that on May 22, Wix met with Whitehead, Bowie, and Production Control Manager William Hill and informed them that there would be no more orders from Delta for the foreseeable future.<sup>4</sup> The next day Whitehead decided to shut down the RCT line and lay off employees who worked primarily on that product. He then instructed Hill to select employees for the layoff. On May 24, the Respondent laid off 25 employees, 24 of whom were in the unit represented by the Union.<sup>5</sup> It is undisputed that the Respondent did not notify or bargain with the Union about the layoff, and that the Union did not request bargaining after the layoff was implemented.

II.

We agree with the judge that the Respondent had an obligation to notify and bargain with the Union prior to the layoff, and that the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with an

<sup>3</sup> All dates are in 2001 unless otherwise noted.

<sup>4</sup> According to the Respondent's witnesses, Wix did not provide any specific information concerning future orders. Delta placed orders for RCTs in June, August, and September, which were filled from existing inventories.

<sup>5</sup> The judge found that employee Willie Grant, who was alleged as a discriminatee in the complaint, was a statutory supervisor.

opportunity to bargain about the layoff before it was implemented. It is well established that the layoff of unit employees is a change in terms and conditions of employment over which an employer must bargain. See *Taino Paper Co.* 290 NLRB 975, 977–978 (1988); *Peat Mfg. Co.*, 261 NLRB 240 (1982). It is also established that “an employer’s obligation . . . to refrain from making unilateral changes in working conditions commences at the time of an apparent ballot victory for a labor organization rather than at the time of its official certification.” *Consolidated Printers, Inc.*, 305 NLRB 1061, 1067 (1992). See also *Ebenezer Rail Car Services*, 333 NLRB 167, 172 (2001); *Lawrence Textile Shrinking Co.*, 235 NLRB 1178 (1978). Because the Union was chosen as the bargaining representative of the Respondent’s employees on May 17, approximately a week before the Respondent made the decision to shut down the RCT line, the Respondent was not privileged to unilaterally lay off employees without bargaining with the Union.<sup>6</sup>

The Respondent argues that the May 24 layoff was not a unilateral change over which it was required to bargain because the layoff was consistent with its past practice of employee layoffs. We find no merit in this argument. The evidence demonstrates that the Respondent had only three layoffs since it began operating its facility in 1987. In an October 1987 layoff, the Respondent retained employees based on their ability to perform specialized work. In a May 1992 layoff, the Respondent retained employees based on their general merit. In an October 1995 layoff, the Respondent retained employees based on their product line assignments. Accordingly, there is relatively little past practice evidence regarding layoffs; further, what evidence has been proffered by the Respondent does not demonstrate a consistent past practice.<sup>7</sup>

<sup>6</sup> We agree with the judge that there were no compelling economic circumstances here that would excuse the Respondent from having to bargain over the layoff. Although the production of RCTs for Delta was apparently a significant part of the Respondent’s business in the spring of 2002, in the absence of a dire financial emergency, the loss of that account does not constitute a compelling economic consideration that would excuse the Respondent’s failure to bargain with the Union. See *Angelica Healthcare Services* 284 NLRB 844, 852–853 (1987). We find no evidence that such an emergency existed at the time of the layoff.

<sup>7</sup> Because the Respondent failed to prove its past practice defense, Chairman Battista and Member Schaumber find it unnecessary to reach the issue of whether a well-established, consistent past practice regarding layoffs prior to the election would have excused the Respondent’s obligation to bargain with the Union regarding the layoff here.

Member Liebman would find that, because of the intervention of the bargaining representative, the Respondent could no longer continue to unilaterally exercise its discretion with respect to layoffs. See, e.g., *Adair Standish Corp.*, 292 NLRB 890 fn. 1 (1989), *enfd.* in relevant

We also find no merit in the Respondent’s argument that the Union waived its right to bargain about the layoff by not making a demand for bargaining once the Union learned that the layoff had occurred. The Union was given no notice of the layoff or opportunity to bargain over the issue prior to its implementation. In these circumstances, we agree with the judge that the Respondent’s unilateral implementation of the layoff was presented to the Union as a fait accompli, making any demand for bargaining futile. See, e.g., *Pontiac Osteopathic Hospital*, 336 NLRB 1021, 1023–1024 (2001) (union’s failure to request bargaining over changes to employee benefits did not constitute waiver where union did not receive notice of changes until after they were implemented).<sup>8</sup>

### III.

Having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally laying off employees, we shall order the Respondent to bargain with the Union over the layoff, to reinstate the laid-off employees, and to make those employees whole for any loss of earnings they may have suffered as a result of the layoff. See *Adair Standish Corp.*, 292 NLRB at fn. 1; *Lapeer Foundry & Machine, Inc.*, 289 NLRB 952, 955–956 (1988).<sup>9</sup>

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part 912 F.2d 854 (6th Cir. 1990); see also *Falcon Wheel Division L.L.C.*, 338 NLRB No. 70 slip op. at 1–2 (2002).

<sup>8</sup> In *American Diamond Tool, Inc.*, 306 NLRB 570 (1992), relied on by the Respondent, the Board found that the union waived its right to bargain over layoffs by inexplicably failing to request bargaining when provided with the opportunity, and by expressly signaling its acquiescence to similar conduct by the employer in the future.

In that case, however, the Board found that an initial layoff prior to any bargaining violated the Act; subsequent layoffs, which occurred during the course of bargaining, were not unlawful. The situation here is comparable to the initial layoff in *American Diamond*, not the subsequent layoffs.

<sup>9</sup> Member Schaumber is of the view that, although reinstatement and make whole relief are appropriate remedies, since the evidence supports a conclusion that the layoffs would not have been averted even if the Respondent had bargained with the Union, all employees who were laid off “are not ipso facto entitled to payments of some kind.” *Schuykill Contracting Co.*, 271 NLRB 71, 73 (1984), *enf.* 770 F.2d 1075 (3d Cir. 1985). Rather, only those employees who would *not* have been laid off following proper bargaining—but who were unlawfully laid off—are entitled to reinstatement and back pay. Which particular employees are entitled to such relief, if any, should be resolved at the compliance stage, if the parties are unable to reach agreement on those issues. *Id.* at 73. See *Dawson Carbide Industries*, 273 NLRB 382 fn. 3. (1984) (leaving for compliance stage issue of whether certain unlawfully laid off employees should not receive back pay, because they would have been laid off due to economic difficulties regardless of their union activity), *enf.* 782 F.2d 64 (6th Cir. 1986). Of course, any ambiguity would be resolved in favor of the laid-off employees.

With respect to those employees who would have been laid off anyway, and therefore would not be entitled to reinstatement and back pay, Member Schaumber would require the parties to bargain over the ef-

Consequently, we find it unnecessary to decide whether the Respondent violated Section 8(a)(3) by using the layoff to retaliate against employees, because any remedy we would order if we were to find a violation would merely be cumulative and would not affect the remedy provided. See, e.g., *Syigma Network Corp.* 317 NLRB 411 fn. 1 (1995); *Pennsylvania Energy Corp.*, 274 NLRB 1153 fn. 1 (1985).

IV.

The Respondent has raised a number of exceptions that it did not address in its supporting brief. Instead, the Respondent has set forth its arguments in support of those exceptions in the exceptions document itself. Although we find that these exceptions have been properly raised, we find that the arguments contained within the exceptions document are to be disregarded, because they do not comply with Rule 102.46(b)(1) of the Board’s Rules and Regulations<sup>10</sup> and are therefore not properly before the Board. In any event, we find no merit in those exceptions.<sup>11</sup>

ORDER

The National Labor Relations Board orders that the Respondent, Tri-Tech Services, Inc., Selma, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Threatening employees with discharge because they engage in protected concerted or union activities.
  - (b) Threatening employees with discharge if they select the Union to represent them.
  - (c) Interrogating employees about their union sympathies and activities and about the union activities of other employees.
  - (d) Issuing warnings and suspensions to employees because of their union activities.
  - (e) Failing or refusing to notify the Union of changes in wages, hours, or working conditions, including the May 24, 2001 layoff of 24 employees.

facts of those layoffs, and for the Respondent to implement the results of effects bargaining.

<sup>10</sup> Rule 102.46(b)(1) of the Board’s Rules and Regulations provides that:

If a supporting brief is filed the exceptions document shall not contain any argument or citation of authority in support of the exceptions, but such matter shall be set forth only in the brief.

<sup>11</sup> Member Liebman would find the exceptions deficient. The Respondent has expressly chosen *not* to argue the exceptions in its supporting brief, while asserting that they are nevertheless preserved. The Board’s rules, however, demand that exceptions be argued in (and only in) the brief, if one is filed. Failure to do so amounts to a waiver of the exception and the argument. Assuming arguendo that the exceptions and the supporting arguments were properly before the Board, she also would find them lacking in merit.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of 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 the following 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, and make them whole for any losses of earning, with interest, in the manner set forth in the remedy section of the judge’s decision:

Joe Acoff	Robert Dragg, Jr.	Chadwick Nelson
Willis Alexander	John Ford	Steve Sewell
Mark Allen	Kenneth Hoover	Eddie Shepherd
Jimmy Brooks	Odell Jackson	Lemont Sigler
Richard Clibrey	Alex Lane	Andre Sigmon
Y. C. Coleman	Roosevelt Lee	Kelvin Threatt
Kevin Day	Kurt Marks	Roosevelt Towns
Charles Dixon	Michael Marshal	Willie Williams

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings and suspension of Eddie Shepherd, and the layoffs of the above-named employees, and within 3 days thereafter notify them in writing that this has been done and that the warnings, suspension, and layoff will not be used against them in any way.

(c) Upon request, bargain in good faith with the Union.

(d) 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.

(e) Within 14 days after service by the Region, post at its Selma, Alabama, location copies of the attached notice marked “Appendix.<sup>12</sup>” Copies of the notice, on forms provided by the Regional Director for Region 15, 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 cus-

<sup>12</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.”

tomarily 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 March 26, 2001.

(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.

Dated, Washington, D.C. September 30, 2003

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Robert J. Battista, Chairman

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

(SEAL) 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 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 threaten you with discharge if you select a union to represent you.

WE WILL NOT threaten you with discharge if you engage in protected concerted activities or union activities.

WE WILL NOT interrogate you about your union sympathies or activities or the union activities of other employees.

WE WILL NOT issue warnings to you or suspend you because of your union activities.

WE WILL NOT refuse to bargain in good faith by failing to notify the United Steelworkers of America, AFL-CIO, of a layoff of unit employees.

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

WE WILL reinstate the following employees to their former jobs, and WE WILL make them whole for any loss of pay or other benefits they may have suffered because of our unlawful layoffs of them:

Joe Acoff	Robert Dragg, Jr.	Chadwick Nelson
Willis Alexander	John Ford	Steve Sewell
Mark Allen	Kenneth Hoover	Eddie Shepherd
Jimmy Brooks	Odell Jackson	Lemont Sigler
Richard Clibrey	Alex Lane	Andre Sigmon
Y. C. Coleman	Roosevelt Lee	Kelvin Threatt
Kevin Day	Kurt Marks	Roosevelt Towns
Charles Dixon	Michael Marshal	Willie Williams

WE WILL remove from our files any reference to the unlawful warnings and suspension of Eddie Shepherd, and the unlawful layoffs of the employees named in the above paragraph, and notify them in writing that this has been done and that the warnings, suspension, and layoffs will not be used against them in any way.

WE WILL, upon request, bargain in good faith with the United Steelworkers of America.

#### TRI-TECH SERVICES, INC.

*Kevin McClue and Beauford D. Pines, Esqs.*, for the General Counsel.

*William F. Gardner, Esq.*, for the Respondent.

*Samuel H. Penn, Sr.*, for the Charging Party.

#### DECISION

#### STATEMENT OF THE CASE

JANE VANDEVENTER, Administrative Law Judge. This case was tried on December 12, 13, and 14, 2001, in Selma, Alabama.<sup>1</sup> The consolidated complaint alleges Respondent violated Section 8(a)(1) of the Act by threatening employees with discharge if they selected the Charging Party Union to represent them, by threatening them with discharge for engaging in union activities, and by interrogating employees about their union membership, activities, and sympathies. The complaint, as amended, also alleges Respondent violated Section 8(a)(3) of the Act by issuing two disciplinary warnings and a 1-day suspension to employee Eddie Shepherd, and by laying off 25 employees because of their union activities or sympathies. Further, the complaint alleges that Respondent violated Section

<sup>1</sup> At the hearing, the name of the Respondent was corrected to add "Inc.," as reflected in the caption.

8(a)(5) of the Act by laying off the employees on May 24, 2001, without notice to the Union and without affording the Union an opportunity to bargain concerning any aspect of the layoff. The Respondent filed an answer denying the essential allegations in the complaint. After the conclusion of the hearing, the parties filed briefs, which I have read.<sup>2</sup>

Based on the testimony of the witnesses, including particularly my observation of their demeanor while testifying, the documentary evidence, and the entire record, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent is an Alabama corporation with an office and place of business in Selma, Alabama, where it is engaged in the manufacture of metal baggage carts, postal carts, and other metal carts. During a representative 1-year period, Respondent sold and shipped from its Selma, Alabama facility goods valued in excess of \$50,000 directly to points outside the State of Alabama. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

### II. UNFAIR LABOR PRACTICES

#### A. *The Facts*

##### 1. Background and organizing campaign

Respondent has operated its Selma, Alabama facility since 1987, and in April 2001, employed approximately 50 people at that facility. Respondent manufactures metal baggage carts for the airline industry and postal carts, called "mail dumpsters" in the record, among other metal products.

In March 2001, employee Eddie Shepherd contacted the Union. After several employee meetings with Samuel Penn Sr., an organizer, the Union filed a petition for an election on April 9.<sup>3</sup> The petition listed Organizing Coordinator Clarence Brown as the Union's representative, and set forth an address and telephone number in Fairfield, Alabama. A representation election was held on May 17, in which a majority of the employees casting ballots voted for the Union to represent them. There were 26 votes for the Union. At the preelection conference, Penn handed his business card, which listed his address and telephone number, to Company Officials Aaron Grimes and Larry Whitehead. No objections were filed, and on May 30, a certification of representative was issued.

##### 2. Allegations of 8(a)(1) violations

On about April 3, employee Eddie Shepherd discussed Respondent's profit sharing plan with other employees. None of them had heard anything about the plan for several years. Shepherd was designated by the employees to ask an official of Respondent about the profit sharing. He spoke to the president, Larry Whitehead, in Whitehead's office, and asked Whitehead

<sup>2</sup> The Respondent also filed an unopposed motion to correct the transcript which is hereby granted.

<sup>3</sup> All dates hereafter are in 2001 unless otherwise specified.

what had happened to the profit-sharing plan. He told Whitehead that he had been selected by the employees to ask about the profit sharing. After making inquiries, Whitehead informed Shepherd that there had been a one-time contribution some 10 years earlier, but none since that time. Whitehead also told Shepherd that if he was the front man, the front man was the one who gets hurt, the one who stands out. Shepherd testified to these facts. Whitehead did not address this incident in his testimony.

On about April 16 Shepherd testified, Whitehead called Shepherd to his office and talked to him about the Union. Whitehead told Shepherd that Respondent was "no place for the Union." Whitehead also asked Shepherd why he was supporting the Union and how he had gotten the cards signed. Whitehead did not testify about this incident.

During the early part of May, before the election on May 17, Aaron Grimes, Respondent's plant manager, approached Shepherd before work and asked him what he knew about the Union. Shepherd said that he didn't know what Grimes was talking about. Grimes responded that if Shepherd knew anything about organizing the Union at Respondent, he would not have a job there. Grimes did not address this incident in his testimony.

In late March, soon after employee Roosevelt Lee<sup>4</sup> had attended his first union meeting, he went to Respondent's facility after working hours to pick up his check. Aaron Grimes approached Lee and asked him if he had heard anything about somebody trying to get the Union started around here. Lee denied having heard anything. Grimes contradicted Lee's denial, saying, "yes, you have," and went on to tell Lee that whoever was trying to get the Union started should stop because they were going to "get their asses in trouble." Grimes did not testify about this incident.<sup>5</sup>

##### 3. Allegations of 8(a)(3) violations

###### a. *Eddie Shepherd warnings and suspension*

Eddie Shepherd was the employee who initially contacted the Union. He was the employee who communicated news of union meetings to other employees. He represented employees in asking Respondent's president about their profit-sharing money in early April. He handbilled along with the union organizer in plain view in front of Respondent's premises on April 30, and he served as the Union's observer at the representation election on May 17. On that day, Whitehead and Grimes initially stated that they did not want Shepherd to be the observer, accusing him of making threats to employees. Shepherd also wore a union button at work for about a week before the election and for the 1 week he worked after the election.

Respondent was aware of Shepherd acting as spokesperson for the employees in asking about the profit-sharing money. After the representation petition had been filed, Respondent held several meetings for employees at which they communicated their opposition to the Union. At one of these meetings in

<sup>4</sup> Roosevelt Lee testified at the hearing. Another employee of the same name will be referred to as Roosevelt I. Lee.

<sup>5</sup> The employees' testimony concerning these incidents was uncontradicted. In addition, I find that the testimony of these two employees was credible and worthy of belief.

April, Whitehead, after stating his views that employees did not need a union, asked employees if they really wanted Eddie Shepherd to be their representative, or if they wanted him, Whitehead. Shepherd attempted to speak at this point, but Whitehead told him to shut up. Whitehead's remarks at the Respondent-called meeting indicated that by the third week in April, Respondent was aware that Shepherd was a leading employee organizer for the Union.

Thereafter, on April 23, Shepherd was absent from work due to car trouble. The following day, near the end of the day, Shepherd was told by Supervisor Bobby Jones that he was to go see Aaron Grimes in his office. Being in the middle of setting up his machine, Shepherd said that he needed to finish the set-up, and would be there in 5 minutes. Shepherd testified that he understood that he was requested to go to the office at some time before leaving the plant, not that he was to go immediately to the office. Jones did not contradict Shepherd, but a few minutes later, returned and told Shepherd he was to report to the office immediately, which he did. Shepherd was given a written warning for having an unexcused absence on April 23. In addition, the following day he was given another written warning for "insubordination" because of having said he wanted to complete the setup he was in the middle of before reporting to the office. Shepherd was suspended for most of April 25, but with no loss of pay.

*b. Layoff of 25 employees on May 24*

As has been described, Respondent was aware of Eddie Shepherd's union activities. In addition, other employees engaged in union activities by wearing union buttons on their work clothes for various periods of time. There was evidence introduced that on election day, May 24, approximately 19 employees wore buttons reading:

Work with Dignity!  
Steelworkers  
USWA AFL-CIO CLC.<sup>6</sup>

Some employees testified that they also wore their union buttons for a week before the election and some that they wore their union buttons for a week following the election, until being laid off. It is undisputed that managers such as Aaron Grimes, as well as other supervisors, spent hours in the employees' working areas daily, and they did so on May 17. Several employees testified that Grimes looked directly at employees' union buttons on May 17. I credit their testimony. I find that Respondent's supervisors had ample opportunity to observe employees' union buttons, did in fact observe these buttons, and that they had knowledge of these 19 employees' prounion sympathies.

In addition, it is uncontroverted that Don Perry attended one of the union organizing meetings in April. Perry's name ap-

pears on the April 20 meeting roster, which was signed by attendees and kept by Union Organizer Penn. At that meeting were 18 other employees.<sup>7</sup> Although Perry disclaimed being a supervisor on that night, saying to another employee that he had been demoted, I find that this was not true, and that he remained a supervisor. There is record evidence that he signed employee absentee reports as "supervisor" only 3 days prior to this meeting, and that his pay did not change during this period. Perry continued to wear a supervisor's light blue uniform shirt. Employees wear dark blue shirts. No document shows any demotion of Perry at this time. I therefore find that Don Perry and Bobby Jones were supervisors of Respondent during April. Don Perry's knowledge of the 18 employees attending the union meeting on April 20 is attributable to Respondent.

Respondent held meetings for employees for several weeks before the election. It is undisputed that Respondent's supervisors and managers who spoke at these meetings urged employees to vote against the Union. Respondent also issued literature espousing this point of view. Several instances of threats and coercive interrogation concerning the Union by Respondent's supervisors have been described in the previous section.

Although Respondent employed approximately 50 to 54 employees in early April, by May 24, the number of employees had grown to 62. On May 24, exactly 1 week after the election at which the employees selected the Union to represent them by a vote of 26 to 16, Respondent laid off 25 employees. Whitehead testified that he made the decision to lay off employees because of a lack of orders for RCT carts, or airline baggage carts. According to Respondent's witnesses, it had continued to manufacture the RCT carts for several months without having actual orders in the expectation that orders for the carts would be forthcoming. According to Whitehead, he told Will Hill, production control manager, to choose which employees to lay off, and to lay off those working on RCT carts. Hill testified that he was not familiar in every case with what jobs employees performed, and was also unfamiliar with the jobs employees were able to perform.

Respondent's employee handbook states that "Length of service is applied in determining [sic] eligibility for the following employee benefits or policy procedures:

1. Vacation
2. Group Insurance
3. Holiday Pay
4. Layoffs
5. Recalls"

The handbook also states that probationary employees (those employed for less than 90 days) and temporary employees "have no service rights." In addition, Respondent employed three inmate employees on May 24. These employees were on a work release program from Alabama prisons. The agreement under which inmates were employed by Respondent specified,

<sup>6</sup> These employees were: Willis Alexander, Mark Allen, Robert Bennett, Doug Braxton, Jimmy Brooks, Y. C. Coleman, Charles Dixon, Robert Dragg, John Ford, Roosevelt Lee, Odell Jackson, Kurt Marks, Michael Marshall, Chad Nelson, Eddie Shepherd, Lemont Sigler, Andre Sigmon, Willie Sullivan, and Roosevelt Towns.

<sup>7</sup> The other employees at the meeting Don Perry attended were Willis Alexander, Mark Allen, Robert Bennett, Richard Clibrey, Y. C. Coleman, Charles Dixon, Robert Dragg Jr., John A. Ford Sr., Kenneth Hoover, Odell Jackson, Homer L. King, Roosevelt Lee, Kurt Marks, Michael Marshall, Tracy Pettway, Mathew Richardson, Eddie Shepherd, and Andre Sigmon.

among other things, that “employment of inmate [sic] shall not displace any employed workers.” Whitehead testified that there were some temporary employees working at Respondent’s facility at the time of the layoff, but he does not know how many. No temporary employees and no inmates were among the employees laid off.

The workers selected for layoff are listed below, along with their continuous length of service (second column), and the number of employees who were not laid off and who had less seniority than the named employee (last column). Of the laid-off employees, one was a supervisor. Sixteen of the laid-off employees had worn union buttons at work (fourth column). Fourteen of the laid-off employees had attended the same union meeting which Supervisor Don Perry attended (third column). Eighteen of the laid-off employees had done at least one of these two activities in support of the Union.

Names	Seniority	4/20 mtg. attendee	Wore button	Jr. emp kept
Joe Acoff	0 yrs., 1 mo.			5
Willis Alexander	0 yrs., 2 mo.	Yes	Yes	19
Mark Allen	11 yrs.	Yes	Yes	33
Jimmy Brooks	0 yrs., 2 mo.		Yes	18
Richard Clibrey	0 yrs., 3 mo.	Yes		21
Y. C. Coleman	0 yrs., 6 mo.	Yes	Yes	22
Kevin Day	0 yrs., 2 mo.			18
Charles Dixon	5 yrs., 2 mos.	Yes	Yes	33
Robert Dragg, Jr.	2 yrs.,	Yes	Yes	29
John Ford	0 yrs., 6 mo.	Yes	Yes	22
Willie Grant <sup>8</sup>				
Kenneth Hoover	0 yrs., 2 mo.	Yes		14
Odell Jackson	11 yrs., 1 mo. (2nd)	Yes	Yes	36
Alex Lane	1 yr., 1 mo.			19
Roosevelt Lee	3 yrs. 11 mos.	Yes	Yes	23
Kurt Marks	0 yrs., 7 mo.	Yes	Yes	25
Michael Marshall	0 yrs., 3 mo.	Yes	Yes	21
Chad Nelson	0 yrs., 2 mo.		Yes	12
Steve Sewell	0 yrs., 1 mo.			4
Eddie Shepherd	10 yrs, 11 mo.(5 <sup>th</sup> )	Yes	Yes	34
Lemont Sigler	0 yrs., 3 mo.		Yes	21
Andre Sigmon	0 yrs., 7 mo.	Yes	Yes	25
Kelvin Threatt	0 yrs., 2 mo.			6
Roosevelt Towns	0 yrs., 2 mo.		Yes	10
Willie Williams	0 yrs., 1 mo.			7

Respondent asserted lack of orders as the reason for the lay-off and has asserted that it chose the 24 employees for layoff based on their work on RCT carts. Respondent had continued to manufacture RCT carts throughout March, April, and May, even adding 28 employees to its work force during those

<sup>8</sup> It was stipulated at the hearing that Willie Grant was a supervisor. Although the General Counsel alleged that Grant’s layoff, along with the remaining layoffs, was a violation of the Act, I find that his supervisory status removes him from the protection of the Act as to both the 8(a)(3) and (5) allegations.

months, despite the lack of written orders for the product. On May 24, these 28 employees were still in the 90-day probationary period described in Respondent’s handbook. Respondent anticipated an order from one customer, Delta Air Lines, and hoped to sell other RCT carts as well. Whitehead testified that the week preceding May 24 was the time at which he abandoned these hopes.

Respondent’s handbook included a policy quoted above which accorded weight to an employee’s seniority in layoff and recall. Calvin Bowie, sales manager of Respondent (and former owner), testified that although he had drafted the handbook, in a previous layoff when he was still the owner of Respondent, he had ignored the policy in the handbook and had instead selected employees for layoff based on their job tasks, and used seniority only as a tie-breaker. Whitehead testified that he instructed Will Hill to select employees who worked on RCT carts as those to be laid off. Will Hill testified as to the reasons he selected certain individuals and not others for layoff. Despite the fact that he was unfamiliar with the experience of most of the longer term employees, and with the job duties and even the identities of all the employees (such as C. Harris, who was a new employee), he was supposed to select the employees for layoff on this basis. According to his testimony, he gave seniority as the reason for choosing certain employees, gave “worked on RCT carts” as the reason he selected other employees for layoff. Hill acknowledged that many employees worked on both RCT carts and other products. He retained one employee who worked on RCT carts because there was still an after-market for RCT parts. He did not explain why that RCT employee was retained instead of more senior employees. One employee who worked on RCT carts was not selected, but was transferred to B & C carts, a different product, because he had past experience on B & C carts. Hill said that in general, however, he did not consider the past experience of employees, because he did not know it. About eight fairly senior employees who were union supporters and were laid off testified that they had experience on B & C carts, but they were not given the opportunity to transfer to that product. Again, no explanation was given for not giving this privilege to more senior employees. Hill had no explanation at all for his selection of some of the laid-off employees, for example Richard Clibrey. Hill’s testimony was given mostly in response to leading questions. Hill gave no reasons for his failure to lay off the three inmate employees, nor for his failure to select temporary employees, nor for his failure to select employees still in their 90-day probationary period for layoff before choosing more senior employees.

3. Allegation of 8(a)(5) violation—May 24 layoff

It is undisputed that Respondent did not notify the Union or any union representative of the layoff in advance. At the end of the workday on May 24, Eddie Shepherd, one of the laid-off employees, notified Penn by telephone after he received his lay-off notice.

### B. Discussion and Analysis

#### 1. 8(a)(1) allegations

When Eddie Shepherd went to talk to Respondent president Larry Whitehead on April 3, he was representing employees and inquiring about the profit sharing plan. This was clearly protected concerted activity. Whitehead's remarks to Shepherd were in direct response to Shepherd's appearing as an employee representative, and implied that he was going to get "hurt" because of that representation. I find that Whitehead threatened Shepherd with unspecified harm because of his protected concerted activities.

Whitehead's later questions on April 16 to Shepherd concerning why he supported the Union and how he had gotten cards signed were coercive interrogation and violated Section 8(a)(1) of the Act. At the time, in mid-April, Shepherd had not yet openly shown his support for the Union by wearing buttons or other actions. In addition, he was alone with the highest ranking Respondent official, the president, in that manager's office. All these factors are ones which indicate the coercive nature of the interrogation. *Rossmore House*, 269 NLRB 1176 (1984).

Aaron Grimes' threats to employees, both in March to Roosevelt Lee that employees supporting the Union would get into trouble, and in May to Eddie Shepherd that union supporters would not have jobs at Respondent, were clear violations of Section 8(a)(1). In addition, his questioning of Lee concerning what he had heard about the Union and who was trying to get the Union started was coercive interrogation, and violated Section 8(a)(1). At this time, Lee had not openly shown his support for the Union, and he denied any knowledge of it to Grimes. The conversation was one-on-one, was accompanied by an inquiry about the union activities of other employees, and included a threat of "trouble" to any employees who engaged in organizing. All these factors underscore the coercive nature of the incident.

#### 2. 8(a)(3) allegations

##### a. Eddie Shepherd's warnings and suspension

Eddie Shepherd's union activities were extensive and the evidence, including Whitehead's meeting with Shepherd in his office and Whitehead's reference to Shepherd's leadership in Respondent's meeting with employees, shows that Respondent was well aware of his activities and of his leadership role in the union organizing effort. In addition, Respondent's animus towards the Union and towards employees' organizing activities was repeatedly shown by its coercive conduct in threatening and interrogating employees, as found above. I find that the General Counsel has decidedly proven the first three elements of a prima facie case: union activities, Respondent's knowledge thereof, and its antiunion animus.

Shepherd's warnings were given on April 23 and 24, about a week after he had been coercively interrogated by Whitehead about his union activities. The first warning, for absenteeism, was given to Shepherd because of an absence for car trouble. It is undisputed that this was an unexcused absence. The company's handbook, however, states that a warning will be given

after two unexcused absences. The record is barren of any recent absences by Shepherd, although Respondent introduced a record of a 1998 absence by Shepherd. The April 24 warning, nevertheless, recites that Shepherd was "notorious" for absences. One absence in 1998 and one in 2001 is hardly "notorious." There was no showing that Respondent applied its absence policy consistently. The record includes documentation of other employees' repeated absences without any discipline being accorded them.

With regard to the second warning and suspension given to Shepherd, the evidence shows that he was requested to go to Grimes' office, that he said he would be there in a few minutes, after he finished his set-up of his machine, and there was no response from the supervisor that he was to go immediately. Despite the fact that Shepherd was *not* told he was to see Grimes without delay, he was given a warning for insubordination for this few minutes delay. Normally, insubordination is understood to refer to refusals to perform assigned work tasks. The only record evidence of discipline of other employees for insubordination shows that Respondent normally used this definition. In Shepherd's case, however, it was applied to a nonwork task, Shepherd's failure to interrupt his work task and proceed *immediately* to Grimes' office. Shepherd was also suspended, without loss of pay, for the same conduct on the following day. I find that the timing of both warnings, the disparity in application of the discipline, the fact that Respondent did not apply its absence policy consistently to Shepherd, the gratuitous and inaccurate use of "notorious" on the first warning, and the lack of clarity of the instruction to go see Grimes, and the use of the word "insubordination" to describe a misunderstanding, all point to an unlawful motive on the part of Respondent for this discipline of Shepherd. I find that the two warnings and the suspension of Shepherd were violative of Section 8(a)(3) of the Act.

##### b. The May 24 layoff

The union activities of Eddie Shepherd, of 18 other employees who wore union buttons, and of 18 employees who attended a union meeting which Supervisor Perry attended, have been set forth above, as has the fact that Respondent had knowledge of these activities. Also, as found in the preceding section, Respondent displayed considerable animus against employees' union activities, and acted on it by its discipline of Shepherd. Its layoff of 24 employees, including Eddie Shepherd, occurred on May 24, just 1 week after the day of the election in which the employees selected the Union to represent them. Grimes and Whitehead had several times threatened that employees who supported the Union would lose their jobs or face "trouble." Despite the printed policy in Respondent's handbook that employees' seniority would govern their selection for layoff, Respondent ignored this policy and chose a mixture of employees with seniority varying from 11 years to 1 month.

An analysis of the employees selected for layoff reveals that 16 of the 19 employees who openly wore union buttons (84 percent) were among those selected for layoff. Fourteen of the 18 employees who attended the April 20 union meeting at which Don Perry was present (78 percent) were selected for layoff. Of approximately 22 employees proven to be known to

Respondent as union supporters, either because of their wearing a union button or because of their attendance at the April 20 meeting, 18 were selected for layoff (81 percent). Of the six other employees included in the layoff, five of the six had seniority of only 1 or 2 months.

After the layoff, Respondent was left with a work force of approximately 38, of whom only about 6 or 7 were known to be union supporters. By the layoff, Respondent had reduced the Union's May 17 election majority to a mere 16 percent. The effect of Respondent's choices of employees for layoff was to dilute the Union's strength significantly.

The General Counsel has carried its burden of proving a nexus between the layoff of these employees and Respondent's antiunion animus. Some of the facts which show this connection are the timing of the layoff, only 1 week after the election, the deviation from its printed layoff policy in the handbook, the extremely high proportion of union supporters, the fact that it gave inconsistent reasons for choosing certain employees for layoff, the retention of probationary, temporary and inmate employees while laying off very senior employees, and the realization of its threats of job loss and other "trouble" to union supporters in the previous 2 months. I find that it was Respondent's intention to retaliate against union supporters and reduce the Union's strength by its layoff and by its choice of employees for layoff.

The burden now shifts to Respondent to show that it would have laid-off employees, and those specific employees it chose, in any case. Respondent has defended its layoff by saying that it did not have written orders for RCT carts in March, April, or May. Respondent, however, continued to build these carts, and in fact continued to hire employees in March, April, and May, despite the dearth of orders. Respondent hired 16 employees in March, five more in April, and seven more in May, for a total of 28 employees hired in the 2 months immediately preceding the layoff of 24 employees. Respondent engaged in this significant increase in its work force at a time when, according to its claim at the trial, it was fully aware that it had no actual orders for RCT carts, but only a verbal assurance from one customer and a hope that they could be sold. Respondent's conduct during this period is inconsistent with its contentions in this case. If indeed Respondent had been so concerned that it had might have to lay off employees in just a few weeks, it would not have continued to hire employees. Respondent gave no explanation for this continued build-up of its work force in the face of insufficient orders for RCT carts. It is possible that Respondent hired 28 employees during this period in order to have enough employees left in its work force when it laid-off employees who supported the Union. The number of employees in its work force after the May 24 layoff was not very different from the number of employees it had 60 days before the layoff.

Respondent's only asserted reason for the May 24 layoff was that it finally abandoned its hope that new orders would be immediately forthcoming. There was no convincing evidence that Respondent should not have given up this hope several weeks earlier, or on the other hand that Respondent should not have continued to hope for several weeks more. The sole explanation for the timing of the layoff was Whitehead's own

estimate of the "right" time to give up its hope for new orders. I find that Respondent has not shown it would have laid off 24 employees on May 24 absent its antiunion motivation.

Regarding the selection of employees for layoff, Respondent completely ignored its written policy in its handbook of applying "length of service" to determine who should be laid off and who retained in a layoff. This policy does *not* state that seniority is only a tiebreaker, and I specifically discredit Calvin Bowie that Respondent's policy limits seniority to a tie-breaking role in layoffs. Hill cited "seniority" as reasons for the retention of only a few employees, and never in regard to union supporters. While he asserted that "working on RCT carts" was the reason for the selection of many of the laid-off employees, there were several exceptions to this reason. No explanation was given for the exceptions, and no reason was given that these same exceptions had not been applied to any senior union supporters among the employees.

The failure of Respondent to follow its own policies, the layoff of very senior and experienced employees in favor of retaining employees with only 1 or 2 months' experience, the high proportion of the laid-off employees who supported the Union, and the high proportion of union supporters who were chosen for the layoff, the inconsistent reasons given for many of the selections, Respondent's inflation of its work force in the previous 60 days by nearly the exact number of employees laid off, the timing of the layoff, and Respondent's several threats of job loss and trouble for union supporters, all are factors which belie the assertions of Respondent that it chose the employees for layoff without regard for their union sympathies or activities. I find that Respondent selected employees for layoff in retaliation for employees having chosen the Union to represent them and selected union supporters disproportionately. I find that the selection of employees for layoff on May 24 was motivated by Respondent's antiunion animus, and violated Section 8(a)(3) of the Act.

### 3. 8(a)(5) allegations

The Respondent's obligation to refrain from making unilateral changes in wages, hours, and working conditions began at the time the employees selected the Union to represent them on May 17. Respondent's contention that its obligation did not begin until the certification of representative was issued by the Regional Director on May 30 is without merit. The Board has long held that an employer who makes changes in terms and conditions of employment after an election, but before the Union is certified, does so at its peril. *Taino Paper Co.*, 290 NLRB 975, 977 (1988). In cases where "compelling economic considerations" force an employer to act with such speed that there is no opportunity to give the union advance notice, there may be exceptions made. Here, however, Respondent knew for several months that it had no certain orders for its RCT carts, yet continued to hire new employees and to manufacture the product. Respondent cannot claim that its own inexplicable, even risky, actions created "compelling economic considerations" which would permit it to bypass the employees' representative with impunity. I find such an argument completely without factual support and without merit. *Casa San Miguel*, 320 NLRB 534 fn. 2 (1995).

There is no dispute that Respondent did not inform any union representative of the layoff on May 24 before it occurred. The record evidence reflects that Respondent was on notice of the names, addresses and telephone numbers of two different union representatives: Samuel Penn and Clarence Brown. In fact, after the layoff occurred, it was an employee who informed the union representative. Respondent never did so. Further, there is no dispute that a layoff is a mandatory subject of bargaining. Respondent does contend, however, that its layoff was not a unilateral change because it was consistent with past layoffs. This presupposes that the parties had established a past practice in bargaining concerning layoffs, and that the May 24 layoff was not a deviation from this past practice. Given that the parties had not yet established any practices at all, since they had not even begun to bargain, this argument is entirely without merit. In addition, I have found above that Respondent did not establish that it had a past practice of laying off employees in the manner it contends it did on May 24, since its May 24 layoff appears to be inconsistent with its written policies concerning seniority and probationary employees, as well as its agreement regarding inmate employees.

Respondent also contends that there was no point in bargaining about the layoff, since the Union could not have suggested any alternatives that Respondent would have accepted. The opportunity of a certified representative to address employees' interests and needs from *their* perspective is an essential part of the collective-bargaining process. No respondent should be privileged decide on its own what proposals employees may or may not advance through their bargaining representative. A respondent's failure to notify a union in advance of so significant a change as a layoff is not excused by its anticipation of the union's objections to the plan. *Rock-Tenn Co. v. NLRB*, 101 F.3d 1441 (D.C. Cir. 1996). The subjects which could be the subject of negotiations concerning a layoff are many. In addition to the need for the layoff, the timing of the layoff, selection criteria, recall rights, and retention of benefits during a layoff, just to name a few, there are numerous other aspects of a large layoff which could be negotiated.

Respondent further argues that the Union waived its right to bargain over the layoff by not requesting bargaining over the layoff after it was already *a fait accompli*. The Board has held, with court approval, that a union does not waive its right to bargain over unilateral changes by failing to engage in the futile act of trying to turn back the clock and bargain over an action the employer has already taken. *Gulf States Mfg. v. NLRB*, 704 F.2d 1390 (5th Cir. 1983). I find that Respondent violated Section 8(a)(5) of the Act by laying off 24 unit employees without notice to the Union and without affording the Union an opportunity to bargain concerning the layoff.

#### CONCLUSIONS OF LAW

1. By threatening employees with discharge if they selected the Union and threatening employees because of their union or protected concerted activities, and by interrogating employees about their union sympathies and activities, and about the union activities of other employees, Respondent has violated Section 8(a)(1) of the Act.

2. By issuing warnings and a suspension to Eddie Shepherd because of his union activities, and by laying off 24 employees because employees selected the Union to represent them, Respondent has violated Section 8(a)(3) and (1) of the Act.

3. By refusing to provide the Union with notice of its May 24 layoff, and thereby depriving the Union of the opportunity to bargain concerning the layoff, Respondent has violated Section 8(a)(5) and (1) of the Act.

4. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

#### REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

I shall also recommend that Respondent be ordered to remove from the employment records of Eddie Shepherd and all the below-listed laid-off employees any notations relating to the unlawful actions taken against them and to make them whole for any loss of earnings or benefits they may have suffered due to the unlawful actions taken against them, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in accordance with *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>9</sup>

#### ORDER

The Respondent, Tri-Tech Services, Inc., Selma, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge because they engage in protected concerted or union activities.

(b) Threatening employees with discharge if they select the Union to represent them.

(c) Interrogating employees about their union sympathies and activities and about the union activities of other employees.

(d) Issuing warnings and suspensions to employees because of their union activities.

(e) Laying off employees because of their union activities and because they had selected the Union to represent them.

(f) Failing or refusing to notify the Union of changes in wages, hours, or working conditions, including the May 24 layoff of 24 employees.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of 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 the following employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions,

<sup>9</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.

without prejudice to their seniority or any other rights or privileges previously enjoyed:

Joe Acoff	Alex Lane
Willis Alexander	Roosevelt Lee
Mark Allen	Kurt Marks
Jimmy Brooks	Michael Marshal
Richard Clibrey	Chadwick Nelson
Y. C. Coleman	Steve Sewell
Kevin Day	Eddie Shepherd
Charles Dixon	Lemont Sigler
Robert Dragg, Jr.	Andre Sigmon
John Ford	Kelvin Threatt
Kenneth Hoover	Roosevelt Towns
Odell Jackson	Willie Williams

(b) Make the above-named employees 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 this decision.

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

(d) Upon request, bargain in good faith with the Union.

(e) 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.

(f) Within 14 days after service by the Region, post at its Selma, Alabama location copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 15, 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 March 26, 2001.

(g) 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.

Dated, Washington, D.C. August 8, 2002

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 any 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 threaten you with discharge if you select a union to represent you.

WE WILL NOT threaten you with discharge if you engage in protected concerted activities or union activities.

WE WILL NOT interrogate you about your union sympathies or activities or the union activities of other employees.

WE WILL NOT issue warnings to you or suspend you because of your union activities.

WE WILL NOT retaliate against you for your union sympathies by selecting you for layoff.

WE WILL NOT refuse to bargain in good faith by failing to notify the United Steelworkers of America, AFL-CIO (the Union) of a layoff of unit employees.

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

WE WILL reinstate the following employees to their former jobs, and WE WILL make them whole for any loss of pay or other benefits they may have suffered because of our unlawful layoffs of them:

Joe Acoff	Alex Lane
Willis Alexander	Roosevelt Lee
Mark Allen	Kurt Marks
Jimmy Brooks	Michael Marshal
Richard Clibrey	Chadwick Nelson
Y. C. Coleman	Steve Sewell
Kevin Day	Eddie Shepherd
Charles Dixon	Lemont Sigler
Robert Dragg, Jr.	Andre Sigmon
John Ford	Kelvin Threatt
Kenneth Hoover	Roosevelt Towns
Odell Jackson	Willie Williams

WE WILL remove from our files any reference to the unlawful layoffs of the employees named in the above paragraph, and notify them in writing that this has been done and that the layoffs will not be used against them in any way.

WE WILL remove from our files any reference to the unlawful warnings and suspension of Eddie Shepherd, and notify him in writing that this has been done and that the warnings and suspension will not be used against him in any way.

WE WILL, on request, bargain in good faith with the United Steelworkers of America (the Union).

TRI-TECH SERVICES, INC