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**Celtic General Contractors, Inc. and Abacus Management Corp., A Single Employer and District Council for New York City and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.** Case 2-CA-32313

May 7, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND WALSH

On April 19, 2002, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief<sup>1</sup> and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Celtic General Contractors, Inc., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The Respondent has requested oral argument. The request is denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.

<sup>2</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

At sec. III.B of the judge's decision, we find it unnecessary to rely on the judge's finding that the Respondent's official, Patrick J. Clarke, made negative comments about the Union and the Respondent's employees "under his breath" while testifying.

No exceptions were filed to the judge's finding that the Respondent did not violate Sec. 8(a)(3) and (1) of the Act by discharging employee Abner Feliciano.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(1) of the Act by offering employee Neville Vega a bonus to work late on the evening of the election, we do not rely on the judge's consideration of the Respondent's antiunion animus in establishing the violation.

Dated, Washington, D.C. May 7, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

*Gregory B. Davis, Esq. and Joanne Wong, Esq.*, for the General Counsel

*Martin Galvin, Esq.*, Bronx, New York, for Respondent Celtic.

*Gary Rothman, Esq. (O'Dwyer & Bernstein)*, New York, New York, for the Charging Party.

*Tamir Rosenblum, Esq.*, New York, New York, for the Mason Tenders District Council of Greater New York

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was heard in New York, New York on 15 days between December 11, 2000 and July 24, 2001. The Complaint herein alleges that Respondent, in violation of Section 8 (a) (1) and (3) of the Act, informed employees that those who supported the Union would be discharged, interrogated employees, conditioned employment upon non-membership in the Union, offered employees extra pay to discourage them from voting in the representation election, informed employees that they were terminated because they communicated with the Union and asked the Union to demonstrate at a job site, and discharged its employees because they supported the Union. Respondent Celtic denies that it is affiliated with or has common management with Abacus and it denies that it has engaged in any violations of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and, after considering the briefs filed by the General Counsel and Respondent Celtic General Contractors, Inc., on January 17, 2002, I make the following<sup>1</sup>

FINDINGS OF FACT

I. JURISDICTION

Respondent Celtic General Contractors, Inc., a domestic corporation with an office and place of business at 2 West 45<sup>th</sup>

<sup>1</sup> The record is hereby corrected so that at page 95, line 22, the phrase reads "you are now a foreman"; at page 632, line 16, the phrase should be "company's offices"; at page 1017, line 15, the word "tormented" should be replaced by "terminated"; at page 1831, line 19, the record should show that Counsel for the General Counsel, Gregory Davis, Esq., was speaking.

Street, New York, NY, is engaged in the operation of a construction company. Celtic annually receives goods valued in excess of \$50,000 directly from suppliers located outside the State of New York. Respondent Celtic admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. Respondent Abacus Management Corp. did not appear in the instant proceeding. Based on the testimony and evidence in the instant record and on my conclusions discussed in detail below, I find that Respondents Celtic and Abacus are single employers. Respondent Celtic admits, and I find, that District Council for NYC and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. Background

Patrick J. Clarke has been in the construction business for many years. He has brought his children into the family business as they became old enough to learn carpentry and other elements of the construction process. Patrick J. Clarke's eldest son, Patrick D. Clarke, and his next oldest son, Barry Clarke, both were taught to perform laborer's and carpenter's tasks in the business as they grew up.<sup>2</sup> Clarke Junior testified that his sister Christine Clarke, the next in age after Clarke Junior and Barry Clarke, helped out in the office as she was growing up.<sup>3</sup> At the time of the events material to the instant proceeding, the Clarke children lived at home. For many years, the bulk of Clarke Senior's construction work has been performed for Joseph P. Day Realty Corp. (hereafter JP Day), a company that owns and operates buildings in New York City.<sup>4</sup> From 1976 to 1995, Clarke Senior had ownership and/or management roles in construction firms named Aleat and Elegant Woodworking.<sup>5</sup> Clarke Senior testified that as a result of a claim on Aleat for unpaid payroll taxes he was constrained to sell his house to satisfy his obligations to the government. When Aleat ceased to do business JP Day offered Clarke Senior a job as its construction manager. In the event, the family decided that Clarke Junior, then a full time college student, would form a construction company and that Clarke Senior would assist him in the business. Clarke Junior graduated from college in the year 2000.

Respondent Celtic was incorporated in 1997 with Clarke Junior as president and sole shareholder. To start his business, Clarke Junior borrowed money from both his mother and father and he used his own savings. In addition, Clarke Junior obtained the Aleat tools free of charge.<sup>6</sup> Celtic's offices are lo-

cated in 2 West 45<sup>th</sup> Street, a building owned by JP Day. Both Clarkes share the same office in the Celtic headquarters.

From 1998 through mid-May 1999 Celtic employed approximately two painters, 19 carpenters and laborers and one truck driver.

The Clarkes identified Janette Flores as the Celtic office manager. Flores described herself as an independent contractor supplying bookkeeping services to Celtic since 1998. Flores' hours are 10 am to 6 PM; she often takes work home. Flores testified that she works in the Celtic office on such matters as the accounts payable, deposits, balances, reconciling bank statements, organizing files, miscellaneous typing, and answering the telephone if no one else in the office is available.<sup>7</sup> Although Flores denied that it was her job to receive calls from employees in the field, she acknowledged that she does answer the office telephone when employees call to see if there is work available for them. Clarke Senior stated that Flores does not supervise the employees. Flores is responsible for entering data on the weekly payroll forms which are sent to and processed by the outside payroll company. She obtains the information from time cards submitted by the employees. After being shown many documentary examples, Flores acknowledged that while the employees' time cards may indicate that they have worked substantial overtime or even weekend time, the payroll sheets often do not reflect payment for more than 40 hours work per week. Flores offered no explanation for this discrepancy.

Clarke Senior described his functions at Celtic as that of an overall construction manager and general manager.<sup>8</sup> Clarke Senior helps Clarke Junior solicit business on behalf of Celtic. Clarke Senior helped his son hire employees for Celtic and they hired many of the men who had worked for Aleat and Elegant. Clarke Senior spends most of his time out in the field looking for jobs and customers. Clarke Senior also helps to direct the work of the employees; he testified that he had no need to keep a written list of the employees' daily assignments because he has this information in his head. Clarke Senior participates in meetings with customers and their architects and engineers. At the time material to the instant case, Clarke Senior was in charge of the woodworking shop. The Clarkes are the only individuals who have the authority to hire and fire employees on behalf of Celtic.

Barry Clarke was employed by Celtic as a laborer at the time the material events of the instant case were taking place although he had been promoted to project manager at the time of the hearing. The record shows that Barry Clarke was used to relay instructions to employees and that at least once he told employees that they were laid off for lack of work. The hearing officer's report in Case 2-RC-22084 found that Barry Clarke's interests were aligned with management and that he enjoyed certain privileges by virtue of his familial relationship to Clarke Senior and Clarke Junior. The hearing officer found that Barry Clarke was used as a conduit to convey information to the Celtic employees.

<sup>7</sup> At various times Celtic employed receptionists named Maria and Shane who answered the telephone.

<sup>8</sup> The parties agree that Clarke Senior is the chief supervisor of Respondent Celtic.

<sup>2</sup> To avoid confusion, I shall refer to Patrick J. Clarke as "Clarke Senior" and to Patrick D. Clarke as "Clarke Junior."

<sup>3</sup> A younger son identified as Alan Clarke is not involved in the instant proceeding.

<sup>4</sup> Clarke Senior has known the principals and managers of Joseph P. Day for 27 years.

<sup>5</sup> Aleat and Elegant did a lot of work for JP Day.

<sup>6</sup> Although carpenters typically own their own tools, certain tools such as jackhammers and other major pieces of equipment are owned by the construction contractor.

The parties agree that Martin Kernan was a purchasing agent/manager of Celtic. Kernan did not testify herein but he was referred to in the testimony of Celtic employees.

The parties agree that Glenn Josey was a purchasing agent of Celtic. Josey testified that he was a purchasing agent, a construction manager and that he did other miscellaneous work. Josey worked in the office and he visited construction projects to check on the progress of the work and to see whether additional materials were needed.<sup>9</sup> Josey testified that it was a part of his job to caution employees who were late or who were not working quickly enough and to warn them that they must improve. Josey testified that he assigned work to employees and that he participated in decisions to discipline and discharge employees. I find that Josey was a supervisor and agent of Respondent within the meaning of the Act.

The cabinets and related items installed by Celtic are fabricated in a woodworking shop situated in upper Manhattan.<sup>10</sup> The property on which the shop and its parking lot are located is owned by an enterprise known as PBCA. This entity, named for the Clarke children, is owned in equal shares by each of the children. The woodworking shop had apparently been in the same location for a number of years before the formation of Respondent Celtic.

Isaac Mejia had worked for Aleat and was employed by Celtic at the shop. Mejia speaks English and he served as the usual conduit between the Clarkes and the Spanish speaking shop employees. The hearing officer's report found that Mejia communicated management's directives and views to the employees and that he was an agent of Respondent Celtic. Mejia testified herein that Clarke Senior came to the shop every day. Occasionally he was accompanied by Clarke Junior. Clarke Senior told Mejia what the work was and he set up the shop in the morning. Mejia transmitted Clarke's instructions to the employees and helped the employees read the plans. Mejia and the other shop employees ate lunch together every day in the shop.

At the time of the instant hearing Mejia had used his savings to incorporate a company known as Rose Woodworking.<sup>11</sup> Rose Woodworking is located in same premises where Celtic maintained its woodworking shop. Mejia said that the shop premises are leased from Clarke Senior and that he leases a van from the Clarkes. In addition, the Celtic vans have the name of Rose Woodworking printed on the side. Mejia employs some former Celtic shop employees and he performs carpentry work for Celtic. Mejia testified that Union organizer Anthony Agridiano invited him to Union meetings in 1999 and explained the benefits of voting for the Union: Union wages are higher, jobs are permanent and there are benefits.<sup>12</sup> Agridiano asked Mejia whether he would vote for the Union but Mejia said that he

would not be with Celtic for long because he had plans to start his own business. Agridiano told Mejia that sooner or later Clarke Senior would be out of business and he promised to help Mejia get Union jobs. Mejia testified that he himself had been worried about Celtic's business; he saw that work was slow and he wanted to quit and get another job. After the election of June 8, 1999 Mejia spoke to Clarke Senior and told him that he could not control the shop any longer. Mejia asked to lease the building.

In 1999 many of Celtic's employees were related by blood or marriage and they had worked numerous years in enterprises controlled by Clarke Senior. These employees included:

- Jose Manuel Vega
- Abner Feliciano cousin of Jose Manuel Vega
- Neville Vega cousin of Jose Manuel Vega
- Teddy Vega brother of Jose Manuel Vega
- Jaffet Ruiz (known as Jamil) cousin of Jose Manuel Vega
- Jose Miguel Vega (known as Wilson) cousin of Jose Manuel Vega
- Hector Vega uncle of Jose Manuel Vega
- Enrique Cuello married to Jose Manuel Vega's aunt

The employees' pay was calculated according to their weekly hours. However, it is clear that the hours shown on an individual's time card often bear an inexact relation to the hours on the official payroll records. Thus, a time card may show substantial overtime but the payroll printout shows that the employee was paid for 40 hours of work that week. This circumstance has not been explained. Moreover, many of the time cards seem to have been annotated by Flores long after they were submitted by the employees and in some cases there are two time cards for the same period. Some time cards do not seem to be dated. The system at Celtic requires an employee to report to his previous day's work location with his tools and to telephone the office to say that he is there. At that point, the employee may be told to set to work or to report to a different work site or he may be told that there is no work for him that day if his name is not on the assignment list in the office.<sup>13</sup> Each day the employee is supposed to write his hours on a time card which is turned in to the office on Tuesday when the employee goes to pick up his paycheck. The time cards are checked for accuracy by Clarke Junior and Flores. Paychecks are subject to a time lag which is unspecified in the record.

The Union began organizing the Celtic employees in February 1999. The organizing effort was conducted by Anthony Agridiano and Anthony Pugliese, organizers with the New York City District Council of Carpenters. Between March 16 and April 23, 1999 thirteen employees signed a Union petition authorizing the Union to represent them. By letter of April 22, 1999 the Union demanded recognition as the majority representative of Celtic's employees. Having not received a response to its demand, the Union filed a petition in case 2-RC-22084 on May 6, 1999. On May 18 Clarke Junior signed a stipulated election agreement. The election was held on June 8 for a unit of about 25 employees. The original tally of ballots was not

<sup>9</sup> Josey worked for Celtic from May 1997 through August 1999. He resigned to resume his studies in architecture at the University of Oklahoma.

<sup>10</sup> The woodworking shop is often referred to in the record as the Harlem shop.

<sup>11</sup> Flores helped Mejia with the incorporation process.

<sup>12</sup> Mejia did not explain the word permanent; apparently, Agridiano was referring to the protections offered by just cause provisions and grievance clauses.

<sup>13</sup> There are some instances where an employee may be told to report to a new location before the actual day he works there.

determinative. A hearing officer's report on challenged ballots and recommendations issued on November 24, 1999 and the Board adopted the recommendations on February 24, 2000. The Union was certified as the employees' representative on March 15, 2000 in the following unit:

All full-time and regular part-time carpenters, apprentices, laborers, tapers, tilers, painters, and handymen employed by the Respondents at and out of the facility located at 2 West 45<sup>th</sup> Street, New York, NY 10036, excluding all clerical employees, drivers and guards, managers and supervisors as defined in the Act.

After the election the Union conducted demonstrations at Celtic job sites on occasion using a large inflatable rat and handing out flyers.<sup>14</sup> The demonstrations began on July 15 and continued in front of locations where Celtic was working at the time. The inflatable rat first appeared on July 29, 1999 at a Celtic work site at 16 Court Street in Brooklyn. The next day the rat appeared outside the Celtic office at 2 West 45<sup>th</sup> Street in Manhattan. During the first week in August the Union used the rat at a Celtic job site located at 108 West 39<sup>th</sup> Street in Manhattan and then went back to 16 Court Street. Agridiano testified that the purpose of the demonstrations was to show the employees that the Union would stand behind them.

Agridiano testified that before the election some employees had expressed fears that they might lose their jobs in retaliation for their support of the Union. Agridiano told the employees to stay strong and to hold on to their jobs. The Union was trying to organize Celtic, and numerous other construction companies in New York City, and it wanted the employees to stay with the company. Agridiano's objective was not to recruit Celtic workers into the Union; rather he wanted to organize the company. Agridiano did not encourage Celtic employees to be fired or laid off and he did not promise that if they lost their jobs he would get them into the Union. However, if an employee were fired or laid off before or after the election Agridiano would assist that person in filing an application for Union membership. Union members could place their names on an out-of-work list and wait to be called by employers. Pugliese testified that Celtic employees knew they might be fired as a result of the Union's campaign. Pugliese told them that if they were fired he would help them seek other employment. Pugliese explained that when he was organizing a shop he did not want the employees to leave or to be fired. If the employees were no longer working for the company they might not be able to vote. In addition, new employees would be hired and the ongoing campaign would suffer. Pugliese stated that the Union's objective was to bring the Union to a company's employees.

#### *B. The Status of Abacus*

Abacus was incorporated in February 1999 with Christine Clarke as president and Janette Flores as secretary. Clarke and Flores were the only two shareholders of Abacus. The corporate address was Flores' home address. A checking account for

Abacus was opened on June 1, 1999.<sup>15</sup> By June 4, 1999 the Abacus account contained \$5400 all of which had been paid to it by Celtic. Between July 16 and November 29, 1999 Celtic paid Abacus a total of \$43,000 more for jobs performed in Brooklyn at JP Day buildings. In two separate payments on December 3, 1999 and January 14, 2000 Abacus was paid \$70,000 directly by JP Day for work at 9 East 40<sup>th</sup> Street. Abacus' only customers were JP Day and Celtic.

Flores testified that her only familiarity with the construction industry at that time was her involvement in keeping the Celtic books. According to Flores Christine had worked for Celtic answering telephones and visiting job sites with her father. At the time of Abacus' incorporation Christine Clarke was 18 years old and a full time student. Christine Clarke did not testify in the instant proceeding.

Flores testified that Christine Clarke had suggested forming a construction business that would try to get jobs reserved for enterprises owned by minorities (presumably by this phrase Flores meant enterprises owned by women). Flores stated that both Clarke Senior and Junior helped start Abacus by giving money to the company. No loan documents were executed for these transactions. Flores was working 8 hours per day in the Celtic offices while Abacus was in existence and she conducted the Abacus business from the Celtic office and from her home. Abacus records were kept in a file cabinet in the Celtic office.<sup>16</sup> Celtic did not bill Abacus for use of the office space. Flores stated that certain other members of Celtic's office staff also performed work for Abacus on occasion. Abacus did not open accounts with suppliers of construction materials. Instead, Abacus ordered supplies under the Celtic name and using Celtic's credit. There was no written agreement providing for repayment to Celtic for supplies used by Abacus.

Flores testified that Abacus hired certain of its carpenters and laborers based on referrals from Clarke Senior. The Abacus records show that from June through December 1999 Abacus employed 11 laborers and carpenters. Some of these were shifted from the Celtic payroll to the Abacus payroll. Abacus made certain payments to Jose Soto but Flores did not know what services Soto had performed for Abacus nor did she know who had hired him. Abacus made a payment of \$2000 to Rose Woodworking Corp. but Flores did not know what that was for.<sup>17</sup>

Abacus tax returns were prepared by CPA Lawrence Ginsberg who was also the tax preparer for Celtic. The Abacus tax return for 1999 shows that it made payments to subcontractors in the amount of \$10,400 but Flores did not know whether Abacus had in fact subcontracted any work.<sup>18</sup>

Flores did not know where Abacus got any tools it needed and she did not know where these tools were stored. Flores did not know who supervised the Abacus workers in Brooklyn. Flores was not involved in solicitation work for Abacus. Flores

<sup>15</sup> In November the bank was instructed to change Abacus' address to the Celtic address.

<sup>16</sup> Flores testified that other Abacus records were located on her laptop computer which was stolen from the Abacus offices.

<sup>17</sup> Flores also keeps the books and does payroll for Rosewood.

<sup>18</sup> It was Flores' responsibility to give information to Ginsberg for the preparation of the tax return.

<sup>14</sup> These rats are common sights in New York City. They are inflated in the public roadway in front of the target location.

did not know whether Abacus filed for building permits for the work it performed.

Clarke Senior testified that he advised Christine Clarke when she solicited work for Abacus from JP Day. He stated that he had hired Jose Soto to perform carpentry for Abacus in a JP Day building. When the job was not finished on time, Clarke gave Soto the job as a subcontractor. Although Soto brought in other workers on the weekend, the work was not done properly and Celtic employees Neville Vega and Jaffet Ruiz were brought in to correct the errors. Clarke Senior denied that he had ever discussed the Union with Soto.

Soto testified that he had been working in a building on 39<sup>th</sup> Street when he met a taper named Otto who gave him Clarke Senior's number. Soto, who was looking for a new job, arranged to meet Clark Senior who confirmed that he was hiring carpenters. When Soto asked whether Celtic was a Union company, Clarke Senior replied that he was not interested in Union carpenters. Soto said he was just looking for work and eventually a supervisor named Martin showed him the job on the 15<sup>th</sup> floor of 9 East 40<sup>th</sup> Street.<sup>19</sup> Beginning on May 24, 1999 Soto worked with a carpenter named Noel installing dry-walls and doors. Clarke Junior came to the job site and informed Soto of his hourly wages. On the 26<sup>th</sup> or 27<sup>th</sup> Glen Josey told Soto that they had changed the name of the company and that he was working for Abacus. Soto asked Clarke Junior about this and Clarke replied that everything would be the same but that they were changing the name. On June 4 Martin told Soto that Clarke wanted to subcontract the job to him and that it had to be finished over the weekend. Soto hired some helpers and they worked straight through the weekend. When Clarke Junior came to the job on Monday he expressed dissatisfaction with the work and the job was completed by Celtic employees. Soto was sent to work at another Celtic job site at 303 East 57<sup>th</sup> Street. The record shows that Soto received two checks from Abacus and that he was on the Celtic payroll for 23.5 hours for the week ending June 14. Soto claimed that he was still owed \$2000 for the weekend work.

*C. Profitability of Celtic and Abacus*

Lawrence Ginsberg, Esq. is an attorney and CPA. Celtic retained Ginsberg as its accountant in April 1999 upon Flores' recommendation. Ginsberg testified that when he met the Clarkes they were having problems meeting the payroll. They told him that the amount of jobs was decreasing and they had significant payables. Ginsberg advised the Clarkes to borrow in order to have a certain amount of cash on hand and he told them to cut expenses. Celtic's main expense was payroll. Ginsberg stated that in 1998 Celtic's gross receipts were \$2,314,654. In 1998 Celtic paid subcontractors \$429,427. In 1999 the company's gross revenues totaled \$2.7 million and, according to Ginsberg, the company was in "better shape." In 1999 Celtic paid subcontractors a total of \$1,253,530, three times as much as the year before. The 1999 tax return shows taxable income of \$12,286, up from \$2151 the year before. In 1998 Clarke Senior drew a salary of \$78,000 and Clarke Junior received \$18,576. In 1999 Clarke Senior received a salary of

\$78,000 and Clarke Junior drew \$40,000. This increase in Clarke Junior's compensation accounts for a decline in the gross profit from \$546,437 in 1998 to \$539,996 in 1999.

Ginsberg is also the accountant for Abacus. The 1999 tax return shows that Abacus had gross income of \$88,000 and a net loss of \$8,400. Its last income was received in January 2000.

Clarke Senior testified that Ginsberg told him in 1999 that Celtic had too many people working and not enough work. Ginsberg told him to cut back. Clarke Senior added that in early 1999 he lost control because the men wanted to join a union and the work slowed down. He could not control the men and Celtic did not get contracts that he had expected to be awarded by JP Day. He said that Celtic used to do about \$250,000 business with JP Day per year but it dropped to \$50,000 in the year 2000. Clarke Senior testified that Celtic lost all the JP Day work at its Court Street buildings in Brooklyn after having been the contractor for over 20 years.

Clarke Senior recalled that in June 1999 Celtic was performing work at the following sites: 575 Park Avenue, 488 Madison Avenue, 9 East 40<sup>th</sup> Street, 303 East 57<sup>th</sup> Street, 800 Third Avenue, 2 West 45<sup>th</sup> Street in Manhattan and at 16, 44 and 50 Court Street in Brooklyn. Clarke also testified about a project at 71 West 23<sup>rd</sup> Street. These jobs were all finished after the summer of 1999 and some were finished in the year 2000. On certain projects Celtic used subcontractors. These included 800 Third Avenue where Celtic used its own workers but also used subcontractors from May 1999 through July 2000. The evidence shows that beginning in July 1999, Celtic made payments to Moustafis, a painting subcontractor, for work performed at 2 West 45<sup>th</sup> Street, 800 Third Avenue and 9 East 10<sup>th</sup> Street. Beginning in June 1999, Celtic used another painting contractor, Florin, for work performed at 488 Madison Avenue and 800 Third Avenue. Celtic also used other subcontractors including West End Interiors for work that it otherwise would have performed with its own workers. Although Clarke Senior testified that he had "always" used Jerome Contracting for demolition the records show that in 1998 Celtic made no payments to Jerome whereas in 1999 Celtic paid Jerome a total of \$166,856. Similarly, Celtic paid Sharp Construction a total of \$127,550 in 1999 for work performed in JP Day buildings. Celtic had not used Sharp as a subcontractor in 1998.

Clarke Senior testified that the Celtic employees kept the Union organizing a big secret. One day his son told him that he had received a letter from the Union. At first Clarke Senior thought the organizing would not amount to much. Clarke Senior recalled that the Union put big rats outside the doors and the men called him a slave driver. The Union put rats outside every building owned by JP Day and "it was a disgrace." The Chairman of JP Day Barry Jacobson called and asked whether Celtic were falling apart. During the lengthy time that Clarke Senior was on the witness stand I heard him making numerous comments under his breath to the effect that the Union and his men had stolen work from him and ruined him.

Clarke Junior testified that before the election he was concerned that Celtic's ability to get work from JP Day might be jeopardized if the employees voted in favor of Union representation. He could not afford to pay higher wages and benefits. Clarke Junior stated that his employees were producing less

<sup>19</sup> I note that Martin Kernan was a Celtic supervisor.

work because they were talking to the Union organizers instead of working. This slow down began in February or March. His painters did not protect the area in which they were working and Celtic lost painting jobs it had expected. Clarke said that he gave out warning letters but these have not been produced. Clarke Junior testified that Celtic's profit went down in 1999 because he was using subcontractors. It is more profitable to use the company's own workers.

Jacobson testified that he took business away from Celtic because the work was faulty and took too long and tenants were upset that they were not given possession of their premises by the promised date. According to Jacobson he and the JP Day tenants were upset that the Union had placed the inflatable rat in front of certain buildings on various occasions and he was upset when he received a Union flyer in front of 9 East 40<sup>th</sup> Street. During the time of the demonstrations the Celtic problems got worse. Then Celtic's performance began to improve but Jacobson watched the company very carefully. Jacobson testified that the Union demonstrations made no difference in the JP Day decision not to use Celtic painters.

Raymond Bennett is an interior designer and construction supervisor for commercial and residential projects. He has known Clarke Senior since 1982 and he has used Aleat and Celtic. Bennett testified that in 1999 he was involved in Celtic work sites at 108 West 39<sup>th</sup> Street, 9 East 40<sup>th</sup> Street and 2 West 45<sup>th</sup> Street in Manhattan, and at 16, 44 and 50 Court Street and 186 Joralemon Street in Brooklyn. Bennett stated that in late spring and early summer of 1999 he visited Celtic sites weekly and it appeared to him that nothing had been done and no progress was being made. He spoke to the Clarkes and urged them to get their act together, to put enough people on the job to get the work done and to pay attention that the work was done right. Bennett said that in some of the Celtic projects walls were in the wrong place, materials were not on site and Celtic had not paid attention to the documents. This was a new type of problem in his dealings with Celtic. Bennett then contracted with Celtic to do construction work on his own office at 108 West 39<sup>th</sup> Street. The planning for the office began in May and the work had to be done in August. Because Celtic's work in the building for another client was going very slowly and he saw that Celtic needed more people on the job, Bennett instructed Celtic to get subcontractors on the job in order to get it done on time and he suggested that they use a company called Tradesource.<sup>20</sup> Bennett stated that the client's job at 108 West 39<sup>th</sup> Street was not getting done because no additional work was taking place and materials such as sheetrock and doors were not being delivered. The foreman on this job was Clarke Junior. As will be shown below, the problems described by Bennett took place when Celtic was discharging and laying off substantial numbers of its unit employees and shifting work to Abacus.

#### *D. Celtic's Employees*

Jose Manuel Vega

<sup>20</sup> In the event, Bennett moved into his office without doors, carpeting and painting.

Jose Manuel Vega testified that he had begun working for Aleat in 1991 and had later gone on to work for Celtic.<sup>21</sup>

Jose Manuel Vega testified that he met Union organizer Anthony Agridiano at a Celtic work site on West 23<sup>rd</sup> Street in March 1999. He attended the first Union meeting at the home of his uncle Hector Vega. There were more Union meetings and eventually Jose Manuel Vega signed a Union petition. The meetings were attended by Hector Vega, Neville Vega, Jaffet Ruiz, Jose Miguel Vega (Wilson), Flavio Gordillo, Chilon Forrester, Matthew Andrew, Harry, Edgar Cedeno, Abner Feliciano, Justo Quendeo, Jack Marzilliano, Jose Soto and Angel Vasquez. Jose Manuel Vega stated that he helped organize for the Union.

In May 1999 Vega was assigned to a Celtic site at 108 West 39<sup>th</sup> Street. On May 24 he was working on ceilings and partitions at the 39<sup>th</sup> Street job and his work was not completed. Nevertheless, he was reassigned to a job site at 44 Court Street in Brooklyn. Vega did not normally work in Brooklyn. When Vega arrived in Brooklyn he saw Hector Vega, Neville Vega and Jaffet Ruiz finishing up a job. On May 26 Glen Josey called him on the two-way radio that he carried to communicate with the Celtic office and told him to give the radio to Barry Clarke. Later on the 26<sup>th</sup> Barry Clarke told the four employees at the work site that there was only work for two of them and that they should decide among themselves which of them would leave the job. Jose Manuel Vega said he would leave the job because he did not usually work in Brooklyn and Jaffet Ruiz also agreed to leave because Neville Vega's wife was expecting a child. The next day, Jose Manuel Vega telephoned the office looking for work. He was told that no one was in to speak to him. Later in the day he telephoned again and reached Janette Flores who told him that there was no work for him. That day, Vega applied for unemployment insurance. Vega testified that he had never been laid off before. He did not receive any messages that Clarke Junior had called to offer him work.

Clarke Junior testified that after Vega left the Brooklyn job on May 26, he did not telephone the office to check if there was other work for him. Clarke said that he called Vega on the 27<sup>th</sup> to assign him to complete some minor punch list work at Flores' house in Queens. Clarke left a message on Vega's answering machine but Vega did not respond. Clarke Junior said that after Celtic received a notice showing that Vega had applied for unemployment compensation he concluded that Vega had quit his job. Clarke Senior testified that Vega was called to finish a job in Queens after he left the Brooklyn job. Clarke Senior asked Vega's brother Freddie to tell Vega to return. Freddie replied that Vega was going to work at Donaldson construction. Glen Josey testified that he had called Vega on his cell phone and that he had asked Abner Feliciano about Vega. Neither Clarke Senior nor Josey gave dates for their calls to Vega.

About two weeks after his layoff Jose Manuel Vega telephoned Celtic and spoke to Clarke Junior. A tape recording

<sup>21</sup> Vega worked for Aleat except for some months in 1992 and 1993 when he left his job.

was made of this telephone call.<sup>22</sup> During the call Vega asked Clarke why he was not getting any more work from Celtic. Clarke responded that Vega had filed for unemployment on the 24<sup>th</sup>.<sup>23</sup> He went on to say that he felt “betrayed by everyone ... that nobody came to us and asked for anything ....” Vega replied that he had filed for unemployment on the 27<sup>th</sup> and asked whether the lack of work had anything to do with the Union. Clarke denied that it did and said “You have the right to go where you can get the most money. ... you got a Union card, congratulations. That is if you do. And if you get it and I hope you get it.” Clarke went on to say that he himself did not want a Union card but that it was a free country. When Vega suggested that Clarke speak to his father to see whether he would give Vega some work Clarke Junior said, “Let me see where the jobs are coming up now. I don’t know.” Vega then commented that they had known each other too long to “let this little thing come between us either.” Clarke replied “It’s not really a little thing though.... I just got pissed off about that there was Union people at every single job that we have. Five-seventy-five, everywhere.” Vega repeated his request for work. Clarke said that most of the jobs were finishing up but he promised to give Vega a call.

Jose Manuel Vega testified that he did not believe Clarke Junior’s assertion that there was no work for him. He had been working for Clarke Senior since 1991 and he had never been without work. Vega always worked in one JP Day building or another; this company has many buildings and they need a lot of maintenance. Vega testified that after the telephone call to Clarke Junior he got his Union book and signed the out-of-work list. Vega was on unemployment for two weeks and he found work through the Union at the end of June. Eventually he became a foreman. He now earns about twice as much as he was paid by Celtic.

Flores testified that Manny Vega had done some work at a house she owned in Queens.<sup>24</sup> According to Flores, Vega informed her that he quit “in person.” When asked what she meant by this Flores explained that Vega told her that the men were going to get a lawyer and join the Union. Vega told her he would earn three times as much as at Celtic and that he would not work for Celtic any longer. Flores did not specify when this conversation took place. Vega denied that he told Flores that he was joining the Union and that he would no longer work for Celtic.

Jaffet Ruiz

Jaffet Ruiz testified that he had worked for Aleat and then for Celtic.<sup>25</sup> Ruiz attended all the Union meetings and he signed the Union petition. Ruiz supported the Union because he wanted higher wages and he needed benefits for his family.

<sup>22</sup> The tape was played at the instant hearing after the testimony of Respondent’s witnesses.

<sup>23</sup> Vega had been instructed to fill in his unemployment form from the first day of the week during which he was laid off.

<sup>24</sup> Vega acknowledged that he worked at a private house in Queens sometime in April 1999.

<sup>25</sup> Ruiz testified through an interpreter. Ruiz stated that he cannot read English but that he understands a little English. Ruiz communicated with the Clarkes in both Spanish and English.

On May 26, 1999 Ruiz was working on sheetrock, taping and ceilings at the 44 Court Street job site in Brooklyn with Neville Vega, Jose Manuel Vega and Hector Vega when Barry Clarke came and said the men had to decide which two of them would leave. Ruiz testified that his work at the site was not finished; indeed, Neville Vega testified that Ruiz’ work was taken over by a man named Otto who was not a Celtic employee. After he left the Brooklyn job Ruiz called the office every day but he was told work was slow and he did not work for a while. Eventually Celtic put him to work at 2 West 45<sup>th</sup> Street for two weeks and then at 9 East 40<sup>th</sup> Street. One morning at the beginning of July Ruiz called the office and informed Flores that he could not work because of an earache. Later that day Ruiz went to the Celtic office to pick up his paycheck. Ruiz stated that although he was too ill to work he needed money and had to cash his check that day. Clarke Junior saw Ruiz in the office and remarked that he thought Ruiz was sick. Ruiz said that he had an ear infection; Clarke replied that he was lying and hiding from him like a child. Ruiz asked Clarke whether he would be paid for the day he was off and Clarke said yes. Then Clarke Junior said that Ruiz should get the big money from the Union guys. After this day Ruiz was not given any more work by Celtic. Ruiz went to the office a second time to get a paycheck that he was owed and he asked why his name was not on the list to work. Clarke Junior replied that Ruiz knew what was going on and told him to get the big money from the Union guys. Ruiz denied that he quit working at Celtic. A few days after his last day of work at Celtic Ruiz went to work for Donaldson Construction.<sup>26</sup>

Clarke Junior testified that Ruiz had quit working for Celtic in order to take a new job with Donaldson Construction. He did not deny Ruiz’ testimony about their conversations.

Ruiz recalled taking part in a demonstration in front of 16 Court Street in Brooklyn. Ruiz was giving out Union flyers and gave one to Clarke Senior. Clarke called Ruiz, “You piece of shit, you nothing,” and said that he would “receive death before receiving the Union.” Clarke Senior denied generally that he had talked to Ruiz about the Union. He acknowledged that his clients were very upset about the flyers being handed out in front of the building. Clarke was upset that the Union was using an inflatable rat balloon in front of 16 Court Street on the occasion when it handed out flyers.

The flyer handed out in front of Celtic work sites was entitled “Representation is Everything!” Under this heading there were three cartoons. One showed King George III saying, “colonists don’t need a declaration to get independence.” The next cartoon showed the same man as in the King George drawing but this time wearing a string tie and a wide hat saying, “slaves don’t need a proclamation to get emancipation.” The third cartoon showed the same man in business attire saying, “workers don’t need a contract to get better pay, benefits, and working conditions.” Underneath these pictures was the information that Celtic workers were seeking Union representation and a request to the public to support the workers and to voice concern to Pat Clarke and Barry Jacobson.

<sup>26</sup> The record shows that Ruiz commenced work for Donaldson in mid July.

## Neville Vega

Neville Vega began work for Aleat and continued with Celtic. He left Celtic on August 30, 1999 after his cousin Jose Vega called to tell him of a Union job at a company called Chemco.<sup>27</sup> Neville Vega testified that he stayed at the 44 Court Street job from which Jaffet Ruiz and Jose Manuel Vega had been laid off on May 26. A new man named Otto took over Ruiz' taping work at that location. Further, Jerome of Jerome Contracting did work for Celtic at both 16 and 44 Court Street with one or two of his men. Neville Vega had never before seen Jerome Contracting on a Celtic job site. In response to questions posed by Counsel for the Respondent Vega testified that Celtic usually did its own demolition although for a big job it might hire an outside company. However, Vega did not describe the work that Jerome was doing at either 16 or 44 Court Street as demolition work.

Neville Vega testified that on June 7, 1999, the day before the NLRB election, he was working at 9 East 40<sup>th</sup> Street fixing a ceiling that Jose Soto had done over the weekend.<sup>28</sup> Clarke Junior asked Vega to stay late and offered him \$100 if he would work past 4:30 in the afternoon. Neville Vega had never before been paid at a higher rate for staying after 4:30. The day of the election Clarke Senior offered Neville Vega extra money if he would stay late to finish the job. Vega refused and he walked down the street to vote in the election. There is no dispute that the polling place was about five minutes away from the work site.

Clarke Junior testified that the job at 9 East 40<sup>th</sup> Street was an Abacus job. The project was not finished on time and the work was done badly and made the family look bad. On Monday June 7 he inspected the shoddy work and he sent Celtic employees Neville Vega and Jaffet Ruiz to fix the job. He offered them a bonus of a few hundred dollars if they would stay late and finish up. The men refused the bonus and the later hours. The next day he asked them to work late again and offered a bonus but the men refused. They said they wanted to vote. It would have been possible for the men to vote and then to return to the job site. Clarke Junior testified that he had offered bonuses before under emergency conditions but that this was not common at Celtic.

## Edgar Ceden0

Edgar Ceden0 worked for the Clarkes since 1996 at Aleat and at Celtic.<sup>29</sup> He attended Union meetings at Hector Vega's house and at the Union hall and he signed the Union petition. Ceden0 testified that after the election he was working at a Celtic job site at 575 Park Avenue when Clarke Senior asked him if he wanted to make a Union. Ceden0 replied that he wanted the Union because he did not have any benefits. Clarke Senior replied that he always had work and the Union did not. He asked Ceden0 why he had not spoken to him about benefits before.

<sup>27</sup> Neville Vega went from earning \$13/hour at Celtic to \$32.30/hour at Chemco.

<sup>28</sup> Vega said that he and Edgar Ceden0 fixed the badly done ceiling over the course of a few days.

<sup>29</sup> Ceden0 testified through an interpreter.

In June or July Ceden0 saw a large inflatable rat that the Union had brought to 16 Court Street.<sup>30</sup> The next day at 44 Court Street, Barry Clarke confronted Ceden0 and accused him of calling the Union in order to have the rat brought to the work site.<sup>31</sup> Ceden0 said he had not. Barry Clarke told Ceden0 that he was fired and told him to put his tools down. Barry Clarke asked why after all his father had done for Ceden0 had Ceden0 called the Union. Again Ceden0 denied calling in the rat. Barry Clarke said he did not trust anyone. Then Ceden0 told Barry to call his father because he was the one who had hired Ceden0. At that point, Barry told Ceden0 to continue working. At about this time Glen Josey arrived at the job site and he asked Ceden0 why he had not finished a job requiring door hinges in the penthouse of 2 West 45<sup>th</sup> Street. Josey said the hinges had been in the kitchen cabinet. Ceden0 replied that he and the owner of the property had looked all over for the hinges and had not been able to find them. Ceden0 was "disgusted" and he told Barry Clarke that he was through with Celtic. About three weeks later Ceden0 got work with a company called Glen Partitions through the list at the Union hall. Celtic did not call Ceden0 back to work and the Clarkes did not help him find another job.

In response to questions posed by Counsel for the Respondent Ceden0 denied that he was promised that if he left Celtic the Union would get him a job paying higher wages. He testified that there was no discussion of the inflatable rat at Union meetings. Ceden0 stated that he was unaware of any management complaints about an employee slowdown at Celtic.

Barry Clarke testified that after he had an argument with Ceden0 the latter left Celtic. He could not recall the subject of the argument. Barry Clarke did not deny Ceden0's version of their conversation about the Union but he testified generally that he had been instructed not to talk about the Union with the Celtic employees.

Glenn Josey recalled that he had assigned Ceden0 to complete a minor job at 2 West 45<sup>th</sup> Street. On June 29, 1999 Josey saw Ceden0 working at 16 Court Street and he asked Ceden0 why he had not done the job. Ceden0 said the job was done but Josey told him that the tenant had called and complained that the work was not completed. According to Josey Ceden0 threw down his tools and said he could not take this and then he quit. Josey did not know whether Ceden0 had had a problem with Barry Clarke earlier that day.

Clarke Senior testified that after he heard from Josey that Ceden0 had quit he called him into the office and pleaded with him to return saying that Celtic would be in trouble with JP Day if he were not in the company. According to Clarke Ceden0 refused to return because he had a higher paying job coming up. Clarke Senior did not say when this conversation took place.

## Jack Marziliano

<sup>30</sup> The record establishes that the rat was first deployed by the Union on July 29, 1999 and that Ceden0's last day of work at Celtic was during the last week in July.

<sup>31</sup> Ceden0 identified Barry Clarke as the foreman on that job.

Jack Marziliano has known Clarke Senior for about ten years having worked for Aleat and then Celtic doing ceilings, sheet-rock and framing. Marziliano attended one Union meeting and he signed the Union petition on March 17, 1999 at the request of Jose Manuel Vega. At about the time he signed the petition Marziliano was working at a job site on the 9<sup>th</sup> floor of 9 East 40<sup>th</sup> Street. Clarke Senior came to the site and took Marziliano up to the 15<sup>th</sup> floor of the building where Celtic had a job coming up. Clarke had a blueprint and he and Marziliano walked around looking at the space and going over the work to be done. Later that day Marziliano was eating lunch in the lobby of the building when Clarke Senior walked over to him and asked whether Marziliano would vote for Clarke. Marziliano replied that he would vote "for me, my family". Clarke Senior said that the company could not afford to go Union and he did not think it would happen. After he finished the 9<sup>th</sup> floor Marziliano was not assigned to the 15<sup>th</sup> floor job. He was sent to the Tourneau job at 488 Madison Avenue and then to a residential job on Park Avenue.

Marziliano testified that around the beginning of July 1999 he asked Clarke Junior for a day off to attend a house closing. When Marziliano returned to the job he called the office and he was told that his name was not on the job list. He returned to the job site daily and called the office every morning but Janette told him that he was not on the list to work. After a few days he told Janette that he was not coming in every day with his tools and that they should call if they had work for him. Marziliano did not tell anyone he no longer wanted to work for Celtic. After about three weeks Marziliano obtained another job from the Union's out-of-work list. The record shows that Marziliano last worked for Celtic on June 24, 1999.

Marziliano said that at the Union meeting he attended the employees were told that the Union did not want the men to quit Celtic. The Union told the men to stay on the job. There were no promises that the Union would help the men find better jobs than they had with Celtic.

Clarke Senior stated that he and Marziliano were friends who had discussed Marziliano's desire to obtain a Union job and earn a pension in 1997 or 1998. At some point, Marziliano told Clarke that he had the opportunity to join the Union. After this conversation Marziliano continued to work for Celtic. Marziliano asked for time off because he was buying a house. He was granted time off and then he was on the list to work, but Celtic could not contact him because his telephone number had changed. Clarke Senior denied telling Marziliano that Celtic could not afford the Union and that "it would never happen."

Enrique Cuello

Enrique Cuello testified that he has known Clarke Senior for about eight years, having worked for Aleat in the past.<sup>32</sup> Cuello, a laborer, asked his nephew Jose Manuel Vega about a job at Celtic and he was hired in March 1999 by Glen Josey to do demolition, cleaning and cement mixing. Cuello worked 40 hours per week. Cuello denied that he was told that his job was not permanent. Indeed, Cuello was sent from job to job by Celtic. Cuello heard about the Union from Jose Manuel Vega.

He attended three meetings at the Union hall where he heard Anthony Pugliese speak about the benefits of the Union. Pugliese did not promise Cuello a job and did not tell him to quit Celtic. Before the election Cuello saw Clarke Senior at the 488 Madison Avenue job site where he had been working for about six weeks. Clarke asked Cuello if he knew that his family organized the Union. Cuello said he did not know. Clarke responded that the Union was no good. Cuello testified that he could understand these statements but that because he did not speak that much English he did not know what else Clarke Senior said on that occasion. Cuello also testified that Clarke did not tell him there would be a problem if it were discovered that he was not a member of a union.

Cuello testified that a few days after the election he was working at 488 Madison Avenue with Edgar Cedenio. At about 2 or 3 in the afternoon both Clarke Senior and Junior arrived and then a supervisor named Martin. Clarke Junior told Cuello to call the office for work on Monday. Martin mentioned that there was a job at 575 Park Avenue mixing cement and Cedenio said that Cuello should be sent there. Martin said, "No." Cuello testified that the work at 488 Madison had not been completed when he left. The following Monday Cuello called the office and was told that there was no work for him. He called the office repeatedly and he was given 1 1/2 days work at a job site on 57<sup>th</sup> Street. Celtic gave him no further work. Cuello last worked for Celtic on June 14, 1999. Cuello is not a member of any union.

Clarke Junior testified that in May 1999 he received a telephone call from a person named Hegarty from the laborers union. According to Clarke Junior Hegarty referred to non-union laborers on the job at 488 Madison Avenue. Clarke responded that the work was subcontracted to a union contractor. But Hegarty said that Celtic could not employ a non-union laborer and that the job would be picketed if he remained. Clarke Junior said that he took no action. Then Hegarty called again and threatened to picket the job. Because there was no other work for Cuello at Celtic he was laid off. Clarke Senior testified that although he and Cuello could not converse Cuello understood enough English to understand his instructions about work. Clarke testified that his son Clarke Junior informed him that Hegarty threatened to shut down the job if Cuello continued to work at the site.

James Hegarty, business agent of Local 79 of the Mason Tenders District Council, testified that his field reports show that he visited the work site at 488 Madison Avenue with another business agent on May 21 and 26. Hegarty had received information that a non-union contractor was employing a non-union laborer at the job. The first visit produced no information. On the second visit an employee told Hegarty that Pat Clarke was the owner of Celtic and gave him the office telephone number. Hegarty called the Celtic office on May 26 and spoke to a receptionist. She took a message but no one returned Hegarty's call. Hegarty did not call again. Hegarty denied that he threatened to picket the job site. Hegarty testified that when he discovers that a contractor is performing laborer's work with a non-union worker his practice is to ask the contractor to sign a trade agreement and to organize the laborers on the site.

<sup>32</sup> Cuello testified through an interpreter.

### Chilon Forrester

Chilon Forrester has been a carpenter for 25 years. He began to work for Celtic in July 1998. In April 1999 Forrester heard about the Union. He attended four or five meetings at the Union hall and he signed the petition and voted in the election. Forrester stated that from July 1998 to May 21, 1999 he worked for Celtic almost every day except for a few days when Celtic was slow. In May 1999 Forrester had been working on the 5<sup>th</sup> floor at 44 Court Street for 2 to 4 weeks performing framing and sheetrock work. Other workers at the site included Hector Vega, Jose Manuel Vega and Neville Vega. According to Forrester, Hector Vega was a co-worker and Barry Clarke was the supervisor. On Friday May 21 Barry Clarke came to the site and told Forrester that he should call the office Monday morning and he would be told where to go. On Monday May 24 Forrester called but Janette told him that she had no message for him. Forrester called back later that day but Janette still had no assignment for him. Each time he called Forrester asked for Clarke Senior but he was told that Clarke was not in the office. This pattern continued on a daily basis until Forrester stopped calling in June or July.

Forrester testified that he had worked at 16 Court Street repairing doors at some point before he was laid off. On one occasion he was instructed by Barry Clarke to work on a door closer but he did not have the proper materials. Forrester recalled that the door was old and the screws kept falling out. He asked Barry Clarke to get him longer screws and bolts but the next day Clarke had not obtained the necessary materials. Later that day Clarke Senior came and swore at Forrester about the problem with the door closer. Forrester tried to tell him that he had not received the proper materials to do the job but Clarke Senior would not listen to Forrester's explanation. Clarke Senior said that the closer fell and could have hit someone. This incident occurred 2 or 3 months before Forrester was laid off.

In response to questions posed by Counsel for the Respondent Forrester recalled that he went to work for Glen partition in August 1999 having obtained the job through the Union hiring hall. Forrester testified that the Union never told him that if he left Celtic he would get a job earning more money.

Marziliano testified that after working with Forrester he had told a supervisor at Celtic that Forrester was old and a little slow but that he knew what he was doing.

Barry Clarke testified that he did not see the door closer fall although he saw it on the floor. He recalled that the door was a new solid oak door and the top was ruined because it had been redrilled in an effort to install the screws for the door closer. Barry Clarke was with his father when a tenant came up to them screaming and angry. Barry Clarke acknowledged that he was responsible for bringing materials to the job site for Forrester. He did not recall that Forrester asked him for additional materials and he did not recall discussing the door closer with Forrester. Barry Clarke stated that there were no problems with door closers on any other doors at 16 Court Street.

Glenn Josey testified that after Hector Vega complained about Forrester's work in Brooklyn Forrester was transferred to work in Manhattan with Jack Marziliano. When Marziliano said that he was slow and not a good carpenter Josey warned

Forrester and told him that he had one last chance to keep his job by working in Brooklyn. Josey recalled that after he had assigned Forrester to install a door closer at 44 Court Street he received telephone calls from JP Day officials saying that a door closer had fallen. Josey did not see the door closer and he did not know if it had actually fallen. Josey told Hector Vega to fix the door closer and he learned from Vega that it had not been installed properly. Josey telephoned Forrester about the door closer and Forrester complained that the screws were the wrong size and that he had put in a request for the correct screws. When Josey asked why Forrester had put it up even without the correct screws Forrester replied that he had been instructed to install the door closer and that nothing had come of his request for different screws. Josey testified that Celtic maintained accounts at local hardware stores where Hector Vega could have gone to obtain the needed screws. He thought Forrester should not have installed the door closer knowing he had the wrong screws. Josey consulted Clarke Senior and they decided to fire Forrester due to the faulty door closer installation.<sup>33</sup> He denied that this action was related to the Union. Clarke Senior testified that Forrester had installed a door closer that fell down and he thought that Forrester had been fired. Clarke Senior added that he had not liked Forrester's work from the beginning because he was slow and Hector Vega had told Clarke that he had only himself to blame for sending bad people to the job.

Hector Vega testified that he had worked with carpenter Chilon Forrester on 12 to 15 occasions.<sup>34</sup> No one told him that there was a problem with Forrester's work and Vega was not instructed to watch Forrester. Hector Vega worked with Forrester at 44 Court Street in May 1999. Vega thought that Forrester was a good carpenter and he had no complaints about him. Vega testified that there was a problem concerning fire-proof doors at 16 Court Street. Due to a construction feature relating to the doors the screws that were meant to hold the door closers on the doors could not be properly installed. The screws would loosen as soon as they were put in. Before Forrester came to work at 16 Court Street some doors were installed and the door closers began to come out of the doors. The door closers did not actually fall down because the screws affixing them to the doorframes held tight. Vega knew about four such incidents. Hector Vega stated that he found out about the problem with the 16 Court Street doors when people began working on them. A carpenter who was the foreman tried to install the door closers at first. Then Barry Clarke came to be the foreman on the site and a solution was devised to deal with the problem. The situation was resolved before the election.

Barry Jacobson the chairman of JP Day testified that in March 1999 there was a problem with a door closer at 16 Court Street. Jacobson said that the door closer fell on a lawyer at

<sup>33</sup> Josey testified that he probably consulted Clarke Junior as well.

<sup>34</sup> Hector Vega has worked as a carpenter for enterprises connected with Clarke Senior for over 14 years. At the time of the instant hearing, Hector Vega was still employed by the Respondent. After the election, Celtic gave him a \$2 raise and some health benefits.

that location.<sup>35</sup> After stating that this occurred in March Jacobson changed his testimony to say that it happened in April or May.

Mario Gordillo

Mario Gordillo worked as a carpenter for Aleat and then Celtic.<sup>36</sup> He constructed cabinets in the shop and he worked in the field installing cabinets and woodwork. Gordillo attended two Union meetings and voted in the election. Gordillo recalled receiving two written warnings from Celtic, one about lateness and one for taking too long in the installation of ground molding when he was working alone with no helper. Respondent introduced two warnings to Gordillo; one warning dated July 12, 1999 charged him with falsifying the hours on his time card, with coming in late and with unsatisfactory performance and the other warning dated July 19 also related to falsifying a time card by erroneously showing that he had worked on July 10. Gordillo denied that he had claimed pay for hours not worked. In addition, a warning dated June 29, 1999 which had been submitted to the Regional Office mentioned lateness, slow work and late submission of time cards.

Gordillo testified that the shop carpenters generally ate lunch together in the shop. The shop workers spoke only Spanish except for Isaac Mejia who could speak English and translated for the Clarkes when necessary. Mejia assigned work to the men in the shop and he assigned them to install cabinets at the Celtic work sites. Before the election the employees in the shop discussed the Union. Mejia told the men that the Union was good and had good benefits but that Clarke Senior did not let the Union come into the company. Mejia said that the people who voted in favor of the Union could be fired. In response to questions posed by Counsel for the Respondent Gordillo testified that there was no agreement among the Celtic workers to abandon their jobs.<sup>37</sup> Although Counsel for Respondent attempted to show that this testimony conflicts with Gordillo's statements in the prior representation case, I do not find that there is any conflict. I observed that Gordillo often seemed confused by the questions that were translated for him and it was clear that in some instances he did not give an accurate answer until a question had been posed more than once and he had the opportunity of hearing the question again before answering. Thus, I conclude that it would be improper to parse his answers in the prior proceeding for seeming inconsistencies.

On the General Counsel's direct case Gordillo testified that there was a fire in the shop in August 1999. On a Wednesday Gordillo went to the shop and Mejia told him that he was laid off and that he should telephone to find out when to come back to work. Mejia also said that Gordillo "should have expected this that the people that were with the Union were going to be left outside." Gordillo said he saw a new person working as a laborer. One week later Gordillo telephoned the office to ask about coming back to work but Clarke Junior told him there

was no work and told him to call back. On the General Counsel's rebuttal Gordillo recalled that the Monday after the fire he went to his work site and waited for cabinets to be delivered so that he could finish the installation he had been working on. Then he called Mejia at the shop and he learned that there had been a fire and that the cabinets would not be delivered. Pursuant to Mejia's instructions Gordillo went to the shop and saw Mejia, Orellana, Acevedo and Ogando at work separating the burnt items from those that could be salvaged. Gordillo helped with this effort for two or three hours. Acevedo was painting and there was garbage and water all over the floor. Mejia said that some things could not be moved because the insurance adjuster had yet to see the damage. Mejia said there would be no work until the shop was cleaned. Gordillo denied saying it was not his job to clean the shop. Gordillo called Mejia the next day and asked whether there was work. Mejia said there was no work because of the fire. On Wednesday Gordillo went to the shop at about 8 am. Mejia did not ask him to stay and clean up and Gordillo did not refuse to help clean the shop. Gordillo's time cards and the payroll records show that he worked for Celtic on July 19, July 21-23, July 26 and 27. Gordillo testified in the representation case that after the fire he was working outside the shop installing cabinets. Doubtless his recollection about where he was working and on what days was better closer to the time of the events.

Gordillo was sure that on the Monday of the fire when he called the shop someone answered and he spoke to Mejia. There is evidence that the telephone lines to the shop were damaged in the fire and the Respondent used this to cast doubt on Gordillo's testimony. However, Gordillo was not asked what number he had called nor whether he called a cell phone number in order to reach Mejia at the shop.

Clarke Junior testified that the fire took place on Sunday, July 18, 1999 and that the fire inspectors gave him access to the shop on Monday. That Monday, after Clarke had left the shop, Mejia called him from the shop to report that Gordillo did not want to help the men clean up the mess in the shop. Clarke told Mejia to send Gordillo home and to inform him that if he wanted to work he would have to call the office and help with the clean up effort. Clarke Junior testified that Gordillo was fired because he would not help clean up the shop. Furthermore, according to Clarke, Gordillo was on thin ice because he had been sent warning letters for tardiness and for working too slowly on a job site and incurring customer complaints. Mejia and an employee named Luis Orellano had complained about Gordillo. After being shown Gordillo's time cards which establish that Gordillo worked a number of days after the fire, Clarke Junior changed his testimony and said that Gordillo was finishing a job at 9 East 40<sup>th</sup> Street on those days but then refused to help the other employees clean up the shop on the first day he was assigned there after the fire. Clarke stated that he himself worked cleaning the shop on weekends and on other days and that he never saw Gordillo working there.

Clarke Senior testified that he had become dissatisfied with Gordillo's work in 1999. Clarke stated that Gordillo was late to work and he was slowing down; for instance, a molding job at 9 East 40<sup>th</sup> Street that should have taken one day instead took four weeks. Gordillo's time cards show that he worked at 9

<sup>35</sup> Jacobson was apparently engaging in hyperbole. The record is clear that a door closer did not fall on a person, that no one was injured and no claims or lawsuits were filed.

<sup>36</sup> Gordillo testified through an interpreter.

<sup>37</sup> Gordillo is not a member of the Union and he did not obtain his current job through the Union.

East 40<sup>th</sup> Street from April 27 to May 3. Clarke testified that Celtic sent Gordillo several warning letters. Gordillo's time cards show that he reported to work at 8 but Clarke Senior stated that he instructed Flores to write "late" on the time cards. Indeed, all of Gordillo's weekly time cards are marked "late" in the same manner between October 6, 1998 and August 2, 1999. Respondent has not explained why Flores marked Gordillo late every week for this lengthy period; it seems that the markings were made in contemplation of the instant proceeding and were not contemporaneous with their submission for payroll purposes. Other shop employees whose time cards show that they reported at 8 were not marked late. Clarke Senior testified that after the fire in the shop there was not work for everyone. A few employees were out on vacation so a few of the more knowledgeable employees were kept on to help put the shop back together again. Clarke Senior said he had made up his mind about Gordillo long before the fire. He asked Mejia to instruct Gordillo to call the office so that he could be fired. Clarke stated that his decision had nothing to do with Gordillo's Union activity.

Mejia testified that the Celtic shop employees discussed the Union during lunch. Gordillo said that he had been to Union meetings and that the Union was OK. Mejia told the employees that it was up to them whether to support the Union. He denied that the Clarkes had spoken to him about the Union. Mejia testified that after the fire the shop employees spent five or six weeks cleaning up the mess and rebuilding the shop. However, Gordillo did not join in the clean up effort. Gordillo said that he was a carpenter and not a laborer. Everyone was upset and Mejia reported to Clarke Junior what Gordillo had said. Clarke Junior instructed Mejia to send Gordillo home. Mejia denied telling Gordillo that he was fired because of the Union. Mejia recalled that Gordillo was always late to work and that there had been complaints about him. But if Gordillo had helped to clean the shop he would still have had a job at Celtic.

Frederico Acevedo testified that he worked in the Celtic woodworking shop for three or four years. He now works for Mejia at the shop. Acevedo heard about the Union from Abner Feliciano and Gordillo who described Union meetings. The shop workers all expressed their own opinions about the Union. Gordillo said that he would vote for the Union because he wanted a permanent job, a pay increase and more benefits. Acevedo testified that he heard Gordillo say that he did not want to help clean the shop because it was not his job.

Jose Miguel Ogando testified that he worked in the wood-working shop.<sup>38</sup> He heard about the Union from Edgar and Jack.<sup>39</sup> Gordillo was the only employee in the shop who supported the Union. Mejia said that the men should vote for what they believed was best. Ogando was not threatened that he would be fired if he voted for the Union. The Union told him that it would help him with education and with a higher wage. Ogando recalled that after the fire the men spent five or six weeks cleaning up the shop.

<sup>38</sup> Ogando testified through an interpreter.

<sup>39</sup> I assume Ogando means Cedeno and Marziliano.

Luis Benjamin Orellano testified that he had worked in the Celtic shop for seven years. Orellano said that the men had discussed the Union once at lunch but that Mejia was not present. Gordillo said that he would vote for the Union because it offered more money and education. He said if the employees did not vote for the Union they would close the business. Orellano testified that after the fire the men spent six months cleaning up the woodworking shop. Gordillo said that he was not there to clean up.

Matthew Andrew and Samuel Perry

Matthew Andrew and Samuel Perry are painters. Both have known Clarke Senior for about 20 years and have worked for the various companies he has been associated with. Andrew testified that he heard about the Union from Cedeno and Jose Manuel Vega and that he attended a number of Union meetings. Perry heard about the Union from Cedeno and he also attended a number of meetings. Andrew and Perry worked together on a job at 575 Park Avenue preparing a private residence for painting. On Friday, June 11, 1999 the work was 85% to 95% completed when Clarke Junior came to the work site and told them not to come to work Monday because concrete would be poured on the floors. Clarke did not say when the men should resume work. On Monday, and for days thereafter, Perry called the Celtic office asking for work but he was not given any more work. Andrew called the office beginning on Tuesday and for two weeks thereafter but Janette Flores told him that things were slow and there was no work. Andrew stated that Celtic had never laid him off before. Perry had not been working steadily for Celtic at the time of the layoff.<sup>40</sup> Andrew testified that Celtic had not complained about his work. Both Andrew and Perry joined the painters union after their layoffs and found steady work through their union. In the spring of 2000 they got part-time work from Celtic.

Clarke Senior testified that Celtic lost the painting contracts from JP Day because the work was not done on time, there was dirt in the elevators and the workmanship was sloppy. This testimony was given in connection with Clarke's recollection that in early 1999 "we just lost control" because the men wanted to join a union and the work slowed down. Clarke said that Celtic had previously done most of the painting work in 15 or 16 JP Day buildings but at some point the work was given to another company. Clarke recalled that when an inflatable rat appeared outside 9 East 40<sup>th</sup> Street Jacobson told him that he would not get any further painting work from JP Day because Celtic had done sloppy work. Jacobson said he could get painting work done faster and cheaper by others. Clarke also testified that currently if he gets JP Day painting work he has to use a designated contractor such as Moustafa Painting. Since the organizing campaign Clarke has used Union contractors such as Westend Partitions or Florin Painting for preparation and painting work at other sites because he wanted to avoid having an inflatable rat outside the work site. But, Clarke added, he prefers his own crew because they are good workers and "beat any other company." Clarke Senior said that he had known Andrew for years and "It was one of the saddest days of my life that he

<sup>40</sup> Perry had worked full time for Celtic until March 1999.

didn't work for me anymore." Clarke said that Andrew is a very hard worker. Clarke Senior kept in touch with Andrew and Perry and whenever he had painting work he offered it to them.

Clarke Junior testified that Celtic lost the JP Day painting work because the painters were not delivering at their usual level and they were not keeping up with the work. However, when there was more work available in the year 2000 Celtic used Andrew and Perry instead of other painters because he and his father were familiar with them and knew them for a long time. In fact, Celtic had asked them to return to work full time but by then Andrew and Perry had other jobs and they were only available on weekends.

Jacobson testified that there was an instance of very bad painting by Celtic and he took the JP Day painting work away from Celtic and gave it to Moustafa. He denied that this had any connection to the inflatable rat.

Celtic records show that beginning in June 23, 1999 and continuing into the year 2000 it has hired Moustafis Painting for work at 2 West 45<sup>th</sup> Street, 800 Third Avenue, and 10 East 40<sup>th</sup> Street. Beginning in March 1999 and continuing into the year 2000 Celtic has hired Florin to perform painting at 488 Madison Avenue, 800 Third Avenue and 350 Fifth Avenue.

Abner Feliciano

The General Counsel contends that Respondent discharged truck driver Abner Feliciano because he is a close relative of Hector Vega, Neville Vega, Jose Manuel Vega and Jaffet Ruiz, all of whom supported the Union, in order to dampen the unit employees' enthusiasm for the Union.<sup>41</sup> Respondent asserts that it discharged Feliciano for chronic tardiness.

Abner Feliciano began work a laborer for Celtic in 1997. Laborers were required to report to the work site and phone the office between 7:45 and 8 am. Feliciano's time cards show that on October 6, 1998 he was assigned to drive the Celtic truck. He was then given a \$2 per hour increase in wages. Josey testified that he supervised Feliciano and that he had supported Feliciano's promotion to truck driver.

According to Josey, the truck driver was scheduled to arrive at the parking lot next to the shop at 7:30 am unless a different arrangement had been specified for a particular morning. Early in the morning, or possibly at the close of business the night before, Josey would have faxed the truck schedule to the shop for transmission to the driver. The truck driver sometimes loaded the truck the night before or he might load the truck with materials and supplies in the morning. Then the driver would proceed to the work sites listed on the schedule. Because the truck had to make its way through traffic the truck driver was required to report earlier than the men at the job sites. Although most of the materials used at Celtic work sites were delivered to the sites by the various suppliers, the Celtic truck delivered certain materials that had been purchased in advance and stored and the truck transported finished cabinets from the shop to the work sites. In addition the truck was occasionally assigned to pick up supplies and deliver them to the

work sites and to remove trash from the sites. If the truck driver was late the men at the job sites might not be able to begin work.

Josey testified that Feliciano was often 10 to 15 minutes late in the morning. At first Josey took no action but in November 1998 Josey, Clarke Senior and Flores spoke to Feliciano about his chronic tardiness in the Celtic office. Josey stated that Feliciano improved from December to mid February and then his problems with lateness arose again. At various times Josey cautioned Feliciano about being prompt and urged him to improve. Josey thought of replacing him with another driver but he did not act because Feliciano's wife was pregnant and he had other problems. The record shows that on December 28, 1998 Celtic issued a written warning to Feliciano stating that he was habitually late and that he had falsified the hours of work on his time card. The warning reminded Feliciano that he was supposed to report at 7:30 am and expressed the hope that he would improve his performance in the new year. Flores testified that she typed this document and put it in Feliciano's pay envelope. On April 29, 1999 Celtic gave Feliciano a written warning about habitual lateness. This document was put into Feliciano's pay envelope. Josey testified that Celtic laid off Feliciano for one week in April 1999 because of his tardiness. At that time Josey spoke to Feliciano and explained the reason for the suspension. On May 18, 1999 Celtic gave Feliciano a document entitled "final warning" which said, "I have spoken to you several times before but you are still consistently late in coming to work. Your working hours start at 7:30 am and not after 8:00 am. If you cannot improve your performance let me know." Josey stated that he spoke to Feliciano about this warning and asked if Feliciano understood it. Eventually, Josey believed that Feliciano was incorrigible and he and the Clarkes decided to fire him. Feliciano's time cards show that after the May 18 written warning he was late two of the five remaining days before his discharge.

Josey testified that Feliciano was late 70 times between September 1998 and his termination on May 25, 1999. This testimony was no doubt the result of Respondent's confusion at the time of the instant trial concerning the actual date in October when Feliciano began driving the truck.<sup>42</sup> Feliciano's time cards show that some mornings he arrived very early at 6 or 7 am. According to Josey, on these occasions management had asked Feliciano to come in very early for a special purpose. Following a specially early day, Josey would permit Feliciano to come at 8 am the next day if the schedule permitted. However, it is impossible to tell from Feliciano's time cards on what days he came in late because he was told to do so by a manager. Feliciano's time cards bear the notation "late" at many points. These marks were made by Flores apparently in preparation for the instant case. Her testimony was flawed in that she claimed that Feliciano was due to report at 7:30 am from the day he was hired. Of course, Respondent makes no claim that Feliciano was due at that hour before he was made a truck driver. Isaac Mejia, management's conduit to the employees at the wood-working shop at the time of the events material to the instant case, testified that he arrived at the shop at 7:30 every morning.

<sup>41</sup> As set forth above, the driver position was excluded from the bargaining unit by stipulation.

<sup>42</sup> Apparently his pay was not docked when he came in late.

Mejia stated that as a truck driver Feliciano was supposed to report to the shop at 7:30. Clarke Junior testified that Celtic fired Feliciano because he was late all the time and that the discharge had not relation to any Union activity. He and Josey told Feliciano repeatedly that he had to report at 7:30 am and they warned and pleaded with him and gave him warning letters. Clarke Junior said that Feliciano did not vote in the election and that he had no idea Feliciano was involved with the Union. Clarke Senior testified that he goes to the shop every morning and that he was aware that Feliciano was often late. He often warned Feliciano about his tardiness.

Feliciano testified that he began driving the Celtic truck in the summer of 1998.<sup>43</sup> Feliciano maintained that when he became a truck driver his hours did not change; he was still required to report to work at 8 am. Feliciano stated that after he was told about the Union organizing campaign by his cousin Jose Manuel Vega he attended two or three Union meetings and signed the Union petition. Feliciano denied repeatedly that he had been told to report at 7:30 am and he denied receiving any oral or written warnings before the final warning of May 18 which he found included in his pay envelope. Although this warning referred to prior warnings Feliciano conceded that did not ask anyone about those. Feliciano did not offer any explanation for the fact that for large stretches of time his time cards show that he reported at 7:30 am.

### III. DISCUSSION AND CONCLUSIONS

#### A. Status of Abacus

The Board considers four criteria to determine whether two separate entities are a single employer. These are interrelation of operations, common management, centralized control of labor relations and common ownership. *Radio & Television Union 1264 v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965). No single factor is controlling although centralized control of labor relations is particularly important. Single employer status depends on all the circumstances of the case and is characterized by absence of an arm's length relationship. *NLRB v. Al Bryant, Inc.*, 711 F.2d 551 (3<sup>rd</sup> Cir. 1983).

The record in the instant case shows that all of the funds required to start Abacus were contributed by Celtic without the execution of any loan documents. Celtic gave Abacus free use of office space and of the labor of Celtic office personnel. Celtic gave Abacus free use of any tools it required. Abacus did not open accounts with suppliers; instead it ordered supplies under the Celtic name without any requirement that it reimburse Celtic. Clarke Senior, the senior construction manager of Celtic, hired Soto and recommended other employees of Abacus, Clarke Senior, Clarke Junior, Glen Josey and Martin Kernan, all Celtic supervisors, supervised the employees of Abacus and directed the construction work of Abacus. Soto, originally hired to work for Celtic, was informed a few days later that he worked for Abacus because the company had changed its name. When Clarke Junior was dissatisfied with the work Soto had done for Abacus he had Celtic employees finish the job and Soto was transferred to another Celtic work site. Other em-

ployees were transferred from the Celtic to the Abacus payroll. The source of the good will required to obtain work from JP Day at 9 East 40<sup>th</sup> Street was the presence of Clarke Junior the owner of Celtic and Clarke Senior the manager of Celtic. Abacus took over the Celtic jobs in the Brooklyn JP Day buildings as a subcontractor to Celtic. I conclude that there is no arm's length relationship between Celtic and Abacus and that Clarke Senior and Junior control all aspects of labor relations at Abacus, that Celtic management and supervisors control the operations of Abacus and that the operations of the two companies are at the least interrelated and most likely entirely integrated. I find that Abacus and Celtic are a single employer.

#### B. Credibility of Witnesses and Anti-Union Animus

In assessing the credibility of witnesses it is always helpful to have documentary evidence as a guide. Here the documentary evidence does not support much of the testimony of Respondent's witnesses. Clarke Senior and Clarke Junior claimed that Celtic lost business because the employees conducted a slowdown and customers complained of sloppy work. However, the documents show that Celtic shifted its business to Abacus and engaged subcontractors. Numerous details testified to by the Clarkes are contradicted by Respondent's own records. The Clarkes' actions taken soon after they learned of the organizing campaign and the fact that the Union had substantial support among the employees showed that they did not want to deal with the Union. The demand for bargaining was received on April 22 and Clarke Junior signed the stipulated election agreement on May 18, 1999. Within two weeks Celtic began transferring funds to Abacus, Abacus began hiring employees and Abacus began performing work that had once been done by Celtic. Thus, although the Clarkes claimed that Celtic lost work from JP Day the record shows that the work was performed by Abacus. Further, the record shows that Celtic continued to perform substantial work for JP Day but that it used other subcontractors instead of its own employees. Even though the Respondent acknowledged that it was more economical to perform work with its own employees, Celtic shed its employees and used subcontractors whose price for the work necessarily included a subcontractor's profit. In effect, Celtic became a general contractor and performed all of its jobs through subcontractors, including Abacus.

Both Clarke Junior and Clarke Senior attributed a decline in business and in profits to the Union and to Celtic employees who desired Union representation. However, the tax returns show that Celtic did more business in 1999 than in 1998 and according to accountant Ginsberg the company was "in better shape" in 1999. Further, the tax returns show that in 1999 Celtic increased by threefold its reliance on subcontractors, a factor which reduced its profits. Nevertheless, Clarke Junior more than doubled his salary in 1999. Further, Abacus received \$70,000 in payments directly from JP Day; this amount was for work which otherwise would have been done by Celtic employees and paid directly to Celtic.

The testimony of Jacobson about work that Celtic performed badly or lost was unspecific as to timing and vague as to the actual cause of the problem. Indeed, Jacobson gave Abacus work to perform just when, according to Respondent's theory,

<sup>43</sup> Feliciano seemingly did not recall that he did not become a truck driver until October 6.

Celtic was falling out of favor with JP Day. But the record shows that Abacus and Celtic were run by the same family and so the Clarke's and Jacobson's testimony on this point is non-sensical. My impression of Jacobson was that he was extremely indignant that the Union had engaged in demonstrations in front of JP Day buildings and that he was hostile to organizing activity. Jacobson testified that Union demonstrations were "childish and obnoxious." I formed the impression that Jacobson shaded his testimony to blame the Union for Celtic's troubles. I shall not rely on Jacobson's testimony.

The testimony of Raymond Bennett is quite specific and, indeed, it proves too much. Bennett stated that in late spring and early summer he told the Clarkes to get their act together, to put more people on the job and to pay attention because it appeared that Celtic was not reading the documents and walls were being put in the wrong place. This statement implies that Celtic did not have enough workers on the job and that supervisors were not telling the employees where to put up the walls. Bennett also said materials were not being delivered as required. This problem results from the failure of the front office to place orders and coordinate the work and not from any problem with carpenters or laborers. Thus, Bennett's testimony is about a failure of management and supervision and does not show that Celtic's employees were deliberately causing the company to underperform.

Further, the hostility of Clarke Senior and Clarke Junior to the organizing efforts of their employees is amply demonstrated by unrefuted evidence. Clarke Junior, the president of Respondent, told Jose Manuel Vega that he felt "betrayed" by "everyone" ... that nobody came to him and asked for anything. This was a clear reference to the Union organizing which was prompted by the employees' desire for higher wages and benefits. After Vega replied that he hoped the Union would not affect his longstanding relationship with the Clarkes, Clarke Junior responded that it was not a little thing and that he was "pissed off" that there were Union supporters at the construction sites. When Ruiz asked Clarke Junior why he was not getting any more work, Clarke Junior responded that Ruiz should get the big money from the Union guys. Clarke Senior testified that the Union's demonstrations were a "disgrace." While he was testifying, I heard Clarke Senior comment repeatedly under his breath that the Union and his men had stolen work from him and ruined him. Barry Clarke, a young man living at home with his father and older brother at the time of the events material to this case, accused Cedeno of being responsible for the Union's demonstration in front of one of the work sites, reproached him for ingratitude after all Clarke Senior had done for him and then told Cedeno he was fired. When Clarke Senior asked Cedeno why he wanted a Union and learned that Cedeno wanted benefits, Clarke Senior said that he always had work while the Union did not and he added that Cedeno should have spoken to him before the election.

Further, as will be seen from my discussion below, I find that the record abounds with other examples of the Respondent's hostility to its employees' organizing efforts. Before the election Clarke Senior asked Cuello whether he knew that his family organized the Union and he told Cuello that the Union was no good. When Ruiz handed him a Union flyer Clarke Senior

called Ruiz "a piece of shit" and said he would rather die than have the Union. Clarke Senior told Marziliano that the company could not afford to go Union and that he did not think it would happen.

Other witnesses called on behalf of Respondent did not inspire confidence with respect to their credibility. Flores, purportedly the half-owner and bookkeeper of Abacus, testified in effect that she knew next to nothing about the company. Further, she testified to certain facts about employees' time cards which were disproved by other evidence. Flores testified that Jose Manuel Vega had told her he quit "in person." But when questioned about this incident Flores could only say that Vega had told her the men were going to get a lawyer and join the Union. She added that Vega would no longer work for Celtic. Vega denied that he ever told Flores that he was quitting nor that he was joining the Union. Indeed, it is highly unlikely that an employee would communicate confidential information of this nature to an office employee. From these examples and others in the record, I conclude that Flores was an uncooperative witness and that she shaded her testimony to favor the Respondent.

Many of the discrepancies between oral testimony and documentary evidence are set forth in the General Counsel's brief. The General Counsel's brief also discusses instances where Respondent's witnesses engaged in inconsistencies, shifting stories and the like. Although these abound in the record I have decided not to discuss them all in order to avoid too lengthy and detailed a decision.

### *C. Interference with Employee Rights*

I credit Soto that during his job interview when he asked whether Celtic was a Union shop, Clarke Senior replied that he was not interested in Union carpenters. I do not credit Clarke's denial that he discussed the Union with Soto. Clarke's hostility to the Union is well established. The General Counsel contends that Clarke Senior's words conditioned the employment of Soto upon non-membership in any labor organization. I agree. Clarke Senior and Soto were discussing Soto's desire to work for Celtic as a carpenter. When Clarke Senior said he was not interested in Union carpenters he was in effect telling Soto that he would not get a job if he belonged to the Union. I find that Respondent violated Section 8 (a) (1) of the Act.

There is no factual dispute that Respondent offered Neville Vega \$100 on June 7 and June 8 to work late on an overdue Abacus job at 9 East 40<sup>th</sup> Street. Clarke Junior testified that such an occurrence was "not common" and the record contains no actual prior example of employees being offered a bonus to work late. In fact, as set forth above, the Celtic employees often worked overtime, apparently without compensation for aught that appears on the payroll records. Furthermore, the record is replete with testimony from the Clarkes that various jobs were running late and that customers were complaining of a work slowdown and of unfinished projects. Nevertheless, in none of these other cases did Celtic offer its employees a bonus to stay late in order to complete the work. The General Counsel contends that the extra pay offered to Neville Vega was intended to discourage him from voting in the election held on the afternoon of June 8. Respondent points out that the election

was held 5 minutes away from the job site and that employees easily could have voted and returned to work. As the General Counsel concedes, this is a close question. However, in view of the well-established anti-Union animus of Respondent and the lack of precedent for offering bonuses I find that Respondent offered Neville Vega a bonus in order to discourage him from voting in the election. Neville Vega's family had spearheaded the organizational effort and management could assume that he supported the Union. By making him an unprecedented offer the company reasonably conveyed the message that it would grant him a special benefit if he kept working and skipped the election. Respondent thus violated Section 8 (a) (1) of the Act.

The Respondent did not refute Edgar Cedenó's testimony that a few days after the election Clarke Senior asked him whether he wanted the Union and, upon Cedenó's affirmative answer, remarked that he always had work but the Union did not. Clarke Senior was the general manager of Celtic and in questioning Cedenó he did not assure him that he need not answer Clarke's questions. The questioning took place against a background of employer hostility and discrimination. Cedenó did not initiate this conversation and he had not openly declared his support for the Union. Clarke Senior's comment that he, unlike the Union, always had work reasonably conveyed the message that Union supporters might not always get work from the Respondent. The questioning was therefore coercive and Respondent violated Section 8 (a) (1) of the Act. *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), *affd.* 760 F.2d 1006 (9<sup>th</sup> Cir 1985); *Bourne v. NLRB*, 332 F.2d 47 (2<sup>nd</sup> Cir. 1964).

I credit Cedenó that after the Union demonstrated at 16 Court Street following the election Barry Clarke accused him of calling the Union to the demonstration and asked how Cedenó could do this after all that Clarke Senior had done for Cedenó. Barry Clarke said that Cedenó was fired and told him to put his tools down. Although Barry Clarke acknowledged that he had an argument with Cedenó before the former left Celtic he could not recall what the argument was about. He did not deny Cedenó's testimony about the contents of the discussion. I find Barry Clarke's general testimony that he was instructed not to discuss the Union with Celtic employees unconvincing in the face of Cedenó's specific and detailed recollection.

The hearing officer's report found that Barry Clarke was used as a conduit between management and the employees. The evidence in the instant case shows that this is true: it was Barry Clarke who told the four carpenters in Brooklyn that only two of them could stay and work and that two of them had to go home. As the brother of Respondent's president and the son of its principal manager who was used as a conduit to the employees Barry Clarke spoke with considerable authority and was the agent of Respondent. I find that Barry Clarke told Cedenó that he was discharged because he caused the Union to demonstrate in front of a Celtic job site and I find that Respondent violated Section 8 (a) (1) of the Act.

#### *D. Lay Off and Discharge of Employees*

Jose Manuel Vega

There is no dispute about the contents of the taped telephone call between Jose Manuel Vega and Clarke Junior which is excerpted in the instant decision. In that conversation Clarke Junior clearly expressed his hostility to the organizational efforts of the Celtic employees and his sense that the employees had betrayed him. During this call, Vega asked for work and Clarke said he didn't have any. Significantly, I note that although subject of this conversation was Vega's request for more work Clarke did not once state that he himself had called Vega to offer him work at Flores' house in Queens but had been unable to reach him. That effort to reach Vega, purportedly made two weeks ago, would surely have been fresh in Clarke's mind when Vega called to ask for work. If Celtic managers had really tried to give Vega work at Flores' apartment but had not been successful in reaching him then Clarke Junior could not have failed to mention Respondent's purported inability to reach Vega in order to give him work. I credit Vega that the day after he left the Brooklyn job he twice called the office and asked for work and he was told there was no more work for him. I note that Clarke Senior's testimony that he asked Vega's brother to give him a message only to be told that Vega was going to work for Donaldson construction places that conversation well after the week when Vega was laid off. Vega testified that he actually collected unemployment insurance for two weeks after his layoff and that he found a new job at the end of June. I do not credit Clarke Junior that Vega did not telephone the office looking for work. I do not credit Flores that Vega told her that he quit "in person." Finally, I note that right before the election Clarke Senior asked Cuello whether he knew that his family had organized the Union. The evidence shows that of the family members Jose Manuel Vega was the most active in support of the Union. I find that Respondent laid off Jose Manuel Vega on May 26 because he and his family supported the Union and in order to rid itself of unit employees in violation of Section 8 (a) (3) and (1) of the Act.

Jaffet Ruiz

I credit Jaffet Ruiz that in July 1999 Clarke Junior told him to get the big money from the Union guys and that thereafter he did not receive any more work from Celtic. I credit Ruiz that on a second occasion when Ruiz asked Clarke Junior why his name was not on the list to work, the latter replied that Ruiz knew what was going on and that he should get the big money from the Union guys. Clarke Junior testified that Ruiz quit but he failed to deny Ruiz' version of their conversation. I do not find that Ruiz quit. I find that the Respondent laid off Jaffet Ruiz because he supported the Union. There can be no more firm proof of the Respondent's motive than Clarke Junior's repeated taunts that Ruiz should get the big money from the Union guys. The record shows, and I find, that after it laid off Ruiz the Respondent gave his work to Otto, a non Celtic employee. At the same time, the record discussed above shows that Celtic subcontracted work to Abacus and other companies. I credit Ruiz that during a Union demonstration Clarke Senior called him a piece of shit and said he would rather die than accept the Union. Although Ruiz does not speak much English he testified that he was able to understand the Clarkes while on the job. The phrases he attributed to Clarke Senior would be

commonplace on a construction site. I do not credit Clarke Senior's testimony that he never talked to Ruiz about the Union. Clarke's demeanor on the witness stand and his testimony convinced me that he felt great hostility toward the Union and Clarke Senior's testimony was often inconsistent and contrary to the documentary evidence. The layoff of Ruiz after July 6, 1999 because he and his family supported the Union violated Section 8 (a) (3) and (1) of the Act.

Marziliano

I find that Jack Marziliano was an impressive and reliable witness and I credit Marziliano's testimony that Clarke Senior asked him how he would vote in the election and then said that Celtic could not afford to go Union and that he did not think it would happen. I do not credit Clarke Senior's denial that this conversation took place. The questioning was carried out by the Respondent's general manager, the employee did not initiate the conversation and there was no evidence that Marziliano had openly announced his sentiments in the 1999 Union campaign. Thus I find that Respondent violated Section 8 (a) (1) of the Act by interrogating an employee about his vote in an upcoming Board election. Pleasant Manor Living Center, 324 NLRB 368 (1997).

Marziliano did not deny that he had once told Clarke Senior that he wished to work in a job that offered a Union pension and benefits. This desire is entirely consistent with Marziliano's support of the Union herein and does not prove Respondent's contention that Marziliano quit for a better paying job. Indeed, Clarke Senior testified that Marziliano continued to work for Celtic after the conversation in which Marziliano discussed the benefits of a job covered by the Union. I credit Marziliano that he asked for one day off to attend a house closing and that thereafter he reported to the job site for several days but when he called in he was told his name was not on the list. As discussed above, Soto and other Abacus employees did the work on the 15<sup>th</sup> floor of 9 East 40<sup>th</sup> Street that Clarke Senior had told Marziliano about. I do not credit Clarke Senior that Respondent could not contact Marziliano for work because it did not have his current telephone number. The evidence shows that employees normally call in for work every morning from their current job site. If Marziliano was on the list to work as claimed by Clarke Senior then whoever answered the phone in the office would have told him so. I note that Marziliano's layoff took place soon after the election at a time when Celtic was ridding itself of members of the bargaining unit and transferring work to Abacus. Thus I find that Respondent laid off Marziliano after June 24 because he supported the Union in violation of Section 8 (a) (3) and (1) of the Act.

Cuello

I credit Enrique Cuello that before the election Clarke Senior asked him whether he knew that his family had organized the Union and then told him that the Union was no good. Although Cuello does not speak that much English he was able to testify about simple conversations at the workplace. Further, Clarke Senior testified that Cuello could understand his instructions on the job. Clarke Senior's question to Cuello shows that Celtic management was aware that the Vega family was organizing

the Union and Clarke's statement that the Union was no good is another example of Celtic's anti Union animus. The General Counsel requests that I find that that Clarke Senior's statement gave the impression of surveillance of employees' union activity and was therefore an unfair labor practice. However, this statement was not alleged as a violation in the Complaint and it was not fully litigated. Because I have found many other violations of Section 8 (a) (1) another such finding would not change the nature of the remedy. Therefore, I decline to find a violation based on unalleged conduct. I credit Cuello that when he was taken off the job at 488 Madison Avenue his co-worker Edgar Cedeno suggested to supervisor Martin [Kernan] that Cuello should be sent to mix cement at 575 Park Avenue but that Kernan refused. This testimony was unrefuted other than by Clarke Junior who testified generally that there was no other work for Cuello. However, the evidence discussed above shows that Celtic had various active worksites at about the time of the election and there is no explanation for the failure to send Cuello to the 575 Park Avenue job. I do not credit Clarke Junior that Hegarty told him the job would be picketed if Cuello remained on the job site. Although Respondent urges that Clarke would not have known of Hegarty unless he had spoken to him personally, Hegarty testified that he had telephoned the Celtic office and left a message including his name and number. I find that Respondent seized upon Hegarty's call as a convenient excuse to rid itself of Cuello. Cuello's layoff took place right after the election at a time when Celtic was laying off members of the bargaining unit who supported the Union and while it was shifting money and jobs to Abacus. I find that the Respondent violated Section 8 (a) (3) and (1) of the Act by laying off Cuello after June 14, 1999 because he and his family supported the Union.

Forrester

I credit Hector Vega that he was unaware of any problems with Chilon Forrester's work, that he had not complained about Forrester's work and that he was not instructed to watch Forrester. Hector Vega is a long time employee of the Clarkes and he was still employed by Celtic at the time of the hearing. Therefore, Hector Vega had no incentive to shade the truth in a manner inimical to the Respondent's interests. I credit Hector Vega that there was a problem with the door closers which arose from the doors themselves, that this problem antedated Forrester's effort to install the door closer and that no door closers actually fell down. I credit Forrester that he brought the door closer problem to the attention of Barry Clarke and that Clarke did not get him the screws he needed to do the job properly. I credit Forrester that this incident occurred two or three months before Forrester was discharged in late May 1999. The testimony offered by Respondent with regard to Forrester is revealing in its inconsistency. Barry Clarke either could not recall or did not know that there had been a general problem with respect to door closers and he did not recall that Forrester asked him for better screws with which to install the door closers. Josey did recall that Forrester explained that his request for proper screws had been ignored but Josey blamed Forrester for doing the job he had been ordered to do. In a non-sequitur, Josey complained that Hector Vega could have obtained the

necessary screws. Josey did not explain why it was Forrester's fault that Vega had not gone to the hardware store. Clarke Senior offered the testimony, contradicted by Hector Vega and Marziliano, that they had complained about Forrester's work. Finally, Respondent offered the preposterous testimony of Jacobson that the door closer actually fell on a Court Street lawyer. Based on the timing of Forrester's layoff on May 24, the conflicting testimony given by the Respondent's witnesses and the fact that Respondent shortly began shifting work to Abacus, I find that the Respondent in fact discharged Chilon Forrester because he supported the Union and as part of a pattern to rid itself of bargaining unit employees. The Respondent thus violated Section 8 (a) (3) and (1) of the Act.

#### Gordillo

I credit the testimony of Mejia, Gordillo, Acevedo and Ogando that the woodworking shop employees discussed the Union when they ate lunch together. It is clear from the testimony of these witnesses that Gordillo was the only shop employee who attended Union meetings and who spoke openly of supporting the Union for higher wages and benefits. I find that Mejia, the conduit between the Clarkes and the men in the shop, knew that Gordillo supported the Union. Clarke Senior was in charge of the woodworking shop and he was at the shop every day. Clarke Senior testified that he made the decision to discharge Gordillo after the fire. Clarke Senior said there was not enough work for everyone and he kept only the most knowledgeable shop employees. Clarke Senior said he chose to fire Gordillo for tardiness and slow work. As an example Clarke said that the molding job at 9 East 40<sup>th</sup> Street took Gordillo four weeks to complete; however, Gordillo's time cards show that he was at that location from April 27 to May 3, a span of only one week. Moreover, Gordillo's time cards show that he reported at 8 am but was marked late, purportedly on Clarke's instructions, even though other employees whose cards bear the same 8 am reporting time were not marked late.<sup>44</sup> Clarke Senior did not explain this discrepancy. The written warnings issued soon after the election refer to falsely claiming time worked. Gordillo denied that he falsified his time cards. Indeed, it is hard to see how he could have done so since he was required to call the office every morning when he got to the work site. In any event, Clarke Senior did not say that he decided to fire Gordillo because he falsified his time cards. I find it most significant that Clarke Senior did not testify that he decided to fire Gordillo because he refused to clean up the shop.<sup>45</sup> All the other witnesses called by the Respondent testified that Gordillo was fired for refusing to help after the fire, among these Clarke Junior, Mejia and Gordillo's co-workers. Mejia swore that Gordillo would still have a job if only he had helped clean the shop. The testimony about Gordillo's refusal to clean up the shop was a well-orchestrated effort to justify Gordillo's discharge but it was all inconsistent with the testi-

<sup>44</sup> The record establishes that at some job sites where Gordillo was assigned to perform installations he could not enter the building until 8:30 am. Therefore, his reporting time would not have been 8 am.

<sup>45</sup> Gordillo himself denied that he refused any management request to help clean the shop.

mony of Clarke Senior, the manager who said he made the decision. In summary, the Respondent offered exaggerated, unsubstantiated, inconsistent and shifting reasons for the discharge of Gordillo, the only Union adherent in the woodworking shop. I find that Gordillo was discharged after July 27, 1999 because he supported the Union. Respondent thus violated Section 8 (a) (3) and (1) of the Act.

As discussed above, Mejia was the conduit between Clarke Senior and Clarke Junior and the Spanish speaking shop employees, transmitting the managers' directives and instructions. Mejia told the employees where to work and what to work on. Mejia possessed apparent authority to speak on behalf of management and was an agent of Celtic. Debber Electric, 313 NLRB 1094, 1096 (1994). I credit Gordillo that Mejia told the shop employees that Clarke Senior would not let the Union come into the company and that employees who voted for the Union could be fired. These statements threatening that selecting a Union would be futile and that employees would be discharged for choosing the Union violated Section 8 (a) (1) of the Act.

#### Andrew and Perry

Respondent's witnesses testified that there was a slowdown in and a decrease in the quality of painting performed by Matthew Andrew and Samuel Perry. Clarke Senior recalled slow work and sloppy conditions and Clarke Junior spoke of a reduced level of production. Clarke Senior attributed the slowdown to the fact that "the men wanted to join a union." Both Clarkes attributed a purported loss of painting work to the misdeeds of their employees and cited this as a reason for laying off Andrew and Perry and giving the work to subcontractors.<sup>46</sup>

However, most curiously, Clarke Senior said that he preferred his own crew because they are good workers; he said that Andrew is a very hard worker and he said that whenever he had painting work he offered it to Andrew and Perry. Clarke Junior confirmed that he had asked Andrew and Perry to return to work full time for Celtic because he and his father were familiar with them. The record shows that starting in the spring of 2000 Celtic gave them part time work. It is not possible to reconcile the claims of slow and shoddy workmanship with the tributes to the work habits of Andrew and Perry. Either these are two inconsiderate and bad workers or they are excellent painters whom Celtic was eager to rehire. I believe that Clarke Senior was sincere when he praised Andrew and Perry. Thus, I believe that the reason Celtic laid them off just days after the election was because they supported the Union. The record establishes that, contrary to the claims of the Clarkes, Celtic did not lose painting work. Rather, as set forth above, Celtic began using other companies as subcontractors to perform the painting work previously done by Andrew and Perry. I find that Respondent violated Section 8 (a) (3) and (1) of the Act by laying off Andrew and Perry on June 11, 1999.

#### Feliciano

<sup>46</sup> Clarke Senior also blamed the Union demonstrations which began in mid-July for the June 11 layoffs of Perry and Andrew.

It is easier to make credibility determinations when it is clear that one witness lied and the opposing witnesses were truthful and accurate. Unfortunately, this seldom happens. With respect to Feliciano, the record is full of inaccuracies and evasions from both the Respondent's and the General Counsel's witnesses. Although Feliciano's discharge presents a very close question, I have made the difficult credibility determinations based not only on my reading of the record but also on my actual impressions during the hearing.

The three warning notices addressed to Feliciano which were produced by Respondent do not seem to have been manufactured for the instant hearing. Feliciano acknowledged receiving the last of the notices which on its face refers to prior warnings. Feliciano acknowledged that he did not question anyone about the reference to prior warnings. I believe that all of the notices were actually given to Feliciano in his pay envelopes. The first of these notices was dated in December 1998, well before the Union organizing campaign. It refers to Feliciano's starting time as 7:30 am. I do not credit Feliciano's statements that he did not receive all three written warnings.

I note that Josey, Flores and Feliciano himself did not recall exactly when he became a truck driver. Thus, it is hard to fault Respondent's witnesses for a failure of recollection shared by the alleged discriminatee himself. But Flores' testimony that Feliciano had been required to report at 7:30 am from the first day of his employment as a laborer did not help Respondent's cause. This is not the only instance where Flores testified with a willful disregard for the actual truth in an effort to aid Respondent's case. On the other hand, I find that Josey is a credible witness with respect to Feliciano. Josey was Feliciano's immediate supervisor and he was very certain that once Feliciano became a truck driver he was required to report to the shop at 7:30 am. This testimony was supported by that of Mejia and both Clarkes and borne out by the fact that Feliciano did in fact report at 7:30 on many occasions. Although I have not credited the Respondent's witnesses in many other areas, with respect to Feliciano they offered convincing testimony to show why the driver was required to report earlier than the other employees. Josey's testimony about the many times he warned and counseled Feliciano orally was especially convincing. I do not credit Feliciano that when he became a truck driver his hours did not change. My impression when he testified to this effect was that he was not truthful. Moreover, Josey's testimony that Feliciano was suspended for a week in April in an effort to correct his tardiness was not contradicted by Feliciano. In summary, I find that from October 6, 1998 Feliciano was required to report regularly at 7:30 am to the shop unless instructed otherwise. I find that Feliciano was frequently late and that he was warned orally and in writing. I find that Respondent discharged Feliciano because he would not correct his habitual tardiness.

Had I found that a motivating factor in Respondent's discharge of Feliciano was due to his or his family's support of the Union, I would also find that Respondent would have discharged Feliciano because of his incorrigible lateness even in the absence of Union activity. Respondent's efforts to correct Feliciano's tardiness began before the Union organizing campaign and Feliciano's inability to report at 7:30 am was abun-

dantly clear. *Wright Line*, 251 NLRB 1083,1089 (1980), *enfd.* on other grounds, 662 F.2d 899 (1<sup>st</sup> Cir. 1981), *cert. denied*, 455 U.S. 989.

CONCLUSIONS OF LAW

1. Respondents Celtic General Contractors, Inc. and Abacus Management Corp. constitute a single employer.
2. By informing employees that it would not hire them if they were members of the Union the Respondent violated Section 8 (a) (1) of the Act.
3. By offering employees a bonus to work late on the evening of the election the Respondent violated Section 8 (a) (1) of the Act.
4. By questioning employees about their support for the Union and how they would vote in the election the Respondent violated Section 8 (a) (1) of the Act.
5. By informing employees that selecting the Union to represent them would be futile and that they would be discharged for choosing the Union the Respondent violated Section 8 (a) (1) of the Act.
6. By informing employees that they were discharged because they had communicated with the Union and caused the Union to stage a demonstration the Respondent violated Section 8 (a) (1) of the Act.
7. By laying off Jose Manuel Vega, Jaffet Ruiz, Jack Marziliano, Enrique Cuello, Matthew Andrew and Samuel Perry because they supported the Union the Respondent violated Section 8 (a) (3) and (1) of the Act.
8. By discharging Chilon Forrester and Mario Gordillo because they supported the Union the Respondent violated Section 8 (a) (3) and (1) of the Act.
9. The General Counsel has not shown that the Respondent engaged in any other violations of the Act.

REMEDY

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

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>47</sup>

<sup>47</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.

## ORDER

The Respondent, Celtic General Contractors, and Abacus Management Corp., a single employer, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Informing employees that it will not hire them if they are members of the District Council for New York City and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other union.
  - (b) Offering employees a bonus to work late on the day of an election.
  - (c) Questioning employees about their support for a union or how they will vote in an election.
  - (d) Informing employees that selecting a union would be futile and that they will be discharged for selecting a union to represent them.
  - (e) Informing employees that they are discharged because they communicated with the Carpenters Union, or any other union, and caused the Union to stage a demonstration.
  - (f) Laying off and discharging employees because they support the Carpenters Union or any other union.
  - (g) 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 Manuel Vega, Jaffet Ruiz, Jack Marziliano, Enrique Cuello, Matthew Andrew, Samuel Perry, Chilon Forrester and Mario Gordillo 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 Manuel Vega, Jaffet Ruiz, Jack Marziliano, Enrique Cuello, Matthew Andrew, Samuel Perry, Chilon Forrester and Mario Gordillo whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.
  - (c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs and discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the layoffs and discharges will not be used against them in any way.
  - (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 facility in New York, New York copies of the attached notice, in English and in Spanish, marked "Appendix."<sup>48</sup> Copies of the

<sup>48</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 Na-

notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 21, 1999.

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

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

## 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 discharge, lay off or otherwise discriminate against any of you for supporting District Council for New York City and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other union.

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

WE WILL NOT inform you that Union members will not be hired.

WE WILL NOT offer you bonuses to work late on the day of an election.

WE WILL NOT inform you that selecting the Union would be futile and WE WILL NOT inform you that you will be discharged for selecting the Union to represent you.

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tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT inform you that you are discharged for calling the Union and asking the Union to demonstrate at a job site.

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 Manuel Vega, Jaffet Ruiz, Jack Marziliano, Enrique Cuello, Matthew Andrew, Samuel Perry, Chilon Forrester and Mario Gordillo full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Jose Manuel Vega, Jaffet Ruiz, Mack Marziliano, Enrique Cuello, Matthew Andrew, Samuel Perry, Chilon

Forrester and Mario Gordillo whole for any loss of earnings and other benefits resulting from their layoff or discharge, less any net interim earnings, plus interest.

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

CELTIC GENERAL CONTRACTORS, INC.