

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

**JOHN RUSHING d/b/a
INDUSTRIAL ELECTRIC SERVICE**

and

Case 16-CA-22138

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION 20**

Michael Rank, Esq., for the General Counsel.
William C. Murley, Esq. and Brian Johnston, Esq.,
for the Respondent.
Jesse Whitley, Organizer Coordinator,
for the Charging Party.

BENCH DECISION

STATEMENT OF THE CASE

JANE VANDEVENTER, Administrative Law Judge. This case was tried on January 9 and 10, 2003, in Ft. Worth, Texas. On January 10, 2003, after hearing oral arguments by counsel, I issued a Bench Decision pursuant to Section 102.35(a)(10) of the National Labor Relations Board's Rules and Regulations, setting forth findings of fact and conclusions of law.

I certify the accuracy of the portion of the transcript, as corrected,¹ pages 367 to 403, containing my Bench Decision, and I attach a copy of that portion of the transcript, as corrected, as "Appendix A."

I include in this written decision a complete version of the Order which was given in part in the Bench Decision. I also include, as Appendix C, the Notice to Employees referred to in the Order.

Exceptions may now be filed in accordance with Section 102.46 of the Board's Rules and Regulations, but if they are not timely or properly filed, Section 102.48 provides that my Bench Decision shall automatically become the National Labor Relations Board's Decision and Order.

¹ I have corrected the transcript containing my Bench Decision and the corrections are reflected in the attached Appendix B.

In my Bench Decision, I inadvertently failed to include in my Conclusions of Law a conclusion reflecting my finding that Respondent had also violated Section 8(a)(4) of the Act by refusing to hire Jesse Whitley, Joe Dean Manry, and Clayton Warwick because the Union had filed charges with the National Labor Relations Board on their behalf, thereby violating Section 8(a)(4) of the Act. I therefore add the following to the Conclusions of Law contained in my Bench Decision:

(3) By refusing to hire Jesse Whitley, Joe Dean Manry, and Clayton Warwick because the Union had filed charges with the National Labor Relations Board on their behalf, Respondent has violated Section 8(a)(4) of the Act.

On the findings of fact and conclusions of law, as corrected, included in my Bench Decision and on the entire record, I issue the following recommended:²

ORDER

The Respondent, John Rushing, d/b/a Industrial Electric Service, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union membership, activities, or sentiments, informing employees that Respondent does not hire union employees, informing employees they will be required to sign a paper stating that they are not salting, interrogating employees as to their willingness to sign such a document, directing employees to participate in a show of hands poll as to whether they do or do not desire to go union or to talk to the Union, requiring employees to sign a written poll form as to whether they do or do not desire to go union or talk to the Union, threatening to close the shop if employees do not sign such a poll form, closing the shop early because employees do not sign such a poll form, informing employees that they and other employees lost their jobs because of refusing to sign such a poll form, telling employees that they are breaking the law and insiting that they leave because they support the union, and informing employees that their union activities cost Respondent business.

(b) Discharging employees because of their union activities, membership, or sentiments.

(c) Refusing to hire employee applicants because of their union activities, membership, or sentiments.

(d) Refusing to hire employee applicants because the Union had filed a charge on their behalf.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

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

(a) Within 14 days from the date of this Order, offer Lewis Adamson full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Within 14 days from the date of this Order, offer employment to Jesse Whitley, Joe Dean Manry, and Clayton Warwick.

(c) Make Lewis Adamson, Jesse Whitley, Joe Dean Manry, and Clayton Warwick whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, remove from its files and destroy any and all originals and copies of poll forms concerning employees' views, sentiments, or desires concerning a union, and within 3 days thereafter notify the employees in writing that this has been done and that the unlawful poll forms will not be used against them in any way.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Lewis Adamson, and to the unlawful refusals to hire Jesse Whitley, Joe Dean Manry, and Clayton Warwick, and within 3 days thereafter notify the employees in writing that this has been done and that the unlawful discharge and refusals to hire will not be used against them in any way..

(f) 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.

(g) Within 14 days after service by the Region, post at its Midlothian, Texas, location copies of the attached notice marked "Appendix C."³ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all

³ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading **"POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD"** shall read **"POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."**

current employees and former employees employed by the Respondent at any time since August 21, 2002.

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

Dated at Washington, D.C.

Jane Vandeventer
Administrative Law Judge

1 because of the way they behaved, they were clearly within
2 their rights in assessing these guys as not fit for
3 employment, despite their minimum qualifications.

4 The Company believes that for certain, the allegations
5 of an unlawful failure to hire and an unlawful termination
6 with respect to the applicants and Mr. Adamson, is not
7 well-founded, and we ask that you deny those allegations, deny
8 any relief or back pay in connection with those allegations,
9 and grant the Employer any other appropriate relief consistent
10 with your ruling on those things.

11 THE COURT: Thank you very much for your arguments.
12 We'll be back here at 2:00 o'clock.

13 All right. We're off the record.

14 (Off the record at 1:28 p.m. and reconvened at 2:00 p.m.)

15 THE COURT: On the record.

16 This will head this bench decision.

17 BENCH DECISION

18 This is a bench decision pursuant to the Board's rule
19 in Section 102.35(a)(10).

20 This case has been tried on January 9th and 10th, 2003.

21 The complaint in this case alleges that the Respondent
22 violated Section 8(a)(1) of the Act by variously interrogating
23 employees regarding their union membership or activities or
24 sentiments, telling employees the Respondent would not hire
25 union electricians, telling employees the Respondent required

1 employees to sign a document stating that they would not
2 organize for the Union, interrogating employees regarding
3 promise to sign such a document, polling employees regarding
4 their union sentiments, threatening to close its shop and
5 closing its shop on one day, as well as other 8(a)(1)
6 allegations.

7 The complaint also alleges 8(a)(3) violations in that
8 Respondent is alleged to have terminated Lewis Adamson
9 on August 23rd and refusing to hire three job applicants on
10 the same date, all because of their union activities. And at
11 hearing, the General Counsel moved to amend the complaint and
12 that amendment was granted, to add the allegation that
13 Respondent, in addition, violated Section 8(a)(4) of the Act
14 by refusing to hire the same three job applicants on the 23rd
15 of August, 2002, because the Union had filed a charge on their
16 behalf.

17 The Respondent by its answer and -- its additional
18 answer to the amendment on the record has denied the essential
19 allegations in the complaint. After conclusion of the
20 evidence, the parties have presented closing arguments, and
21 now, based on the testimony of the witnesses, including
22 particularly my observation of their demeanor while
23 testifying, the documentary evidence and the entire record, I
24 make the following findings of fact.

25 (1) Jurisdiction. Respondent is a sole proprietorship with

1 an office and place of business in Midlothian, Texas, where it
2 is engaged in business as an electrical contractor --
3 construction contractor.

4 During a representative one year period, Respondent
5 purchased and received at its facility goods valued in excess
6 of \$50,000 from suppliers within the State of Texas, who, in
7 turn, received those goods directly from points outside the
8 State of Texas. Accordingly, I find as Respondent has
9 stipulated, that it is an employer engaged in commerce within
10 the meaning of Section 2(2)(6) and (7) of the Act.

11 The Charging Party, who I will call the Union,
12 hereafter is a labor organization within the meaning of
13 Section 2(5) of the Act.

14 (2) Unfair labor practices.

15 (A) The facts. The main events that are involved in
16 this case began on August 21st, 2002. An
17 electrician named Lewis Adamson, who had been a journeyman for
18 approximately eight years at the time and had approximately 13
19 years of experience in the electrical trade, and was a union
20 member, had learned of a job posting at the Texas Workforce
21 Commission for a journeyman electrician.

22 The Texas Workforce Commission customarily posts
23 notices on behalf of employers.

24 Mr. Adamson secured the name and phone number to call.

25 It turned out to be Industrial -- the Respondent herein. He

1 called and talked to Melinda Rushing, the wife of John
2 Rushing, the sole -- the main sole proprietor.

3 Mr. Adamson expressed his interest in employment. Ms.
4 Rushing, in turn, stated that the Company needed electricians.
5 Among other things, she stated that the Company had 11 jobs
6 locally and needed an employee to staff a new service truck,
7 needed a fourth crew, and to complete its third crew, needed
8 lead men, and although it had hired one electrician recently,
9 still needed electricians, and said that Mr. Adamson might be
10 paid as much as \$17 an hour to start.

11 Finally, near the end of the call, Mr. Adamson
12 asked if all he needed to do was to come and fill out an
13 application, and he was in, and Ms. Rushing answered, you're
14 in, and invited him to come in to fill out an
15 application. He arranged to come in later that day, and
16 indeed, an hour or two later, went to Respondent's premises
17 and filled out an application.

18 After Mr. Adamson filled out his
19 application, John Rushing spoke to Mr. Adamson. According to
20 Mr. Adamson's testimony, he said he had about ten employees in
21 the Dallas/Midlothian area, and wanted to get up to about 22
22 employees.

23 When Mr. Adamson asked for \$17 an hour, Mr. Rushing
24 said, I'll pay you \$16 an hour for two weeks. If we still
25 like you, you'll get a raise to \$17 an hour at that time. And

1 he informed Mr. Adamson that he could fill out his W-4 and any
2 other paperwork required to be officially put on the payroll
3 at any time.

4 The facts in addition show that Mr. Adamson had filed
5 an application -- prior application with Respondent some
6 year and a half earlier, but no mention was made of that prior
7 application during this initial job interview.

8 On his application in August of 2002, Mr. Adamson
9 purposely left off any mention of his union electrical
10 training or union employers. Mr. Adamson stated he did this
11 because he was afraid that his union affiliation would prevent
12 his getting a job, and that he needed a job.

13 During their initial interview, Mr. Adamson testified
14 that Mr. Rushing looked at his last listed
15 employment, which had been at a Sherwin Williams plant, and
16 that Mr. Adamson had stated that he was laid off there, and he
17 thought that it had to do with the painters union, and that he
18 was not involved with the painters union, which led him to
19 believe he had been laid off because of that. Rushing then
20 asked him if he had been a union member or involved with the
21 union at Sherwin Williams, and Adamson said that
22 he had not.

23 Following the interview, Adamson worked with Rushing
24 for a period of time after the interview. In other words, he
25 began immediately. He left early from work that day, however,

1 in order to pick up his daughter from school and reported the
2 following day to work.

3 But when he got home that very same night, on the 21st,
4 there was a message on his answering machine to call
5 Respondent Company. He did. He called the Company, and
6 talked to Melinda Rushing. After discussing how to get hold
7 of Mr. Rushing, Melinda Rushing told Adamson that John Rushing
8 wanted to know whether he, Adamson, was union. Adamson
9 answered that no, he had told him so earlier. And Melinda
10 Rushing added that the Company did not hire union electricians.

11 After this conversation, Mr. Adamson called Mr. Rushing
12 -- John Rushing who, after initial greetings, asked Mr.
13 Adamson if he still was a member of the Union. Mr. Adamson
14 said, no, I told you earlier, I'm not involved with the Union,
15 and Mr. Rushing asked him about Dallas Convention Center job.

16 Mr. Adamson said he did not recall having worked on the
17 convention center. Rushing then informed Adamson that he was
18 an open shop, and that he'd had the Union try to get in and
19 salt his company, and he was not going to have it.

20 He described to Mr. Adamson some problems with the
21 Union, alleged they had followed employees, knocked on their
22 door, and threatened them. Mr. Rushing added that he had
23 heard through the grapevine that Adamson was union, and needed
24 to find out for sure. He also told Adamson to let him know if
25 the Union tried to harass him or talk to him, or if he had any

1 problems with the Union.

2 Rushing also informed Adamson that he had all of his
3 employees sign a document saying that they're not involved
4 with the Union. Adamson assured Rushing that he was willing
5 to sign this document, and that he would let him know if he
6 had any problems.

7 These conversation that I've summarized,
8 Adamson's testimony, were denied by witnesses,
9 John Rushing and Melinda Rushing: not that the conversations
10 occurred, but the main allegations that Adamson made in his
11 testimony.

12 The following day on the 22nd of August, Mr. Adamson
13 worked a full day. During the day, employee Brenda Ayers, who
14 was at the job site, was introduced to the employees, and
15 Melinda Rushing told the employees to come into the office,
16 and John Rushing, by speaker phone, informed the assembled
17 employees that Brenda Ayers would be in charge of the job and
18 would lay out their work and would see that everyone was doing
19 their job.

20 This testimony by Mr. Adamson concerning the
21 announcement about Brenda Ayers was not denied or contradicted
22 by any witness. It should be noted at this point and
23 throughout, Brenda Ayers did not testify either about this
24 event or any of the events that occurred the following day.

25 She didn't testify in this hearing at all.

1 The following day on the 23rd, Mr. Adamson understood that
2 he was supposed to show up at the shop to meet his co-worker,
3 an employee named Raphael Barrera, but Mr. Barrera was
4 not at the shop. According to Mr. Adamson's testimony, Mr.
5 Rushing arrived and found Mr. Adamson at the shop but not Mr.
6 Barrera, and went about trying to getting Barrera to come back
7 to the shop. In the meantime, Mr. Adamson was put
8 to work hanging lights.

9 Mr. Adamson also, at some time between 8:00 and 9:00
10 that morning, saw three applicants at the office
11 Respondent's office, whom he recognized as fellow union
12 members. Shortly after this, he observed Mr. Rushing come out
13 of the shop. He described him as throwing some things and
14 cursing.

15 Mr. Adamson also testified that Ms. Rushing came out
16 into the shop and told the employees not to talk about
17 Respondent's jobs and to shut up. When Mr. Adamson asked why
18 she had questioned him, Ms. Rushing stated that she had been
19 told by Mr. Barrera that Adamson had been in the Union, and
20 that Mr. Rushing thought Adamson's presence on the job was the
21 reason that the three union applicants had come to
22 the office.

23 Ms. Rushing continued that Mr. Rushing hates union
24 employees and that if Mr. Rushing
25 thought an employee was involved in the Union, he would fire

1 that employee. Ms. Rushing denied this conversation, or the
2 remarks made in this conversation.

3 Mr. Barrera had come back to the shop, and Mr. Adamson
4 observed Mr. Rushing hollering at Mr. Barrera. At this point,
5 Mr. Adamson went to his truck and got his union t-shirt from
6 his truck and put it on.

7 Prior to leaving for the job site with Reuben Barrera
8 however, Mr. Adamson went into the office, asked Ms.
9 Rushing about his W-4 form, and while there, said hello to the
10 three union applicants in the office, told them that there was
11 work with the Company, and that he was glad to see them. Ms.
12 Rushing then stated that, we don't have that work, we just
13 have bids out.

14 Adamson at that point went with Mr. Barrera to the job
15 site they were assigned to go to, which was called the VSA job
16 site. Some time later, Mr. Rushing came to the job site,
17 according to Mr. Adamson, and while cursing, and
18 saying, that son of bitch, you are a lying bastard, why did
19 you lie to me, or words to that affect.

20 Mr. Adamson said that he did not believe he would've
21 been hired if he had been honest about his union affiliation.

22 Rushing denied that he would not have been hired and
23 stated that he had cost him contracts, and that they
24 were lost because of Mr. Adamson, and because he was wearing a
25 union t-shirt and said, "now everybody knows or thinks that

1 I have union problems."

2 At some point Mr. Rushing had a
3 conversation with a representative of the customer at the job
4 site, and after that conversation -- Mr. Adamson stated that
5 he heard the representative of the customer at the job site
6 tell Mr. Rushing that the job should've been finished two
7 weeks ago, and we're tired of waiting, and we'll get someone
8 else to finish told Mr. Rushing and his employees to
9 leave the job site.

10 Mr. Rushing and his employees did leave the job site.

11 Upon returning to the shop, Mr. Rushing called a meeting of
12 all the employees who were there, who were about six
13 in number -- approximately six in number. He stated that
14 Brenda Ayers would tell them about the Union, and that he
15 could not be involved in the meeting because he is in
16 management. Mr. Rushing, according to Mr. Adamson's
17 testimony, continued that Adamson is a union member, and he's
18 the reason we're having this meeting, and that Brenda Ayers
19 would run the meeting or conduct the meeting.

20 Brenda Ayers then informed the approximately five
21 employees who were there that Adamson is a union member, and
22 the reason for the meeting is to vote whether we want to take
23 the shop union or not. And she asked employees to vote by a
24 show of hands if they wanted to take the shop union. Mr.
25 Adamson raised his hand, and looked around, and saw that no

1 other employees did so. When he looked around, he observed
2 John Rushing and Melinda Rushing behind the employees
3 observing the meeting.

4 Ms. Ayers then asked employees who wanted not to take
5 the shop union, and she and the other four employees raised
6 their hands in response to that. Mr. Adamson stated that at
7 this point, Ms. Rushing appeared and handed some papers to
8 Brenda Ayers. Brenda Ayers handed out one of these pieces of
9 paper to each employee, and told the employees they were to
10 fill them out, and that Respondent would then keep these
11 papers in the file.

12 The paper that was handed out by Ms. Ayers, it is
13 undisputed, is a sheet of paper that is not
14 headed other than by Respondent's letterhead, and it has been
15 referred throughout the record as General Counsel's 3.

16 General Counsel's 3 reads, "I," blank, with a line
17 for a name, General Counsel's 3 has Lewis Adamson's name
18 written in, "wish to discuss or to participate in a silent
19 vote to become a union member and/or talk with the owner about
20 taking the Company union. Please indicate your choice by
21 placing a check mark in the spaces provided below."

22 First choice is, "I wish to discuss becoming a union
23 member and/or taking the Company union." The second choice
24 is, "I wish to participate in a silent vote to become a union
25 member." Third choice is, "I do not wish

1 either of the above."

2 Below these three choices is a line that says
3 "signature" underneath, another lines that says "date"
4 underneath, and in caps underneath all of the above, "I signed
5 this freely with no coercion and with no representation but
6 myself."

7 It is undisputed that some of these were filled out by
8 the employees at the meeting, and Ms. Rushing -- Melinda
9 Rushing stated that she later filed them in employee files or
10 another company file.

11 Mr. Adamson stated he witnessed other employees filling
12 out the forms, which I will call the "poll form" instead of
13 calling it GC-3. That is what I am referring to whenever I say
14 "poll form." He wrote his name at the top, but wanted to ask
15 questions about it. Mr. Adamson testified that he
16 stated, I don't think this vote is legal, and stated, I cannot
17 sign this. I need to get some advice.

18 Brenda Ayers told Mr. Adamson to sign the paper, and
19 then we'll talk to John Rushing. Mr. Adamson said, no, he
20 couldn't sign it. Ms. Ayers then went out and talked to
21 Mr. Rushing. She said she was going to talk to Mr. Rushing.

22 After a while, she came back and told Mr. Adamson, you need
23 to sign this, and then you can talk to him. Mr. Adamson then
24 said, I want to talk to a union rep and see if it's okay to
25 sign this paper. Brenda Ayers said, you can't -- told him he

1 could not talk to anyone, that first he had to sign it, and
2 then he could talk to anybody he wanted.

3 Mr. Adamson still insisted that he wanted to talk to
4 someone in the Union first. At this point, Mr. John Rushing
5 came into the room and told Mr. Adamson, according to his
6 testimony, to sign the goddamned thing. Mr. Adamson said no,
7 he needed to talk to a union representative to find out if it
8 was okay. Mr. Rushing replied that he couldn't talk to
9 anyone, and that all this was because of you. If you'd told
10 me the truth up front, that this wouldn't have happened. All
11 you had to do was tell me the truth, and you can't discuss
12 this paper with anyone.

13 He then went out, and after a few minutes, came back
14 and asked Mr. Adamson if he had signed it yet. Mr. Adamson
15 said no, and asked if he could make a phone call. Mr. Rushing
16 told him he could not make a phone call and told him he had
17 ten minutes to sign the fucking paper, or I'll close the shop
18 down.

19 At this point, Mr. Adamson went outside and another
20 employee talked to Mr. Adamson, tried to persuade him to sign
21 the paper, and then once again, Mr. Adamson spoke with Brenda
22 Ayers, and they talked about signing the paper. Again, Mr.
23 Adamson insisted to Brenda Ayers that he could not sign this
24 poll form without talking to someone. And once again, Brenda
25 Ayers went to talk to John Rushing.

1 When she came back, she told Adamson, it doesn't matter
2 if you sign it now. He's closing the shop, and we're all out
3 of a job. We're all fired because you wouldn't sign that
4 paper.

5 According to Mr. Adamson, he asked Ms. Ayers if he
6 should come back on Monday. Ms. Ayers told him no, we are all
7 fired. At this point, according to Mr. Adamson's testimony,
8 after this exchange with Brenda Ayers, he left Respondent's
9 premises.

10 Although Mr. Rushing denied the remarks attributed to
11 him by Mr. Adamson on this date, Ms. Ayers did not testify.

12 During that morning, as it's been previously mentioned,
13 three applicants -- job applicants came into Respondent's
14 premises between 8:00 and 9:00 a.m. They were Jesse Whitley,
15 Joe Dean Manry, and Clayton Warwick. Both Mr. Whitley and Mr.
16 Manry testified they are organizers with the Union. All three
17 wore the union name or logo on their clothes, either on a shirt
18 or a hat or on both.

19 The evidence was clear and undisputed,
20 from documentary and or testimony, all three
21 possessed the announced qualifications for a journeyman
22 electrician job, over four years' of experience,
23 correct licenses, and the sufficient training and skills to
24 qualify as a journeyman electrician. All three filled out
25 applications provided to them by Melinda Rushing at the office.

1 After they had filled out applications -- or, during
2 the time they were filling out applications, another employee
3 applicant of unknown name, arrived at the office, and sat
4 down, and began to fill out an application also. Both Melinda
5 Rushing and Mr. Whitley and Mr. Manry testified that there was
6 such an applicant also in the office.

7 After the three applicants, Whitley, Manry, and Warwick
8 had finished their applications, John Rushing entered the
9 office and asked the three employees who was their union
10 representative. After a repetition of the question, the
11 employees stated they were from Local 20, and John Rushing
12 immediately told them to leave their applications and leave
13 the premises, that they had just salted him, and that they had
14 broken the law, and that he would have his attorney call them.

15 He added that he'd been in the Union -- Mr. Rushing added
16 he'd been in the Union, and he knows how it works.

17 Mr. Rushing repeated that you broke the law, you salted
18 me, and again, asked them to leave. The
19 employees stated that they had come in to
20 apply for work and wanted to have interviews, and
21 then Mr. Rushing began to talk about a prior contact with Mr.
22 Whitley some years earlier, and at that point, he
23 raised his voice, interrupted, and began to repeat himself and
24 then again, told employees they had broken the law, and after
25 some further comments, told them to leave, which after

1 requesting an interview -- Mr. Warwick requested an
2 interview, and then the employees left the office.

3 Mr. Whitley and Mr. Manry testified that they checked on
4 their applications within the next two weeks, but they never
5 heard anything further from Respondent. John Rushing stated
6 in his testimony that he was not aware they continued to be
7 interested in employment. He never heard that they had called
8 to check on their employment, and that he assumed they were
9 not interested after charges had been filed, and in
10 cross-examination, did state that he did not hire these three
11 employees because of the charges that were filed with the NLRB
12 the following Monday or Tuesday.

13 It was stipulated that at least three journeymen
14 carpenters were hired by Respondent during the approximately
15 six weeks following this date as well as one helper.

16 First, I have relied on facts which I have
17 recited as well as all those in the record.

18 Regarding credibility, there are direct
19 conflicts in the testimony. First with regard to the conflicts
20 between Mr. Adamson's testimony and that of both John and
21 Melinda Rushing. In demeanor I found Mr. Adamson to be a
22 straight-forward witness. In testimony he gave a coherent and
23 detailed account of the facts. He demonstrated that he has a
24 good memory. His testimony, in addition, was corroborated by
25 one tape recording, he had

1 made of several telephone conversations, which corroborate his
2 testimony in detail.

3 The fact that he misrepresented on his application that
4 he had previously applied to the Respondent does not outweigh
5 his detailed corroborated testimony.

6 With regard to Mr. John Rushing,
7 first, his testimony showed poor recall. In fact,
8 he stated that at crucial times about which he testified, he
9 was either "very upset" or "pissed off" during these events,
10 and in his testimony, he wandered, often went off on
11 tangents and rambled into other subjects, contradicted himself
12 on several occasions, often did not listen to the question or
13 answer the question asked. At times he testified in
14 extravagant and conclusionary language, very short on facts
15 and specifics. At other times, his testimony became confused
16 and imprecise.

17 His description of his own calm response to the
18 news of Mr. Adamson's pro-union stance was that he said okay.

19 Given the credited testimony to the contrary, I do not
20 find that believable.

21 His statement that the
22 reason for giving the poll to the employees, the poll about
23 their union sentiments, was that he just wanted their opinion
24 and would be happy to arrange a union meeting -- a meeting for
25 the union with them if they wished to talk about the union, I

1 also find disingenuous. Therefore, in view of Mr. Adamson's
2 testimonial conflicts with that of John Rushing, I credit Mr.
3 Adamson's testimony.

4 Melinda Rushing's testimony conflicted with that of Mr.
5 Adamson in a few particulars, about three or four particulars.

6 Again, I would credit Mr. Adamson for all the same reasons.

7 His testimony was detailed, it was corroborated, and he
8 demonstrated a good memory. Ms. Rushing's attitude, or
9 demeanor in testifying was somewhat surly. She testified in
10 conclusionary terms regarding the contested facts rather than
11 in factual terms. For all those reasons, where there is a
12 conflict, I credit Mr. Adamson's testimony.

13 And with regard to the tape recorded transcripts, the
14 transcripts are not evidence. The tape recordings themselves
15 are the evidence, but I have read the transcripts, and
16 compared them with the tape recordings in evidence, and find
17 that they are substantially accurate. The inaccuracies are in
18 small, minor and immaterial words only. And there are only
19 three or four of those inaccuracies.

20 We'll first turn to the agent and
21 supervisory issues as they are preliminary issues. First,
22 regarding Ms. Melinda Rushing, Respondent's
23 Counsel described Respondent as a mom and pop operation.

24 Melinda is the wife of the sole proprietor, or the mom of the
25 mom and pop operation. Through her testimony and that of John

1 Rushing, it was established that that she has
2 certain personnel responsibilities, such as assessing the
3 skills, references, qualifications, and experience of
4 applicants, and of pruning those applications, choosing the
5 ones that will be referred to John Rushing for further
6 consideration.

7 She also communicated hiring plans and policies to
8 potential employees, and it can be gleaned from the testimony
9 of both the Rushings, made effective recommendations, which
10 John Rushing, both in deference to her work and her authority
11 and their relationship, did give weight to her
12 recommendations. He agreed he discussed personnel matters,
13 such as hires and fires, with her.

14 She also has a direct financial interest in the
15 business. She works in it full time and is the wife of the
16 sole proprietor.

17 I find that she is an agent under
18 2(11) of the Act. Her title as office manager also shows that
19 she has some managerial authority.

20 Turning to Brenda Ayers, I decline, as argued by
21 General Counsel, to draw an adverse inference in any regard
22 from the failure of Respondent to call her to testify. Brenda
23 Ayers no longer works for Respondent, and it's not by any
24 means clear that it has control over her at the present time.

25 However, as most of Mr. Adamson's testimony of conversations

1 between Ms.
2 Ayers and the employees or Ms. Ayers and himself, Mr. Adamson,
3 is uncontradicted. His testimony stands as uncontradicted in
4 this record. Consequently, no adverse inference is really
5 necessary.

6 With regard to her supervisory status, Mr. Adamson
7 testified, again without contradiction, that John Rushing told
8 himself and other assembled employees that she was in charge
9 of the job, would lay it out. That means in electrical
10 circles, assign work. She was to assign work and to make sure
11 they did their work. Even John Rushing, in his testimony,
12 admitted that he "may have" told employees that Brenda Ayers
13 was their foreman.

14 It is undisputed that John Rushing authorized and
15 directed Brenda Ayers to conduct the unlawful poll of
16 employees regarding their union sentiments, and therefore she
17 had specific authority to engage in that activity on behalf of
18 Respondent.

19 In addition, Brenda Ayers repeatedly checked with John
20 Rushing during the course of her discussions with Mr. Adamson
21 on the last afternoon of his employment, as she went back and
22 forth between John Rushing and Lewis Adamson checking on
23 Adamson's different requests to be allowed not to sign the
24 poll form or to be allowed to consult with the Union before he
25 did so. It may be presumed from what she then said to

1 Mr. Adamson and from her actions stating that she was going to
2 check with John Rushing. Then, in fact, she repeatedly
3 checked with John Rushing and continued to receive authority
4 from him. She was at the very least a go-between and a
5 conduit of management views and words to the employees, and
6 specifically to Lewis Adamson.

7 I therefore find that Brenda Ayers has been shown
8 on this record to be a supervisor and agent within the meaning
9 of the Act. And also, an additional finding is that she had
10 specific authority to engage in the polling of employees on
11 Respondent's behalf, and the conversations with Adamson on
12 Respondent's behalf on the afternoon of August 23rd.

13 With regard to the allegations of 8(a)(1), there are a
14 lot of them. I'm going to try to take them systematically and
15 hope to be clear, and will generally follow the complaint
16 pattern, although that's not entirely a chronological pattern.

17 Initially the allegations concern John Rushing,
18 concerning his activities on
19 August 21st, both in person, at his meeting with Mr. Adamson
20 at the shop as well as later phone conversations with Mr.
21 Adamson. As I have credited Mr. Adamson with regard to those
22 conversations, it is clear that Mr. Rushing did coercively
23 interrogate Mr. Adamson. At the time, he had no idea of Mr.
24 Adamson's union sentiments one way or the other. It was a job
25 interview situation. He was the top official in the

1 Company.

2 He repeated the questions about union
3 affiliation several times. All these factors show that the
4 interrogation of Mr. Adamson about his union membership
5 or past association or activities was coercive.

6 He had told Mr. Adamson that Respondent does not hire
7 union electricians, and he also told Mr. Adamson that he
8 required employees to sign a paper stating they were not
9 salting, and asked Mr. Adamson whether he would sign such a
10 paper.

11 All these three statements were coercive.
12 Mr. Adamson had not yet filled out his pre-employment
13 forms. Although he had actually
14 started work that afternoon, he was still in some doubt as to
15 whether he was actually employed since he had not been put on
16 the payroll.

17 It is analogous to a
18 pre-employment situation, and therefore is more coercive for
19 that reason. It is the top official in the Company. It's
20 coercive for that reason. And, in fact, whoever
21 told an employee they would be required to sign a paper
22 stating they were not in favor of the Union or not going to
23 organize a union once they were employed, that
24 a violation of Section 8(a)(1), regardless of
25 what supervisor or agent stated that to an employee.

1 There was one other allegation of 8(a)(1) conduct, was
2 that he told Mr. Adamson that the Union might follow employees
3 or scare them or threaten them. I do not find that to be a
4 violation of 8(a)(1). That's within 8(c). It's Mr. Rushing's
5 opinion of what the Union might or might not do, and I don't
6 find that to be a violation of 8(a)(1). His opinion or
7 prediction as to what the Union might -- a union might or
8 might not do.

9 There was also an unalleged statement that I have found
10 did occur. Mr. Rushing told Mr.
11 Adamson that he would not allow the Union at his Company.

12 That has not been alleged as a violation of 8(a)(1). Hence,
13 I will not find it to be one, but I will consider it in my
14 assessment of animus.

15 With regard to Melinda Rushing, again, I've credited
16 Mr. Adamson and find that when she asked him if he was a union
17 member, or said that John wanted to find out if he was a union
18 member, a statement which calls for a response, she was
19 coercively interrogating Mr. Adamson. Again, it was a
20 pre-employment situation.

21 He had tried not to reveal his sentiments about
22 the Union one way or the other, and there was another
23 unalleged statement that she made in the same phone
24 conversation stating that Respondent does not hire union
25 electricians. That was not alleged in the complaint. Again,

1 I will not find it to be a violation specifically, but I will
2 consider it in my assessment of animus.

3 Turning now to the next sub-paragraph in the complaint,
4 those allegations concern John Rushing and concern the date
5 of August 23rd. There are three separate allegations that Mr.
6 Rushing directed employees to participate in a show of hands
7 poll, that he directed Brenda Ayers to conduct such a poll,
8 and that he watched the employee poll. I find that these are
9 all one, that he both directed and observed a poll of
10 employees regarding their union sentiments. I would find as
11 opposed to separate violations, that that's all one violation.

12 I would add that given the evidence concerning both the
13 verbal or the oral poll and the written poll
14 that followed it, it's an egregious 8(a)(1) violation. It's
15 extremely coercive. The fact that the Company retained these
16 written documents adds to the egregiousness of the violation.

17 There were, as pointed out in General Counsel's
18 arguments, no assurances of any kind, none of the Strucksnes
19 safeguards, there's no question but that it is an unlawful
20 poll.

21 Additionally, on that date, with regard to
22 conversations with Mr. Adamson, Mr. Rushing is alleged to have
23 violated 8(a)(1) by telling Adamson that nothing would have
24 happened to employees if they had been
25 honest with Mr. Rushing and told him they favored the Union,

1 even though it was unlawful to ask such a thing. That
2 comment is, in fact, a violation of Section 8(a)(1) as
3 coercive, to tell an employee, yes, it's unlawful to ask, but
4 I'm asking you anyway.

5 The next 8(a)(1) violation that's alleged is the
6 written poll, the poll form, handing that out and requiring
7 employees to sign the written poll form and refusing to allow
8 an employee to talk to or consult with anyone about it, all
9 violates Section 8(a)(1). As I stated a minute earlier, it's
10 an extremely egregious violation of Section 8(a)(1).

11 Having credited Mr. Adamson regarding his conversations
12 with Mr. Rushing, I will also credit his testimony with regard
13 to the fact that John Rushing threatened to close the shop if
14 he did not sign the poll form, General Counsel Exhibit 3. And
15 the fact that Respondent did close the shop early on that one
16 day, Friday, August 23rd, the day
17 that Mr. Adamson did not sign the poll form, that,
18 too, violates Section 8(a)(1).

19 With regard to the other allegations concerning Mr.
20 Rushing on the 23rd of August, those occurred in the office
21 area in the morning when the three union organizers wearing
22 their union logos were applying for work. The first allegation is
23 that he interrogated them about who at the Union had sent
24 them, and who their Union rep was. In fact, I find that was
25 just a repetition of the same question. I find that it is not

1 a violation of 8(a)(1) as to those three union reps. They
2 were wearing their union logos prominently.

3 Even though it was a job interview situation, they are
4 seasoned and were not hiding their union affiliation.

5 However, there was a job applicant in the room, as
6 Melinda Rushing and Mr. Manry and Mr. Whitley's testimony
7 establishes. As to that individual, who is an employee, who
8 was not wearing union paraphernalia, who was a job applicant,
9 who would objectively have been coerced by hearing the head of
10 the Company question three applicants repeatedly about their
11 union rep and their union affiliation, it is an 8(a)(1)
12 violation as to the unknown job applicant who was present in
13 the office.

14 It was again an 8(a)(1) violation to repeatedly tell,
15 as Mr. Rushing did, at least two times, tell the job
16 applicants that they broke the law by applying for jobs while
17 wearing union insignia. Or as he put it, by "salting" or
18 attempting to salt.

19 There was one allegation in the complaint that it was a
20 violation of 8(a)(1) for Mr. Rushing to tell the job
21 applicants that he would get to the bottom of this. I find
22 that was not a threat. It just meant he intended to find out
23 more. I find that statement was not a violation of Section
24 8(a)(1).

25 However, essentially throwing the three

1 union applicants out, and telling them
2 repeatedly to leave, and especially in the presence of a
3 stranger job applicant, the unknown fourth job
4 applicant who was seated in the room at the time--that is
5 coercive. It was clearly done because they were wearing union
6 insignia, and were attempting to apply for work as open union
7 adherents. That is coercive. It violates Section 8(a)(1).

8 There is one final 8(a)(1) allegation with regard to
9 Mr. Rushing, and that is at the VSA job site, he told an
10 employee in the presence of Adamson and Raphael Barrera that
11 Adamson had caused Respondent to lose a contract or contracts
12 because of his wearing his union shirt. Although Mr. Rushing
13 denied the language that Adamson testified to, he essentially
14 admitted that he had told Adamson that it was his fault that
15 he'd lost that contract out at VSA. I do find that this
16 statement was made, that it was because of Adamson's union
17 activities, and was understood that way, and violated Section
18 8(a)(1) of the Act.

19 Turning to the remarks of Brenda Ayers that were
20 testified to by Mr. Adamson, as I stated earlier, they were
21 uncontradicted. Brenda Ayers relayed to Mr. Adamson a threat
22 that Respondent would close the shop if he did not sign the
23 poll form, GC-3, the very presentation of which was a
24 violation of the Act, and certainly the requirement that it be
25 filled out and signed by Mr. Adamson was an

1 additional violation. And threatening to close the shop if he
2 didn't sign it was yet again a violation.

3 Her informing Mr. Adamson that the reason that
4 Respondent was closing his shop on that Friday for the rest of
5 the afternoon, or just closing the shop, was because of
6 Adamson's refusal to sign the form, is another violation of
7 Section 8(a)(1). In addition, her informing Mr. Adamson that
8 the reason that he and all employees lost their jobs was
9 because he would not sign the poll form, is a third violation
10 of 8(a)(1) that Ms. Ayers committed.

11

12 (Pause)

13 THE COURT: Turning now to an analysis of the Section
14 8(a)(3) violations, as both parties pointed out in their
15 arguments and has been well-summarized by the Board in,
16 or possibly the ALJ in "Fluor Daniel III," which is 333 NLRB,
17 No. 57, March 2001:

18 The elements of a prima-facia case in a refusal to
19 hire, which I'll state first, are that the Government must
20 establish that the Respondent, (1) was hiring or had concrete
21 plans to hire at the time of the alleged conduct; (2) that the
22 applicants had experience or training relevant to the
23 announced or generally known requirements of the position; and
24 (3) that anti-union animus contributed to the decision not to
25 hire the applicants. And if that is established, the

1 Respondent may defend on traditional Wright Line principles.

2 In this case, the animus of Respondent was
3 unmistakable, pervasion, strong hostility to the Union. There
4 was -- by Mr. Rushing's testimony, no union talk permitted on
5 the job site. There's been no violation of that alleged, but
6 I do note it with regard to animus.

7 His form, which was presented to employees, he had kept
8 for a year, but not presented to employees because generally,
9 according to his testimony, he asked those questions or took care
10 of matters like that by word of mouth and not on a written
11 form, was another strong indication of Respondent's animus for
12 any union activity among its employees, or even union talk on
13 the job site.

14 His avowed dislike for union reps, that is the only two
15 he'd ever met, is one more factor. And in addition, the
16 numerous 8(a)(1) statements, both to Mr. Adamson and to other
17 employees, all show that there was great animus displayed by
18 Respondent.

19 Mr. Rushing's testimony that he did not offer
20 Whitley and the two other employees who accompanied him on the
21 23rd, employment because they had filed charges with the NLRB
22 establishes that that, too, was a subject of resentment and a
23 reason behind his decision not to offer them employment.

24 The fact that Respondent has hired a few former union
25 members does not negate this strong evidence of animus,

1 especially as these same employees were either polled, or
2 according to Mr. Rushing, required to promise to refrain from
3 union activity if they were employed by Respondent.

4 The fact that Respondent didn't fire Mr. Adamson
5 immediately upon learning that he supported the Union, but
6 waited three or so hours after he had learned of that fact,
7 doesn't show lack of animus. It merely shows a delay. It
8 doesn't undercut the timing. Three hours is quite a short
9 time, and quite closely follows Mr. Adamson's display of his
10 union support. The lack of worse treatment than was accorded
11 to Mr. Adamson is not an argument that disproves animus by any
12 stretch of the imagination.

13 Therefore, it is clear that General Counsel has
14 established that the Respondent harbored significant animus.

15 Mr. Adamson's union activity and putting on his
16 union t-shirt and thereafter greeting the union reps is
17 undisputed. The fact that he was discharged is disputed.

18 Mr. Adamson testified, without contradiction, however,
19 that Brenda Ayers told him he was fired, in fact they were
20 all fired. That has not been contradicted in this record. As
21 uncontradicted testimony, I have found that it is fact. I
22 have found that Ms. Ayers is a supervisor, and was, in fact,
23 an agent specifically designated by Mr. Rushing
24 on that afternoon to talk to employees, and therefore her
25 remarks for both those reasons, are attributable to Respondent.

1 The facts that there's significant union animus in the
2 timing as well as the numerous 8(a)(1) violations that cluster
3 around all these events on two or three days in August provide
4 a very close nexus, in addition to the fact that Mr. Rushing
5 openly blamed Adamson, both for the appearance of Mr. Whitley,
6 Mr. Manry, and Mr. Warwick at his office on Friday, as well as
7 for the loss of a contract. And there is clearly a nexus
8 between the firing of Mr. Adamson and the anti-union animus.

9 I therefore find that it violated Section 8(a)(3), the
10 discharge of Mr. Adamson.

11 Other than the position that it did not fire
12 Mr. Adamson, Respondent did not really offer a Wright Line
13 defense. I found that it did, in fact, fire him, and so find
14 it unnecessary to reach Respondent's calls to Mr. Adamson on
15 the Monday. Whether they happened or not is immaterial. He
16 was fired by then.

17 With regard to Mr. Whitley, Manry, and Warwick, their
18 union activities and the Employer's knowledge of it is clear.

19 They wore their union shirts and caps and/or logos on some
20 part of their clothing into the Respondent's office on the
21 morning of the 23rd. Their qualifications are basically
22 undisputed, and they did fill out applications.

23 The animus has been canvassed previously. The fact
24 that it does have a connection with the failure to offer them
25 any employment is shown by their being required to leave

1 immediately, amidst a lot of discussion of the Union, and Mr.
2 Rushing's history with the Union. And in addition, his
3 testimony that he did not offer them jobs because they filed
4 charges, is certainly evidence of a connection with regard to
5 the Section 8(a)(4), if that was any part of the decision,
6 which it admittedly was. The violation of 8(a)(4) is also
7 established prima-facie.

8 And so I find that both an 8(a)(3) and an 8(a)(4)
9 prima-facie case has been made. Respondent has defended on
10 grounds that regardless of any union activity, it would not
11 have hired anybody whose appearance was poor, and who spoke
12 loudly, that they were not serious applicants. There is no
13 evidence in this record that they were not serious applicants.

14 In addition, Respondent has asserted that it does not
15 hire people of poor appearance or who speak in a loud voice,
16 but it has not produced any evidence that it has such a policy,
17 that it has ever used such a reason for not employing any
18 other individuals, that there is any dress code for applicants
19 when they fill out an application, nor even what the dress
20 code is, if any, on job sites. In fact, the evidence shows
21 that Respondent tolerated considerable loudness and arguments.
22 In fact, Raphael Barrera and Herbert Mayo engaged in loud
23 arguments, and their employment was continued.

24 This does not prove that Respondent had a policy against such
25 behavior, but on the contrary, it proves that it tolerated it.

1 In fact, in addition, in listening to General Counsel
2 Exhibit 8, I find that the conduct of the three applicants was
3 not particularly loud. In fact, Mr. Rushing was significantly
4 louder, more excited, repeated himself, and interrupted other
5 speakers much more often. They were not as loud as Mr.
6 Rushing, and they left after being asked a couple of times to
7 do so, and after finishing a discussion that Mr. Rushing had
8 begun about something that happened two years earlier.

9 The case cited by Respondent, Exterior Systems, does
10 not support its argument. In that case, both the Judge
11 and the Board found that the conduct of the applicants was
12 significantly more egregious than any that occurred in this
13 case. It's just not apposite.

14 I find the defense that Respondent believed in
15 good faith that the employees were no longer interested in
16 employment is not justified. I do not find that to be a
17 defense. Certainly filing of a charge does not entitle a
18 Respondent to assume that, nor does an employee's assertion,
19 or a potential employee's assertion that he will engage in
20 organizing activity once hired. That, too, does not entitle a
21 Respondent to assume that an employee is not a serious
22 applicant. That is not evidence which would support such a
23 conclusion.

24 And other than those two things, no other evidence of
25 non-seriousness as applicants is in this record.

1 For all those reasons, I find that Respondent has not
2 rebutted the case established in this record, and I therefore
3 conclude as follows: Conclusions of Law.

4 (1) By interrogating employees concerning their union
5 membership activities or sentiments, informing employees that
6 Respondent does not hire union employees, informing employees
7 they'll be required to sign a paper stating that they are not
8 salting, interrogating employees as to their willingness to
9 sign such a document, directing employees to participate in a
10 show of hands poll as to whether they do or do not desire to
11 go union or to talk to the Union, requiring employees to sign
12 a written poll form as to whether they do or do not desire to
13 go union or talk to the Union, threatening to close the shop
14 if employees do not sign such a poll form,
15 closing the shop early on one day because employees do not
16 sign such a poll form, informing an employee that he and other
17 employees lost their jobs because of refusing to sign such a
18 poll form, and informing an employee that he cost the
19 Respondent business because of his union activities.

20 By engaging in this conduct, Respondent
21 has violated Section 8(a)(1) of the Act.

22 (2) By discharging Lewis Adamson and by refusing to hire
23 Jesse Whitley, Joe Dean Manry and Clayton Warwick, Respondent
24 has violated Section 8(a)(3) of the Act.

25 (3) The violation set forth above are unfair labor

1 practices affecting commerce within the meaning of the Act.

2 The Remedy

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

7 I shall also recommend that Respondent be ordered to
8 remove from the employment records of Lewis Adamson, Jesse
9 Whitley, Joe Dean Manry, and Clayton Warwick any notations
10 relating to the unlawful actions taken against them, and to
11 make them whole for any loss of earnings or benefits they may
12 have suffered due to the unlawful actions against them in
13 accordance with "F. W. Woolworth, 90 NLRB, 289, 1950," plus
14 interest as computed in accordance with "New Horizons for the
15 Retarded, 283 NLRB 1173, 1987."

16 I shall further recommend that Respondent be ordered to
17 offer employment to Jesse Whitley, Joe Dean Manry, and Clayton
18 Warwick, and reinstatement to Lewis Adamson. Further, I shall
19 recommend that Respondent be ordered to remove from
20 its files all poll forms in any employee's file or in any of
21 its company files which show or memorialize employees'
22 sentiments regarding a union as set forth in GC-3 or any
23 similar document.

24 On these findings of fact, in Conclusions of Law and on
25 the entire record, I issue the following recommended order.

1 That Respondent, John Rushing DBA Industrial Electrical
2 Services, its officers, agents, successors and assigns, shall
3 cease and desist from engaging in any of the 8(a) -- Section
4 8(a)(1) violations set forth above in the Conclusions of Law,
5 discharging employees because they engage in union activities,
6 refusing to hire applicants because of their union activities
7 or in any like or related manner, interfering with, restraining
8 or coercing employees in the exercise of the rights guaranteed
9 them by Section 7 of the Act.

10 And (2), take the following affirmative action
11 necessary to effectuate the policies of the Act. Within 14
12 days from the date of this order, this order issues in written
13 form. To offer employment to Jesse Whitley, Joe Dean Manry,
14 and Clayton Warwick, and to offer full reinstatement to Lewis
15 Adamson to his former job, or if that job no longer exists, to
16 a substantially equivalent position without prejudice to his
17 seniority or other rights and privileges, and make these four
18 named employees whole for any loss of earnings or other
19 benefits suffered as a result of the discrimination against
20 them in the manner set forth in the Remedy section of this
21 decision.

22 And also, within 14 days of the date of this order,
23 remove from its files any reference to the unlawful discharge
24 of Adamson or the unlawful failure to employ the other three
25 named discriminatees. And also to remove from all its files

1 any and all copies of its unlawful polling form, and within
2 three days thereafter, notify the employees involved in
3 writing that this has been done, and that neither the
4 discharge nor the polling forms will be used against them in
5 any way.

6 The remaining portions of the order regarding
7 preserving records for the computation of back pay and posting
8 of a notice will be included in my written order, as will a
9 copy of the notice itself.

10 And as the parties may know, time for filing exceptions
11 to my decision begins to run only when the Board issues this
12 bench decision in written form, along with the transcript
13 pages, which comprise the decision -- which recite the
14 decision.

15 With that, the hearing will be closed. Thank you for
16 your participation herein.

17 (Whereupon, the proceedings were concluded at 3:14 p.m.,
18 January 10, 2003.)

19 * * * * *

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APPENDIX B

**Transcript:
Page and Line(s)**

CORRECT

TO

368:5	it's	its
368:8	Anderson (sic)	Adamson
368:11	hearing the complaint,	hearing,
368:11	amend,	amend the complaint,
369:16	Delete : "begin on --"	
369:16	And	An
370:5	stated	she stated
370:11	Delete "at--- "	
370:14	Delete "for an---"	
370:18	While—or, after	After
371:5	Respondent's	Respondent
371:9	Delete "his---"	
371:14	Delete "his prior---"	
371:21	Delete "at South---"	
372:5	He did –he	He did. He
372:6	Delete "a"	
373:7	This was---these	These
373:8	Delete "concerning" and "and,"	
373:9	,	:
374:1	following	following day
374:3	Delete "a---"	

APPENDIX B

**Transcript:
Page and Line(s)
Continued:**

CORRECT

TO

374:7	Delete “assigned—”	
374:10	-----	,
374:11	office	office,
374:21	Delete “Union---”	
374:24	Delete “Adamson— I’m sorry, and if”	
375:8	Delete “(sic)”	
375:17	Delete “asked Mr.--- ”	
375:22	Delete “said---”	
375:23	it was—	they
375:25	Delete “t-shirt—a”	
375:25	t-shirt, now	t-shirt and said, “now
376:1	problems.	problems.”
376:2	Delete “there was—”	
376:8	it. And	it, and
376:12	Delete “which—”	
377:13	Delete “one” and “has been—”	
377:16	for a line--	with
377:17	Delete “is—”	
377:25	Delete “to—I do not wish”	

APPENDIX B

**Transcript:
Page and Line(s)
Continued:**

	CORRECT	TO
378:3	lines	line
378:13	3, but that is I	3. That is what I
378:15	Delete “He asked—”	
378:20	Mr. Ayers (sic)	Ms. Ayers
379:21	the	then
380:17	on shirt	on a shirt
380:19	undisputed that that all three of	undisputed,
380:20	these, but whether from documentary or	from documents and
380:22	Delete “there are”	
381:18	Delete “they left—or”	
381:19	Delete “they wanted to—”	
381:20	Delete “after—”	
381:22	Delete “and after—”	
382:1	Delete “I’m sorry,”	
382:3	Warwick	Mr. Manry
382:9	filed. And	filed, and
382:16	while dealing with the	I have relied on
382:16	facts, I may add some	facts which I have
382:17	facts that I haven’t canvassed, but they’re all	recited as well as all those

APPENDIX B

**Transcript:
Page and Line(s)
Continued:****CORRECT****TO**

382:18	of which there are straight across	there are direct
382:19	testimony, first	testimony. First
382:21	Rushing, in	Rushing. In
382:23	fact.	facts.
382:25	Delete “two tape recordings —I’m sorry,”	
383:6	Delete “his testimonial”	
383:7	Delete “demeanor—”	
383:10	Delete “his—”	
383:17	carm (phon.)	calm
383:19	Delete “his—”	
383:21	Delete “he would arrange —if—that”	
384:1	aware	in view
384:2	testimony	testimonial
384:5	not	about
384:11	reason	reasons
384:20	With regard—we’ll	We’ll
384:22	as the—the Respondent--	Respondent’s
385:1	Delete “she assesses—”	
385:1	is	has

APPENDIX B

**Transcript:
Page and Line(s)
Continued:**

	CORRECT	TO
385:11	her—the	their
385:14	is	has
385:17	Delete “for purposes of—”	
386:1	Delete “Ayers (sic) and the employee—I’m sorry, Ms.”	
386:16	sentiment	sentiments
386:19	repeated checking	repeatedly checked
386:22	Larry Adamson (sic)	Lewis Adamson
386:25	She—it	It
387:7	Delete “(sic)”	
387:18	Delete “his interrogation —concerning”	
387:25	Mr.—he	He
388:1	Delete “For all those reasons, his interrogation about Mr.”	
388:2	Adamson’s—oh, and he	He
388:4	Delete “was—”	
388:11	Delete “There were—”	
388:12	Delete “was—”	
388:13	He was still, in some —although	Although
388:17	Delete “an employment situation—”	

APPENDIX B

**Transcript:
Page and Line(s)
Continued:**

CORRECT**TO**

388:21	Delete “asked an—”	
388:23	Delete “would be—”	
388:24	Delete “who—”	
389:10	Delete “that did occur—I found”	
389:21	Delete “not—”	
390:3	complaint.	complaint,
390:4	Those	those
390:13	Delete “as well as—”	
390:18	Struckness	Strucksnes
390:21	This—additionally,	Additionally,
390:24	Delete “had—would happen”	
391:2	comments	comment
391:8	---	or
391:10	a	an
391:12	so	also
391:16	he told—or, was assigned to--	the day
391:17	Delete “the fact”	
391:17	form. That	form, that
391:22	First	The first
392:2	Delete “There was no—”	

APPENDIX B

**Transcript:
Page and Line(s)
Continued:****CORRECT****TO**

392:3	even	Even
392:11	affiliation. It	affiliation, it
392:25	Delete “this repeated,”	
393:1	out when they were--	out,
393:3	Delete “third—or”	
393:4	time. That	time—that
393:20	Adamson. As	Adamson, as
393:23	pole	poll
393:25	Delete “signed by Mr.— ”	
394:11	Delete entire line	
394:15	Delete “in—”	
394:17	2001.	2001:
394:19	is	are
395:9	asked	he asked
395:19	Delete “His—”	
396:6	after had	after he had
396:15	Delete “t-shirt—”	
396:17	his	he
396:19	the	in
396:23	Delete “designated—”	

APPENDIX B

**Transcript:
Page and Line(s)
Continued:**

CORRECT

TO

397:1	As I've said,	The facts that
397:7	contract.	a contract.
397:11	With regard—other than the fact	Other than the position
397:13	he	it
397:13	him. And	him, and
397:15	Monday, whether	Monday. Whether
398:16	such policy,	such a policy,
398:21	loudness, arguments by	loudness and arguments.
398:22	the fact that	In fact,
398:23	Delete “were—and”	
399:5	often, and they	often. They
399: 6	Rushing. And	Rushing, and
399:10	Delete “the—“	
399:13	opposite.	opposite.
399:14	With regard to the	I find the
399:20	hired, that,	hired. That,
399:25	Delete “has been—”	
400:3	—I will—these are	as follows:
400:14	Delete “form—such a”	

APPENDIX B

**Transcript:
Page and Line(s)
Continued:**

CORRECT

TO

400:20 Delete “doing these—”

401:19 Delete “order—”

401:21 seek show

402:7 with with,

402:12 day date

403:1 --- and

403:4 would will

APPENDIX C

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT interrogate you about your union membership, activities, or sentiments.

WE WILL NOT tell you that we do not hire union employees.

WE WILL NOT tell you that you will be required to sign a paper stating that you are not a union salt.

WE WILL NOT interrogate you about whether you are willing to sign such a paper.

WE WILL NOT direct you to raise your hand to show us if you want to go union or not.

WE WILL NOT require you to fill out and sign a poll form indicating whether you want to go union, or talk with the union, or neither.

WE WILL NOT threaten to close the shop if you refuse to fill out and sign such a poll form.

WE WILL NOT close the shop early because you refuse to fill out and sign such a poll form.

WE WILL NOT tell you that by refusing to fill out and sign a poll form about the union, you have caused yourself and other employees to lose their jobs.

WE WILL NOT tell you that because of your union activities, you have cost us business.

WE WILL NOT tell you are breaking the law and insist that you leave because you support the union.

WE WILL NOT discharge you because of your union membership, sentiments, or activities.

WE WILL NOT refuse to hire you because of your union membership, sentiments, or activities.

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

WE WILL offer Lewis Adamson reinstatement to his job, and **WE WILL** make him whole for any loss of pay or other benefits he may have suffered because of our unlawful discharge of him.

WE WILL offer employment to Jesse Whitley, Joe Dean Manry, and Clayton Warwick, and **WE WILL** make them whole for any loss of pay or other benefits they may have suffered because of our unlawful refusal to hire them.

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

WE WILL remove from our files any reference to the unlawful refusals to hire Jesse Whitley, Joe Dean Manry, and Clayton Warwick, and notify them in writing that this has been done and that the unlawful refusals to hire will not be used against them in any way.

WE WILL remove from our files any and all originals and copies of our unlawful poll form concerning the union which we required you to fill out, and we will notify you in writing that this has been done and that the unlawful poll forms will not be used against you in any way.

JOHN RUSHING d/b/a INDUSTRIAL ELECTRIC SERVICE

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

**819 Taylor Street, Room 8A24, Fort Worth, TX 76102-6178
(817) 978-2921, Hours: 8: a.m. to 4: 30 p.m.**

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE
DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY
ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR
COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE
REGIONAL OFFICE'S**

COMPLIANCE OFFICER, (817) 978-2925