Casey Electric, Inc. *and* International Brotherhood of Electrical Workers, Local 26, AFL–CIO. Case 5–CA–22404

February 28, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND TRUESDALE

On December 31, 1992, Administrative Law Judge John H. West issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.

The judge found, and we agree, that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging employee Zane Metz because of his union activities,[2] and by refusing to consider and refusing to employ the 23 applicants for employment named in the complaint because of their suspected union sympathies. In his remedy, the judge recommended that Metz be made whole for any loss of earnings he may have suffered from the date of his discharge until the date of the completion of the Respondent's project 377 at Winchester, Virginia. In addition, he recommended that the 23 applicants be made whole for any loss of earnings they may have suffered from the date they applied for employment. The General Counsel has excepted to this remedy, arguing that both Metz and the 23 applicants should be granted the traditional make-whole remedy of offer of employment and backpay. We find merit in these exceptions.

A. *Employee Metz*

The remedy for the unlawful discharge of Metz is governed by *Dean General Contractors*, 285 NLRB 573 (1987). There, the Board declined to apply a precompliance presumption against reinstatement in the construction industry, holding that, as in other industries, reinstatement and backpay issues ordinarily will be resolved by a factual inquiry at the compliance stage of the proceeding. Consistent with *Dean General Contractors*, supra, we give a conditional order of reinstatement, entitling the Respondent to avoid the reinstatement obligation and terminate the backpay obligation at the completion date of the project in question if the Respondent shows in compliance that, under its established policies, an employee hired into a position like the one unlawfully denied the discriminatee would not have been transferred or reassigned to another job after the project at issue ended. Here, the issue whether Metz would have been retained or laid off at the conclusion of the Respondent's projects was not litigated in the hearing. Accordingly, we are modifying the Order to provide for both a make-whole remedy and reinstatement, but the Respondent will have the opportunity at compliance to limit its remedial obligations by showing that Metz would not have been transferred to other projects.

B. *The 23 Applicants*

In finding violations on the basis of the Respondent's treatment of the 23 union-referred applicants, the judge used the terms ''refused to consider'' and ''refused to employ'' apparently interchangeably. Given the findings summarized below, we conclude that the Respondent engaged in hiring discrimination, and that the make-whole remedy, subject to the *Dean General* conditions noted above, is therefore appropriate. See *Sunland Construction Co.*, 309 NLRB 1224 (1992) (giving traditional offer of employment and backpay remedy, subject to *Dean General* conditions, for construction industry employer's discriminatory refusal to hire); *Fluor Daniel, Inc.*, 304 NLRB 970, 981 (1991) (same).

In brief, the evidence credited by the judge shows the following: that the Respondent knew of the union affiliation of all of these applicants; that the Respondent manifested animus towards such an affiliation;[3] that the Respondent had appropriate openings for the applicants at the times they filed applications; that after individuals with identifiable union affiliations began applying at the jobsite in person, the Respondent departed from its past method of advertising and hiring so as to draw applicants from areas distant from the jobsite; that the 23 applicants were all experienced electricians, not shown to be unqualified for the positions for which they applied; and that only two were hired.

[1] 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.

[2] However, we do not agree with the judge that *Wright Line*, 251 NLRB 1083 (1980), ''does not apply'' to pretext cases. See *Taylor & Gaskin*, 277 NLRB 563 fn. 2 (1985). Rather, in adopting the judge's finding that the Respondent unlawfully discharged Metz, we rely on the judge's alternative rationale that the General Counsel made a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the discharge decision and that the Respondent has not met its burden of showing that it would have discharged Metz even in the absence of his union activity.

[3] We agree with the judge's finding that the Respondent interrogated two of the applicants concerning their union membership, in violation of Sec. 8(a)(1) of the Act.

The hiring discrimination took place with respect to the electrical work for two projects at the Kraft General Electric plant in Winchester, Virginia. Project 375 began in July 1991 and was completed in January 1992; and project 377 began in September 1991 and was completed in March 1992. During this period, the Respondent hired a total of 96 employees for the 2 projects.[4] Between July 1 and November 12, 1991,[5] at the suggestion of the Union's business agent, Sonnie Myers, 23 applicants, all of them openly displaying some manifestation of union affiliation, reported to the Winchester jobsite seeking employment, and many of the 23 followed up with subsequent visits. With two exceptions, none were hired for either project.[6]

Prior to July 1, the Respondent had placed advertisements in newspapers in the Winchester, Virginia area for both electricians and helpers. The union electricians began applying at the jobsite on July 1. Thereafter, when the Respondent obtained a contract for a separate project at Winchester (project 377), it shifted the hiring from the jobsite to its headquarters in Jackson, Tennessee. Advertisements for electricians to work at that site were placed in newspapers in North and South Carolina, Tennessee, and two cities in Virginia away from the Winchester area; advertisements in the Winchester paper described only helper positions. The advertisements for electricians instructed applicants to reply to a post office box address or telephone number in Jackson. In the meantime, the union electricians who were coming to the Winchester site in person were not advised about the new locus of hiring.

The judge discredited the testimony of the Respondent's witnesses concerning the reasons for the changed hiring policy and the pattern of advertising. He did so in part because the Respondent's story shifted between the time one of its witnesses gave a pretrial affidavit and the time when its witnesses testified at trial.[7] The Respondent also supplied no explanations for not advising the Winchester site applicants that they should send their applications to Jackson or for the Winchester superintendent's failure to forward applications to Jackson after the locus of hiring shifted. As the judge correctly reasoned, through the combination of the shift in hiring, the pattern of advertisements, and the failure to advise the Winchester applicants about the new hiring policy for project 377, the Respondent effectively denied ''the applicants at Winchester even the possibility of being hired for the 377 job.''[8] In short, the applicants did not lose out on jobs to better qualified employees in the course of either a random or entirely merit based hiring process. A preponderance of the evidence supports a finding that the process itself had been modified, because of their union affiliation, to screen them out. We, therefore, find that the Respondent's conduct amounted to a discriminatory refusal to hire in violation of Section 8(a)(3) and (1) of the Act.

AMENDED REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (3) of the Act, we shall order the Respondent to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

Having found that the Respondent has violated Section 8(a)(1) and (3) of the Act, we shall order the Respondent to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully discharged Zane Metz, and unlawfully discriminated against the 23 named job applicants, we will order it to offer them reinstatement or employment to the same or substantially equivalent positions at other projects as close as possible to Winchester, Virginia. In addition, we shall order the Respondent to make them whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful discrimination against them, from the date of the discharge, in the case of Metz, or, in the case of the applicants, from the date they applied for employment, to the date that the Respondent makes them a valid offer of reinstatement or employment. Such amounts shall be computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and shall be reduced by net interim earnings, with interest computed in ac-

[4] A joint exhibit admitted into evidence shows that 23 employees were hired in July, 8 in August, 10 in September, 40 in October, and 15 in November.

[5] All dates hereafter are in 1991 unless otherwise stated.

[6] Kenneth Darr was hired on October 21 and laid off on November 22. Robert Truslow was hired on September 11 and laid off on November 27. Both had begun applying in July, and Darr had made four unsuccessful trips to the jobsite in July. We agree with the judge that the hiring of these two does not outweigh the evidence supporting the finding that the hiring process was discriminatory.

[7] During the initial investigation of the unfair labor charges, the Respondent's superintendent, Charles Farmer, stated in his affidavit that the hiring change was made only because the Respondent had received a ''flood'' of applications for project 375, and he did not have the time to deal with so many applicants at the jobsite. At the trial, the Respondent's witnesses claimed that the reason was that the applicants in Winchester had been largely unqualified. The judge found no substantiation for this allegation. It is also noteworthy that, despite testimony from the Respondent's witnesses that ''instrumentation experience'' was essential for electricians on project 377, the advertisements placed in newspapers outside Virginia simply specified ''electricians'' and made no mention of any specific qualification requirements.

[8] This disparate treatment of the Winchester jobsite applicants, who had come to be associated with the Union, distinguishes this case from *J. E. Merit Constructors*, 302 NLRB 301 (1991), in which the Board dismissed refusal-to-hire allegations where the judge found no evidence that the employer was aware of the union affiliations of those alleged as discriminatees and where there was no evidence of either a sudden change in hiring procedure or efforts to avoid certain areas in advertising the jobs.

cordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). This Order is subject to resolution at the compliance proceeding of the issues outlined in *Dean General Contractors*, supra. Consistent with that decision the Respondent will have the opportunity in compliance to show that, under its customary procedures, an employee in Metz' or the 23 applicants' position would not have been transferred to another project after the one for which he was hired was completed, and that thus no backpay and reinstatement obligation exists beyond the time when the project as to which discrimination occurred was completed.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Casey Electric, Inc., Winchester, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 2(a) and (b).

''(a) Offer Steve T. Albert, Theodore L. Banks, Wayne P. Bennett, Lamont Bowden, David Bowers, Joseph Brehon, Kenneth L. Darr, David L. Dooley, James Franklin, Gerald Hildenbrand, Gregory Jones, Forrest Mathias, William Perrero, Ramiro G. Ramos, George C. Riggs, Michael A. Ross, Craig L. Salisbury, Edward R. Sargent, Linwood K. Sherman, Robert E. Truslow, Clark E. Villers, Robert F. Whitson, and Wade Woodell employment in positions for which they applied or, if such positions no longer exist, to substantially equivalent positions, and make them whole for any loss of earnings and other benefits that they may have suffered as a result of the discrimination against them, as set forth the in the amended remedy section of this decision.

''(b) Offer Zane Metz immediate and 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, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the amended remedy section of this decision.''

2. Substitute the following for paragraph 2(c).

''(c) Remove from its files any and all references to the unlawful discharge of Zane Metz on October 11, 1991, and of the unlawful refusal to consider for employment and to employ the 23 discriminatees named above, and notify them that this action has been taken and will not be used against them in the future.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

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

WE WILL NOT refuse to consider for employment, and refuse to employ Steve T. Albert, Theodore L. Banks, Wayne P. Bennett, Lamont Bowden, David Bowers, Joseph Brehon, Kenneth L. Darr, David L. Dooley, James Franklin, Gerald Hildenbrand, Gregory Jones, Forrest Mathias, William Perrero, Ramiro G. Ramos, George C. Riggs, Michael A. Ross, Craig L. Salisbury, Edward R. Sargent, Linwood K. Sherman, Robert E. Truslow, Clark E. Villers, Robert F. Whitson, and Wade Woodell.

WE WILL NOT discharge Zane Metz Jr. or any other employee because he engaged in union activity and concerted protected activity.

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

WE WILL offer Steve T. Albert, Theodore L. Banks, Wayne P. Bennett, Lamont Bowden, David Bowers, Joseph Brehon, Kenneth L. Darr, David L. Dooley, James Franklin, Gerald Hildenbrand, Gregory Jones, Forrest Mathias, William Perrero, Ramiro G. Ramos, George C. Riggs, Michael A. Ross, Craig L. Salisbury, Edward R. Sargent, Linwood K. Sherman, Robert E. Truslow, Clark E. Villers, Robert F. Whitson, and Wade Woodell employment in positions for which they applied or, if such positions no longer exist, to substantially equivalent positions, and WE WILL make them whole for any loss of earnings and other benefits that they may have suffered as a result of the discrimination against them.

WE WILL offer Zane Metz immediate and 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, and WE WILL make him whole for any loss of earnings and other benefits that he may have suffered as a result of the discrimination against him.

WE WILL remove from our files any and all references to the unlawful discharge of Zane Metz on October 11, 1991, and of the unlawful refusal to consider for employment and to employ the 23 applicants named above, and will notify them that this action has

been taken and will not be used against them in the future.

CASEY ELECTRIC, INC.

Paula S. Sawyer, Esq., for the General Counsel.
Terry M. Brooks, Esq., of Nashville, Tennessee, for the Respondent.
Ward A. Myers III, of Front Royal, Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. On a charge filed November 29, 1991,[1] as amended on December 18 by the International Brotherhood of Electrical Workers, Local 26, AFL–CIO (the Union) against Casey Electric, Inc., Respondent, a complaint was issued March 31, 1992, alleging that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act), collectively, by (1) interrogating job applicants regarding their union membership, activities, and sympathies, (2) refusing to consider for employment and/or refusing to employ 23 named applicants[2] for employment, and (3) by discharging its employee Zane Metz Jr. on October 11. Respondent denies violating the Act.

A hearing was held in Winchester, Virginia, on July 21–24, 1992. On the entire record in this case, including my observation of the demeanor of the witnesses and consideration of the brief filed by General Counsel,[3] I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Tennessee corporation, maintained an office and place of business at a worksite in Winchester where it was engaged as an electrical contractor in the building and construction industry. The complaint alleges, the Respondent admits, and I find that at all times material it has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Facts

Respondent started onsite setup in the beginning of July for the lighting and power distribution work, project 375, at the new Kraft General Foods plant in Winchester. Superintendent Joseph Abbitt and Assistant Superintendent Charles Farmer were Respondent's onsite supervisors. The latter was in charge of the night shift. Abbitt testified that because he had not worked a project in the Winchester area before, he did not know what type of help he would receive and so to be sure that he would have help at the outset he contacted some individuals who had previously worked on other Casey jobs.[4]

On July 1, before it even had its trailer on site, Respondent began receiving applications for employment. It had placed an ad in the Winchester Star and Northern Virginia Daily for electricians and helpers for the Winchester job. Farmer testified that he conducted some of the job interviews and his hiring criteria in selecting journeymen electricians was their experience and years in the trade; that about 30 percent of the hiring decisions were made on the spot; that the applications, which were not kept in any special order, were kept for 30 days;[5] that he seldom had time to review the application at the time it was given to him; that he tried to get helpers with 2 years of experience in the electrical trade; and that he was not able to distinguish those contractors which work union from those contractors which work nonunion.[6] Abbitt testified that when he needed additional employees he did not go through all the applications, which were not filed in any particular order, but rather he went through the applications only until he found someone who was qualified. Farmer testified that he followed the same approach. Joint Exhibit 1 summarizes the staffing on project 375.

On July 1 Craig Salisbury went to the involved jobsite in Winchester seeking employment. He had been an electrician for 6 years and was a member of Local 26. Sonnie Myers, who is the business agent for Local 26, suggested that he and a couple of other members should go to the Casey jobsite and fill out applications. Salisbury, who went with Forrest Mathias, filled out an application, indicating that he received 4 years of training in Local 26's apprenticeship program, that his personal reference was Business Agent Myers, that in the past he worked for John Miller, Chewning and Wilmer, Mona Electric, and Truland Electric,[7] and that he held a journeyman's card through the Local and had a Virginia state license. Salisbury testified as follows about his subsequent conversation with Farmer:

> He [Farmer] looked the application over. And when he got to the personal reference part, I remember he asked what BA was—what exactly all that was about. And I told him that was my Union representative through the Local.
>
> He, in turn, asked me if I was a Union member, and I said, ''Yes.''
>
> And at the time, work was so bad that we were seeking employment wherever we could find work. That's just about all that was said.

Before he went to the Casey jobsite, Salisbury signed a salting agreement at the Local, which agreement permitted him

[1] All dates are in 1991 unless indicated otherwise.

[2] Although the complaint contains the names of 25 individuals, at the hearing here counsel for the General Counsel withdrew the allegations with respect to 2 of the named individuals.

[3] Although Respondent requested and was granted an extension of time for filing briefs, it did not file a brief here.

[4] Donald Slagle, Ken Conley, Curtis Palmore, James Palmore, Hebb Jeffery, Timothy Abbitt, Joe Phillips, Roy Mullinax, and Gary May.

[5] It is noted that G.C. Exh. 117 is an application dated ''7–3–91'' and, according to Abbitt's testimony and Jt. Exh. 1, the applicant was hired October 1.

[6] Abbitt also testified that he would have no idea which contractors operate with a union agreement.

[7] Steve Stump, an IBEW International representative, testified that in the involved industry it is common knowledge who is and who is not a union contractor because the pay differs.

to work nonunion and avoid being brought up on charges, with the understanding that he would help with an organizing drive if one occurred. (R. Exh. 10.) Mathias testified that he had 9 years' experience as an electrician and is a member of the Union; that he drove his car, with union stickers, General Counsel's Exhibit 7, on the back window, to the involved jobsite accompanied by Salisbury; that he parked his car right next to the Casey truck nearby the two men from Casey; that Myers told him that he should go to the Casey jobsite if he needed a job and that the Union was going to try to organize Casey; that he signed a salting agreement before going to the jobsite; that in the work history portion of the application he listed E.C. Ernst, Chewning and Wilmer, and Lord Electric; that he saw Salisbury listing the Union's apprenticeship and putting Myers as a reference on his application; and that they spoke with Farmer at the jobsite.

Farmer testified that he did not interrogate any job applicants about their union membership, activities, or sympathies; and that he did not remember anyone wearing union jackets or union T-shirts but he did remember one applicant wearing a baseball cap with a union insignia on it.

Also on July 1 Kenneth Darr went to the involved jobsite of Casey looking for a job. Darr had been a journeyman electrician for about 4 years and was a member of the Union. Myers told him about the job and asked him if he would like to apply. Myers also asked him to try to organize the job if he was hired. Darr signed a salting agreement. At the jobsite, Abbitt told him that he was out of applications and to come back tomorrow. Darr testified that he had two union insignia, General Counsel's Exhibits 12 and 7, on the back window of his car which he intentionally parked so that the union stickers would be facing Casey's trailer.

And finally on July 1 Edward Sargent went alone to the involved jobsite looking for a job.[8] He had been an electrician for about 19 years and was a member of the Union. Sargent graduated from Local 26's 4-year apprenticeship program.[9] According to Sargent's notes, Casey was on the jobsite but it did not have a trailer or phone set up yet. Myers told Sargent that if he got a job at Casey he would be expected to help organize.

On July 2 David Dooley went to the Winchester jobsite to apply for a job. He is a member of the Union and Myers had shown him a local newspaper ad and asked him if he wanted to apply for a job with Casey.[10] Dooley filled out an application at the Winchester jobsite, indicating therein, among other things, that he spent 4 years in the IBEW National Joint Apprenticeship program, and that he worked for E.C. Ernst, Dynalectric, Haugh Enterprises, and Heller Electric.[11] Dooley testified that Farmer, after looking at the application, asked him if he was still a union member, if he understood that it was not a union job and if he had ever worked outside the union; that at the time he was wearing a hat which had IBEW on it; that the truck he drove to the involved jobsite had an IBEW sticker, General Counsel's Exhibit 3, on the rear window behind the driver's seat; that the truck was parked near Casey's trailer and the IBEW sticker could be seen from inside the trailer;[12] and that Farmer said that in the next few days they would be calling the people they were interested in hiring.

Farmer testified that he did not ask any applicant if he knew that this was a nonunion job.

Also on July 2 Darr returned to the Casey jobsite. He drove the same car and parked in about the same place as before. Abbitt told him that Casey had run out of applications again and he should stop back in a couple of days.

And on July 2 Wayne Bennett went to the Casey jobsite looking for a job. He has been a journeyman electrician for 23 years and is a member of the Union. Myers asked Bennett if he would be interested in going over to the Casey jobsite for employment as part of an organizing committee to try to get Casey to work union in the involved area. Bennett signed a salting agreement. He filled out an application and spoke with Abbitt who said that Casey was going to start work the next week and it probably would have a second shift. Bennett testified that Casey did not have a trailer on the site yet and Abbitt was sitting in a pickup truck. Bennett included his 4-year apprenticeship program on the application. He wore a belt buckle with a union insignia, and he had union stickers, General Counsel's Exhibits 7 and 12, on his car which he parked about 50 feet from Abbitt's truck. Bennett, who has an answering machine, did not hear from Casey. When asked by counsel for Respondent whether he recalled seeing an IBEW buckle on Bennett's belt, Abbitt testified ''I've never seen any IBEW buttons or stickers.''[13] Subsequently, Abbitt testified that he did see a union sticker on employee Robert Truslow's lunchbox.

On July 3 Salisbury returned to the Casey jobsite accompanied by Eddie Sargent, Dave Bowers, and Gregory Jones. Salisbury testified that at that time there was a trailer there occupied by Casey; that Abbitt told him that he had already filled out an application; and that it was indicated that Casey did not have much materials on the job but they would be hiring. Bowers, who has worked for about 30 years as an electrician, has a master's license from Virginia and is in the union, testified that on or about July 3 he went with Salisbury, Sargent, and Jones to the Casey jobsite; that they filled out the applications and left them on the front seat of a Casey truck because Abbitt went to lunch; and that in the past work history portion of the application he listed a number of specified employers who were well-known union con-

[8] As indicated by his notes, R. Exh. 8, Sargent went to the involved jobsite four times in June before Casey arrived on the scene.

[9] Sargent did not believe that Local 26 had a 2-year program.

[10] Dooley testified that Myers asked him to be part of an organizing committee at the Winchester jobsite and he agreed.

[11] According to Dooley's testimony, the first two named companies are well-known union contractors. Albeit he was not sure whether he indicated it in his application, Dooley testified that he held journeyman's licenses from Washington, D.C. and the State of Virginia and he has been an electrician for about 9 years.

[12] Dooley testified that he could not recall if the trailer was identified in any way as being Casey's; that the trailer was there during the last week of June; and that someone from the general contractor's trailer pointed out Casey's trailer.

[13] Abbitt went on to testify that he did not care if a man belongs to a union so long as he produces in a journeyman-like manner; and that he offered a position to a union member but he could not remember his name. Additionally, Abbitt testified that he never asked any applicant if he was a union member, about any union apprenticeship program, or about union activities. Finally, Abbitt testified that he never saw Myers' business card; that none of the applicants he talked to was wearing a union jacket, a union T-shirt, or a union baseball cap; and that he never looks at what a person is wearing when they come in to apply for a job.

tractors. Bowers signed a salting agreement before he went to the Casey jobsite. Jones, who finished his apprenticeship in 1977 and who is in the Union, testified that on July 3 he went to the Winchester jobsite with Salisbury, Sargent, and Bowers; that he and the others, except Salisbury, filled out applications; that he believed that he indicated in the application that he served his apprenticeship with Local 672; that all the contractors he listed on his application were union contractors; that he signed a salting agreement before going to the Casey jobsite; and that he never heard from Casey. Sargent testified that he went to the involved jobsite twice that day; that the first time he went by himself and drove his own car;[14] that the second time he went to the jobsite that day he went with Jones, Bowers, and Salisbury in Jones' car; that the four contractors he listed on his application were union contractors; that he left the application in Casey's trailer; that he requested a wage rate of $12 or $13; that he has done control work but he has not done any instrumentation work; that no one from Casey asked him if he could do instrumentation work on this day or later; and that he never heard from Casey.

Abbitt testified that the Casey trailer arrived at the jobsite on July 3; that there was no window in the Casey trailer facing the parking lot but rather there was a heating and cooling unit at that end of the trailer; that the door into the trailer was a third of the way down the length of the trailer and to enter the trailer one had to walk down an alleyway between trailers; and that there were windows on the sides of the trailer but no one could not see the parking lot out of the windows of the trailer because there were trailers on both sides of the Casey trailer after an unspecified date. Farmer testified that you could see some of the parking area from inside Casey's trailer ''but because of the trailers around us it was very much obstructed.'' In an affidavit he gave to the Board dated February 28, 1992, Farmer stated ''[a]pplicants who come to the site generally parked in a gravel area next to the trailer within view from the office window of the trailer, or along the road.'' Farmer subsequently testified that at that time there were no obstructions; and that he did not tell the Board agent anything about obstructions from the window of the office trailer.

On July 5 Darr returned to the Casey jobsite. Abbitt told him that he had run out of applications. Darr drove the same car as before and parked in approximately the same place.

On July 8 Darr returned to the Casey jobsite. Farmer told him that Casey was not hiring anymore because they were full but Abbitt gave him an application to fill out. Darr testified that while he was filling out the application he overheard Farmer talking about not hiring any blacks or any women on the Winchester job, except for one black man who had worked for Abbitt before. Darr was told that the job was shut down temporarily because of a building permit question but that Casey would be hiring later on. Darr parked his car in the same area with the back facing Casey's trailer.

On July 9 Dooley returned to the Winchester jobsite and spoke with Farmer who said that he had not had a chance yet to go over any of the applications and he, Farmer, would call Dooley if he wanted him. Dooley testified that he drove the same truck with the IBEW sticker and parked in the same area at the jobsite.

On July 10 Ted Banks went to the Casey jobsite. He had been an electrician for 9 years, had a journeyman's card in Virginia, and was a member of the Union. Myers told him that Casey was hiring and Myers told him to wear something showing that he was a union member. Before going to the Casey jobsite, Banks signed a salting agreement. Banks, wearing his union button, asked Farmer if he was hiring and Farmer asked him what kind of experience he had. Banks told Farmer that he, Banks, worked on union jobs and he was a member of the Local. Farmer then said that he did not have any applications and Banks should try back in a couple of weeks.

On July 11 Dooley returned to the Winchester jobsite. Again he spoke with Farmer who repeated basically what he said on July 9 and again Dooley drove the same truck and parked in the same area.

On July 15 Dooley returned to the Winchester jobsite. Again he spoke with Farmer who said that they were not finished reviewing the applications yet and he would be contacted if Casey wanted to hire him.

Farmer testified that Respondent had sufficient manpower for project 375 very early in July.

On July 17 Banks returned to the Casey jobsite. Mrs. Farmer, who worked as a secretary in the Casey trailer, gave Banks an application to fill out. All of the contractors he listed on the application were union. Farmer, who entered the trailer just as Banks was finishing the application, first said that Casey was not accepting any more applications and then he accepted the application.

On July 22 Banks returned to the Casey jobsite. Farmer told him that he was just hiring helpers at the time and to check back in a couple of weeks.

On July 30 Robert Truslow went to the involved Casey jobsite looking for work. He has been a journeyman electrician and a member of the Union since 1985. Myers told him about the job and Truslow signed a salting agreement before going. A number of people were filling out applications in Casey's trailer. After looking at Truslow's application, Farmer told him that he could not pay the $15 an hour requested. Truslow then said that it was negotiable and Farmer said that he could not pay that amount.

Abbitt testified that by late July the general contractor on the job had indicated that if Casey did a good job it had a good chance to get the process work, which involved instrumentation, control, and calibration work; and that about this time he told Casey's Jackson office that there might be a problem manning the 377 job, which would involve control work, because of the type of job it was going to be and the fact that the applications he saw for the 375 job demonstrated that the applicants were not qualified to do control work or instrumentation and calibration work. Assertedly, most of the applications were from people unskilled in electrical work.

On August 1 Banks returned to the Casey jobsite. Farmer told him that he was not hiring and to check back in a couple of months.

In September Farmer became superintendent of project 377 when it began. He testified that the verbal commitment was made on job 377 in late September and that the hiring for job 377 was handled differently than job 375 in that

[14] He testified that he had a union sticker, G.C. Exh. 11, laying on the dashboard of his car with the front of the car facing Casey's trailer.

while Respondent ran newspaper ads in the Winchester area for journeymen electricians for project 375, newspaper ads for journeymen for project 377 were run in South Carolina and Tennessee. Five lead people who had been with Respondent for a number of years were brought to Winchester. They received a per diem allowance of $100 a week. Larry Casey, Respondent's president, testified that since job 377 involved equipment hookup, with all the instrumentation and the control work, it was decided that some of Casey's permanent employees would be sent to the jobsite; that he heard complaints that ''they'' were having a hard time getting qualified men for the 375 job or more specifically, that Farmer told him that ''the big majority of people who came by applying for jobs . . . didn't even have any electrical experience'' and ''[a] lot of the other electricians were house wiremen''; that Casey had to have 30 employees on short notice for the 377 job which was to start on about October 19; that he was told that the supervisors in Winchester did not have the time to try to staff the 377 job; that when Casey gets into the technical side of a job it looks for employees in the Carolinas where there is a lot of industry and, therefore, people experienced in this type of work;[15] that ads were run in the newspapers in that area for electricians;[16] that Casey's Jackson office received about 50 applications; that he spent a week screening the applications, asking the applicants if they had ever done any control work, interconnecting electronic wiring or programmable logic controls (PLC) and where they had worked; that he is aware of some of the companies which are either union or nonunion; that he hired a number of employees and he faxed the information to Farmer regarding their wages and when they were supposed to report in Winchester; that in the past Casey has paid for permanent employees to stay in the area of a jobsite, Respondent's Exhibit 5; that about 10 of the men on the 375 job were transferred to the 377 job; that not a lot of the electricians in the country can hook up instrumentation and do control work; that Casey is a member of the Associated Builders and Contractors (ABC) which is a group of contractors which will work union people but will not sign agreements; and that one of the members of ABC is a union contractor. Joint Exhibit 2 summarizes the staffing on project 377.

Abbitt testified that one reason that electricians were hired by the headquarters office in Jackson, Tennessee, for the 377 project was that there were so many applications filled out for the 375 project by people who were unqualified in that they had never done any electrical work. Also he and Farmer, with only one secretary in Winchester to handle all the paperwork for the two projects, did not have the time to check references. According to Abbitt, in the past Casey had advertised and hired out of its Jackson office for jobs in the field and there is nothing unusual in the electrical industry about journeymen traveling long distances to work on construction sites.

Farmer testified that some of the journeymen working on job 375 were not qualified to work on job 377; that about 70 percent of the journeymen on 375 were transferred to job 377; that the main reason that the hiring was done out of Jackson for job 377 was the flood of applicants Casey had on job 375 and that another reason was the quality of applicants. In his February 28, 1992 affidavit to the Board, Farmer stated ''[i]t was only the unmanageable flood of applicants we experienced on job number 375 that caused the company to begin hiring through Jackson on job 377.'' Farmer testified that he did not know why an ad for journeymen for the 377 job was not placed in the Winchester paper giving the Jackson telephone number and address as was done all over the rest of the East Coast. Also he testified that he did not recall telling any of the applicant's who came to the Casey trailer looking to work on the 377 job that they should contact the home office in Jackson. While Farmer testified that the need for instrumentation experience was very important for job 377, he also testified that not all industrial jobs would need instrumentation experience and certain ads placed for job 377 read only ''Electricians/journeymen needed immediately,'' ''Help wanted, electricians. Wanted journeymen electricians, industrial experience,'' ''Electrician wanted. Journeyman with industrial experience,'' General Counsel's Exhibits 121, 122, and 123, respectively. On redirect Farmer testified that the employees who were hired after they were screened by Jackson were qualified in pneumatic instrumentation work; and that while the majority of the employees on job 377 were journeymen, the majority of employees on job 375 were helpers.

The week of September 1 Billy Wayne Church, who had been employed by Casey as a helper on the involved job since July, spent a week in jail for assault and battery on a man who was involved when Church divorced his wife. Church testified that there were times when he was also late in arriving at work because of his marital problems. Farmer spoke to him about it, warning Church that he would be fired if his attendance did not improve, but Farmer took no action when Church explained the reason. Abbitt told Church, however, that if Church worked for him, he would fire him in a heartbeat. Church's absentee calendars were received as General Counsel's Exhibits 17 and 18.[17] During the time he worked for Casey, Church received two raises and he was complimented for his work. According to Joint Exhibit 2, Church was transferred to job 377 on October 10. Church worked for Casey until the end of December when he accepted a better offer elsewhere. Farmer testified that Church missed a lot more work than he should have.

On September 10 Truslow returned to the Casey jobsite. Abbitt told him that he would have to fill out another application since they were not kept beyond 30 days. Three or four other people were filling out applications in the Casey

[15] Examples supplied, R. Exhs. 3 and 4, refer to a job in 1989 in West Virginia when Casey advertised in newspapers in the Carolinas.

[16] R. Exh. 7, which is an ad which ran in the Raleigh, North Carolina Observer reads as follows: ''ELECTRICIAN Wanted Journeyman with industrial experience for project in northern Va. Working 6–10's. Reply to: PO Box 1508, Jackson, TN.'' Ads run by Casey in Winchester were for helpers only. R. Exh. 6. It was explained that helpers would not normally travel and pay for their lodging when they make $6 or $7 an hour. It was stipulated that from early October to October 27 Casey ran ads for the Winchester job, collectively, in the Greenville, South Carolina News; the Jackson, Tennessee Sun; the Memphis, Tennessee Commercial Appeal; a Roanoke, Virginia newspaper; and the Richmond Times Dispatch. Some of the ads had Casey's Jackson post office box address and some had Casey's Jackson telephone number.

[17] The General Counsel also introduced the absentee calendar of Cris Hoeltke, G.C. Exh. 19.

trailer. On the application, General Counsel's Exhibit 14, Truslow asked for $13 an hour.[18] Abbitt offered $12 an hour, indicating that Casey would be hiring in 3 or 4 days when the instrumentation contract was awarded, if it was awarded. As Truslow was leaving in his car, Abbitt approached and told him that he could start work the next day.

On September 11 Truslow began working for Casey. He had an IBEW sticker on his lunchbox. About 4 days later he began wearing a union sticker on his hard hat. No Casey supervisor ever said anything to him about having the union stickers.

Abbitt testified that job 375 started winding down around the middle or late September; that he told Farmer that he could pick the men he wanted to have transferred to the 377 job;[19] and that about a week later Casey received change orders which resulted in more work and Abbitt had to hire men to finish 375.

On September 19 Bowers returned to the Casey jobsite with Wade Woodell after being told that Casey was hiring again. Farmer told Bowers that applications were kept for 30 days and he would have to fill out another one; and that Casey would probably be hiring some people in the next week but it would be mainly helpers. Bowers told Farmer that he, Bowers, was a diabetic and he did not want to climb real high. Farmer testified that he would not hire Bowers because of his problem with heights. Woodell testified that Myers told him to go to the jobsite, get a job, and organize; that he signed a salting agreement; that he filled out an application listing a number of union contractors; that Farmer asked him to get the telephone numbers of the contractors; and that Farmer said that Casey had a lot of rigid pipe to run and he was going to hire a few journeymen and a couple of helpers. The car that Woodell drove that day had a union sticker in the back window which was facing the Casey trailer across the parking lot.

Also on September 19 Sargent returned to the Casey jobsite. Abbitt told him that Casey might be hiring some helpers. Sargent filled out another application updating his prior work history. He never heard from Casey and he was never told by anyone at Casey that hiring was being done out of the Tennessee home office.

On September 20 Woodell returned to the jobsite with the telephone numbers. He testified that he drove the same car as the day before and he parked it in the same place.

On September 23 George Riggs went to the Casey jobsite. He had been an electrician for 15 years and was a member of the Union. Myers told him that Casey was hiring. Riggs signed a salting agreement. Abbitt took Riggs' application and allegedly told Riggs to come to the site on September 25 ''prepared to go to work; bring . . . [your] hack saw, hand tools and be prepared too buy a hard hat from . . . [Casey].'' Riggs also testified that Abbitt told him that he would be paid $12.50 an hour. The car that Riggs drove that day to the site had two union stickers, General Counsel's Exhibits 7 and 9, on the bumper. Farmer, who had also been speaking to Riggs, at one point left the trailer. Riggs' wife and daughter were present during a part of the interview. Riggs' wife testified that when she entered the trailer her husband had already filled out the application; that Abbitt told her husband that he should come to work with his tools and be prepared to buy a hardhat; and that Abbitt said something about going to Alaska after the Winchester job was finished. Abbitt testified that he told Riggs that he did not need any journeymen or helpers; and that he never had any plans to go to Alaska. Abbitt also testified that employees of Casey are required to pay for their hardhat.

Also on September 23 Steve Albert went to the Casey jobsite. He had been an electrician for 6 years and was a member of the Union. Myers had told him that he could possibly get a job and help organize Casey. Albert spoke with Farmer at the jobsite. He testified that he filled out an application; that of the four contractors he listed on his application two were union contractors; that he had a union insignia, General Counsel's Exhibit 10, on his car, which he parked about 75 yards from Casey's trailer; and that he has journeyman licenses from Virginia and West Virginia.

Abbitt testified that when Riggs came to the jobsite the next day, September 24, with his tools, he, Abbitt, told him that he did not need any help.

On September 25 Riggs, according to his testimony, reported for work at 6:45 a.m. Allegedly, Farmer and Abbitt told him that things, possibly the contract, fell through and he should come back tomorrow. Riggs testified that he continued to show up every day at 6:45 a.m. for work until either October 4 or 6. On each occasion allegedly he was told that things were not working out and he should just keep coming back and trying. Farmer testified that he spoke with Riggs once over the telephone and once when Riggs was in the parking lot and both times he told Riggs that they did not need him.

On September 30 Dooley returned to the Winchester jobsite after Myers told him that Casey had another newspaper ad. Farmer gave him another application to fill out. Also Farmer asked him what types of work he had done and how much money he wanted. Again Dooley drove the same truck with the union insignia and parked in the same area at the jobsite. Dooley testified that his wife was home through the end of August and in September and October she was home in the afternoon.

Also, on September 30 Robert Whitson went to the Casey jobsite looking for a job. He has been an electrician since 1984 and was a member of the Union. Myers asked him to file an application with Casey and Whitson signed a salt agreement. While in the Casey trailer, Whitson carried a briefcase which had a union sticker on it. Also, he indicated on his Casey application that he went through IBEW Local 26's 2-year residential wireman apprenticeship program. Instead of filling out the prior work history section of the application, he attached a resume, General Counsel's Exhibit 15. Farmer told him that he would keep him in mind.

Farmer testified that sometime in the last week of September or the first week in October a contract was signed for job 377.

On October 2 James Franklin went to the Casey jobsite in Winchester. He had completed his electrician apprenticeship in 1982 and he was a member of the Union. Myers had told him about the job. At the jobsite he filled out an application and spoke with a man who fits the description of Abbitt. The man told him that his job was finishing up and there would

[18] Except for the rate of pay, he gave the same information on both of the applications. One of the contractors listed on his applications, Truland Electric, is a union contractor.

[19] According to Jt. Exh. 2, it appears that the transfers began on September 18.

be a new foreman who would be hiring. Franklin listed union contractors on the application. And the truck he drove to the jobsite and parked 30 feet from the Casey trailer had three union stickers on it, General Counsel's Exhibits 9, 3 and 11. Franklin did not hear from Casey. At some point in time Franklin signed a salting agreement.

On either October 4 or 6, according to his testimony, Riggs showed up for work at the Casey jobsite for the last time. Assertedly, Abbitt told him that Casey was pretty much done, it did not need help and he should apply for work with a company from Missouri which was doing the control wiring work, which company was located on the other side of the involved plant. Riggs testified that he looked for that company but he was unable to locate it.

On October 7 Whitson returned to the Casey jobsite with his briefcase which had the union sticker. According to Whitson's testimony, Farmer told him that he reviewed the application and that he, Whitson, was in the running for a job.

On October 8 Dooley returned to the Winchester jobsite. Farmer told him that Casey intended to hire some people in the next few days, his application would be considered and he would be contacted if Casey wanted to hire him.

On Friday October 11 Abbitt fired Zane Metz Jr., who had been working for Casey at the involved jobsite since July. Metz testified that he had worked as an electrician since 1970; that he worked for Farmer in 1990 on a Casey job in West Virginia; that on October 8 he spoke to 10 or 12 employees, asking them if they would be interested in signing a union authorization card;[20] that one of the helpers that he spoke to regarding the Union left the jobsite at the end of the day with Roy Mullinax, who had come to the job with Casey; that he was sick on October 10 but he did not call in; that when he called in on October 11 Abbitt said that he was not happy with Metz' work, the main office told him that the hourly rates were too high, he could not afford to pay Metz $13 an hour and he was going to have to let him go; that while he had never been warned that his attendance was unsatisfactory, Farmer did speak to him about missing 2 days after Labor Day because Foreman Ken Conley neglected to tell Farmer that Metz told him the Friday before Labor Day that he might be out for a couple of days after Labor Day; that sometime after he had been on the job for 6 weeks and switched to day shift, Abbitt told him that he would have a job until April or May 1992;[21] that once while he worked on the night shift Farmer had to help him bend a saddle in a conduit but that was only because the Casey equipment was old and the bending degree marks were painted over; that Farmer himself was not able to bend the conduit correctly the first time; and that Farmer was his supervisor when he worked on the night shift and subsequently on the day shift after the night shift ceased.

Abbitt testified that on October 11 he made the final decision[22] to discharge Metz; that Metz did not produce as a journeyman and his absenteeism was bad; that he told Metz this when he fired him and Metz said that he was not surprised because he knew that he was being watched; that initially Metz produced but his production dropped; that he verbally warned Metz twice within the last couple of weeks that he worked that he had to increase his production;[23] that he never gave Metz a written warning; that Metz was the only employee that he recalled firing for absenteeism; that he did give another employee, Jim Madigan, a written warning after two verbal warnings for talking on the job instead of doing his work; and that he never told Metz that he would have a job until April or May 1992. General Counsel's Exhibit 120 is an undated memorandum of Respondent's regarding Metz' termination which, as here pertinent, is signed by Abbitt. It specifies a termination date of October 10. Abbitt could not explain why the termination date on the memorandum was October 10 and not October 11 and he did not know exactly when he signed the undated memorandum.

Farmer testified that in 1990 on the Martinsburg, West Virginia Casey job Metz told him that he, Metz, had dropped his union membership; and that there was nothing discussed with Abbitt about Metz' termination.

Metz' employee evaluation, General Counsel's Exhibit 21, dated ''9–3–91'' and signed by Farmer, indicates that Metz' work attendance was good and that Farmer would like to have Metz' work on a future job.

On October 15 Farmer discharged Harold Hammons, who was working on job 377 at the involved jobsite. The notification of termination, Respondent's Exhibit 11, indicates that Hammons was discharged after verbal warnings for excessive absenteeism. The General Counsel introduced Hammons' absentee calendar (G.C. Exh. 20).

On October 21 Darr returned to the Casey jobsite. Darr was told that another member of the Union, Lester Wisecarver, had been hired. According to Darr, other union members hired by Casey included ''Jim something . . . another guy that actually left the Union on that job'' and Robert Truslow. Darr drove the same car as before. After filling out a new application, General Counsel's Exhibit 13, on which he indicated, among other things, that he attended a union apprentice trade school for 4 years, Darr was hired. He began work on October 22 and worked for 1 month until he was laid off.

On October 23 Dooley returned to the Winchester jobsite. Farmer told him basically the same thing he said on October 8. Dooley never heard from Casey.

Also on October 23 Gerald Hildenbrand went to the involved Casey jobsite. He had 25 years' experience, with a master's license from Virginia, and was a member of the

[20] Metz had not been a union member since 1985. But he did indicate in his application to work on the aforementioned 1990 Casey job, R. Exh. 9, that he graduated from the Union's apprenticeship program, and he also indicated that he obtained work through Local 466 of the IBEW from 1970 to 1976. Before going to work for Casey at Winchester, Metz had discussed with Myers the possibility of getting a new union ticket. On October 7 Metz spoke with Myers, with a Bob Trustlove present, about the requirements for an election and about the guidelines regarding what could be said. Myers told Metz that if he could get cards signed and get an election, it would be a feather in his cap and probably help Metz in getting a new union ticket.

[21] Metz believed that this occurred sometime in September.

[22] Abbitt testified that he discussed Metz' production with Conley before Metz was terminated and that he, Abbitt, did not believe that Metz told Conley in advance that he might be out a few days after Labor Day.

[23] Abbitt testified that, on one job he worked during his last week with Casey, Metz, who earned $13 an hour, did one-half as much as a helper, Tom Sager, who was doing a similar task and who earned $7 an hour.

Union. Myers told him about the job. After he filled out an application, Farmer asked him a number of questions and told him that he, Farmer, was hiring a crew for nights and that he would contact him.[24] Hildenbrand had a union sticker on the rear bumper of his car. He parked his car at the jobsite with the rear facing the Casey trailer. He did not hear from Casey.

On October 24 Lamont Bowden went to the Casey jobsite looking for a job. He had worked as an electrician for 22 years and was a member of the Union. Bowden saw Casey's ad for helpers in one of the Winchester newspapers. He had been working for a janitorial service company and he wanted to get back into the electrical field. Bowden testified that he did not inform the Union that he was going to apply for a job with Casey before he did. He was told in the Casey trailer that Casey was hiring for a night shift that was supposed to start on October 29. He took an application to fill out and bring back the next day.

On October 25 Bowden returned to the Casey jobsite with the completed application. Farmer told him that he would place his name in a hat. Bowden, who has an answering machine, never heard from Casey.

On October 29 Franklin went back to the Casey jobsite. He asked Farmer if Casey was hiring. After the man sitting next to Farmer whispered in Farmer's ear, Farmer said that his field crew was full and he stopped hiring 2 days ago. Franklin drove his truck with the union stickers on it to the jobsite. No one in the Casey trailer told him that he had to contact the home office in Tennessee to inquire about a job. He never heard from Casey.

Also on October 29 Hildenbrand went back to the Casey jobsite. Farmer told him that the positions were filled and if there were any more positions opened he would put his name in a hat.

Also on October 29 Whitson returned to the Casey jobsite with his briefcase with the union sticker on it. Abbitt told him that all of the positions had been filled. They discussed Whitson's qualifications, including the fact that Whitson had worked with controls, and Whitson handed Abbitt Myer's business card, General Counsel's Exhibit 16, saying that Abbitt should contact Myers for any further information. Whitson was wearing a jacket with union lettering on it at the time.

Farmer testified that he thought an ad was placed in the Winchester Star and Northern Virginia Daily in the latter part of October; that in the last week in October he began telling individuals who came to the Casey trailer in Winchester that there was no need for additional employees; that he stopped hiring journeymen for job 377 in early November;[25] and that he started laying employees off in November.

On November 4 Salisbury returned to the Casey jobsite with Bowers and Jones. All three men were wearing hats with IBEW and NECA (National Electrical Contractors Association) union insignia.[26] Salisbury asked Abbitt if Casey was taking applications and Abbitt replied he was not and Casey was ''all filled up.'' Salisbury went because he had just been laid off from another job. He testified that no one from Casey told him to call the home office in Tennessee for hiring and he never heard from Casey. Bowers corroborated Salisbury regarding what was said on November 4.[27] Bowers never heard from Casey. Jones testified that he was wearing a hat with an NECA insignia on it.

Also on November 4 Romero Ramos went to the involved Casey jobsite. He has been an electrician for 20 years, with a master's license from Frederick County, Virginia, and he is a member of the Union. Myers had told him that Casey had a job in Winchester and he could go over and apply for a job. At the jobsite, Ramos told Abbitt about his, Ramos', master's license and Abbitt told him that Casey was not accepting any applications at that time. Ramos was wearing a jacket with a 12-inch union seal on the back with a local's number.[28] Ramos obtained Abbitt's business card for unemployment purposes. He did not recall Abbitt telling him that the hiring was being done at the home office in Tennessee.

On November 5 William Perrero went to Casey's jobsite in Winchester. He has been an electrician for 6 years and is a member of Local 26. Myers told him that Casey had an ad in the newspaper and was hiring; that if he obtained a job with Casey he would have to sign a salting agreement and that it would be a good idea to wear a union cap and a union pin when he applied for the job. Perrero was looking for a helper's job. Abbitt told him that Casey was not hiring at that time. Abbitt did not tell him that Casey was hiring from the home office in Tennessee. Perrero testified that he was wearing an IBEW baseball cap and a union button on his shirt, General Counsel's Exhibit 5; that he also had a union sticker, General Counsel's Exhibit 7, on the back window of his truck, which he parked near the Casey trailer; and that he did not look from the inside of Casey's trailer to determine if he could see his truck from inside the trailer.

On November 6, Banks returned to the Casey jobsite. Farmer told him that the job was just about finished and Casey would not be hiring anybody. Banks testified that Farmer never told him that the hiring was done from the home office in Tennessee.

Also, on November 6 Joseph Breehon went to the involved Casey jobsite looking for a job. He has been an electrician for about 22 years, holds a journeyman's license from Virginia, and is a member of the Union.[29] At the time, Breehon was out of work and Myers told him about the Casey job. Breehon went to the site with Lynwood Sherman and Michael Ross. He had signed a salting agreement before going. Farmer gave them applications to fill out. Breehon testified that he overheard Farmer and another unidentified man make comments to the effect that some of the workman-

[24] Farmer asked him if he considered himself a commercial electrician and he answered ''yes.'' Hildenbrand also considered himself an industrial electrician and he pointed out that he had 4 years' experience as an industrial electrician doing maintenance and new equipment work.

[25] Farmer testified that commitments were made to hire certain individuals, namely, Jerry Norton, Forrest Ward, and David Harrison, weeks before they began work in November.

[26] NECA is a national association of electrical contractors and, according to Stump, between 95 and 98 percent of the people who belong to it have union agreements. Myers suggested that all three wear the hats.

[27] Bowers was not sure if it was November 4 or 11.

[28] The jacket had Local 672 on it. That Local merged with Local 26 about 4 years ago.

[29] Breehon, who was a full-time business representative for the Union in 1989, was elected to the Union's executive board 1 month before the hearing in this case.

ship that was being done and the amount of time that it took to get the work done made it seem like it had been done by union people. Breehon listed his union apprenticeship on the application, he was wearing a sweater with IBEW on it and he wore a cap with LU 26 on it. Ross, who has been a journeyman electrician for 8 years and is a member of the Union, testified that he did not sign a salting agreement before going to the Casey jobsite with the above-named individuals on November 6;[30] that he overheard someone in the Casey trailer, other than Farmer, commenting about the inferior quality of union work and he saw Farmer smirking; that he indicated on his application that he went through the IBEW apprenticeship program and all of the contractors he listed in the work history section of the application were union; that he wore a union T-shirt and jacket to the jobsite that day; that Farmer said that he had all the help that he needed and the job was only going to last for 2 or 3 months; and that he never heard from Casey. Sherman, who has been an electrician for 20 years and is a member of the Union, testified that he went to the Casey jobsite with Breehon, Ross, and Scott on November 6; that Myers had told him about the job and Myers told him that if his group was hired, the Union might think about organizing; that he asked Farmer if Casey was hiring and Farmer said it was not; that he asked Farmer if he could fill out an application and Farmer said ''No''; that he asked Farmer how long the job was going to last and how many men Casey had on the job to which Farmer replied, respectively, a couple of months and about 50; that when he told Farmer that he needed to fill out the application for unemployment purposes, Farmer told the secretary to give out the applications; that while he was filling out the application he overheard someone say ''That's just like the Union''; that he wore an IBEW cap to the Casey jobsite, listed the IBEW apprentice program on his application, and listed union contractors in the prior work history section of the application; that no one told him that he should contact Casey's Tennessee office to be hired; and that he never heard from Casey even though he placed his telephone number on the application and he has an answering machine.

On November 12 Clark Villers, who has been an electrician for about 7 years, has a journeyman's license from West Virginia and is a member of the Union, went to Casey's jobsite. Myers had told him about the job. Villers testified that he spoke with Farmer who said that he was not taking any applications, the job was filled up, and Casey was not planning on hiring anybody; that he gave Farmer a resume, General Counsel's Exhibit 4; that at the time he wore a shirt which indicated ''America works best when we say Union yes,'' ''The IBEW, Local 26'' and ''Organizing Committee''; that he also had his IBEW, Local 26 baseball cap on; and that he never heard from Casey.

On November 17 Whitson returned to the Casey jobsite. Farmer told him that all positions were filled. Whitson never heard from Casey. He has an answering machine and his wife is home everyday. Whitson testified that he has worked with PLCs.

On November 18 Darr did not go to work at the Casey jobsite because he thought that he was going to be working on a job in York, Pennsylvania, for more money than he was earning at Casey.

On November 22 Darr was laid off by Casey. During the 1 month that he worked for Casey, Darr wore union stickers on his hardhat and on his tool boxes. No one from management said anything to him about the union stickers. Darr testified that he worked on the core part of the job which was being finished but none of the controls had been done yet.

On November 27 Truslow and 11 other employees were laid off. Truslow testified that IBEW members who worked for Casey included Chris Williams, Lester Wisecarver, and Jim Hass.

On January 23, 1992, project 375 was completed.

The contract on job 377 ended in March 1992.

In June 1992 Respondent's job in Winchester was finished.

Contentions

On brief, the General Counsel argues that Farmer unlawfully interrogated applicants Salisbury and Dooley about their union membership; that Respondent unlawfully refused to consider for employment and/or has refused to employ the 23 applicants listed in paragraph 6 of the complaint because the applicants named joined, supported, or assisted the Union; that a policy of screening out applicants for this reason is unlawful; that it is reasonable to infer that it was not just coincidental that those applicants displaying union affiliation were refused employment while those who were hired did not display union affiliation; that if the employer offers no credible reasons to explain why union applicants were not considered for employment in the same manner as other applicants, it is reasonable to infer that some factor, other than merit, caused the employer to discount the union applicants; that even a determination to not consider for hire which is based on past employment with unionized employers is unlawful; that as the Board noted in *Fluor Daniel, Inc.*, 304 NLRB 970 (1991), ''when a respondent's stated motives for its actions are found to be false, the circumstances may warrant an inference that the motive is an unlawful one that the respondent desires to conceal''; that in that case the Board went on to note that ''[t]he motive may be inferred from the total circumstances proved. Under certain circumstances the Board will infer union animus in the absence of direct evidence. That finding may be inferred from the record as a whole [footnotes omitted]''; that of the 57 journeymen hired to work at the involved jobsite, only two showed possible union affiliation on their applications; that the fact that Respondent eventually hired Darr and Truslow neither excuses Respondent's earlier failure to hire them nor does it detract from Respondent's failure to hire other union applicants; that Respondent's defense at the trial shifted from the position that Respondent took during the investigation of the charge in that while Farmer's affidavit stated that the only reason that the hiring for job 377 was done from Jackson was because of the flood of applicants, at the trial Respondent took the position that the hiring was done from Jackson because of the poor quality of the applicants at the jobsite; that the inconsistencies and contradictions lead to only one possible conclusion, namely, that the term qualified applicant is a smokescreen for avoiding hiring applicants with union affiliation; that the only explanation for the fact that Respondent did not set aside applications of people who were qualified

[30] Ross testified that a Randolph Scott also went to the jobsite with the above-named union members that day.

for job 377 once it realized that it was going to have the job was that it had determined not to hire union applicants; that Respondent avoided hiring local union applicants for the first round of hiring by bringing in known entities, namely, former Casey employees; that for job 377 Respondent again avoided hiring local union applicants by advertising in distant places; that no explanation was proferred by Respondent for why an advertisement for journeymen was not placed in the Winchester area newspapers; that the smokescreen did not stop there but rather it continued on a daily basis in that none of those who applied in Winchester for job 377 were told that they should contact the Jackson office; that there is just one inescapable conclusion which is that Respondent schemed to avoid the local union applicants; that Larry Casey, who asked applicants for job 377 what company they worked for in the past, admitted knowing the major nonunion contractors; that the majority of journeymen hired for job 377 had previously worked for open-shop employers, which are employers who are not signatory to any contract with any union; that an inference is warranted that Respondent's true motives in failing to hire applicants with union affiliation is an unlawful one and animus should be inferred from the totality of the circumstances starting with the interrogation of applicants on the first and second day Respondent is on the job and finishing up with its hiring practices for job 377; that under Board law, one who seeks a job in order to organize the employer's work force is entitled to the protection of the Act; that job availability is relevant only with respect to the employer's backpay obligation; that Respondent unlawfully discharged Metz and improper motive may be established through circumstantial evidence such as the employer's knowledge of the employee's union affiliation, the timing of the dismissal in relation to the employee's protected activity, and the employer's failure to warn the employee prior to discharge; that although Abbitt attempted to create a scenario where it was a serious transgression for Metz to be out sick because it would leave helpers without any guidance, that situation did not apply to Metz since at the time of his discharge he was working alone without any helpers; that Metz' termination form contradicts Abbitt's testimony; that Respondent treated Metz disparately; that according to Metz' September 3 evaluation, his attendance up to that point was good; that his attendance after this evaluation did not change substantially; that he was not warned about his attendance; that he was discharged within 48 hours of the beginning of his protected activity of talking to employees about the Union; and that since the stated motive for the discharge is false, it can be inferred that there was another motive, the unlawful motive to discourage union activity.

As noted above, although counsel for Respondent requested and was granted an extension of time for filing a brief, Respondent did not file a brief.

Analysis

Paragraph 5 of the complaint alleges that on or about July 1 and 2, 1991, Respondent acting through Farmer, at Respondent's worksite trailer, interrogated job applicants regarding their union membership, activities, and sympathies. The General Counsel, on brief, contends that both Salisbury and Dooley were interrogated by Farmer about their union membership and that such questions violate the Act. As noted above, the alleged interrogation violations, according to the complaint, occurred at Respondent's worksite trailer. Although the complaint alleges that the violations occurred on July 1 and 2, Abbitt, as noted above, testified that the trailer did not arrive at the jobsite until July 3. Some of the General Counsel's own witnesses, Sargent, Salisbury, and Mathis, specifically or in effect testified that the Casey trailer was not at the jobsite on July 1. Darr, on the other hand, testifies that Casey had a trailer at the jobsite on July 1. Salisbury does not testify that his conversation with Farmer about being in the Union occurred in the Casey trailer, however. Salisbury is credited; Farmer did ask Salisbury if he was a union member. It does not matter that the complaint mistakenly alleges that the violation occurred at Casey's trailer. Farmer's general denial is not credited. More than once the General Counsel was able to demonstrate that testimony Farmer gave at the hearing was not consistent with the affidavit he gave to the Board during the investigation of this case. It was obvious that Farmer was changing his position at the trial in an attempt to strengthen Respondent's case. As pointed out by the Board in *Gilberton Coal Co*., 291 NLRB 344 (1988), ''[i]t is well established that questions concerning union preference, in the context of job application interviews, are inherently coercive and unlawful.'' Dooley's testimony about Farmer asking him if he was still a union member, if he understood that it was not a union job and if he ever worked outside the Union is also credited notwithstanding the apparent conflict of the testimony of several of the witnesses regarding whether Casey had a trailer on the jobsite on July 2. As noted above, the General Counsel demonstrated more than once that Farmer's testimony was not consistent with his prior affidavit to the Board. Sargent's notes indicate that early on the morning of July 3 Casey had a trailer on the jobsite and he testified that when he entered the trailer, they were setting it up. Dooley testified that when he was in the Casey trailer on July 2 ''[t]hey were moving things in.'' Another of the General Counsel's witnesses, Bennett, testified that on July 2 all Casey had at the jobsite was a pickup truck. Bennett's testimony would not be inconsistent with Dooley's if Bennett was at the jobsite some time before Dooley on July 2 and in the interim Casey started setting its trailer up and was still in the process early on the morning of July 3 when Sargent arrived at the jobsite.[31] Only Abbitt testified that the Casey trailer arrived at the jobsite on July 3. For the reasons given below, I do not find Abbitt to be a credible witness. Respondent violated the Act in interrogating Salisbury and Dooley as set forth above.

The Act prohibits an employer from refusing to hire job applicants because they are members of, support, or assist a union. Respondent's involved onsite superintendents, Abbitt and Farmer, take the absurd position that, except for one union hat and a sticker on an employee's lunchbox, they did not notice any union insignia. Apparently they realized that if they admit what they saw, they will be also admitting that they knew that certain of the applicants were union members or union supporters. Respondent knew. It knew from certain of the attire some of the applicants wore, it knew from cer-

[31] Dooley's reference to trailers being there the last week in June apparently referred to a group of trailers and not specifically to Casey's individual trailer since Dooley also testified that he was inside those trailers speaking with people during the last week in June; and that he was under the impression that July 2 was the first day Casey was at the jobsite.

tain of the applications, and it is reasonable to conclude that it knew from union stickers on certain of the vehicles parked at the jobsite. As found above, Farmer unlawfully interrogated certain of the applicants about their union membership. This was not only an indication of its awareness, but it is also a manifestation of the Respondent's union animus. The application process for job 377, as far as journeymen applicants from the Winchester area were concerned, was a sham. Unexplainably, Respondent did not even advertise for journeymen for job 377 in the Winchester area. And unexplainably those who turned their applications in at Winchester for journeymen positions on job 377 were not even told that they should contact Jackson. Farmer's affidavit to the Board indicated that Respondent decided to handle the staffing of journeymen for job 377 out of the Jackson office because of the flood of applications Respondent originally received at Winchester. Those applications indicating that the applicant had prior journeyman electrical experience could have been sent to Jackson and Respondent's personnel at Jackson could have conducted interviews over the telephone just as was done for applicants from North and South Carolina and from Tennessee. At the trial, Farmer shifted his defense apparently now taking the position that a lot of the applicants at Winchester were not qualified.[32] Because Respondent did not keep the applications of those not hired, there is no documentary way to test this shift in the defense. Moreover, by not really considering those applications and treating them the same way it did the applications from areas other than Winchester, Respondent was not really in a position to make a reasonable determination as to whether the applicants were indeed qualified to do the work involved on job 377. By its conduct, Respondent was denying the applicants at Winchester even the possibility of being hired for the 377 job.

As stated by the Board in *Fluor Daniel, Inc*., supra,

> In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982) [and approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983)], the Board set forth its causation test for cases alleging violations of the Act turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a ''motivating factor'' in the employer's decision. Once accomplished, the burden then shifts to the employer to demonstrate that the same action would have taken place notwithstanding the protected conduct. It is also well settled, however. that when a respondent's stated motives for its actions are found to be false, the circumstances may warrant an inference that the true motive is an unlawful one that the respondent desires to conceal. The motive may be inferred from the total circumstances proved. Under certain circumstances the Board will infer animus in the absence of direct evidence. That finding may be inferred from the record as a whole. [Footnotes omitted.]

In my opinion, it is reasonable to conclude that Respondent realized that it was receiving a number of applications from union members. All of the alleged discriminatees revealed some indicia of union ties. Respondent's assertion that it did not, with few exceptions, see the indicia is, as noted above, absurd. Such assertion demonstrates, in my opinion, the fact that Respondent's witnesses believed that it was in the Respondent's best interest to disclaim knowledge of the fact that the applicant's were union members. But was it? When a person disclaims seeing that which would be obvious to a reasonable man, one has to wonder why the party making the unreasonable disclaimer believes it is necessary to do so.

As demonstrated by the applications introduced by the General Counsel, with few exceptions, the journeymen hired to work the Winchester job had work histories with well-known nonunion employers. This, considered in conjunction with Farmer's above-described unlawful interrogation, is sufficient, in my opinion, to support a prima facie case of discrimination both with respect to jobs 375 and 377.

Notwithstanding Respondent's attempts to prove the contrary, the involved applicants were bona fide. In *H. B. Zachry Co. v. NLRB*, 886 F.2d 70 (4th Cir. 1989), the court held that a paid full-time union organizer was not a bona fide ''applicant'' for employment and, therefore, was not covered by the Act. While it was demonstrated that many of the discriminatees signed salting agreements, this, obviously, is not the same as being a paid full-time union organizer. Consequently, this case can be distinguished from *H. B. Zachry Co*., supra.[33] Here the applicants needed work. Clearly they would have accepted employment. They were not seeking employment solely to attempt to organize Respondent's employees. As one of the discriminatees noted, he has a mortgage to pay. Undoubtedly, for some of the discriminatees it was a matter of ''putting food on the table'' or at least attempting to make more than they were receiving on unemployment. Many signed an agreement to help the Union organize Respondent's employees if they were hired. This, in and of itself, does not mean that the alleged discriminatees were not bona fide applicants protected by the Act.

Respondent's stated reasons for refusing to consider for employment and/or employ the discriminatees are false and its true reason was to discriminate against them because of their union affiliation. The General Counsel made a prima facie showing of unlawful motivation on the part of the Respondent for its refusal to hire the specified discriminatees as required under *Wright Line*.[34] Respondent's proffered justifications are pretextual. Respondent has failed to meet its *Wright Line* burden of demonstrating it would have taken the

[32] Abbitt made a similar assertion, including in this category applications from those with no prior electrical experience. He conceded that he did not set aside applications which looked like the applicant might have the credentials needed for job 377.

[33] Interestingly, on the day the trial in this case began, July 21, 1992, in *Willmar Electrical Service v. NLRB*, 968 F.2d 1327 (D.C. Cir. 1992), the court agreed with the Board and held that the word ''employee'' in the Act encompasses a job applicant who is employed by a union at the time of application, seeks the job for the purpose of organizing the work force, plans to retain some kind of employment affiliation with the union, and has at least a substantial prospect of later returning to full-time employment by the union.

[34] The General Counsel correctly argues that the fact that Respondent eventually hired Darr and Truslow neither excuses Respondent's failure to hire them when they originally sought employment nor does it detract from Respondent's failure to hire other union applicants.

same action absent the union activities of the specified discriminatees.

Paragraphs 7 and 8 of the complaint allege that Respondent discharged Metz because of his union activity and his concerted protected activity. Abbitt testified that he made the decision to terminate Metz, and he asserts that the allegation in the complaint that it was because of union activity is untrue. Abbitt was not a credible witness. His testimony that he did not see any of the union insignia other than that on Truslow's lunchbox is, as noted above, absurd. Metz, without contradiction, testified that Farmer was his supervisor both while he worked on the night shift and subsequently on the day shift. Farmer hired Metz for the Winchester job because Metz had worked for him previously. As indicated by Abbitt, Metz, on the word of Farmer, was paid top dollar. Abbitt claims that there was a drop in Metz' production and that he verbally warned Metz twice about it. There was no written warning. Farmer, who hired Metz and apparently was his supervisor, does not testify about any drop in production. Farmer testified that nothing was discussed with Abbitt about Metz' termination. Metz' testimony that he was told that he would have a job with Casey until April or May 1992 is credited. Consequently, it appears that Metz was going to be transferred from job 375 to job 377. Church worked on job 375 until October 10. In other words, he was transferred 1 day before Metz was fired. Those journeymen electricians on job 375 who were transferred were transferred between September 18 and October 14. The week Church spent in jail occurred while he was working on 375. Also, according to General Counsel's Exhibit 17, Church had other absences while he worked on job 375. Church reported to Farmer after getting out of jail. Yet, Abbitt had ultimate responsibility for job 375. Church, despite his poor attendance record, was transferred. Metz, who would have been considered for transfer at about that time, was fired. This firing occurred 3 days after Metz spoke to 10 or 12 of Respondent's employees and 1 of the employees he spoke to was seen in the company of 1 of the Casey employees Casey brought to this job from out of State. Metz admits that he did not come to work on October 10 and he did not call in. But the only other time there was a question of him being absent and not calling in was over the Labor Day weekend and Farmer, who questioned him about this absence, did not dispute Metz' testimony that Foreman Conley admitted that he neglected to tell Farmer that Metz told him about the possible absence before he left for the Labor Day weekend.[35] Conley did not testify. Abbitt, who at the time it occurred, was not involved in the Labor Day weekend absence question, testified that he did not believe that Metz told Conley before he left for the weekend. Metz impressed me as being a credible witness. Only Abbitt attempted to contradict Metz' testimony. He did not succeed. As found above, Abbitt was not a credible witness. There was no written warning to Metz.[36] Abbitt's testimony about Metz' alleged poor production is not corroborated. As evidenced by the treatment of Church, Respondent was willing to give some leeway on absences. Metz testified that he had never been warned about absences. He is credited. On the other hand, Hammons' termination form signed by Farmer, Respondent's Exhibit 11, states ''AFTER VERBAL WARNINGS FOR EXCESSIVE ABSENTEE.''

In my opinion the reasons given by Respondent for Metz' discharge are pretextual, and *Wright Line*, supra, therefore, does not apply. In the event it did apply, the General Counsel has made a prima facie showing sufficient to support the inference that protected conduct was a ''motivating factor'' in the Employer's decision. The Respondent has not met its burden of showing that it would have fired Metz even in the absence of his union activity. In unlawfully discharging Metz, Respondent violated the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by interrogating job applicants regarding their union membership.
4. The Respondent violated Section 8(a)(1) and (3) of the Act by refusing to consider for employment, and/or refusing to employ on specified dates, Steve T. Albert, Theodore L. Banks, Wayne P. Bennett, Lamont Bowden, David Bowers, Joseph Brehon, Kenneth L. Darr, David L. Dooley, James Franklin, Gerald Hildenbrand, Gregory Jones, Forrest Mathias, William Perrero, Ramiro G. Ramos, George C. Riggs, Michael A. Ross, Craig L. Salisbury, Edward R. Sargent, Linwood K. Sherman, Robert E. Truslow, Clark E. Villers, Robert F. Whitson, and Wade Woodell.
5. The Respondent violated Section 8(a)(1) and (3) of the Act by discharging Zane Metz Jr. because he engaged in union activity and concerted protected activity.
6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

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

It having been found that Respondent unlawfully discriminated against specified job applicants based on their suspected union sympathies, it will be recommended that Respondent make such employees whole for any loss of earnings they may have suffered by reason of the failure to give them nondiscriminatory consideration for employment from the date they applied for employment. And it having been found that Respondent unlawfully discharged Zane Metz Jr.,

[35] Regarding the conduit saddle incident, Farmer testified that it was pretty much the way Metz told it.

[36] The undated memorandum, G.C. Exh. 120, which Abbitt signed at some point after Metz' termination contains the following:

> Reason For Termination—Mr. Metz was verbally warned, on several occasions that he was not performing at journeyman standards and that he needed to start doing journeyman work. He was also warned about missing too much work, and not calling to let us know he was not going to be at work.

As noted above, the memorandum gives October 10 as the date of termination. Abbitt could not explain this. Although apparently his wife typed the memorandum, Farmer testified that he had not seen it before the hearing. While the memorandum contains what purports to be the signature of Ken Conley, Conley did not testify. It is noted that Conley's signature does not appear on his application, G.C. Exh. 37.

it will be recommended that he be made whole for any loss of earnings he may have suffered as a result of the discrimination against him by payment to him of a sum of money equal to that which he would have earned as wages during the period from the date of his discharge to the date of completion of Casey's project 377 at Winchester, Virginia. Backpay shall be computed on a quarterly basis, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and shall be reduced by net interim earnings, with interest computed in conformance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[37]

ORDER

The Respondent, Casey Electric, Inc., Winchester, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating job applicants regarding their union membership.

(b) Refusing to consider for employment, and/or refusing to employ Steve T. Albert, Theodore L. Banks, Wayne P. Bennett, Lamont Bowden, David Bowers, Joseph Brehon, Kenneth L. Darr, David L. Dooley, James Franklin, Gerald Hildenbrand, Gregory Jones, Forrest Mathias, William Perrero, Ramiro G. Ramos, George C. Riggs, Michael A. Ross, Craig L. Salisbury, Edward R. Sargent, Linwood K. Sherman, Robert E. Truslow, Clark E. Villers, Robert F. Whitson, and Wade Woodell.

(c) Discharging Zane Metz Jr. because he engaged in union activity and concerted protected activity.

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

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

(a) Make Steve T. Albert, Theodore L. Banks, Wayne P. Bennett, Lamont Bowden, David Bowers, Joseph Brehon, Kenneth L. Darr, David L. Dooley, James Franklin, Gerald Hildenbrand, Gregory Jones, Forrest Mathias, William Perrero, Ramiro G. Ramos, George C. Riggs, Michael A. Ross, Craig L. Salisbury, Edward R. Sargent, Linwood K. Sherman, Robert E. Truslow, Clark E. Villers, Robert F. Whitson, and Wade Woodell whole for any loss of earnings and benefits they may have suffered by reason of Respondent's discrimination against them in the manner and to the extent set forth in the remedy section of this decision.

(b) Make Zane Metz Jr. whole for any loss of earnings and benefits he may have suffered by reason of Respondent's discrimination against him in the manner and to the extent set forth in the remedy section.

(c) Expunge all records kept of Zane Metz Jr.'s discharge on October 11, 1991.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Mail a copy of the attached notice marked ''Appendix''[38] the last known address of Steve T. Albert, Theodore L. Banks, Wayne P. Bennett, Lamont Bowden, David Bowers, Joseph Brehon, Kenneth L. Darr, David L. Dooley, James Franklin, Gerald Hildenbrand, Gregory Jones, Forrest Mathias, William Perrero, Ramiro G. Ramos, George C. Riggs, Michael A. Ross, Craig L. Salisbury, Edward R. Sargent, Linwood K. Sherman, Robert E. Truslow, Clark E. Villers, Robert F. Whitson, Wade Woodell, and Zane Metz Jr. Copies of the notice on forms provided by the Regional Director for Region 5, after having been signed by an authorized representative of Respondent, shall be mailed by Respondent immediately upon receipt.

(f) Sign and return to the Regional Director sufficient copies of the notice for posting by the Union, if it is willing at its office and meeting halls, including all places where notices are customarily posted.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[37] 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.

[38] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''