The Wilkie Company d/b/a Wilkie Metal Products, Inc. *and* Local Lodge 670, District Lodge 67, International Association of Machinists and Aerospace Workers, AFL–CIO. Cases 7–CA–40357, 7–CA–40446, 7–CA–40868, and 7–CA–41033

March 15, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On April 21, 1999, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

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

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Wilkie Company d/b/a Wilkie Metal Products, Inc., Muskegon, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Thomas W. Doerr, *Esq.,* for the General Counsel.
Robert W. Sikkel and *Robert A. Dubault, Esqs. (Warner Norcross & Judd*), of Muskegon, Michigan, for the Respondent.
L. Pete Jazdzyk, for the Union.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These cases were tried in Grand Rapids, Michigan, on November 18–20 and 23–25, 1998. The charges were filed from October 28, 1997,[1] through June 2, 1998, and the complaints were issued, consolidated, and amended from January 27 through November 3, 1998.

Manufacturing Manager John Robert Boos Jr. (J. R. Boos or Boos) was the son of President and Owner John Robert Boos Sr. (John Boos). Union bargaining committee Member Jeffrey Pugh (Jeff Pugh or Pugh) and the two other bargaining committee members were the top three union officials in the shop. Working as general labor in general press, Pugh was a senior employee whose higher wage rate had been "grandfathered" since his high-skilled Prototype job ended and he began working wherever assigned.

J. R. Boos, regarded as "abusive" and having "over emphasized his authority," abruptly assigned Jeff Pugh to the evening shift—against his will and despite his seniority—after Pugh refused to sign the final draft of the new safety rules until some provisions were clarified. In response to the Union's NLRB charge, Boos returned Pugh to the first shift but reduced his pay, canceling his "grandfathered" wage rate. Then Boos—again against Pugh's will and despite his skills and seniority—assigned Pugh "for the rest of his career" to a menial drill job.

The General Counsel alleges that these and other actions against Jeff Pugh and Karen Workman (who became a union steward) were coercive, discriminatory, and unlawful changes in conditions of employment. The General Counsel also alleges that J. R. Boos advised employees against making complaints to or seeking assistance from the Union because he did not like the Union and that then Vice President Robert Darga made coercive statements regarding employees filing NLRB charges.

The General Counsel further alleges that beginning in December (before negotiations began for a new agreement) both

[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] We agree with the judge that President John Boos' comments to employees Bernard Robart and Robert Dollaway violated the Act. Shortly before the contract negotiations began, Boos saw Robart walking toward the lunchroom and asked, "Do you have your money saved up for the strike?" Contrary to our colleague, we find that Boos, who had the capacity to direct negotiations as the Respondent's owner, clearly threatened Robart with the futility of bargaining by suggesting in advance of negotiations there would be a strike. About a month later, after bargaining had begun, Boos approached Dollaway, who was working on a maintenance job. Boos, referring to the ongoing negotiations, asked Dollaway what he thought would happen. When Dollaway stated that he hoped the employees "wouldn't go on strike, Boos replied, "I hope you don't either because it will be pretty ugly if you do." We further conclude that Boos, by commenting that the situation "will be pretty ugly," was not merely expressing his opinion on strikes, but rather was unlawfully threatening unspecified retaliation if the employees exercised their statutory right to strike.

Member Hurtgen disagrees with his colleagues in three respects.

First, Member Hurtgen does not agree with the judge that the Respondent's president, John Boos, unlawfully threatened employee Bernard Robart. As set forth by the judge, Boos stated that he hoped Robart had saved up money for a possible strike, that two or three employees might cause a strike and that he was sick and tired of all the employee grievances. Boos' remarks contained no threat of employer retaliation for striking, and contained no implied message that a strike was inevitable.

Second, Boos' remark to employee Robert Dollaway (that "it will get ugly" if there was a strike) did not threaten employees with retaliation. Rather, the remark simply reflects Boos' 8(c) opinion that strikes are a form of industrial warfare and often "get ugly." My colleagues conclude that the remark would be understood by Dollaway as a threat that the Respondent would take action in retaliation for his striking. There is no evidentiary basis for this conclusion.

Finally, having found that the strike was, at its inception, an unfair labor practice strike, Member Hurtgen does not pass on the judge's finding that certain misconduct by Manager J.R. Boos, occurring after the inception of the strike, served to prolong the strike.

[1] All dates are from October 1997 through April 1998 unless otherwise indicated.

President John Boos and a supervisor (quoting John Boos) made unlawful threats if the employees engaged in a strike.

In a membership meeting on February 1, the union members overwhelmingly rejected the Company's "final proposal," which contained major changes, assigning more latitude in contractual provisions to the Company. The membership expressed no trust in the Company—especially mentioning the manner in which J. R. Boos assigned and dealt with the membership. They referred many times in the meeting to the cutting of Jeff Pugh's wages and questioned how J. R. Boos would enforce the proposed modifications. They also cited how President John Boos threatened the loss of their jobs if they went on strike.

The membership voted to strike after being told that it may be an unfair labor practice strike because of the Company's alleged unlawful conduct. The strike began on February 2.

On the morning of February 14 the Company gave the Union a written strike settlement proposal that included a number of concessions. The Company had not repudiated or remedied the alleged unfair labor practices, and the Company's proposal was again rejected by the membership that same day. The strike continued.

On the evening of April 22, between picketing shifts, J. R. Boos (with another person) destroyed the Union's property in the picket area. They placed in a steel barrel (which the pickets used as a stove to keep warm in the cold weather) and burned seven or eight picket signs, the pickets' sign-in log book, all the logs used for firewood, the pallets that were broken up and used for kindling, and the plank placed over two stumps for a bench, where the log book had been kept (leaving only the stumps, which were too heavy to lift).

When the first of the pickets returned she asked if "J. R." had been out there and had burned "all our stuff." The security supervisor answer yes, he watched J. R. Boos do it. Later that night, after other pickets arrived, Boos came out. In a verbal altercation that ensued between the first picket and Boos (as the security supervisor credibly confirmed), Boos spit in the picket's face.

On April 29 J. R. Boos grabbed a wooden picket sign shaped as a cross and bearing the words "Rest in Peace" and (according to him) his initials "J. R." He threatened the pickets, waiving the sign at them and stating, "I'll hit you over the fucking head with it" if he saw another one of the signs. He threw the sign in the back of his brother's truck and left. He returned and grabbed a cardboard picket sign with a cross drawn on it. He later videotaped the picket signs.

The Company's management witnesses (excluding former Vice President Darga, who did not testify) denied any unlawful conduct.

The primary issues are (a) whether the Company, the Respondent, engaged in the alleged unlawful conduct in violation of Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act, (2) whether the strike was an unfair labor practice strike, and (3) whether the strike was prolonged by J. R. Boos' conduct on April 22 and 29.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, manufactures metal stampings at its facility in Muskegon, Michigan, where it annually ships goods valued over $50,000 directly outside the State. It admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. J. R. Boos' Treatment of Jeff Pugh

1. Background

a. Jeff Pugh's "grandfathered" wage rate

By the mid-1980s Jeff Pugh (employed since 1978) was performing high-skilled Prototype work, making models of products to be manufactured. When that work ended and he declined promotion to management, the Company informed him that because of his experience and efficiency, his work was worth the money it was paying him and it had no desire to cut his pay. He worked as general labor in general press, being assigned wherever he was needed. (Tr. 316, 358, 368, 376–381, 389, 486, 896–899; GC Exh. 6.)

Jeff Pugh worked as a press operator and on a temporary basis in various classified departments, including die setters, welders, and power brake, but never signed a job posting for permanent assignment to any of the classified jobs. He was already being paid next to the highest wage in the shop, and he had the second highest seniority of the general labor in general press. (Tr. 284, 325, 380–387, 414; GC Exh. 6.)

He continued to receive his higher pay after President John Boos acquired the business from Walter Wilkie on January 1, 1993. In 1995 both a die setter and a welder sought higher wages because Jeff Pugh, as general labor, was being paid more than they were. It is undisputed that at that time, John Boos "said that he was not interested in cutting Pugh's pay." (Tr. 286, 358–359, 389, 708; GC Exh. 4.)

Finally on March 23, 1995, Plant Superintendent James Barnett gave the Company's written decision in the die setter's grievance, which sought a wage increase to bring the die setters' pay "up above top paid General Labors" (referring to general labor Jeff Pugh's higher wage rate). The Company's decision was that the grievance was denied, that the pay structure stays as is, and "One employee [referring to general labor Jeff Pugh] will be grandfathered in at his current [$12.05] pay." (GC Exh. 3; Tr. 287–289, 312–315, 390–391, 887.)

b. Jeff Pugh's delay in signing new safety rules

For 9 years Jeff Pugh was a member of the bargaining committee. He and two other members of the committee were the three top union officials in the shop (Tr. 376–377).

Beginning in late spring or early summer 1997 the Company and a safety committee were working on revising the shop safety rules. Jeff Pugh was not on the safety committee. (Tr. 392, 458–460, 464–465, 820–823.) About 9 a.m. on Wednesday, October 8, Pugh was at the workbench of press floor

leadman David Bates (another member of the Union's bargaining committee). J. R. Boos came up and told them that they were dragging their feet on the safety policy and that it appeared they were not going to agree with it. Boos said he was going out on the floor and start writing people up for any violation of the old safety agreement and for some people that would mean discharge. (Tr. 394–395, 399, 468–469.)

Neither Jeff Pugh nor David Bates realized that there was a safety policy ready for the bargaining committee to approve or reject. J. R. Boos said he had given the document 2 weeks earlier to Karl Tazelaar (the chief steward and third member of the bargaining committee). Boos said he would give Pugh and Bates a little time to talk to Tazelaar to determine if the committee would approve or reject the policy. No time was set for them to talk to Tazelaar. (Tr. 356, 394–395, 399, 468.)

Right after lunch, with a notepad in his hand, J. R. Boos brought around Union Steward Cliff Oliver and said, "You guys have done it now. And I'm going to start writing people up." (Tr. 395–396.)

At the 2 p.m. break David Bates told Jeff Pugh to go to Tazelaar's work area, stating that the Company wanted them to review the safety policy. J. R. Boos was there and said, "I'm going to give you guys a little time to review it and get back to me." Boos then left with Vice President Robert Darga. (Tr. 397.)

The three union officials found a conflict between this final draft of the safety policy and a working rule and decided not to approve the policy until certain provisions were clarified. Bates and Tazelaar took the policy back to the Company, obtained the clarification, and signed the document. (Tr. 398–399.)

On Thursday, October 9 (the next day), when David Bates and Tazelaar showed the signed document to Jeff Pugh, he still had two problems with it and refused to sign. Either Bates or Tazelaar returned the document to Company, which clarified the provisions to please Pugh, the holdout. He signed it later that day. (Tr. 399–401.)

When called as a defense witness, J. R. Boos disputed this account of what happened. He claimed that in late summer 1997 the Company turned the safety rule proposal over to the bargaining committee, that the three members were "very much in favor of it," and that a couple of days later he picked up the signed agreement from Tazelaar and turned it over to Vice President Darga. He testified that no, he did not talk individually to Jeff Pugh while waiting for the paperwork to be signed. (Tr. 824–825.)

I discredit, as a fabrication, this account given by J. R. Boos of an earlier signing of the agreement. When testifying, J. R. Boos appeared by his demeanor to be willing to fabricate any testimony that would help the Company's cause.

I note that Jeff Pugh was asked on cross-examination about his very precise testimony regarding the safety policy, with "quotes of conversations with Mr. J. R. Boos throughout this process," including the "Time of day, 9 a.m., out on the shop floor" when Boos approached him. Pugh credibly explained [Tr. 462–463]:

> I have documents. J. R. Boos, in my opinion, over—over emphasized his authority. He became abusive of me and I started documenting every conversation we had.

Jeff Pugh impressed me most favorably by his demeanor on the stand as a truthful witness.

2. Jeff Pugh's assignment to second shift

a. Abrupt transfer

The following day, Friday, October 10, J. R. Boos posted a notice that Jeff Pugh was to report to Die Setting on the second shift the following Monday, October 13 (Tr. 401–402).

Jeff Pugh was a senior general labor in general press. His assignments in the die setters and other departments were on a temporary basis. He had never signed a posting for die setting and had never been classified as a die setter. (Tr. 379–381, 388, 414.)

Previously, a month or two earlier, J. R. Boos had told the first-shift die setters and Jeff Pugh that Boos needed somebody to replace a temporarily missing evening-shift die setter, and "if you guys can't come up with somebody who can do this, I'm going to assign you to do it," pointing to Jeff Pugh. Pugh protested that seniority prevailed in the shop and he did not want to work on the second shift. "If you have to have somebody to do it, J. R., it won't be me. Because of my seniority." (Pugh's wife was working, and he was taking care of their children in the evening.) The first-shift die setters and Pugh then worked out a temporary arrangement, sharing the evening-shift assignments. (Tr. 333, 335, 406–409.)

On this occasion in October, an evening-shift die setter had committed suicide and the Company needed a permanent replacement on the evening shift. Leadman David Bates' son Bates Junior signed a posting and was selected for the second-shift die setter position. While still in school, Bates Junior had worked a split shift with the die setters, beginning work at 12 noon and working into the evening hours, but was not fully trained. For proper training, J. R. Boos placed Bates Junior on the first shift. (Tr. 405, 476–477, 829.)

When asked on cross-examination who then trained his son Bates Junior on the first shift, David Bates credibly named Leo Kriger (the die setter with the most plant seniority) and himself (the leadman)—then adding that Bates Junior worked "with a number of employees," without naming Al Sturgis, the junior classified die setter on the first shift (Tr. 330).

J. R. Boos did not consult with David Bates about arrangements to be made to train Bates Junior on the first shift and to transfer someone as a die setter to the evening shift during the trained. Instead, as David Bates credibly testified, "I really didn't have any say in the matter," that "I was told how it was going to be done." He positively denied knowing why Jeff Pugh was transferred and credibly testified that yes, despite the fact that Pugh had more seniority than Al Sturgis, "J. R. unilaterally assigned Jeff Pugh to the second shift." (Tr. 328–332, 365.)

Thus, J. R. Boos announced to David Bates that he was transferring Jeff Pugh (despite Pugh's almost 20 years of seniority), without explaining why he was not instead transferring Al Sturgis, the junior first-shift die setter. The Union's position

was that Pugh had shop seniority over Sturgis and that Pugh should not have been transferred to the second shift (Tr. 331–332).

b. Jeff Pugh's protests

That Friday morning, October 10, Jeff Pugh saw J. R. Boos passing by and said, "J. R., I'd like to talk to you about the posting that you put up regarding me" and asked what was going on. Boos said they had an employee (Bates Junior) on the evening shift who needed better training, and they had to put somebody on that shift so they could bring him on the day shift. (Tr. 410–411.)

Jeff Pugh said, "I'm not the guy . . . you shouldn't be putting me on there. You should be putting . . . your low die setter on the job [referring to classified die setter Sturgis]." J. R. Boos responded, "I'm assigning you." Pugh stated, "J. R., I can't work second shift. I've never had a desire to work second shift. . . . there's something that has to be worked out because I'm not for second shift." Boos responded, "If you don't like it, file a grievance," and by the time you win it or the grievance is resolved, "I won't need you on second anymore." (Tr. 411.)

Jeff Pugh asked how long this would last and J. R. Boos answered, "However long it [takes] to train the man . . . it'd be roughly Christmas [over 2-1/2 months later]" (Tr. 411–412).

The bargaining committee asked for a formal meeting with Vice President Darga that Friday afternoon after J. R. Boos left for the day. As Jeff Pugh credibly testified (Tr. 413–414):

> I told [Darga] . . . I've never been a die setter. . . . [T]hey should assign a classified die setter, not a temporary. . . . [That was an] assignment which should've been done within that classification. . . . I explained to him that I was general labor. I'd been general labor for years. And my family life prevented me from ever [transferring to the second shift]. . . . Bob, I've been here for 20 years. . . . I've earned the right to stay on the day shift.
>
> Q. And what did Mr. Darga say, if anything, in response to that?
>
> A. He said that he would talk to J. R. and get back with me.

Later that Friday afternoon, as Jeff Pugh further credibly testified (Tr. 415): "I asked [Darga] if he had a chance to talk to J. R. to get that straightened out," and Darga answered: "Yes, you will still be going on second." Pugh told him, "Bob, you know that I'm going to have to file a grievance," and Darga responded, "Go right ahead." (As indicated, Darga did not testify.)

c. Company's defenses

J. R. Boos claimed that leadman David Bates was "very adamant" that "he did not want Jeff Pugh to train his son." Boos further claimed that David Bates needed Al Sturgis (the junior die setter on the first shift) to train Bates Junior on the automatic cell because Pugh was not qualified to do so. Then when asked on direct examination specifically why Al Sturgis was not moved to the second shift, Boos claimed that he and David Bates "selected Al [to remain on the first shift] because he could do the job" of training Bates Junior (Tr. 833–836.)

I find that this testimony by J. R. Boos was again fabricated.

On cross-examination, David Bates positively denied telling J. R. Boos or any other member of management that he did not want Jeff Pugh to be training his son. Testifying as the leadman, Bates positively testified that in his opinion, Pugh "had the experience and skills to train a die setter." (Boos admitted that "at that time I was not a very good die setter and didn't know a lot about it," Tr. 329–330, 845.) As found, David Bates credibly testified that "J. R. unilaterally assigned Jeff Pugh to the second shift" and "I really didn't have any say in the matter." Like Jeff Pugh, David Bates impressed me most favorably by his demeanor on the stand as a truthful witness.

The Company in its brief (at 20), relying on J. R. Boos' discredited testimony, contends:

> [T]he Company had absolutely no idea which members of the Union bargaining committee took issue with any aspect of the proposals exchanged by the parties. . . . There is nothing to indicate that anyone in management was aware of Pugh's specific disagreement with the [safety] rules. . . . Furthermore, the extended time lapse between the amendments to the safety rules (late summer) and Pugh's transfer to second shift (October) undermines General Counsel's retaliatory theory.

As indicated, credited testimony is to the contrary.

In arguing that the Company was not discriminatorily motivated when it transferred the senior employee Jeff Pugh instead of the junior employee Al Sturgis, the Company relies in its brief (at 21) on J. R. Boos' discredited claims of a request by David Bates that Pugh not train his son and Pugh's inferior training ability. The Company not only ignores David Bates' credited testimony that he made no such request and that Pugh was qualified to do the training, but also ignores David Bates' undisputed testimony that after the transfer, the senior die setter Leo Kriger and leadman David Bates himself trained Bates' son.

The collective-bargaining agreement in effect at the time specifically provided (GC Exh. 2, art. 13, p. 20):

> 13.1 In the assigning of employees to any other shift than the shift to which he is regularly assigned seniority will govern.

The Company concedes in its brief (at 5 fn. 2) that Jeff Pugh had more seniority than Al Sturgis. It contends (Br. at 4), however, that the April 1996 "Preference Work Areas" letter of understanding (GC Exh. 5) provides that short-term assignments to a given area could be made "at the discretion of management." That provision, referring to the assignment of an employee to a different work area, is obviously inapplicable. Jeff Pugh was not assigned to a different work area, but from the first to the second shift in the same work area.

The Company contends in its brief (at 21) that there is a past practice of "temporary, training-based transfers" that are "not driven by seniority." In support of this contention the Company cites two instances, one on April 21, 1997, and the other on April 27, 1997. Both instances are clearly distinguishable.

The first instance was the training transfer of two employees from the first to the second shift and two employees from the second to the first shift. J. R. Boos admitted, however, that those transfers—for only 1 week—were by agreement of eve-

ryone and no one objected. It therefore is no precedent for the involuntary assignment of the senior Jeff Pugh for months from one shift to another shift in the same area. The second instance was the movement of an employee "to Drill Preference Area" for training. This movement was obviously permitted "at the discretion of management" under the "Preference Work Areas" letter of understanding. (R. Exh. 8; Tr. 838–840, 843.)

d. Concluding findings of discrimination and bargaining violation

Particularly in view of the abrupt, involuntary assignment of senior employee Jeff Pugh to the evening shift on the day following his refusal as a union official to sign the safety policy until it was clarified to his satisfaction, as well as the other discriminatory actions taken against him as discussed below, I find that the General Counsel has made a prima facie showing sufficient to support an inference that Jeff Pugh's union activity was a motivating factor in J. R. Boos' decision to reassign him to the second shift. *Wright Line*, 251 NLRB 1083 (1983).

Having found that the Company's defenses are lacking in merit, I find that the Company has failed to meet its burden of proof that J. R. Boos would have reassigned Jeff Pugh in the absence of his union activity. I therefore find that the Company, through J. R. Boos, discriminated against Pugh in violation of Section 8(a)(3) and (1) of the Act.

I further find that by not permitting Jeff Pugh to exercise his seniority right under the contractual provision to remain on the first shift, the Company changed working conditions without providing the Union prior notice and affording it the opportunity to bargain, violating Section 8(5) and (1).

3. Jeff Pugh's reduction in pay

a. Continued discrimination

Immediately after his transfer to the evening shift on October 10, Jeff Pugh filed a grievance, asserting that the shift transfer was out of seniority and seeking a return to the day shift (Tr. 416, 844).

As indicated, Jeff Pugh took the position that his 20 years of service had earned him the right to stay on the day shift, that the Company was obligated to recognize his seniority as general labor in general press, and that the Company should have transferred the junior classified die setter to the evening shift—not a senior employee who was assigned temporarily to work in the die setters department.

The Company denied the grievance until the Union filed its charge on Tuesday, October 28 in Case 7–CA–40357. The charge alleged that the Company discriminatorily transferred Union Committeeman Jeff Pugh to a different shift in violation of the collective-bargaining agreement, violating Section 8(a)(1), (3), and (5). (Tr. 488; GC Exh. 1A.)

The following Tuesday, November 4, J. R. Boos granted Jeff Pugh's request to be returned to the day shift, but canceled his assignment as a die setter (despite the shortage of trained die setters and the fact that Bates Junior's die-setting training was not completed). At the same time Boos also eliminated Pugh's "grandfathered" $12.05 wage rate, effective November 3, reducing his wages $1.49 an hour to the $10.56 top general labor rate (which was 87 cents below the die setters rate of $11.43). (Tr. 416, 846, 849, 861, 887; R. Exh. 13; GC Exh. 3.)

J. R. Boos denied having any knowledge of Jeff Pugh's having worked wherever assigned for years as general labor at the "grandfathered" rate of $12.05 and claimed that he thought Pugh was a classified die setter until Pugh told him otherwise when seeking a return to the first shift (Tr. 846–850, 896–898, 966). I find that this again was a fabricated defense.

I find further find that even if it were possible that J. R. Boos—in top management with his father, President John Boos—were oblivious of Jeff Pugh's higher "grandfathered" wage rate, which had caused much controversy over Pugh, as general labor, being paid more than die setters and welders, his father of course was aware of the situation.

J. R. Boos initially concealed the fact that President John Boos had either decided on or approved the elimination of Jeff Pugh's "grandfathered" wage rate, which John Boos had opposed changing 2 years earlier (Tr. 359). When specifically asked, "Did your father agree with that reduction [in pay]," Boos answered: "I have no idea. I never asked him about it." (Tr. 864.)

To the contrary J. R. Boos later revealed that in a meeting with his father in the presence of Vice President Bob Darga, he explained to his father that Jeff Pugh's wage was "out of line" and asked his father, "*What do you want to do* [emphasis added]?" In response, "I think my father just said *we'll look into it*," and "I honestly assumed that *they* [John Boos and Bob Darga] *called Bob* [*Company Attorney Robert Sikkel*]." (Emphasis added.) Then, "Bob [Darga] just came back to me later in the day and informed me to make the change to first shift and put [Pugh] at top rate for general laborer." (Tr. 866–867, 869.) On cross-examination Boos admitted, "I assumed Bob [Darga] and my dad" decided to cut Pugh's pay (Tr. 963).

Therefore, even if J. R. Boos were unaware of Jeff Pugh's working as general labor on temporary assignment in the die setters department at the "grandfathered" $12.05 rate (62 cents higher than the $11.43 die setters rate), his father, John Boos, was aware of it. In 1995, as found, when employees were seeking higher wages because Pugh, as general labor, was being paid more than classified die setters and welders, the Company gave a written decision in the die setter's grievance that the pay structure stays as is and that Jeff Pugh "will be grandfathered in at his current [$12.05] pay" (GC Exh. 3).

After President John Boos decided on or approved Jeff Pugh's $1.49 reduction in pay and the cancellation of his assignment to the die setters department, J. R. Boos prepared a Payroll Change Report, dated November 4, effective November 3 (Tr. 418, 869), stating (R. Exh. 13):

> Per request by union Jeff is not a die setter and would like to be on 1st shift general labor. To resolve grievance re. shift transfer—Co. agrees Mr. Pugh is not a die setter and is able to move to 1st shift starting 11/10/97 at general labor wage.

I find that this wording was intentionally a misrepresentation. The Union had not requested the Company to cancel Jeff Pugh's assignment as a die setter, to demote Pugh to general labor (which Pugh had been for years, working wherever as-

signed with "grandfathered" wages), or to reduce his pay. (Tr. 358, 379–381, 419–420, 488–490.) I discredit J. R. Boos' claim that the Union "told me to put [Pugh] back to general laborer" (Tr. 964–965).

Again relying on J. R. Boos' discredited testimony and ignoring evidence to the contrary, the Company contends in its brief (at 6–7 and 25):

> In an effort to settle Mr. Pugh's grievance, the Company verified Pugh's claim and concluded that he was, in fact, a General Laborer. . . . It then placed Mr. Pugh in the General Laborer classification, adjusted his pay to the top rate of the General Laborer classification, and moved him back to first shift.
>
> General Counsel and the Union contend that Pugh's reassignment to the first shift and the change in his pay was in retaliation for certain union-related or protected conduct on behalf of Pugh. . . . This was not the case. Pugh was returned to first shift at his own request. His change in pay was solely a function of his classification being clarified to that of General Labor—a classification other than that in which he performed most (if not all) of his work until October 1997 and a classification other than that which the Company believed him to hold.

I find to the contrary that the credible evidence clearly shows that there was no change in or clarification of Jeff Pugh's "classification" as general labor in general press and that the Company was well aware of his general labor status there. The Company not only reduced Pugh's wages, eliminating his "grandfathered" wage rate, but also removed him from his assignment in die setters, where there was a shortage of trained die setters.

I find it obvious that this was a continuation of the discrimination against Jeff Pugh and that the reduction in his pay violated Section 8(a)(3) and (1).

b. Reprisal for filing NLRB charge

I find that the Company also had another motivation for discriminating against Jeff Pugh.

It is undisputed that on Friday, November 7, Jeff Pugh's last day on the second shift, as he credibly testified (Tr. 422–424), Pugh told Vice President Darga that the Company did not have a right to cut his wages and that

> our relationship is pretty strained right now. And [Darga] said, yeah, it's almost to the point of unrepair.
>
> [Darga] said . . . you should've filed a grievance and been happy with that . . . we wouldn't have any problem. *You went to the Labor Board. You're getting what you deserve*. [Emphasis added.]

The record is also undisputed that after the Company cut Jeff Pugh's wages, welder leadman James Pugh (Jeff Pugh's brother), as James Pugh credibly testified, asked Vice President Darga "what was going on . . . why Jeff was ending up with a crappy job like sweeping up shavings over in the Toolroom?" Darga replied that "they didn't mind that Jeff filed a grievance over the issue of getting put on second shift, but they didn't like the fact that he went to the Labor Board about it." (Tr. 235–237.)

I therefore find, as alleged, that the Company discriminated against Jeff Pugh also because of the filing of the NLRB charge, violating Section 8(a)(4) and (1).

I further find, as also alleged, that the statements by Vice President Darga regarding the reprisals against Jeff Pugh for going to the Labor Board were coercive, violating Section 8(a)(1).

4. Jeff Pugh's assignment to more onerous work

About 2 or 3 weeks after Jeff Pugh was returned to the first shift and was operating a press, J. R. Boos told press floor leadman David Bates that when Pugh was done on that job, to tell him "that *his career will be in the drill area from that point on* [emphasis added]." Then, as Bates credibly testified, he explained to Boos that if he and Pugh "had any kind of problems," he should do that himself, that it was not part of Bates' leadman job "to tell someone where their career was going to be." (Tr. 284, 535–537.)

David Bates later witnessed a conversation between J. R. Boos and Jeff Pugh (Tr. 285):

> J. R. told Jeff that *he would be spending his career in the drill area from that point on.* Jeff [said] he would go to the drill area, but he wanted to use his seniority and preference rights to stay in the press area. . . . J. R. said: "You'll go to the drill area when I tell you and you'll go now." [Emphasis added.]

J. R. Boos followed Jeff Pugh to the drill area, where Boos approached drill department lead person Michelle Holt. As Pugh credibly testified (Tr. 445):

> Q. All right. And what did you hear [J. R. Boos] say?
>
> A. [Jeff Pugh will] have jobs back in the drill area for the rest of his career.
>
> Q. And what was said after that?
>
> A. Michelle said, J. R., *why is it every time you're mad at somebody you stick them back in the drill area? I'm tired of getting workers who are upset and mad.* [Emphasis added.]

Michelle Holt (a striker who returned to work before testifying) recalled only that J. R. Boos told her: "Jeff is a part of your drill team now"—without saying anything about it being a temporary assignment, contrary to Boos' discredited claim (Tr. 753–754, 890, 988).

Jeff Pugh had never been assigned to the drill department, although he had to drill in the 1980s as part of his Prototype work. He was aware that some employees do like work in the drill department, but he testified that he absolutely did not want to work there. The work was "tedious" and "boring to death." You "get a job set up and you run it for 8 hours straight." He also opposed working there for health reasons. It is repetitive work, and "a lot of [the operators] had carpal tunnel [syndrome], tendonitis in elbows and wrists." (Tr. 446–447, 525, 527–528.)

Jeff Pugh's assignment in the drill department included cleaning out the Toolroom "at the end of every day" (Tr. 526). This part of Jeff Pugh's drill job was what his brother James Pugh referred to when complaining to Vice President Darga

about Jeff Pugh's "ending up with a crappy job like sweeping up shavings over in the Toolroom" and Darga responding that the Company "didn't like the fact that [Jeff Pugh] went to the Labor Board," as found.

When Jeff Pugh told J. R. Boos that he did not want to go to the drill department, that he wanted to work in the press area, that he had enough seniority, and he "wanted to exercise my right, per our job preference agreement," as Pugh credibly testified (Tr. 443):

> [J. R. Boos] said the whole shop is general labor and you work where I tell you to work. Get back there right now.

The top union officials in the plant (bargaining committee members Jeff Pugh, press floor leadman David Bates, and Chief Steward Karl Tazelaar) considered this permanent assignment to the drill area, without posting a vacancy and honoring Pugh's seniority, was an obvious violation of the "Preference Work Areas" letter of understanding. They decided to give the required 30-day notice for terminating that agreement. (Tr. 444, 535–537, 896, GC Exh. 5.)

Jeff Pugh told J. R. Boos that "if you cannot live up to our agreement, we're giving you 30 days notice that we're going to rescind that agreement." As Pugh credibly testified (Tr. 444), "He got red-faced" and speaking in an irate manner, said, "Get back to the drill area."

I reject the Company's contention in its brief (at 26)—based on J. R. Boos' discredited claim that Jeff Pugh's assignment to the drill department was only temporary—that the assignment was permitted by the provision, "Short term assignments to a preferred area can be done at the discretion of management" in the Preference Work Areas agreement (GC Exh. 5). As found, Boos told both Jeff Pugh and bargaining committee member David Bates that the assignment to the drill department was for the rest of Pugh's career at the shop. Pugh was still assigned there on February 2 the following year when the strike began (Tr. 447).

I also reject the Company's contention (also at 26) that Jeff Pugh's assignment to the drill department was permitted by the provision, "Management may make reassignments as necessary in order to meet business needs." The Preference Work Areas agreement specifically required that long-term assignments "will be done through the posting procedure," requiring the posting of vacancies for long-term assignments (GC Exh. 5).

I find that Jeff Pugh's assignment to the drill department was a culmination of the Company's discrimination against this member of the bargaining committee for his union activity.

Because of his skills and efficiency, Jeff Pugh had been in a favored position with the "grandfathered" next-to-the-highest pay rate in the shop, below only his brother, welding leadman James Pugh (Tr. 388). Press floor leader David Bates credibly testified, "I believe that Jeff had the skills to do just about any job that needed to be done in the shop" (Tr. 330). The Company had reduced Pugh's pay to that of general labor, had removed him from his assignment as a skilled die setter, and now had placed him for the rest of his work career in a routine, menial job, depriving the Company of the opportunity to utilize his wide skills.

Particularly under the circumstances of this case, I find that the assignment of such a skilled employee to the menial job for the rest of his work career constituted, as alleged, an assignment to more onerous work, violating Section 8(a)(3) and (1).

I also find that by this continued discrimination against Jeff Pugh and the violation of the Preference Work Areas agreement in effect at that time, without bargaining with the Union, the Company, through J. R. Boos, violated Section 8(a)(5), (3), and (1).

There is further evidence of an another unlawful motivation.

It is undisputed, as bargaining committee member David Bates credibly testified, that shortly after the Union sent the 30-day notice to cancel the Preference Work Areas agreement, Vice President Darga asked David Bates if they did not have anything better to do than write letters. Bates responded (Tr. 293–294):

> Well, you weren't abiding by it. Therefore we want to do away with it.
>
> And [Darga] asked why.
>
> I said: "With the Jeff Pugh incident and he didn't want to work in drill."
>
> He said: "Jeff needs to settle down because *he files charges. It costs the company thousands of dollars and the Boos brothers will not back down*." [Emphasis added.]

Similarly, as found, when James Pugh complained to Darga about Jeff Pugh's "ending up with a crappy job" (when assigned to the drill department), Darga revealed the Company's discriminatory motivation by telling James Pugh that the Company "didn't like the fact that [Jeff Pugh] went to the Labor Board."

I find, as alleged, that Darga's statement to David Bates about filing charges (clearly referring to the NLRB charges), like the statement to James Pugh, was coercive and violated Section 8(a)(1).

I also find that Darga's statements to both David Bates and James Pugh reveal an unlawful motivation for J. R. Boos' assignment of Jeff Pugh to the drill department and that the Company, through J. R. Boos, made the assignment also because of the filing of the NLRB charges, in violation of Section 8(a)(4) and (1).

5. Jeff Pugh's denial of excused leave for union business

a. Given unexcused absence

Before J. R. Boos' discriminatory actions against Jeff Pugh in the fall of 1997, as Pugh credibly testified, the Company was agreeable to granting union officers excused leave on union business "if it didn't conflict with their schedule" and "We could have it at a time that was convenient for both parties" (Tr. 424–425, 496–500).

The attendance policy in the collective-bargaining agreement defined an "absence" as missing work "for more than half a day" for any reason other than seven listed ones. Listing the seven reasons, the attendance policy specifically provided (GC Exh. 2 at 43):

> You will not be charged with an absence if you miss work for one of the following reasons:
>
> . . . .

3. Official union business by union officials.

On December 4 (shortly after J. R. Boos assigned Jeff Pugh to the drill department for the rest of his work career at the Company), Pugh and Karen Walkman (a newly elected steward) had appointments with a Board agent at the union hall. They were to give their affidavits in support of an NLRB charge the Union had filed on November 24 (the Union's second charge on behalf of Pugh and the first charge on behalf of Walkman regarding Pugh's alleged treatment toward her, as discussed later). (Tr. 269, 425–426, 491; GC Exhs. 1A & 1C.)

That morning Jeff Pugh presented to J. R. Boos leave slips for both himself and Walkman. Both slips read, "Union business at the hall" and requested leave to begin at 9 o'clock, without stating how long they expected to be gone. (They returned about 12 noon.) Pugh could not recall Boos' asking anything about the nature of the union business or Boos' making any response, other than stating that their absences would be unexcused. He believed that Boos already knew the purpose of his union business because "it was common knowledge that I had filed a labor charge" and he believed Boos "knew I was going down there for that." (Tr. 426–428, 492, 501, 504, 509–510.)

On cross-examination Jeff Pugh credibly testified that he did not remember telling Boos, "If you want to know more, you better go talk to [Chief Steward] Karl Tazelaar," but "I may have said that," because "that would have been a normal response" (Tr. 506).

Walkman recalled that J. R. Boos had two conversations with her before she and Jeff Pugh went to the union hall. In the first conversation she told Boos she was going down to the union hall for union business and "I don't feel that I need to say any more" and referred him to Chief Steward Karl Tazelaar. This time Boos said the absence "wasn't excused," and in the second conversation (which Walkman believed was after Boos talked to Tazelaar), Boos "said definitely [it] is not excused." (Tr. 249–251.)

On cross-examination Walkman testified that Boos afterwards had a board on his wall, but "I didn't see his marks" to determine if she had received an unexcused absence, explaining that "I was leaving the company shortly because of stress" (Tr. 242, 275).

According to J. R. Boos, Jeff Pugh handed him the two leave slips. He asked, "what are these?" and Pugh "just kind of sniffed at me and kept walking." He asked Walkman and she answered, "You know" and "Everybody knows. Go ask Dave." He asked David Bates, who said, "Well, I know, but I don't know. . . . Just go ask Karl." Chief Steward Karl Tazelaar in turn answered, "You know." Boos denied knowing, and Tazelaar said that "they're going to go file harassment charges against you." Boos asked, "How long are they going to be gone?" and Tazelaar answered, "Whenever." Then Boos said, "We'll leave it at that. It's an *absence* [emphasis added] until we figure out what's going on." (Tr. 876–880.)

Two days later at the December 6 Christmas party, the Company awarded its employees with a perfect attendance record a certificate and a bonus vacation day. Although Jeff Pugh had a perfect attendance record under the attendance policy, the Company advised him (as he credibly testified), "I wouldn't be given [the award] because I didn't have perfect attendance anymore." (Tr. 545–546.)

As quoted above, the aqttendance policy defined an "absence" as missing work "for more than half a day" and provided that "You will not be charged with an absence if you miss work" for "Official union business by union officials." Jeff Pugh, an undisputed union official, had missed work only 3 hours and had been on official union business.

Jeff Pugh credibly testified that he was told it was an unexcused absence both before leaving and after returning to the plant and that the unexcused absence remained on his record until about late December. It is undisputed that then, as Pugh credibly testified, Vice President Darga told him in a meeting that the "unexcused absence had been rescinded." He "asked officially what was going to be done about it," and Darga "said don't worry about it, it's going to be excused." He was then given the perfect attendance award. (Tr. 529–531, 544–545.)

Concerning Jeff Pugh leaving the plant on December 4, J. R. Boos claimed that he never told Pugh that it was an unexcused absence, that he "did not know" that Pugh "was in any way involved in the filing of an unfair labor practice charge," and that when Tazelaar said they were leaving the plant to file harassment charges against him, "I thought they were going to the police" (Tr. 881, 885–886).

Regarding his admitted statement to Tazelaar that "It's an *absence* [emphasis added] until we figure out what's going on," J. R. Boos claimed that this did not mean an unexcused absence—despite the specific wording of the attendance policy that union officials on official union business would not be charged with an "absence" (meaning an unexcused absence). Boos also claimed that because the leave slips did not indicate how long they would be gone, "I assumed that meant the rest of the day frankly." (Tr. 881–883.)

J. R. Boos further claimed on direct examination, "That's correct," Jeff Pugh was not given an unexcused absence for his time off (Tr. 899). He then testified (Tr. 901):

> Q. Do you know if Mr. Jeff Pugh received the attendance bonus?
>
> A. Jeff received the bonus. He didn't come to the Christmas party, but he got his paperwork [the certificate] and the vacation day.

The Company offered no evidence to dispute Jeff Pugh's credited testimony that the Company advised him that he would not be given the perfect-attendance award at the December 6 Christmas party "because I didn't have perfect attendance anymore." Neither did it dispute Pugh's credited testimony that in a meeting in late December, Vice President Darga informed him that the December 4 "unexcused absence had been rescinded" and was "going to be excused."

b. Misleading contention in Company's brief

In its brief (at 32) the Company, relying on J. R. Boos' testimony, contends that Jeff Pugh got the time off as requested and that no action was taken against him for doing so. It further makes the misleading contention (Br. at 31) that "Pugh, himself, *admitted that his time off was excused* [emphasis added]."

This contention falsely implies that Pugh's testimony agreed with Boos' testimony that no action was ever taken against Pugh for leaving the plant. To the contrary, Pugh credibly testified that the Company charged him with an unexcused absence until it rescinded the absence on his record about late December.

In making this contention the Company cites selected lines of Jeff Pugh's testimony on two pages of the transcript, but omits other lines on those same two pages and also Pugh's previous testimony on cross-examination, contradicting the Company's contention.

In its brief (at 32) the Company cites the transcript (Tr. 544, LL. 11–19) where Jeff Pugh testified that Vice President Darga told him in a meeting "that *it* [emphasis added]" had been rescinded and "I asked officially what was going to be done about *it* [emphasis added]. And [Darga] said don't worry about it, it's going to be excused." The Company omits from the citation the preceding lines on that same page (Tr. 544, LL. 7–10), which reveal that the emphasized "it" refers to the "unexcused absence" on his record having been rescinded, as Pugh had previously testified on cross-examination (Tr. 529–531, also omitted from the citation). The Company also omitted another line on that page (Tr. 544, L. 3), where Pugh testified that he was told "repeatedly" that it was "unexcused."

The only other citation that the Company gives in its brief (at 32) to support its contention (Br. at 31) that "Pugh, himself, admitted that his time off was excused" and that he received the attendance award, is to the next page of Pugh's testimony (Tr. 545, LL. 12–16). There Pugh testified that "they brought out awards and they . . . didn't have one for me. . . . I didn't get it at that time, I got it later, whenever the meeting was in the office." The Company omits Pugh's previous testimony on that same page (Tr. 545, LL. 2–7) that when the Company awarded the certificates on December 6, "they said . . . on that day, I wouldn't be given one because I didn't have perfect attendance anymore."

I reject the Company's misleading contention.

I find, based on Jeff Pugh's credited testimony, that the J. R. Boos refused to grant him the requested excused leave for union business on December 4 and that the Company placed an unexcused absence on his record, depriving him of the perfect-attendance award on December 6—although it granted him the award later that month when it rescinded the unexcused absence.

I find that the General Counsel has made a prima facie showing sufficient to support an inference that Jeff Pugh's union activity and the filing of NLRB charges on his behalf were motivating factors in J. R. Boos' decision to refuse to grant him the requested excused leave for union business on December 4. Discrediting Boos' testimony to the contrary, I find that the Company has failed to meet its burden of proof that Boos did not refuse to grant Pugh the requested excused leave. Accordingly I find that the Company, through J. R. Boos, again discriminated against Jeff Pugh, violating Section 8(a)(4), (3), and (1).

I also find that by refusing to grant Jeff Pugh the requested excused leave for union business to which he was entitled under the attendance policy in the collective-bargaining agreement, the Company, through J. R. Boos, changed working conditions without providing the Union prior notice and affording it the opportunity to bargain, violating Section 8(a)(5) and (1).

In view of these findings of unlawful conduct for refusing to grant Jeff Pugh's request for union leave on December 4, I find it unnecessary to rule on J. R. Boos' alleged refusal to granted the requested union leave to Karen Walkman, who did not have a perfect attendance record, who did not know whether she was given an unexcused absence, and who testified that she was leaving the Company shortly "because of stress." (The General Counsel does not allege that she was constructively discharged.)

B. J. R. Boos' Treatment of Karen Walkman and Coercive Statements

In a work review on November 14, as press operator Karen Walkman credibly testified, J. R. Boos told her that she went to the Union too much and "You know how I felt about the union, they just piss me off." He said not to go to the Union, but to go to him if she had a problem. (Tr. 242–243, 257.) I discredit Boos' denials (Tr. 872).

On November 19—without any explanation—J. R. Boos went to Walkman's press and abruptly told her to pick up her stuff, punch out on that job, and go to drill. She was being replaced by press operator Mary Jane Cunningham, who had less seniority and was working in the drill department. Being upset because she did not like the drill job and did not know why she was pulled from her job, she stopped on the way to the drill area and talked to a union official, leadman David Bates, who said he would talk to Boos and find out why she was being replaced. (Tr. 244–246, 258–261.) I discredit Boos' claim that he told Walkman why he was switching her job with Cunningham and that Walkman said fine (Tr. 874–875).

After Walkman worked in the drill department about 45 minutes or an hour, J. R. Boos came up and said, "What did I tell you about going to the union? . . . That pisses me off." She worked in the drill area about 4 or 5 hours until the end of the day and returned the next day to her press job. (Tr. 246–247, 261.)

I agree with the General Counsel that J. R. Boos' statements to Walkman on November 14 and 19 conveyed the message that employees should not exercise their protected right to seek assistance from the Union. I find that the statements tended to be coercive and violated Section 8(a)(1).

I disagree, however, with the General Counsel's contention that the reassignment of Walkman on November 19 violated Section 8(a)(3). Although J. R. Boos did not show her the courtesy of informing her why she was being transferred, the Company had a business need for the parts on which Walkman was working to be finished that day, and Walkman conceded that Cunningham could produce more of those parts on that press than she could (Tr. 261).

I therefore find that the temporary reassignment was not discriminatory and that the 8(a)(3) allegation must be dismissed.

C. Other Coercive Conduct Before the Strike

1. By President John Boos

At the Union's February 1 ratification meeting when the members overwhelmingly voted to reject the Company's "final proposal" and to strike, as discussed below, the membership cited not only the conduct of J. R. Boos but also how President John Boos threatened the loss of their jobs if they went on strike.

At the trial, four of the union members testified about President John Boos' prestrike statements and two employees testified about the statements of Shift Supervisor Mitch Piasecki, who quoted John Boos as saying "that if we go on strike, none of us will be coming back" (as discussed below).

Bernard Robart. Just before Christmas as he was walking toward the lunchroom, as welder Bernard Robart credibly testified, President John Boos asked him, "Do you have your money saved up for the strike?" Robart responded, "I hope it really don't come to that." Then John Boos said, "Well, two or three guys in the shop . . . are going to cause you guys to go on strike" and he was "sick and tired of all the grievances" or "just was tired of the people that were filing the grievances." (Tr. 137–139.)

On cross-examination Robart testified that he had a good memory of what was said because after the strike began, "we wrote it down on that sheet of paper [what] we were told" by company people beforehand about the strike and "because I told a few people, and then it got around, and everybody was asking me what was said." Robart recorded December 23 as the date of the conversation. (Tr. 140–141, 143–144.) (As discussed below, the membership had been told before they voted to strike that it may be an unfair labor practice strike because of the Company's alleged unlawful conduct.)

John Boos admitted having a conversation with Robart at that time. He, however, denied asking Robart if he had saved up money for the strike, denied that he recalled saying that he was tired of all the grievances, and denied believing that he told Robart that some guys will cause the employees to got on strike (Tr. 718–720). John Boos did not impress me as being a candid witness. I discredit the denials.

David Bates. About the first week of January (alleged to be January 8), as bargaining committee member David Bates credibly testified, President John Boos talked to him in the die rack area and asked if he was prepared for the strike. When David Bates responded, "I hope there is no strike," John Boos said, "I hope there isn't also because if you guys do go on strike, *you will not be coming back. . . . [I]t would get very ugly* [emphasis added]." (Tr. 282–283.) The negotiations for a new contract had just begun. Bates was not aware of any talk in the plant at that time about going on strike. (Tr. 304.) As indicated, David Bates impressed me most favorably by his demeanor on the stand as a truthful witness.

John Boos claimed that he did not recall a conversation with David Bates in early January. He denied ever telling David Bates that if there was a strike that no one would be coming back, or initiating any conversation by asking whether David Bates was prepared for strike. He did not deny telling David Bates that if the employees went on strike, "it would get very ugly." (Tr. 725–726, 728–729.) I discredit the denials.

Karen Bates. On Tuesday, January 27, as press operator Karen Bates credibly testified, President John Boos came to her press and asked how things were going. She told him good as far as work goes and asked, "Or were you talking union?" He said, "Both." He then said there would be changes made and she asked, "What changes?" He said he wouldn't go into it, but people were scared to change. She asked, "Well, what do you expect when people don't know what the changes are going to be?" and told him the people on the floor "didn't know what to expect." (Tr. 227–229, 231–232.)

The conversation ended when John Boos told her, "Well, *good luck with your new career* [emphasis added]." She responded, "Are you for real?" He looked at her, smiled, and walked away. She was not planning any change in her career. (Tr. 229.)

John Boos, in effect, denied telling Karen Bates that he would not go into what changes would be made and denied telling her, "Good luck with your new career." (Tr. 723–725.) I discredit the denials.

Robert Dollaway. On Friday, January 30, when maintenance employee Robert Dollaway was working on press 12, as he credibly testified, President John Boos approached and asked how it was going. Dollaway started explaining about the press and John Boos said no, he wanted to know, because Dollaway was "out on the floor with the people. . . . what do you think is going to happen?" When Dollaway said "we had to wait and see. . . . I hoped we wouldn't go on strike," John Boos responded, "I hope you don't either, because *it will be pretty ugly* [emphasis added] if you do." (Tr. 145–147.)

John Boos admitted asking Dollaway "in general how the feeling was out on the shop floor . . . what [Dollaway] was seeing and what he was hearing" about the negotiations. He denied telling Dollaway that things would get pretty ugly if they go out on strike (Tr. 721–723, 745). I discredit the denial.

2. By Shift Supervisor Mitch Piasecki

Sometime in the last 2 weeks of January, as press operator Rhonda Boltze credibly testified, Shift Supervisor Mitch Piasecki told her in the lunchroom not to tell anybody, but President John Boos "said that if we go on strike, *none of us will be coming back* [emphasis added]." She testified that she "[k]ind of held it in" what Piasecki had said. (Tr. 88–90, 794.) The evidence does not reveal whether she was one of the union members who reported this threat before the strike vote at the February 1 ratification meeting.

Although John Boos himself made a similar statement to David Bates, as found, Piasecki denied telling Boltze that if she would go out on strike, no one would be coming back. He also denied that John Boos ever told him that. I discredit the denials (Tr. 797–798). Piasecki, like John Boos, did not impress me as being a candid witness.

Shelli Moran. On Thursday, January 29 by the coffee machine, as drill operator Shelli Moran credibly testified, Piasecki walked up when she and Rhonda Boltze were talking about her father's union. Piasecki told Moran that maybe her dad's union was strong in his day, "But these little unions don't amount to

crap." Piasecki then said, "I'll tell you right now . . . that if you guys go on strike, *you won't be getting your job back* [emphasis added]. And the Drill Department will be the first thing to go." (Tr. 105–107.)

I discredit Piasecki's denials (Tr. 800–801).

3. Findings of coercive conduct

The six employees who testified about John Boos' and Piasecki's prestrike conduct appeared on the stand to be credible witnesses. Having discredited the denials, I find that the Company, through John Boos and Mitch Piasecki, engaged in the following coercive conduct, violating Section 8(a)(1).

I find that by asking if Bernard Robart had money saved up for the strike and by telling Robart that two or three guys in the shop were going to cause a strike and he was sick and tired of the people that were filing all the grievances, John Boos was implying that a strike was inevitable because of positions the Company would take in reprisal for employees filing all the grievances, a protected activity.

I find that by asking if David Bates was prepared for the strike and by telling him that if employees went on strike they would not be coming back and "it would get very ugly," John Boos was threatening the inevitability of a strike and threatening employees with discharge and other unspecified reprisals if they engaged in a strike.

I find that wishing Karen Bates "good luck" with her "new career" in the context of contract negotiations, even though she was not planning any career change, John Boos was making an implied threat of discharge if the employees engaged in a strike.

I find that by telling Robert Dollaway that "it will get pretty ugly" if the employees go on strike and by asking Dollaway to go out on the floor and report on "what he was seeing and what he was hearing" regarding the feeling in the shop about the negotiations, John Boos was threatening employees with unspecified reprisals if they engaged in a strike and, in the context of this threat, was coercively interrogating Dollaway by asking him to report the sentiments of other employees regarding their protected right to strike.

I find that by telling Rhonda Boltze that John Boos "said that if we go on strike, none of us will be coming back," Shift Supervisor Mitch Piasecki threatened employees with discharge if they engaged in a strike.

I find that by telling Shelli Moran that "if you guys go on strike, you won't be getting your job back" and "the drill department will be the first thing go to," Piasecki threatened employees with discharge if they engaged in a strike.

D. Rejection of Company's "Final Proposal" and Vote to Strike

1. Complaints about conduct of J. R. Boos and threats to jobs

When President John Boos acquired the business in 1993, he assumed the collective-bargaining agreements covering employees in the press division as well as those in the toolroom (not involved in this proceeding). The Company and the Union in 1994 negotiated a new 3-year agreement and in 1997, a 1-year extension that expired February 1, 1998. (Tr. 482, 517–518, 553, 708–711; GC Exh. 2.)

In the negotiations this time, the Company proposed major changes in the new agreement, assigning more latitude in contractual provisions to the Company. After negotiations began on January 5, little progress was made until a marathon meeting was held on Saturday, January 31. The negotiations continued through the night until early Sunday morning, February 1, when the Union's bargaining committee (consisting of David Bates, Jeff Pugh, and Karl Tazelaar) agreed to make a unanimous recommendation for ratification after the Company made certain concessions in its "final proposal." (Tr. 304, 339–344, 511–512, 538–539, 565, 569–572, 576–581, 714–717, 943–948.) The proposal was not introduced in evidence.

Copies of the Company's proposal were distributed at the 2-1/2- to 3-hour ratification meeting, which began that Sunday noon, February 1, and which was attended by all except perhaps 1 or 2 of the 48 bargaining unit members. District Business Representative Pete Jazdzyk and the bargaining committee announced that they were recommending the proposal. Jazdzyk explained and took questions on each item in the proposal. (Tr. 300–301, 429, 553–554, 581–582.)

The membership, as Jazdzyk credibly testified, was overwhelmingly opposed to the provisions of the Company's proposal as he explained them. They were "unhappy with this package we had brought before them because of the many changes that gave the Employer greater latitude" than under the previous contract. They mentioned especially J. R. Boos, "the manner in which he had assigned people" and "in general, his dealings with the entire membership." They had many questions "relating to how J. R. would enforce the modifications" and made many references to "the cutting of Jeff Pugh's wages." (Tr. 555–556, 587.)

In addition, as Jazdzyk testified, the membership was "also upset that they had been threatened by his father John Boos Sr. with losing their jobs—that type of talk was rampant through the entire group" (Tr. 556). Jazdzyk, like David Bates and Jeff Pugh, impressed me most favorably on the stand as a truthful witness.

Jazdzyk also recalled that assembly employee Cliff Oliver, standing and shouting from the back of the room, and die setter Bates Junior were most vocal. Many of the women employees were very outspoken, including drill operator Shelli Moran (Tr. 555; GC Exh. 6). As found, Shift Supervisor Piasecki had made the threat to Moran that "if you guys go on strike, you won't be getting your job back" and "the drill department will be the first thing to go."

David Bates credibly testified that Jazdzyk answered most of the questions and the employees were "basically one-sided" in opposition to the Company's proposal. "It seemed to me most of the concerns were the loss of seniority and certification of the cell concept" (taking away die setter and other classified jobs and the entire shop being general labor, broken down into cells, such as presses, drills, welders, and shipping/receiving). There was "no trust" there, after what had been happening. "People had seen what had happened with Jeff" Pugh. (As found, J. R. Boos had not only transferred Pugh to the evening shift despite his high seniority and later cut his wages, but had told Pugh upon assigning him permanently to the drill department that "the whole shop is general labor and you work where

I tell you to work.") David Bates also recalled the "intimidating talk about the strike coming up." (Tr. 301–302, 346, 360.)

Jeff Pugh credibly testified that employees in the meeting spoke against the proposed no-fault attendance policy, the work rules (about half of which were the basis for discharge on first offense), and all employees being uncertified under the cell concept (with those currently at top pay continuing to receive certification pay, but probably half of the employees in the middle of the pay scale having to be qualified, without any assurance "they'd be given a fair shot"). (Tr. 431–435, 516–517.)

As Pugh further testified, the employees were specifically concerned that "J. R. would just put anybody in and out of a cell at his will" and they "didn't want to be transferred helter-skelter," as Pugh had been. The membership asked Pugh, "Is this going to happen to us like it happens to you?" and referred to what happened to me "as part of their fear of the new proposal." (Tr. 435, 438.)

Before this meeting, employees had been telling Jeff Pugh that "management persons had told them that if you go out the door, you won't be invited back to work. You would lose your job forever. You'd be done with the Company." (Tr. 542.)

At the meeting, as Pugh further recalled, "Several people spoke up and said that John Boos, the owner, approached them on the shop floor, told them that if they voted this contract down they would be permanently replaced. They would not get a second chance. They would be out of work" and told specific individuals, "Good luck in your new career." Pugh said he could not recall all of them who spoke up at the meeting about this, but specifically recalled David Bates, Karen Bates, and Bernard Robart. (Tr. 441–442.)

2. Vote against proposal and strike vote

The membership voted about 2 hours after the February 1 ratification meeting began. The vote was about 80 percent to reject the Company's proposal. The Company refused to negotiate further on its final proposal and advised Jazdzyk "to take our strike vote." (Tr. 557–558.)

Jazdzyk then explained to the waiting membership that if they voted to strike, "we consider this as an unfair labor practice strike because of the charges that had already gone to complaint" (referring to the original complaint issued a few days earlier on January 27, alleging in part discrimination against Jeff Pugh) and "many of the complaints [of unfair labor practices] that I was hearing from the audience. However, I was not the final authority on that and that they risked being permanently replaced with a strike vote." (Tr. 440–441, 559; GC Exh. 1G.)

Jazdzyk specifically recalled that employee Cliff Oliver shouted from back of the room that "he felt that it was absolutely an unfair labor practice strike" and "there was affirmation essentially from the entire group," with employees saying yes (Tr. 555, 560).

About 30 or 45 minutes after the ratification vote, a virtually identical vote was taken, with 80 percent of the membership voting to strike. The picketing began the next morning, February 2. (Tr. 561.)

Negotiations continued after the strike began, and on February 14 the Company made another written proposal after making several additional concessions and agreeing to reinstate the strikers. Although this strike settlement proposal was again recommended by the bargaining committee, the union membership rejected it that same day. The Company had not repudiated or remedied the alleged unfair labor practices. The strike continued. (Tr. 346–352, 596–599, 603–604, 609–610, 647, 948–955; R. Exhs. 2, 3.)

E. Finding of Unfair Labor Practice Strike

1. Company's defenses

The Company contends in its brief (at 56) that "there can be no doubt but that the alleged unfair labor practices were *not* the cause" of the strike.

First, the Company contends that the alleged unfair labor practices did not coincide in time with the walkout—Jeff Pugh's October transfer being 3 months before. This contention ignores J. R. Boos' also cutting Pugh's wages (to which the membership referred many time at the February 1 ratification meeting) and Boos' refusing to honor Pugh's seniority and permanently assigning him against his will to a menial job in the drill department (to which they referred when stating "they didn't want to be transferred helter-skelter" as Pugh had been).

In making this contention the Company also ignores the credited testimony that Jeff Pugh was asked at the meeting, "Is this going to happen to us like it happened to you?" and the membership's referring to what happened to Pugh "as part of their fear of the new proposal."

The Company further argues, in support of this contention, that "the Pugh matter" or "any of the other allegedly illegal conduct was never even discussed during negotiations." The Company ignores District Business Representative Jazdzyk's credited explanation that the unfair labor practices were not mentioned in the negotiations "Because we were trying to get a contract settlement" (Tr. 647).

Second, the Company contends (Br. at 56–57) that the "isolated statements allegedly made by John Boos and Mitch Piasecki" in December and January, at worst, occurred on five separate instances over a 6-week period and "were allegedly made to six different employees, many of whom by their own admission did not share them with others prior to the strike."

The Company ignores the credited testimony regarding drill operator Shelli Moran, to whom Shift Supervisor Piasecki made the threat that "if you guys go on strike, you won't be getting your job back" and "the drill department will be the first thing to go." Moran was one of the women employees who was "very outspoken" at the February 1 ratification meeting. The Company also ignores Jeff Pugh's credited testimony that David Bates, Karen Bates, and Bernard Robart were three of the members who spoke up at the meeting before the strike vote about President John Boos' threats.

The Company further contends in its brief (at 57) that its "extraordinary bargaining efforts certainly served to mitigate any effects that the alleged unfair labor practices would have had." To the contrary, the issue is not whether the Company was seeking in good faith to obtain approval of its proposals giving it greater latitude than under the previous contract, but

whether the Company's unfair labor practices were a "contributing cause" of the strike.

The Company argues that even assuming John Boos "had made statements about not returning strikers to work," its February 14 strike settlement proposal (including reinstatement of strikers) "defused the impact of any of those allegedly unlawful statements." This argument ignores the fact that the evidence clearly shows that J. R. Boos' unlawful conduct was a pervasive cause of the "no trust" and fear on the part of the membership and nothing was ever done to "defuse" that impact.

The Company, in effect, challenges the credibility of the three witnesses who testified about the February 1 ratification meeting, Pete Jazdzyk, David Bates, and Jeff Pugh (all of whom impressed me most favorably as truthful witnesses). It contends in its brief (at 59) that "Quite simply, the Union and General Counsel are engaged in an exercise in revisionist history." It argues that "none of the conduct at issue in this case (assuming it occurred) had anything whatsoever to do with the Union's February 1, 1998 strike. It was an economic strike then and it continues to be one now."

To the contrary, as found, Pete Jazdzyk referred the membership at the February 1 ratification meeting to the original complaint in this proceeding (dated January 27, GC Exh. 1G), and told them that if they voted to strike it may be an unfair labor practice strike. Then, after the strike began, as the Company elicited on cross-examination of welder Bernard Robart, "we wrote it down on that sheet of paper [what] we were told" by the company people beforehand about the strike—indicating union preparation for proving an unfair labor practice strike.

The Company contends in its brief (at 59) that "Lastly, assuming that the alleged illegal conduct did occur," its February 1 and 14 tentative agreements with the Union's bargaining committee have "cured" or repudiated any unfair labor practices and "the strike is economic in nature." To the contrary, the union membership—not the bargaining committee—made the decisions to reject the Company's proposals and to go on strike, despite the committee's unanimous recommendations for approval of the proposals.

Finally the Company contends (Br. at 60): "Furthermore, the Company has actually reinstated all employees who have offered to return to work. Therefore, it is clear that the Company not only cured the alleged unfair labor practices, but that it did not act on the alleged threats not to reinstate striking employees."

The Company makes no contention that it has "cured," repudiated, or in any other way remedied the unfair labor practices it committed through J. R. Boos.

2. Concluding find of unfair labor practice strike

It has long been held, as in *Larand Leisurelies, Inc. v. NLRB*, 523 F.2d 814, 820 (6th Cir. 1975):

> If an unfair labor practice is a "contributing cause" of a strike, then, as a matter of law, the strike must be considered as an unfair labor practice strike. . . . The burden in on [the employer] to show that the strike would have occurred even if [it] had not committed unfair labor practices.

Although the union membership at the February 1 ratification meeting was overwhelmingly opposed to the provisions of the Company's proposal, this opposition was in the context of the unfair labor practices committed by the Company through Manufacturing Manager J. R. Boos as well as threats to their jobs made by President John Boos and Shift Supervisor Mitch Piasecki.

The membership objected at the meeting to giving the Company greater latitude in the contractual provisions, citing the way J. R. Boos had assigned the employees under the previous contract and, "in general, his dealings with the entire membership." They made many references to "the cutting of Jeff Pugh's wages." They were specifically concerned that "J. R. would just put anybody in and out of a cell at his will" and they "didn't want to be transferred helter-skelter" as Pugh had been. They asked Pugh "Is this going to happen to us like it happened to you?" and referred to what happened to Pugh "as part of their fear of the new proposal." They had many questions "relating to how J. R. would enforce the modifications" of the contract. "People had seen what had happened with Jeff" Pugh, and there was "no trust" in their being treated fairly under the proposed provisions, or the employees in the middle of the pay scale being "given a fair shot" in qualifying for certification under the proposed cell concept.

Under these circumstances I find that the evidence clearly shows that particularly the Company's unfair labor practices in discriminating against Jeff Pugh through the conduct of J. R. Boos were a "contributing cause" of the membership's refusal to follow their own bargaining committee's unanimous recommendation that they approve the negotiated tentative agreement and the membership's vote to strike.

I therefore find that the strike that began on February 2, 1998, was an unfair labor practice strike from its inception.

There being no contention that the Company has "cured," repudiated, or in any other way remedied the unfair labor practices committed by it through J. R. Boos, I find that the strike remained an unfair labor practice strike.

F. J. R. Boos' Conduct Prolonging the Strike

1. J. R. Boos' destroying picket signs and other union property

On April 22, after the evening picket shift left early, J. R. Boos and an unidentified person arrived at the picket area near the entrance to the plant. As observed under the overhead street light by John Brimmer, the site supervisor for Burns International Service, they proceeded to destroy the Union's property in the picket area. (Tr. 29–31, 47–48, 60.)

As credibly testified by Brimmer (who appeared to be a trustworthy witness), he saw J. R. Boos and the other person burn the property in a steel barrel, which the pickets used as a stove to keep warm in the cold weather. Brimmer saw them burn seven or eight picket signs, the pickets' sign-in log book (sheets of paper on a clipboard), and all the logs used for firewood. They tore apart and burned the wooden pallets, which pickets break up and use as kindling. They also burned the plank placed over two stumps for a bench, where the log book had been kept, leaving only the stumps. (Tr. 31–32, 35, 57–60.)

As J. R. Boos and the other person were destroying the union property, as Brimmer further testified, they were "Laughing,

joking . . . just having a good time doing it. The way it looked to me." When they left and went inside the plant, the raging fire was flaming almost 10 or 11 feet in the air. (Tr. 33–34.)

In the Company's defense, J. R. Boos claimed that the property was abandoned. He admitted burning the wood (except the stumps that he could not lift), but denied that he burned any picket signs or any log book or clipboard. I discredit his denials. (Tr. 902–904, 911.)

When press operator Kimberly Navarini (the first to arrive on the late night picket shift) looked around and "none of our stuff was there"—no wood, picket signs, or sign-in clipboard, just a smoldering fire—she immediately suspected who was responsible. She went to Security Supervisor Brimmer and, as she credibly testified, asked (Tr. 74):

> "J. R. was out here, wasn't he?" [Brimmer] said, "Yes, he was." I said "He burned all our stuff, didn't he?" He said, "Yes he did. I watched him do it.

This deliberate destruction of union property clearly interfered with the exercise of the striking employees' right to engaged in protected picketing activity. I therefore find that J. R. Boos again committed an unfair labor practice, violating Section 8(a)(1).

2. J. R. Boos' spitting in picket's face

a. Confirmed by security supervisor

Later that evening, April 22, after operators Gary Binkley and Shelli Moran arrived to join Navarini on picket duty, J. R. Boos returned to the picket line. He was walking with another person (production scheduler Mark Mehling), to escort a loaded truck from the premises. While Boos was there, Navarini asked him "if he felt like a big man for burning all our stuff?" Boos told her to shut up and said, "I was a big mouth bitch" and "I was a fat bitch who needed to go on a diet." (Tr. 74–77, 82–85.)

J. R. Boos was standing about 6 feet from Navarini when, as Navarini credibly testified, "He stepped forward, spun around like he was going to walk away, spun around again and spit in my face." Trying to keep her temper, Navarini said, "You shouldn't spit on me. I could turn around and do the same to you." Boos chuckled, turned around, and went back up to the building. (Tr. 78–79, 86.)

Binkley, who was standing nearby, recalled that Navarini asked J. R. Boos if he felt grown up and a big man for burning all of their picket signs and that Boos mentioned her being fat and needed to lose weight. They were "both going back and forth" and "then J. R. spit on her." Binkley told Boos to "grow up." (Tr. 94–96.)

Earlier that evening when Moran arrived around 11:30, she heard Navarini and Binkley talking about J. R. Boos burning a bunch of their picket signs. Later when Boos came out again (with Mehling) to escort a truck out, Moran overheard Navarini asking if Boos felt like a big man, burning their picket signs. Moran recalled that Boos told Navarini, "You got a big fucking mouth" and needed to lose weight. Moran was "standing sideways" by the fire," not wanting "to get involved in it," but "they were pretty loud" and she could hear "all of the conversation." When asked if Navarini was using any profanity, she answered: "After, yes." (Tr. 103–105, 108–110, 114–115.)

Moran did not see J. R. Boos spit on Navarini, but "Kim came over to the fire and said he just spit in my face." Navarini got angry and "was pretty hurt by it." (Tr. 104–105.)

Burns supervisor Brimmer recalled that the argument between Navarini and J. R. Boos—when "J. R. spit at Kim"—occurred "around midnight. . . . I didn't like look at my watch" (Tr. 36–37). He credibly testified (Tr. 38):

> Q. And you say that when this verbal confrontation between Kim Navarini and J. R. Boos occurred, *that you saw J. R. Boos spit on Kim Navarini*, is that correct?
>
> A. *Yes, sir*. As he—as he was backing away from her, he just spit. [Emphasis added.]

b. Deceptive defense

In an effort to disprove that J. R. Boos spit in Navarini's face after she complained to Boos about his burning the Union's picket signs that evening, the Company introduced into evidence a video tape that shows Boos and Mehling escorting a truck from the premises on April 28—*6 days later* (R. Exh. 7; Tr. 688). Of course, the video shows that no spitting occurred on that date.

Both J. R. Boos and Mehling testified in detail about what happened when they escorted a truck from the premises on the evening of April 28 (Tr. 651–666, 911–921). The evidence is clear that on that occasion, they were escorting a truck hours *earlier* in the evening. Their testimony about what happened on April 28 is therefore of no value in determining what happened on April 22.

Burns supervisor Brimmer's April 22 incident report (R. Exh. 15) reveals that Brimmer himself and "another Wilkie employee" (Mehling) escorted the truck on April 22 through the picket line *onto* the premises at 11 p.m. As indicated, Brimmer recalled that the spitting occurred "around midnight" (when J. R. Boos and Mehling were escorting the truck *from* the premises).

Mehling revealed that on April 28 (6 days later) he alone escorted a truck *onto* the premises at 8 or 8:30 p.m. and that he and J. R. Boos escorted the truck *from* the premises about 10 p.m. (Tr. 651–653, 658–659, 665–666).

I rely on the accuracy of Brimmer's April 22 incident report, which shows that he wrote the report at 11:10 p.m., 10 minutes after he and Mehling escorted the truck *onto* the premises at 11 p.m. (on the evening of the alleged spitting). This was about 2-1/2 or 3 hours *later* in the evening than when Mehling alone escorted a truck *onto* the premises on April 28 and about an hour *later* than when J. R. Boos and Mehling escorted that truck *from* the premises about 10 p.m. (6 days after the alleged spitting). Brimmer's daily security officer reports for April 21–23 and 28–30 (R. Exhs. 6 and 14) show no other incident report on April 22 or 28.

Thus the Company's own exhibit, Brimmer's April 22 incident report (R. Exh. 15), belies the Company's defense.

I find that the Company presented a deceptive defense when it introduced the April 28 video tape and the detailed testimony by J. R. Boos and Mark Mehling about what happened hours earlier in the evening on a separate occasion 6 days later to disprove the alleged spitting on April 22.

Relying on the testimony of Security Supervisor John Brimmer, operators Kimberly Navarini, Gary Binkley, and Shelli Moran, and the Company's exhibit (Brimmer's April 22 incident report), I discredit J. R. Boos' claim that he absolutely did not spit at Navarini (Tr. 920).

I find that J. R. Boos' assault on Kimberly Navarini, spitting in her face on the picket line, was coercive and interfered with the exercise of the right to engage in protected picketing activity. I therefore find that J. R. Boos again committed an unfair labor practice, violating Section 8(a)(1).

3. J. R. Boos' removal of picket signs and threat of physical violence

a. The removal and threat

In the midafternoon on April 29, when going to lunch with his brother, Jim Boos, J. R. Boos saw in the picket area a wooden sign in the shape of a cross on which was written across, "Rest in Peace," and going down (according to him), his initials "J. R." He told his brother to stop the truck and, as he admitted, "I got out of the truck, grabbed the sign," and threw it in the back of the truck. (Tr. 929.)

(In the absence of former Vice President Darga at the trial, the evidence does not reveal whether Darga was referring to J. R. Boos and Jim Boos when he told David Bates that the "Boos brothers will not back down" after Jeff Pugh "files [NLRB] charges.")

David Eaves, one of the pickets in the area, credibly recalled that J. R. Boos grabbed the 4-foot sign, started walking toward the pickets, "went like this" (shaking the sign at them), and said that "if anybody makes another one of these signs, *I'm going to hit you in the fucking head with it* [emphasis added]" (Tr. 120–123).

Nihl Brannam, another picket, credibly recalled that J. R. Boos "got out of the truck and grabbed ahold of the sign and waved it at us, then "threatened all of us," stating that if he saw "another one of these signs, he'd *hit us over the fucking head with it* [emphasis added]" (Tr. 192, 217–221).

Mary Cunningham, a third picket there, credibly recalled that J. R. Boos' words were that he was "*going to hit us over the fucking head with it* [emphasis added], if he saw another one out" there (Tr. 153). Leo Kriger, a fourth picket in the area, credibly recalled that Boos said, "If I see another one of these *I'll hit you over the fucking head with it* [emphasis added]." (Tr. 171.)

Thus, the four pickets credibly recalled that J. R. Boos threatened to hit them "over [or in] the fucking head with it" if he saw another one of the signs. (None of them recalled seeing "J. R." on the cross sign that Boos grabbed and removed, Tr. 122, 130–131, 153, 162, 206.)

J. R. Boos claimed instead that he said: "If I see another one of these fucking signs we're going to have some problems. I'm going to be really pissed." He denied threatening to hit them and denied shaking the picket sign at them. (Tr. 930, 933.) I discredit the denials.

J. R. Boos admitted that about 40 minutes later, he stopped on the way back from lunch and grabbed a new cardboard cross sign that read "Rest in Peace" and (according to him) "Wilkie Company" (Tr. 930, 980–981). Kriger credibly testified that he knew where J. R. Boos was heading, so he went over and picked up the new sign and said it is union property. "J. R. said give it to me." Brannam told Kriger to drop the sign, Kriger did, and "J. R. took the sign." (Tr. 174–175.) Cunningham credibly testified that a cross was drawn on the cardboard sign and recalled that "Local 670" was written on the sign, not "Wilkie Company" (Tr. 155).

J. R. Boos testified that he removed the first picket sign because it had his initials "J. R." on it. Even though the four pickets did not recall seeing "J. R." on the first sign, even though Boos admitted removing the second picket sign, which did not have his initials on it (Tr. 980–981), and even though Cunningham recalled that "Local 670" was written on the second sign, I assume for purposes of this decision that "J. R." was written on the first picket sign and "Wilkie Company" was written on the second sign, as J. R. Boos testified.

(I note that the Company falsely indicates on p. 18 of its brief that the picket signs that J. R. Boos removed were "two cross-shaped signs containing the phrase 'R.I.P.-J.R.'" and on pp. 45–46 incorrectly asserts that "Boos admitted removing two (2) cross-shaped signs containing *personal references to him* [emphasis added]." To the contrary, J. R. Boos testified that the second picket sign read "Wilkie Company"—not a personal reference to him.)

J. R. Boos admitted that later that afternoon, he and his father John Boos went to the picket line and he took video pictures of the picket signs (Tr. 934).

J. R. Boos explained that Police Captain Hiles had been "very specific to all of us that absolutely *no one's name, no personal connotations, nothing but union-related activity* [emphasis added] was allowed on the signs," referring to "*employees that we had hired* [emphasis added] after the strike" (Tr. 927–928). Boos claimed that the pickets "would put names of individuals, social security numbers" on the back of the picket signs, "So when the employees would come through, or drive out . . . they would flip the sign around . . . and flash that side" of the picket sign. He testified that the officers "were only looking at the front of the sign" and "We wanted" the video "to show Captain Hiles." (Tr. 928–929, 933–935.)

The video tape introduced in evidence does not reveal any employee names, either on the front or back of the picket signs (R. Exh. 7; Tr. 699–701). A viewing of the tape shows:

> 1. A large wooden cross sign with "United We Stand" written across and "Local 670" written downward on the front side.
>
> 2. A small wooden cross sign with "Rest in Peace" written across and "Local 670" written downward on the front side.
>
> 3. A cardboard picket sign, not shaped as a cross, with "Locked Out Unfair Labor Practice" written on the front side and the outline of a cross drawn on the back side with the words, "Rest in Peace" and "Local 670."
>
> 4. A small self-standing picket sign, not shaped as a cross, next to the curb, without any wording showing on the video tape.

I discredit J. R. Boos' claim that he videotaped the words "Wilkie Company" on the back of the "regular cardboard sign"

(listed as No. 3 above) where they had drawn a cross and written the words "Rest in Peace" (Tr. 934). A viewing of the video tape in evidence shows "Local 670" on the first three of the listed signs, including the back side of the "regular cardboard sign." The name "Wilkie Company" is not written on any of them. (Tr. 934; R. Exh. 7.)

On the audio can be heard one of the pickets saying, "There ain't nothing wrong with them signs," someone stating, "Take the back side of it too," and someone stating, "We've got enough." The video tape shows the pickets, including picket Nihl Brannam with his video camera on his shoulder, and the picket area. (R. Exh. 7.) Brannam was himself videotaping J. R. Boos' taping (Tr. 196).

b. Contentions of the parties and concluding findings

The General Counsel contends in his brief (at 13–14) that even if the first sign removed by J. R. Boos read "Rest in Peace" and "J. R." and the second sign read, "Rest in Peace" and "Wilkie Company," the picket signs would suggest that the Company's labor relations—as shown by the Company's "numerous and serious unfair labor practices"—are threatening "the very existence" of the Company and the positions of its managers.

The General Counsel also contends (Br. at 13):

> Employees have a right to engage in picketing with signs under Section 7 of the Act and confiscating those signs interferes with, restrains, and coerces employees in the exercise of that right. Similarly, threatening employees with violence if they continue to engage in such protected activity interferes with, restrains, and coerces employees in violation of the Act. Finally, videotaping of employees while engaged in picketing or picketing type activity is unlawful.

The Company in its brief (at 47) cites *NMC Finishing v. NLRB,* 101 F.3d 528 (8th Cir. 1996), as justification for J. R. Boos' removing the picket signs. In that case the employer refused to reinstate a striker that had carried a picket sign that referred to "crossover" Rhonda Yarborough, who worked during the strike. The sign read: "Who is Rhonda F/Sucking today?"

I find that decision to be obviously inapplicable. That picket sign was a "clearly offensive" personal attack on a nonstriking employee with "sexual connotation."

Here, the first picket sign that J. R. Boos removed was in the shape of a cross and read "Rest in Peace" and "J. R." These were the initials of J. R. Boos himself, who was a member of the Company's top management and who personally committed a number of unfair labor practices that were a "contributing cause" of the unfair labor practice strike. The second picket sign Boos removed was also a cross sign that read "Rest in Peace" and had the name of the Company itself, "Wilkie Company," whose employees were on strike.

Referring to the "J. R." sign, the Company contends in its brief (at 48) that "The sign at issue contained no reference to the labor dispute between the Company and the Union." To the contrary, I find that J. R. Boos was the personification of the labor dispute, caused in large part by his unlawful conduct.

The Company also contends (Br. at 48) that the "J. R." picket sign, with the "R.I.P." (Rest in Peace) message, "was more in the nature of a death threat than a sign publicizing a labor dispute." To the contrary I find, in agreement with the General Counsel, that both the "J. R." and the "Wilkie Company" picket signs would suggest that the Company's labor relations are threatening "the very existence" of the Company and the positions of its managers.

I therefore find that both cross signs—one with "Rest in Peace" and "J. R." and the other with "Rest in Peace" and "Wilkie Company" written on them—were lawful picket signs related to the survival of the Union and the Company in their struggle to prevail in the labor dispute.

I find that the confiscation of the signs interfered with the exercise of the striking employees' right to engage in protected picketing activity. Accordingly I find that J. R. Boos again committed an unfair labor practice, violating Section 8(a)(1).

Next, relying on J. R. Boos' discredited denials, the Company contends in its brief (at 48) that Boos did not threaten anyone. It contends that even assuming Boos made the statement as claimed by the pickets (threatening to hit them "over [or in] the fucking head with it" if he saw another one of the signs), he used the word "if." The Company argues that the statement is therefore "more in the nature of a future-oriented hypothetical statement" and "did not carry with it a threat of *present* or *immediate* violence."

For such a proposition, the Company argues that under the standard of *Clear Pine Moulding*, 286 NLRB 1044, 1046 (1984), verbal statements will lose protection under the Act only if they raise a reasonable likelihood of "imminent physical confrontation." The *Clear Pine Moulding* standard, as adopted by the Board is, however, an "objective test for determining whether verbal threats *by strikers directed at fellow employees* [emphasis added] justify an employer's refusal to reinstate." That standard, of course, does not apply when a top member of management threatens violence against strikers if they continue to engage in lawful picketing activity, as here.

I therefore find that J. R. Boos' threat of violence was coercive and violated Section 8(a)(1).

I disagree, however, with the General Counsel's contention that the videotaping of the employees was coercive when the Company videotaped the picket signs, the pickets, and the picket area on April 29. Both the Company and the Union were engaged in the videotaping. The Company had been videotaping the entrance to the plant since the beginning of the strike (Tr. 197). On this occasion, the pickets understood why the Company was videotaping the picket area: to obtain verification that the Union was placing "wrong" wording on the picket signs, naming nonstriking employees.

I find that under these circumstances, the videotaping was not coercive and the allegation must be dismissed.

4. Prolonging of strike

The General Counsel contends that the unfair labor practices committed by J. R. Boos on behalf of the Company on April 22 and 29 prolonged the strike that began on February 2.

The Company contends that J. R. Boos never committed any unfair labor practices and that the strike that began as an economic strike continued to be an economic strike.

As found, J. R. Boos' unlawful conduct was a "contributing cause" of the February 2 strike, which was an unfair labor practice strike. As also found, J. R. Boos committed further unfair labor practices on April 22, when he destroyed picket signs and other union property and assaulted a picket who complained to him about the destruction by spitting in her face, and on April 29, when he confiscated two of the Union's lawful picket signs and threatened the pickets with physical violence if they continued to engage in the protected picketing activity.

I find that these additional unfair labor practices, committed by the same person whose conduct was a "contributing cause" of the unfair labor practice strike, prolonged the unfair labor practice strike, as alleged by the General Counsel.

CONCLUSIONS OF LAW

1. By J. R. Boos Jr.'s discriminating against Jeffrey Pugh on October 10, 1997, by assigning him to the second shift; on November 3, 1997, by reducing his pay; about December 2, 1997, by assigning him to more onerous work; and on December 4, 1997, by refusing to grant him an excused absence as a union official for union business, because of his union activity, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. By J. R. Boos Jr.'s discriminating against Jeffrey Pugh on November 3, 1997, by reducing his pay; about December 2, 1997, by assigning him to more onerous work; and on December 4, 1997, by refusing to grant him an excused absence, because of the filing of NLRB charges, the Company violated Section 8(a)(4) and (1).

3. By J. R. Boos Jr.'s not permitting Jeffrey Pugh to exercise his contractual seniority right on October 10, 1997, to remain on the first shift and about December 2, 1997, to decline an assignment to more onerous work, and to exercise his contractual right on December 4, 1997, to take an excused absence as a union official for union business, the Company changed working conditions without providing the Union prior notice and affording it the opportunity to bargain, violating Section 8(a)(5) and (1).

4. The recognized appropriate bargaining unit is "All production and maintenance employees in the Press Division of The Wilkie Company at its Muskegon, Michigan plant, excluding office or clerical employees, guards, professional employees, foremen, and supervisors as defined in the National Labor Relations Act."

5. By J. R. Boos Jr.'s statements to Karen Walkman on November 14, 1997, advising her that he did not like her going to the Union and making complaints about working conditions because he did not like the Union and on November 19, 1997, reminded her not to seek assistance from the Union, the Company violated Section 8(a)(1).

6. By Robert Darga's statements to Jeffrey Pugh on November 7, 1997, after his pay was cut that it was what he deserved for going to the NLRB; to James Pugh that Jeffrey Pugh had been reassigned because he went to the NLRB; and to David Bates that Jeffrey Pugh had been reassigned because of the NLRB charges, the Company violated Section 8(a)(1).

7. By John Boos' statements to Bernard Robart about December 23, 1997, implying that a strike was inevitable as the Company's reprisal for employees filing all the grievances; to David Bates about January 8, 1998, threatening employees with discharge and other unspecified reprisals if they engaged in a strike; to Karen Bates about January 27, 1998, making an implied threat of discharge if the employees engaged in a strike; and to Robert Dollaway on January 30, 1998, threatening employees with unspecified reprisals if they engaged in a strike and coercively interrogating him about sentiments of other employees regarding their protected right to strike, the Company violated Section 8(a)(1).

8. By Shift Supervisor Mitch Piasecki's statements to Rhonda Boltze about January 18 and to Shelli Moran about January 29, 1998, threatening employees with discharge if they engaged in a strike, the Company violated Section 8(a)(1).

9. The strike that began on February 2, 1998, was an unfair labor practice strike from its inception.

10. By J. R. Boos Jr.'s conduct on April 22, 1998, destroying picket signs and other union property and assaulting a picket by spitting in her face when she complained to him about the destruction, the Company violated Section 8(a)(1).

11. By J. R. Boos Jr.'s conduct on April 29, 1998, confiscating two lawful picket signs and threatening pickets with physical violence if they continued to engage in the protected picketing activity, the Company violated Section 8(a)(1).

12. By J. R. Boos Jr.'s unlawful conduct on April 22 and 29, 1998, the Company prolonged the unfair labor practice strike.

13. The Company did not unlawfully discriminated against Karen Walkman by temporarily reassigning her on November 19, 1997.

14. The Company's videotaping at the picket area on April 29, 1998, was not coercive and was therefore lawful.

REMEDY

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

Because unfair labor practice strikers are entitled to special remedial provisions, even if there is no allegation of any denial of reinstatement, the Respondent must be ordered to offer the strikers, on their unconditional offer to return to work, immediate and full reinstatement to their former jobs or, if the positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and previously enjoyed, discharging, if necessary, any replacements hired after the start of the strike.

The Respondent must make the strikers whole for any loss of earnings and other benefits resulting from any failure to reinstate them within 5 days of their unconditional offer to return to work, with backpay and interest to be computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Board has found that the 5-day period is a reasonable accommodation between the interests of the employees in re-

turning to work as quickly as possible and the employer's need to effectuate that return in an orderly manner. Accordingly, if the Respondent ignores or reject, or has already rejected, any unconditional offer to return to work, unduly delays its response, or attaches unlawful conditions to its offer of reinstatement, the 5-day period serves no useful purpose and backpay must commence on the date of the unconditional offer to return. *Grondorf, Field, Black & Co.*, 318 NLRB 996, 997 fn. 3 (1995), enfd. in relevant part 107 F.3d 882 (D.C. Cir. 1997).

Any of the employees for whom employment is not immediately available must be placed on a preferential hiring list for employment as positions become available and before other persons are hired for the work. Priority for placement on the list shall be determined by seniority or other nondiscriminatory test.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, The Wilkie Company d/b/a Wilkie Metal Products, Inc. Muskegon, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminating against any employee for supporting Local Lodge 670, District Lodge 97, International Association of Machinists and Aerospace Workers, AFLCIO or any other union.

(b) Discriminating against any employee for filing an NLRB charge.

(c) Changing working conditions without providing the Union prior notice and affording it the opportunity to bargain.

(d) Warning any employee not to seek assistance from the Union or file an NLRB charge.

(e) Threatening discharge or other reprisal if the employees engage in a strike.

(f) Coercively interrogating any employee about union sympathies of other employees.

(g) Confiscating or destroying the Union's picket signs or other property.

(h) Assaulting any picket or threatening pickets with physical violence.

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

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

(a) From February 2, 1998, when the strike started, reinstate on their unconditional offer to return to work all striking employees to their former jobs or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any replacements hired after the start of the strike, and make the employees whole, with interest, for any loss of earnings or other benefits resulting from any failure to reinstate them on their unconditional offer to return, in the manner set forth in the remedy section of the decision.

(b) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All production and maintenance employees in the Press Division of The Wilkie Company at its Muskegon, Michigan plant, excluding office or clerical employees, guards, professional employees, foremen, and supervisors as defined in the National Labor Relations Act.

(c) Restore Jeffrey Pugh's "grandfathered" wage rate and make him whole for the loss of earnings resulting from the reduction in his wage rate on November 3, 1997, plus interest.

(d) Within 14 days after service by the Region, post at its facility in Muskegon, Michigan, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 10, 1997.

(e) Within 14 days after service by the Region, mail a copy of the notice to all employees in the bargaining unit who were employed on February 2, 1998, the date of the unfair labor practice strike. The notice shall be mailed to the last known address of each of the employees.

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

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

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

[3] 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."

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 discriminate against any of you for supporting Local Lodge 670, District Lodge 97, International Association of Machinists and Aerospace Workers, AFL–CIO or any other union.

WE WILL NOT discriminate against any of you for filing an NLRB charge.

WE WILL NOT change working conditions without providing the Union prior notice and affording it the opportunity to bargain.

WE WILL NOT warn you not to seek assistance from the Union or file an NLRB charge.

WE WILL NOT threaten discharge or other reprisal if the employees engage in a strike.

WE WILL NOT coercively question you about union sympathies of other employees.

WE WILL NOT confiscate or destroy the Union's picket signs or other property.

WE WILL NOT assault any picket or threaten pickets with physical violence.

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

WE WILL, from February 2, 1998, when the strike started, reinstate on their unconditional offer to return to work all striking employees to their former jobs or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any replacements hired after the start of the strike, and make the employees whole, with interest, for any loss of earnings or other benefits resulting from any failure to reinstate them on their unconditional offer to return.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All production and maintenance employees in the Press Division of The Wilkie Company at its Muskegon, Michigan plant, excluding office or clerical employees, guards, professional employees, foremen, and supervisors as defined in the National Labor Relations Act.

WE WILL restore Jeffrey Pugh's "grandfathered" wage rate and make him whole for the loss of earnings resulting from our cutting his pay on November 3, 1997, plus interest.

THE WILKIE COMPANY d/b/a WILKIE METAL PRODUCTS, INC.