Emergency One, Inc. *and* International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO (IUE) *and* Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 385, affiliated with International Brotherhood of Teamsters, AFL–CIO.[1] Cases 12–CA–13361, 12–CA–13498, 12–CA–13742, 12–CA–13873, 12–CA–13887, 12–CA–13973, 12–CA–14184, and 12–CA–14234

March 24, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On September 26, 1991, Administrative Law Judge Jay R. Pollack 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,[2] and conclusions and to adopt the recommended Order.

The judge found, and we agree, that Supervisor Baker threatened employee Vinyard in violation of Section 8(a)(1) of the Act. The judge found that Vinyard, in response to Baker's questioning him about why employees wanted a union, listed employee concerns. Baker then replied that ''it's a right to work state and the company doesn't have to negotiate with the union.'' This statement is contrary to the law and could reasonably be interpreted as a threat that the Respondent would not bargain with a union, even if employees elected union representation. Baker did not end his inquiry there, however. His continued questioning evoked the spectre of a strike, with Vinyard on the ''other side'' of a picket line, and the permanent replacement of strikers. Baker cautioned Vinyard to think the matter over and said that he would not like to see Vinyard ''go down the road.'' In these circumstances, we adopt the judge's finding that Baker unlawfully threatened Vinyard with reprisals if he engaged in protected activity.

We also agree with the judge's finding that Supervisor Flinn unlawfully restricted conversations about union matters during worktime while permitting conversations about other nonwork matters. He credited testimony by the Respondent's former employee, Taub, that Flinn announced the prohibition to Taub and four other employees, including Russ Miller, during a meeting in late January 1989. In its exceptions, the Respondent points out that Russ Miller testified that Flinn never restricted employee discussions of union matters.

Although the judge erroneously found that Miller was not present at the conversation testified to by Taub, we find that this is a harmless error. We find that Miller's testimony is not inconsistent with the judge's decision. Miller's testimony was in response to broad, general questions about Flinn's conduct. In fact, Miller was not asked specifically about the circumstances of the January 1989 meeting. Thus, his general testimony does not address the factual situation in issue. Accordingly, we affirm the judge's conclusion that the Respondent violated the Act as alleged.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Emergency One, Inc., Ocala, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

E. Walter Bowman, Esq. and *Evelyn M. Korschgen, Esq.*, for the General Counsel.

Thomas C. Garwood Jr., Esq. (Garwood & McKenna), of Orlando, Florida, for the Respondent.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this matter in trial at Ocala, Florida, on December 10 through 14, 1990. On April 26, 1989, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO (the IUE) filed a charge in Case 12–CA–13361 alleging that Emergency One, Inc. (Respondent) committed certain violations of Section 8(a)(3) and (1) of the National Labor Relations Act (the Act). The IUE filed a charge and an amended charge in Case 12–CA–13498 on August 11 and October 10, 1989, respectively. On January 17, 1990, Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 385 (the Teamsters) filed a charge in Case 12–CA–13742 against Respondent alleging violations of Section 8(a)(3) and (1) of the Act. Thereafter, on March 15 and 20, the Teamsters filed charges in Cases 12–CA–13873 and 12–CA–13887, respectively. The charge in Case 12–CA–13887 was amended on May 15, 1990. The Teamsters filed another charge in Case 12–CA–13973 on June 14, 1990. A charge and an amended charge in Case 12–CA–14184 were filed by the Teamsters on September 24 and November 20,

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] 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.

The Respondent also has excepted to certain inferences drawn by the judge. We find that these inferences are supported by substantial evidence on the record as a whole. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466 (9th Cir. 1966).

1990, respectively. Another charge was filed by the Teamsters in Case 12–CA–14234 on October 31, 1990. On March 30, 1990, the Regional Director for Region 12 of the National Labor Relations Board issued a consolidated complaint and notice of hearing against Respondent, alleging that Respondent violated Section 8(a)(3) and (1) of the Act. On July 19, the Regional Director issued an amended consolidated complaint and on November 26, 1990, the Regional Director issued a second amended consolidated complaint against Respondent. Respondent filed timely answers to the complaints, denying all wrongdoing. At the hearing, Respondent amended its answer to admit that it maintained an overly broad no-distribution rule.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs of the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent, a Delaware corporation, has been engaged in business as a custom manufacturer of fire trucks and emergency vehicles in Ocala, Florida. During the 12 months prior to issuance of the complaint, Respondent purchased and received at its Florida facility goods, products, and materials valued in excess of $50,000 directly from sources located outside the State of Florida. Accordingly, Respondent 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.

The parties stipulated and I find that at all times material the IUE and the Teamsters each have been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The timeframe encompassed by the complaint consists of two periods of organizing by Respondent's employees, on behalf of two different labor organizations, the IUE and the Teamsters. In January 1989, the IUE began its organizing campaign at Respondent's facility. James Taub, an acting crew leader, was the leading organizer of the IUE campaign. However, the IUE never filed a representation petition and its campaign ended in the fall of 1989.

Several months later, in January 1990, the Teamsters began an organizing campaign. On March 1, 1990, the Teamsters filed a petition with the Board seeking to represent employees at Respondent's body plant. That petition was withdrawn in August. However, on August 28, 1990, the Teamsters filed another representation petition in Case 12–RC–7365. At the time of the instant trial, an election was scheduled to be held for Respondent's production and maintenance employees at all its Ocala, Florida facilities on January 11, 1991.[1]

Within the context of these two organizing drives, the complaint alleges that Respondent discharged employees Ken Wood and Dennis Miller because of their activities on behalf of the Teamsters. The complaint also alleges that Respondent withheld certain profit-sharing payments and wage increases due employees in its body shop in order to discourage activities on behalf of the Teamsters. Further, the complaint alleges nine independent violations of Section 8(a)(1) of the Act in order to discourage union activities.

1. The peer review panel

General Counsel alleges that in response to the IUE organizing drive, Respondent established and utilized a peer review panel in order to discourage union activities.

As stated earlier the IUE campaign began in January 1989. Although employee meetings were held, no representation petition was filed. On March 5, 1989, Frank Carmody, human resources vice president, announced a peer review panel to permit employees a method of seeking redress from discipline or adverse actions. The plan was incorporated into the employee handbook but was never implemented. The IUE filed an unfair labor practice charge and Respondent, faced with such a charge, never implemented the peer review panel.

The evidence establishes that in the fall of 1988, as part of a periodic review of Respondent's employee handbook, Carmody proposed an employee peer review panel to supplement Respondent's then-existing internal grievance procedure. The review panel was based on a similar procedure utilized by Coor's Brewery. Although the review panel was announced and published in the handbook, Carmody suspended its implementation after learning that the Regional Director was alleging the peer review panel as an unfair labor practice.

Carmody testified that in late 1988, the peer review panel was adopted as part of Respondent's ongoing review of its policies and procedures. Carmody got the idea from reading about the peer review panel in use at the Coor's Brewery. The panel would have been an addition to the existing complaint procedure for employees. However, because of the IUE's charge, and the subsequent NLRB complaint, the review panel has never been utilized.

2. The alleged surveillance

The complaint alleges that Respondent engaged in unlawful surveillance by having its managers and supervisors distribute antiunion materials and thereafter observing which employees accepted the materials.

James English testified that in October 1989, Supervisors Bob Fosson and Steve Dean were passing out antiunion T-shirts. According to English, he accepted a shirt from Dean and was told, ''I expect you to wear that to work tomorrow.'' The shirts read ''Union Free and Proud Of It.''

Fosson and Dean denied passing out the antiunion T-shirts. Other employees who work in the same building as English, Dean, and Fosson corroborated the testimony of the two supervisors. The credible evidence establishes that the T-shirts were paid for by Respondent and made available to employees. However, Respondent's supervisors did not pass out the shirts nor make any notation as to who accepted the shirts. On one occasion, Fosson and Dean helped carry the shirts from a storeroom to the breakroom. The testimony of Dean and Fosson is corroborated by other employees working in

[1] The representation case was not before me. Thus, the results of the election are not relevant to the instant case.

that building. Accordingly, I credit the testimony of Dean and Fosson over that of English.

3. Implied threats to discharge employees

Former employee Jim Taub testified that in January 1989, he was approached by his supervisor, Scott Flinn, and asked about a union.[2] Taub told Flinn that he was trying to organize the employees for the IUE. Flinn answered that he didn't want to hear anymore and cautioned Taub that the employee could lose his job. Flinn denied making any such statement to Taub. I credit Taub's testimony over Flinn's denial.

Employee William Vinyard testified that on April 11, 1989, while he was working on top of a truck, his supervisor Stanley Baker climbed on top of the truck and asked him ''what's wrong.'' According to Vinyard, he told Baker that nothing was wrong. Baker insisted that something was wrong and Vinyard asked if Baker meant the Union. Baker said yes and asked what the employees wanted. Vinyard answered, better medical benefits, better pay scale, and fairer treatment from supervisors. Baker stated, ''it's a right to work state and the company doesn't have to negotiate with the union.'' Baker then asked ''what would happen if the union came in with fifty-one percent and the company wouldn't agree to the contract.'' Vinyard answered, ''Well, we'd probably end up on strike.'' Baker said Vinyard would be on the other side of a picket line and asked what would happen. Vinyard answered the Company would probably hire replacements. Baker answered that Vinyard was right. Baker cautioned Vinyard to think the matter over. He suggested that if Vinyard changed his mind, other employees would follow the lead. I credit Vinyard's testimony over that of Baker.

4. The alleged ban of union discussions

Taub testified that at a meeting at the end of January 1989, Flinn told Taub and four other employees that Flinn did not want any union talk on company hours. The employees who worked under Flinn in the parts assembly area had been permitted to talk about any subject so long as they kept working. The undisputed evidence establishes that Flinn allowed these employees to discuss any topic, work related or not, as long as it did not interfere with their work duties. According to Taub, Flinn stated that union talk was not allowed but made no mention of any other subject.

Flinn denied making the statements attributed to him by Taub. According to Flinn, he told the employees that operations were working behind schedule and he did not want talk of any kind interfering with work. Employees Miller, L'Heureux, and Hildebran all credibly testified that Flinn allowed employees to talk about any subject as long as the employees did not stop work to talk. These employees were not barred from discussing the Union. These employees were not present, however, at the conversation testified to by Taub.

5. The alleged creation of an impression of surveillance

At meetings in February 1989, Frank Carmody, Respondent's vice president of human relations, admittedly told employees that he knew where union meetings were being held and who was attending them. While several employees testified to what Carmody said at employee meetings concerning the union meetings, I find that the most reliable version of what was said was the testimony of Carmody. Carmody encouraged employees to get both sides of the story so as to make an intelligent decision. Stating that the IUE had not communicated with many of the employees about their organizing efforts, Carmody told the employees that he would share any information that he obtained about IUE meetings. Carmody told employees about the date and place of future meetings and told employees that he would give them the names of fellow employees who could give more information about the union meetings and organizational drive. According to Carmody the information about the meetings had been volunteered by employees. He testified that he informed the employees of what he knew so that they could attend union meetings and find out more about the Union.

6. The alleged restriction of employee James Taub's contact with other employees

In late February 1989, Taub, then an acting crew leader, was placed in a parts department assignment in the electrical department. According to Taub, his previous position caused him to travel throughout the plant. Taub was told that as part of a job rotation he was being assigned to the prefab area. That was a fenced-in area in which Taub prefabricated certain parts. Taub testified that Supervisor Scott Flinn told him that he could not leave his area, even to go to the bathroom, without permission. When Taub protested, Flinn responded that he also had bosses. A few days later, when Taub again protested this assignment, Flinn stated ''Why did you start this Union shit anyway?''

Several employees, including Miller, Nawrocki, and L'Heureux, testified that the prefab area was not isolated and that Taub's assignment was not punishment. Carmody testified that the rotational program was a normal and routine company undertaking. Taub had previously announced the intent of taking a leave and Respondent wanted to familiarize other employees with his job function. Flinn's denial is not credited.

7. The no-distribution rule

During the hearing, Respondent admitted that the following rule in its employee handbook was overly broad and invalid. There was no evidence of any improper application of the rule.

> No solicitation of any kind is allowed during working hours. No distribution of any written or printed matter of any kind is allowed on company property at any time. For purposes of this rule, ''working hours'' does not include break time, lunch periods or other duty-free periods of time. ''Working hours'' does include time spent on all work tasks by both the employee engaging in the solicitation or distribution and the employee to whom the solicitation or distribution is directed.

[2] Taub had contacted the IUE and was open about his union activities. At company meetings, in the spring of 1989, the IUE was often referred to as ''Mr. Taub's union.''

8. The alleged interrogation and threats of discharge by Supervisor Alan Lavish

Former employee Gary Stidham testified that on a couple of occasions he was asked by his supervisor Alan Lavish if he had heard anything about the Union. Stidham told Lavish that he had joined the Union. Further, Stidham wore a union button to work. According to Stidham he heard Lavish say on several occasions that employees ''better watch out'' and that employees might lose their jobs because of the Union.

Lavish denied making any such statements. Other employees working for Lavish testified that they heard no such statements. Employee Fitzgerald testified that the remark allegedly made by Lavish was in fact made by another nonsupervisory employee. Fitzgerald was an open union supporter. I credit Lavish's testimony over that of Stidham.

9. The withholding of the profit-sharing distribution and wage adjustments at the body plant

Prior to any union activity at its plant, Respondent had established and administered a profit-sharing plan for its employees. In 1989, Respondent decided to change the plan's employee distributions from an annual basis to a quarterly basis. This change was announced to employees in February 1990. However, on March 1, 1990, the Teamsters filed their representation petition seeking to represent the employees at Respondent's body plant.

As a result of the petition, Respondent decided not to distribute the profit-sharing quarterly distribution to the employees in the body plant. The employees at the other facilities received their quarterly distribution. However, employees at the body plant were told that their distributions would be placed in an escrow account, earning interest, until the union representation question had been resolved. The employees were told that this procedure was necessary to avoid the appearance of an inducement to cease union activities.

In August 1990, the Teamsters withdrew their representation petition and the employees in the body shop received their profit-sharing plus interest.

In a similar fashion, Respondent had followed a procedure of conducting an area wage survey and reviewing the results for purposes of wage adjustments. Although the survey does not automatically result in wage increases, usually some upward adjustment can be expected. However, since no determination on wage adjustments had been made prior to the Teamsters petition, Respondent determined to hold the wage adjustments for body plant employees in an interest bearing escrow account. As with the profit-sharing plan, employees were told that the moneys due would be paid after the union representation question had been resolved. In August, the affected employees received their wage adjustments with interest.

10. The discharge of Kenneth Wood

Wood had been working for Respondent almost 4 years when he was discharged on January 12, 1990. On January 7, 1990, Wood and several employees met with representatives of the Teamsters Union. On Monday, January 8, Wood began distributing union authorization cards and flyers in Respondent's parking lot. This activity was open and observed by at least two supervisors. In addition, Wood wore a Teamsters hat at work.

On January 10, Wood attended a meeting held by Frank Carmody to discuss the Teamsters union campaign. Wood, wearing his union hat, asked several questions of Carmody indicating his prounion stance. Wood was the only employee to reveal a position contrary to Carmody's antiunion message.

On January 11, Wood was still attending a scrap team meeting at the close of his shift. His crew leader, Randy Rouse,[3] helped put away Wood's tools while the employee was at the scrap team meeting. In putting away Wood's tools, Rouse found a wrench belonging to himself amongst Wood's tools. Rouse put his wrench away with Wood's tools. Rouse later reported that Wood had taken his wrench without permission.

Respondent required its employees to furnish their own personal hand tools. Wood had a wrench just like the one he borrowed from Rouse but had repeatedly borrowed a second one from Rouse. Wood credibly testified that he had often borrowed the wrench in question from Rouse. Rouse admitted at trial that the wrench went back and forth between him and Wood. Rouse's testimony that Wood did not have permission to use this tool is not credited.[4]

On January 12, before work, Wood and Rouse, an outspoken antiunion activist, had a discussion about the Union in which Rouse suggested that Wood leave the Company. Rouse did not mention Wood's alleged unauthorized borrowing of his wrench. Just before noon, Wood was approached by John Owens, assistant plant manager, and Glenn Hall, supervisor. Owens told Wood that another ''employee . . . has tools missing and he thinks you have them in your box . . . we want to search your tool box.'' Wood asked for a witness and accompanied them back to his work bench. Owens did not tell Wood that he was looking for Rouse's wrench which Wood was using. After Owens did not find

[3] Rouse was one of the leaders of the employee-sponsored antiunion group. The parties stipulated that Rouse was not a supervisor within the meaning of the Act.

[4] I found Rouse to be a particularly untrustworthy witness. Rouse left me with the strong impression that he was simply denying those events and statements attributed to him which he felt were inconvenient or embarrassing. I do not believe he felt constrained by the truth to fully describe events as he recalled them. I came to the conclusion that Rouse's testimony was designed to be harmful to Wood's case rather than to recite events as they were recalled.

Rouse was further impeached by the testimony of three credible witnesses. Employee Ray Wallace testified that he heard Rouse say, a couple of days after Wood's discharge, that ''it was Wood's tail or Randy's tail.'' Employee Randy Renwick testified that even after Wood's discharge, Rouse himself borrowed personal tools from other employees without first asking permission. The tools were later returned by Rouse and Renwick without incident.

Employee Donnie Wreen testified that the day of Wood's discharge, he asked Rouse whether Rouse had reported that Wood had stolen a wrench. Rouse answered that ''the company had asked him if he knew anything about Wood—as far as union activity [was] concerned or anything else about him.'' Rouse said the wrench was the only complaint he had. Wreen then went to Owens to tell Owens that he had a tool belonging to Rouse.

One day after Wood's discharge, Rouse expressed regret to Wreen. Rouse said that if he knew how things were going to work out, he might have acted differently. Rouse indicated to Wreen that ''the company'' had asked him (Rouse) whether he had any complaints against Wood or anything that Wood had done wrong. Rouse again said that the wrench was the only complaint he had.

Rouse's wrench, he asked Wood to see a nine-sixteenth wrench and Wood showed Owens his wrench. Then Wood remembered Rouse's wrench which was on his work bench. Wood then showed Owens the wrench and said he had borrowed it from Rouse.

After Owens checked with Carmody, he suspended Wood at approximately 12:40 p.m. Wood asked Owens whether Owens believed that he had stolen the wrench. Owens answered ''No, Ken, I don't. If you ask me, I really shouldn't be playing with you like this.'' Thereafter, without talking to Wood's witnesses, at 1:30 p.m., Owens discharged Wood for ''misappropriation of personal tools.'' Owens testified that he did not question Wood's witnesses because Wood had not cooperated in his investigation.[5] Owens' investigation consisted of finding a tool Rouse had placed in Wood's toolbox the night before. Owens did not tell Wood what tool he was looking for. Owens gave no credible explanation for not talking to Wood's witnesses between the time that Wood was suspended and the discharge 50 minutes later.

Employee Don Wreen, one of Wood's witnesses who could have established that Rouse had lent the wrench to Wood, told Owens prior to the suspension and discharge that he too had borrowed a tool from Rouse. Wreen asked Owens if he would also be fired. Owens did not respond to Wreen. Owens testified that he believed Rouse's story that he had given the tool to Wreen as a gift.[6]

Wood subsequently filed a claim for unemployment compensation. Respondent contested this claim at a hearing before an appeal's referee.[7] In contesting this claim, Respondent offered a written policy, dated October 1, 1986, stating ''employees should not lend their tools to anyone.'' However, the document submitted at that hearing was not authentic. The true October 1, 1986 policy read ''employees are *recommended* not to lend their *company issued* tools to anyone.'' (Emphasis added.) No explanation for tendering this false evidence was offered. Tom Alexander, director of human resources and the official who produced the document at the hearing, was present at the instant trial but was not asked to explain the false document. The actual written policy was changed in 1990, approximately 1 month after Wood's discharge.

11. The discharge of Dennis Miller

Dennis Miller worked for Respondent approximately 2 years prior to his termination. General Counsel contends that Miller was discharged but Respondent contends that Miller resigned his employment in contemplation of returning to school. Prior to his disputed termination, Miller had an outstanding work record and had received excellent evaluations.

Miller signed a union authorization card for the Teamsters. He wore a union hat one day and wore a union pin for several days prior to his termination. General Counsel contends that it was a bright yellow prounion T-shirt that denoted Miller as a leading union adherent. Miller wore this shirt in January and February 1990. There were no other prounion shirts worn at the facility during that time period. Antiunion shirts were worn during relevant time periods and prounion shirts were worn sometime later in the year.

Alan Thomas, Miller's supervisor, admitted knowing that Miller wore the union T-shirt and that Miller had been an outspoken union supporter. On the same date that the Teamsters representation petition was filed, Miller was seen by Thomas giving a union cheer as he was leaving a company antiunion meeting.

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[5] Owens was not a credible witness. He testified that he was unaware of Wood's union activities but was impeached by a prior written statement admitting that he was aware of such activities. Further, Owens first testified that the investigation consisted only of finding the ''missing'' tool. Later, on being recalled to the stand, Owens testified that he did not question Wood or Wood's witnesses because Wood did not cooperate in the investigation. Since Owens did not tell Wood what tool he was looking for, it would be very difficult for Wood to have cooperated more than allowing Owens to search his tools. Wood readily agreed to allow Owens to search his tools.

Owens simply choose to credit Rouse's version of events over that of Wood and Wreen. Wood offered the names of two witnesses while Rouse had no one to corroborate his stories. Owens gave no credible explanation for not talking to Wood's witnesses after the suspension. No explanation was given for the time period between the suspension and the discharge. Owens stated the suspension was pending further investigation. However, 1 hour later, he discharged Wood without talking to the witnesses. One would think that with an allegation as serious as ''misappropriation of personal tools'' Owens would talk to the witnesses. Further, knowing of Rouse's antiunion bias and Wood's prounion stance, Owens might entertain doubts as to the validity of Rouse's claims. Wreen's statements to Owens also made Rouse's claims doubtful, but Owens chose to base all his actions on Rouse's claims. I fail to see how Owens and Respondent can claim that they investigated Rouse's accusations.

[6] Wreen credibly testified that he had borrowed the tool from Rouse but had not yet returned it. He credibly denied that Rouse had given him the tool. For the reasons stated above, I do not credit Rouse's testimony that he had given the tool to Wreen. As stated earlier, I do not credit Owens' testimony regarding his alleged investigation.

[7] General Counsel offered the referee's decision, finding that Wood was not discharged for just cause, in evidence. I rejected the offer. First, the issue before the referee was whether just cause had been proven. That was not the same issue presented in the case before me. Second, the burden of proof was not the same. Third, the referee's decision simply stated that the referee credited Wood's testimony over that offered by Rouse. I reaffirm my ruling that the referee's decision is hearsay.

I further find that this decision is not appropriate for deferral for the following reasons. The Board will defer to an arbitrator's decision where the following criteria are met: (1) The arbitral proceedings are fair and regular; (2) all parties must have agreed to be bound; (3) the arbitral decision must not be repugnant to the policies of the Act; (4) the contractual issue before the arbitrator must be factually parallel to the unfair labor practice issue; and (5) the arbitrator must have been presented generally with the facts relevant to resolving the unfair labor practice. *Dennison National Co.*, 296 NLRB 169 (1989); *Teledyne Industries*, 300 NLRB 780 (1990).

Applying the same reationale to the referee's decision, I conclude that deferral here would not be appropriate since the statutory issue was not presented to or decided by the referee. The referee stated that the issue presented was whether the employee had been discharged for just cause. To determine this issue the referee did not need to consider, and apparently did not consider, the facts necessary to establish a violation of Sec. 8(a)(3) of the Act. The decision merely states that because Wood's denials are credited, just cause has not been established. The referee's decision concerns only one issue relevant to this case, the defense for the discharge, but is silent as to the motivation for Respondent's conduct, the crucial element of an 8(a)(3) case. Accordingly, I find that the unemployment compensation issue was not parallel to the unfair labor practice issue. Although some of the facts were presented to the referee, the referee did not decide the statutory issue. I, therefore, shall not defer to the decision of the referee.

On the same date as the Teamsters petition was filed, Miller asked Thomas what kind of notice the Company required if he were to leave to go to college. Miller also asked whether there were any job possibilities at Respondent's Gainesville facility which was much closer to Miller's home. Miller was interested in working at the Gainesville facility even if he went to school. At the time of this conversation, Miller had applied to the University of Florida in Gainesville but would not learn whether he was accepted until 4 to 6 weeks later.

On March 5, Thomas called Miller into his office and had supervisor Mike Ferrell there as a witness. Thomas told Miller ''we're terminating you due to overstaffing and . . . the work situation'' and ''you're definitely up for rehire.'' Miller made a comment to the effect that he was expecting this. However later, when Miller stated that he would be filing for unemployment compensation, Thomas stated, ''we're not firing you. We're accepting your early resignation.'' Miller insisted that he had not resigned. He also stated that if he was eligible for rehire, he wanted to be rehired immediately.

Thomas called Plant Superintendent Dick Moon to speak with Miller. Miller told Moon that he had never resigned and wanted to remain in Respondent's employ. Moon listened to Miller's denials but stated that the resignation would stand. Thomas and Ferrell escorted Miller from the premises. The next day, Miller returned to the plant to speak with Tom Alexander, director of human resources. Miller insisted that he had not resigned and asked for his job back. Miller argued that he was eligible for rehire and if a mistake had been made, he should simply be allowed to go back to work. Alexander produced a written statement from employee Barry Artman who had overheard Miller's March 1 conversation with Thomas. Artman and another witness, Marty Workman, were summoned to Alexander's office. Artman and Workman gave equivocal answers, neither stating that Miller had resigned.

Artman had given a written statement stating that Miller had ''made mention'' of giving a notice. I find that consistent with Miller's testimony that he asked how much notice was required. At the instant hearing, Artman testified that Miller said ''he had planned to go back to school, in the fall if everything went right.''

Alexander testified that the statement was requested from Artman on March 1 or 2. Alexander said the statement was taken in case there was some doubt about whether Miller had resigned. If there was some doubt, why not just ask Miller? To avoid doubt, why not ask Miller to put his notice in writing? Alexander could offer no reasonable explanation. His actions appear inconsistent with his position that what occurred was simply the acceptance of a routine resignation.

On March 7, Miller delivered to Respondent's personnel office a letter explaining what had happened and insisting that he had never resigned. Miller submitted a copy of this letter to the State Department of Employment Security. Miller submitted such an explanation to the unemployment office because he was concerned that the intake officer had believed that he had resigned.[8] Miller obtained employment elsewhere and did not pursue the unemployment claim.

Respondent offered evidence that it was overstaffed in Miller's welding crew. Miller has not been replaced. Further, the record shows several other instances where Respondent has acted on a notice and terminated the employee prior to the employee's requested termination date. However, those situations involved either unsatisfactory employees or employees having access to trade secrets. Such circumstances were not applicable in the instant case.

Respondent offered testimony from two other witnesses to support the contention that Miller gave a 30-day notice of resignation. Tom Hagans, a fellow employee, testified that in late 1989, Miller told him that Miller would have to resign from the company bowling team because Miller was going back to school full time. Miller resigned from the team in the fall or winter of 1989. While I credit Hagans' testimony, I find it not persuasive. Miller was contemplating going back to school for sometime. However, in the fall of 1989, and even as late as March 1990, Miller had no idea of whether he would be accepted by the university. In fact, in April, Miller learned that he had not been accepted by the university. He subsequently enrolled elsewhere.

Cynthia Prince, a former human resources assistant, testified that in March of 1990, Miller told her that he had given 30-day notice to quit and wanted to know what paperwork was necessary for claiming his accrued benefits. I do not credit Prince's testimony. Rather, I credit Miller's explanation that he asked some questions about the benefit plans, employment in Gainesville and returning to school, but that he never told Prince or anyone else that he had given 30-day notice.

B. *Analysis and Conclusions*

1. The 8(a)(1) allegations

a. *The peer review panel*

It is well settled that, in deciding whether to grant benefits while a representation election is pending, an employer should act as if no union were in the picture. *Centre Engineering*, 253 NLRB 419, 421 (1980). The Board does not automatically find that grants of benefits during an organizational campaign to be unlawful, but it presumes that such action will be objectional ''unless the Employer establishes that the timing of the action was governed by factors other than the pendency of the election.'' *American Sunroof Corp*., 248 NLRB 748 (1980); *Honolulu Sporting Goods*, 239 NLRB 1277 (1979).

Applying these principles to the instant case, I find that Respondent lawfully included the peer review panel in its revised employee handbook. It appears the peer review language was drafted prior to any union activity and, thus, for reasons other than the pendency of the union campaign.

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[8] Miller's unemployment compensation application indicates, in handwriting that is definitely not Miller's, that Miller resigned. The inference is that the handwriting belonged to the intake officer. The intake officer was not called to testify. I do not know the basis for that writing. I credit Miller's testimony that he did not tell the intake officer that he resigned. Having just vigorously argued this point with Thomas, Moon, and Alexander, Miller was not likely to tell the intake officer that he resigned.

Respondent argues that I should draw the inference that the intake officer obtained the information concerning the resignation from Miller. Without testimony from the intake officer, I believe, the inference is just as strong, that the information came from a misunderstanding or from contact with the employer's representative.

There is no evidence that Respondent attempted to use the peer review to discourage union activities. Finally, as indicated earlier, Respondent did not utilize the peer review because an unfair labor practice complaint had been authorized.

b. *The alleged surveillance*

I have credited the testimony of the Respondent's witnesses that Supervisors Dean and Fosson helped carry antiunion T-shirts to the employee break area. However, Dean and Fossom did not distribute shirts to employees. The shirts were left in the employee break room and were thereby made available to employees. I find no credible evidence that Respondent took notes or otherwise recorded who took or wore the shirts. To the extent that former employee English testified to the contrary, his testimony is not credited. Accordingly, I find no evidence to support this allegation of the complaint.

c. *The alleged threats by Baker and Flinn*

I have credited former employee Jim Taub's testimony that he told his supervisor Scott Flinn that he was trying to organize the employees for the IUE. Flinn answered that he didn't want to hear anymore and cautioned Taub that the employee could lose his job.

I have credited the testimony of William Vinyard that Stanley Baker insisted that something was wrong, and Vinyard asked if Baker meant the Union. Baker said yes, and asked what the employees wanted. Vinyard answered, better medical benefits, better pay scale, and fairer treatment from supervisors. Baker stated ''it's a right to work state and the company doesn't have to negotiate with the union.'' Baker then asked ''what would happen if the union came in with fifty-one percent and the company wouldn't agree to the contract.'' Vinyard answered, ''Well, we'd probably end up on strike.'' Baker said Vinyard would be on the other side of a picket line and asked what would happen. Vinyard answered the Company would probably hire replacements. Baker answered that Vinyard was right. Baker cautioned Vinyard to think the matter over. He suggested that if Vinyard changed his mind, other employees would follow the lead. Baker said he would not like to see Vinyard ''go down the road.''

Accordingly, I find that Respondent, through Baker and Flinn, unlawfully threatened reprisals if employees engaged in union activities.

d. *The alleged prohibition of union discussions*

I have found that Flinn told Taub and four other employees that Flinn did not want any union talk on company hours. The employees who worked under Flinn in the parts assembly area had been permitted to talk about any subject as long as they kept working. The undisputed evidence establishes that Flinn allowed these employees to discuss any topic, work related or not, as long as it did not interfere with their work duties. According to Taub, Flinn stated that union talk was not allowed but made no mention of any other subject.

The evidence establishes that Flinn restricted conversations about the Union while still permitting general conversations. Accordingly, I find that Respondent violated Section 8(a)(1) by such action. See *Magnolia Manor Nursing Home*, 284 NLRB 825, 829 (1987); *F. Mullins Construction*, 273 NLRB 1016, 1022–1023 (1984).

e. *The alleged restriction of Taub's movements*

In late February 1989, Taub, then an acting crew leader, was placed in a parts department assignment in the electrical department. Taub was told that as part of a job rotation he was being assigned to the prefab area. That was a fenced-in area in which Taub prefabricated certain parts. I credit Taub's testimony that Supervisor Scott Flinn told him that he could not leave his area, even to go to the bathroom, without permission. When Taub protested, Flinn responded that he also had bosses. A few days later, when Taub again protested this assignment, Flinn stated, ''Why did you start this Union shit anyway?''

Even assuming that the rotational program was a normal and routine company undertaking, Flinn's statements could only imply that Taub's movements were being restricted because he had engaged in union activities. As set forth above, I have found that Flinn implied that reprisals would be taken against Taub for his union activities. Coupled with Flinn's statements about the assignments, Taub would reasonably conclude that his assignment was based on union considerations. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act.

f. *The alleged impression of surveillance*

The credited testimony establishes that Vice President Frank Carmody actively encouraged employees ''to get both sides of the story.'' Carmody announced where the union meetings were being held and offered to give the names of the employees that could be contacted for more information.

I find that Carmody's views did not contain any threat of reprisal or force or promise of benefit. I do not find that his statements implied that Respondent kept the union activities of its employees under surveillance nor did Carmody suggest reprisals against those attending the meetings. Rather, Carmody suggested employees attend the meetings to get more information. While Carmody's statements did imply that he had information about union activities, there was no suggestion that the information would be used against employees.

g. *The overly broad no-distribution rule*

Respondent admitted at the hearing that its rule prohibiting distribution of any written or printed matter of any kind, at any time, is overly broad. Distribution may be prohibited both during working time and in working areas. However, the rule here extends to any area and at any time. I therefore, find that Respondent violated Section 8(a)(1) of the Act.

h. *The threats of discharge by Lavish*

I have credited the testimony of employee Fitzgerald that the threat allegedly made by Lavish was made by another rank-and-file employee. I have also credited Lavish's denials. Accordingly, I do not credit the testimony of former employee Gary Stidham that Lavish threatened that employees could lose their jobs because of the Union. Accordingly, I find that no credible evidence supports this allegation of the complaint. Based on my credibility determinations, I also

find no evidence that Lavish interrogated Stidham as alleged in the complaint.

i. *The withholding of the profit-sharing distribution and wage adjustments*

The undisputed facts show that the profit-sharing distributions and wage adjustments were held in escrow for the employees covered by the Teamsters petition. The employees at the other facilities received their payments as scheduled. The employees at the body plant received their payments, with interest, in August after the Teamsters petition was withdrawn. The employees were notified that the payments would be held in escrow until the representation question was resolved.

As mentioned earlier, the Board's general rule is that an employer's legal duty during a preelection campaign period is to proceed with the granting of benefits, just as it would have done had the union not been on the scene. See, e.g., *American Telecommunications Corp*., 249 NLRB 1135 (1980). Thus, if an employer withholds wage increases or accrued benefits because of union activities, and so advises employees, it violates the Act. *Liberty House Nursing Home*, 236 NLRB 456 (1978). However, where employees are told *expected* benefits are to be deferred pending the outcome of an election in order to avoid the appearance of election interference, the Board will not find a violation. *Truss-Span Co*., 236 NLRB 50 (1978).

Applying these principles to the facts of the instant case, I find that Respondent informed the employees, at the time of the deferral, that the sole reason for its deferral of the benefits was to avoid the appearance that it was attempting to unlawfully affect the representation election. Respondent acted consistently with its expressed reasons and the employees suffered no losses. Thus, I find the evidence establishes that the sole reason for the deferral of the benefits was to avoid the appearance of impropriety. I note that prior to these events, the Respondent had been accused of unlawfully granting benefits in the IUE campaign. Accordingly, I find that Respondent did not violate the Act in deferring the granting of these benefits nor did Respondent unlawfully attribute the deferral to the Union. *Centre Engineering*, supra.

2. The discharge of Ken Wood

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a ''motivating factor'' in the employer's decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Corp*., 462 U.S. 393, 399–403 (1983).

Based largely on demeanor and credibility, I have found that employee Randy Rouse fabricated a story that was utilized by Respondent to discharge Wood. Rouse had a wrench which Wood had often borrowed. Rouse knew that Wood had the wrench but he reported that Wood had stolen the wrench. Rouse's animosity against unions and Wood for supporting the Union was established by credible evidence. Rouse told employees that the Company had sought ''complaints or anything against Ken'' and that if he hadn't helped cause Wood's discharge, action would have been taken against him. To lend support to his falsehood about the wrench, Rouse then lied about the tool that Wreen had borrowed, untruthfully claiming that he had given it as a gift.

It seems clear that Rouse caused Wood's discharge and that he was motivated, at least in part, by union animus. However, Rouse was not a supervisor for Respondent and has not been shown to be an agent of Respondent. Therefore, Rouse's knowledge and animus cannot be imputed to Respondent. Further, Rouse's admissions that he set up Wood for discharge at Respondent's request are hearsay as to Respondent. The burden rests on General Counsel to show that Respondent was motivated by union considerations in acting on Rouse's complaint and discharging Wood. For the following reasons, I find that General Counsel has met that burden.

John Owens, assistant plant manager, knew that Wood was a leading union adherent and that Rouse was a leader of the antiunion employee group in the plant. Owens, claiming to have investigated the matter, did nothing but find the wrench Rouse had placed in Wood's toolbox the night before. Prior to Rouse's prevarication, Wood had been a fine employee who had received excellent evaluations. Owens never asked Wood how the employee had acquired the wrench nor did he attempt to verify Wood's claim that he had borrowed it from Rouse. Owens discounted the word of employee Wreen who told him that he too had borrowed a tool from Rouse. Owens preferred to believe Rouse's story that he had given the tool to Wreen.

Owens' conduct reveals an investigation designed not to find out what occurred but rather to support a discharge of Wood. Owens admitted to Wood that he did not believe that Wood had stolen the wrench and stated, ''I shouldn't be playing with you like this.'' I find that statement to be an admission that Owens knew that there was no validity to the charge of misappropriation. That admission also explains why Owens did not contact the two witnesses whose names had been given to him by Wood. There was no explanation given why those witnesses could not have been interviewed between the suspension and the discharge of Wood. Owens said Wood was suspended pending further investigation. However, an hour later, Owens discharged Wood without any investigation. Owens' testimony that he did so because Wood did not cooperate in his investigation is not helpful to Respondent's case. Wood permitted Owens to search his toolbox. That was the extent of Owens' investigation. Without knowing what Owens was looking for, it appears that Wood couldn't have cooperated to any further extent. It seems clear that Owens was simply searching for some reason to justify not talking to the two employees named by Wood as witnesses.

Further evidence of discriminatory motive can be found in Respondent's defense of the unemployment claim. At the unemployment hearing, Respondent offered a false or backdated policy stating that employees were not to lend their tools to anyone. The policy in effect at the time of Wood's discharge stated that employees were recommended not to lend company tools. It is well settled that when the asserted reasons for a discharge fail to withstand examina-

tion, the Board may infer that there is another reason—an unlawful one which the employer seeks to conceal—for the discharge. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Louisiana Council No. 17, AFSCME*, 250 NLRB 880, 886 (1980); *Reno Hilton*, 282 NLRB 819 (1987).

The timing of the discharge, the fact that an excellent employee was discharged without being given the opportunity to defend himself, the animus established by the contemporaneous unfair labor practices and the false reasons given for the discharge establish a strong prima facie case that the discharge was motivated by the employee's union activities.

The burden shifts to Respondent to establish that the same action would have taken place in the absence of Wood's protected conduct. Rather than rebutting the prima facie case, Respondent's defense strengthened it. The reasons given by Owens for the discharge simply do not withstand scrutiny. There was an accusation by Rouse, an outspoken union antagonist, against Wood, a leading union adherent. However, Owens took no steps to interview Wood's witnesses and he ignored Wreen who volunteered information which would have supported Wood and cast doubt on Rouse. Owens admitted to Wood that he didn't believe that Wood had stolen the wrench and implied that he was just following orders in discharging Wood for this spurious reason. Unlike Rouse, Owens was a supervisor and agent, and therefore, his knowledge and motives can be imputed to Respondent. Accordingly, I find that Respondent discharged Wood in violation of Section 8(a)(3) of the Act.

3. The discharge of Dennis Miller

I have found based largely on credibility that Dennis Miller did not resign from Respondent's employ. Miller asked questions concerning employment at Respondent's Gainesville facility and also about how much notice Respondent would want if Miller returned to school. Miller asked these questions of his supervisor on March 1, 1990. Four days after the petition was filed, Thomas told Miller that his resignation had been accepted. Respondent had already acquired a statement from employee Barry Artman, drafted by someone in its labor relations department, stating that Miller had indicated an intention to resign. Miller was never asked to put his resignation in writing. Rather than ask Miller to resolve any question of whether he was offering his resignation, Respondent authored a statement for an employee to sign in order to establish that Miller resigned. Similar to the Wood incident, Respondent was not interested in the facts, i.e., whether Miller had submitted a resignation or not. Rather, Respondent was intent on establishing a defense for the termination.

Miller insisted to Thomas, and Supervisor Farrell,[9] that he had not resigned. Miller then informed Alexander, the official apparently responsible for the false tool policy in the Wood unemployment hearing, that he had not resigned and that he wished to continue his employment. Alexander, knowing that Miller was an excellent employee and eligible for rehire, refused to allow Miller to cancel the resignation. Alexander told Miller that he would adhere to Thomas' conclusion that Miller had given a 30-day notice. Miller was quickly ushered out of the plant.

I find the timing of the discharge, the fact that an excellent employee was discharged for a false reason, and the animus established by the contemporaneous unfair labor practices, particularly the unlawful discharge of Wood, establish a prima facie case that the layoffs were motivated by Miller's union activities.

The burden shifts to Respondent to establish that the same action would have taken place in the absence of Miller's protected conduct. The reasons given by Thomas for the termination simply do not withstand scrutiny. There was no resignation; simply an inquiry as to whether there were openings at the Gainesville facility and how much advance notice was required if Miller returned to school. Alexander's alleged review of the controversy was as suspicious as the alleged investigation of the Wood situation. Respondent, rather than attempting to clarify any doubt, sought to establish through a prepared statement that Miller resigned. It was not interested in whether he resigned; only in proving that he had.

The facts establish that Respondent did not replace Miller or fill his position. However, I do not find that evidence convincing. Respondent had a need for experienced welders through its facility and did not lay off any welders. Finally, while Respondent has in the past accepted resignations of employees prior to the effective date requested by the employee, those situations involved either unsatisfactory employees or employees having access to trade secrets. Such circumstances were not applicable in the instant case. Accordingly, I find that Respondent has not overcome the prima facie case.

REMEDY

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

I shall recommend that Respondent offer Ken Wood and Dennis Miller full and immediate reinstatement to the positions they held prior to their unlawful discharges.

Further, Respondent shall be directed to make Wood and Miller whole for any and all loss of earnings and other rights, benefits, and emoluments of employment they may have suffered by reason of Respondent's discrimination against them, with interest. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); see also *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 139 NLRB 716 (1962).

Respondent shall also be required to expunge any and all references to its discharges of Wood and Miller from its files and notify Wood and Miller in writing that this has been done and that the discharges will not be the basis for any adverse action against them in the future. *Sterling Sugars*, 261 NLRB 472 (1982).

[9] Farrell was present as a witness. Respondent never explained why a witness was necessary to accept a voluntary resignation. Another supervisor acts as a witness in the case of adverse actions. However, in this case, Thomas was allegedly accepting a voluntary resignation.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The IUE and the Teamsters are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by engaging in the following acts and conduct:

(a) Threatening employees with reprisals for engaging in union activities.

(b) Restricting conversations about unions while permitting conversations about other nonwork matters.

(c) Threatening employees by telling them that their assignments were adversely affected by their union activities.

(d) Promulgating an overly broad no-distribution rule.

4. Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Ken Wood and Dennis Miller because of their union activities.

5. Respondent has not otherwise violated the Act as alleged.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Emergency One, Inc., Ocala, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with reprisals for engaging in union activities.

(b) Restricting conversations about unions while permitting conversations about other nonwork matters.

(c) Threatening employees by telling them that their assignments were adversely affected by their union activities.

(d) Promulgating an overly broad no-distribution rule.

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

(f) Discharging employees in order to discourage union membership and activities among its employees.

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

(a) Offer immediate employment to former employees Ken Wood and Dennis Miller to the position they would have held, but for Respondent's wrongful discharge of them.

(b) Make whole Wood and Miller for any and all losses incurred as a result of Respondent's unlawful discharge of them, with interest, as provided in the remedy section of this decision.

(c) Expunge from its files any and all references to the discharges of Wood and Miller and notify them in writing that this has been done and that the fact of Respondent's discharge of them will not be used against them in any future personnel actions.

(d) Post at each of its Ocala, Florida facilities copies of the attached notice marked ''Appendix.''[11] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by Respondent's authorized representative, shall be posted for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced, or covered by any other material.

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

[10] All motions inconsistent with this recommended Order are denied. 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.

[11] 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 threaten employees with reprisals for engaging in union activities.

WE WILL NOT restrict conversations about unions while permitting conversations about other nonwork matters.

WE WILL NOT threaten employees by telling them that their assignments were adversely affected by their union activities.

WE WILL NOT promulgate an overly broad no-distribution rule.

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

WE WILL NOT discharge employees in order to discourage union membership and activities among out employees.

WE WILL offer immediate employment to former employees Ken Wood and Dennis Miller to the position they would have held but for our wrongful discharge of them.

WE WILL make whole Wood and Miller for any and all losses incurred as a result of our unlawful discharge of them, with interest.

WE WILL expunge from our files any and all references to the discharges of Wood and Miller and WE WILL notify them in writing that this has been done and that the fact of our discharge of them will not be used against them in any future personnel actions.

EMERGENCY ONE, INC.