**Tualatin Electric, Inc. *and* International Brotherhood of Electrical Workers, Local No. 48, AFL–CIO.** Case 36–CA–6874

September 15, 1993

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On April 6, 1993, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief to the Respondent's exceptions, and the Charging Party filed a brief in opposition to the Respondent's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

## ORDER

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

1. Substitute the following for paragraph 2(a).

''(a) Offer Edward W. Campbell immediate and full reinstatement to his former job at Project Thunder or, if that position no longer exists, to a substantially equivalent position at another of the Respondent's projects to which Campbell would have been transferred at the conclusion of his work at the Project Thunder site, but for the Respondent's unlawful discharge of him, without prejudice to his seniority or any other rights or privileges previously enjoyed.''

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

[1] In adopting the judge's decision, we do not rely on *Habermen Construction Co*., 236 NLRB 79 (1978), enf. denied in part 641 F.2d 351 (5th Cir. 1981). Instead, we rely on *Dean General Contractors*, 285 NLRB 573 (1987), for the proposition that the question of whether backpay is due a discriminatee for additional projects, as in this case, is appropriately resolved during the compliance process.

[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.

[3] We shall modify the judge's recommended Order to include the usual language for requiring reinstatement of an unlawfully terminated employee.

## 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.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT make threatening and coercive statements to employees because of their involvement in union activities.

WE WILL NOT interrogate employees about their union activities.

WE WILL NOT discharge employees because of their union activities and the union activities of other employees.

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

WE WILL offer Edward W. Campbell immediate and full reinstatement to his former job at Project Thunder or, if that position no longer exists, to a substantially equivalent position at another project to which Campbell would have been transferred at the conclusion of his work at the Project Thunder site, but for our unlawful discharge of him, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Edward W. Campbell for any and all losses incurred as a result of the unlawful termination of him, with interest.

WE WILL remove from our files any and all references to the discharge of Edward Campbell and WE WILL notify him in writing that this has been done and that the discharge will not be used against him in any future personnel actions.

TUALATIN ELECTRIC, INC.

*Linda J. Sheldrup, Esq*., for the General Counsel.
*Thomas M. Triplett, Esq*. (Schwabe, Williamson & Wyatt), of Portland, Oregon, for the Respondent.
*Norman D. Malbin, Esq*., of Portland, Oregon, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard this case in trial on November 19 and 20, 1992, in Portland, Oregon, pursuant to a complaint and notice of hearing issued by the Regional Director for Region 19 (Regional Director) of the National Labor Relations Board (Board) on September 29, 1992, and amended on October 28, 1992, based on a charge filed on July 20, 1992, and docketed as Case 36–CA–6874 by International Brotherhood of Electrical Workers, Local No. 48, AFL–CIO (the Charging Party or the Union) against Tualatin Electric, Inc. (Respondent) and an amended charge filed on October 27, 1992. Posthearing briefs were submitted on January 25, 1993.

The complaint alleges that Respondent's project superintendent, Brad Adams, on or about July 20, 1992, at Respondent's Wilsonville, Oregon jobsite threatened employees with discharge if they engaged in union activities in violation of Section 8(a)(1) of the National Labor Relations Act (the Act). The complaint further alleges that Respondent on or about July 17, 1992, discharged employee Edward Campbell because of his union activities in violation of Section 8(a)(3) and (1) of the Act. Finally the complaint alleges that the charge was initially resolved by the parties' entrance into an informal settlement agreement approved by the Regional Director on August 21, 1992, but that Respondent failed to comply with its terms and, accordingly, the settlement was vacated and set aside.

Respondent in its answer and at trial asserts that the settlement agreement was improperly set aside and should be reinstated in full resolution of the matters in controversy. Further, Respondent denies the conduct attributed to it as violative of Section 8(a)(1) of the Act. Finally Respondent contends that the discharge of Campbell was not in violation of Section 8(a)(3) and (1) of the Act.

All parties were given full opportunity to participate at the hearing, to introduce relevant evidence, to call, examine, and cross-examine witnesses, to argue orally, and to file posthearing briefs.

On the entire record[1] herein, including helpful briefs from the General Counsel, the Charging Party, and Respondent, and from my observation of the witnesses and their demeanor, I make the following

### FINDINGS OF FACT[2]

#### I. JURISDICTION

At all material times Respondent has been an Oregon state corporation with an office and place of business in Wilsonville, Oregon in which State it has been engaged in the business of electrical contracting in the construction industry. In the course of its business operations at relevant times, Respondent annually purchased and received goods, materials, and services valued in excess of $50,000 directly from points and places outside the State of Oregon or from suppliers within the State which in turn obtained goods and materials directly from sources outside the State.

Accordingly, it is undisputed, and I find, that Respondent has at all times material been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *Background*

Respondent is an electrical contractor engaged in electrical contracting in the State of Oregon at various construction sites. Two of the many jobs where Respondent's employees were employed in the summer of 1992 were the Project Thunder job in Wilsonville, Oregon, and the Walmart project in Salem, Oregon. Respondent's employees are not represented by any labor organization.

Respondent's president at relevant times was Mike Overfield. Its Project Thunder project superintendent was Brad Adams. A job supervisor on Project Thunder was Brad Adam's brother, Mark Adams. Respondent's Project Thunder job involved electrical work as part of the construction of a new commercial retail facility of approximately 170,000 square feet. The store was scheduled for pubic opening in mid-September 1992. Respondent had staffed the job initially in the spring of 1992 and by the summer of 1992 was employing up to 45 electricians on the job.

The Charging Party is a constituent local of the International Brotherhood of Electrical Workers, AFL–CIO (the International). The Charging Party and other locals of the International primarily represent electrical workers in the construction industry. Not surprisingly, the Charging Party favors the success of employers who recognize it as the representative of their workers. The Charging Party seeks to organize employers in the electrical construction industry and, to the extent such employers remain unorganized, seeks to have its members refrain from working for such employers.

Edward W. Campbell at all relevant times was a resident of Longview, Washington, and a member of Local 970 of the International. Unemployed in June 1992, Campbell sought work through the Charging Party's hiring hall, but was not initially successful. At that time Campbell was asked by a Charging Party official if he would be interested in salting a job for the Union.[3] Campbell had not had previous experi-

[1] The General Counsel's unopposed motion to correct transcript is granted.

[2] As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

[3] ''Salting a job'' is the act of a trade union in sending a union member or members to an unorganized jobsite to obtain employment and then organize the employees. A ''salted'' member or ''salt'' is a union member who obtains employment with an unorganized employer at the behest of his or her union so as to advance the union's interests there. The terms seemingly derive from the use of term ''salt'' as in the term ''salting a mine'' which refers to the artificial introduction of metal or ore into a mine by subterfuge to create the false impression that the material was naturally occurring or the similar term ''salting the books'' used in reference to falsification of books of account.

ence as a salt, but needed a job and accepted the terms offered.[4]

### B. *Evidence Concerning Campbell*

#### 1. Events on the Project Thunder site

Pursuant to his agreement with the Union, Campbell sought and obtained employment with Respondent at the Project Thunder site as a journeyman electrician. He commenced work on July 6, 1992, commuting some 66 miles each way from his Longview, Washington residence to the site. During his employment Campbell engaged in organizing activity on behalf of the Union among the electricians on the site primarily before and after work and on work breaks. He was discharged on July 17, 1992.

During the less than 2-week period of his employment at the site, Campbell worked under the supervision of Supervisor Mark Adams and also under the direction of Project Superintendent Brad Adams. Working with an apprentice, Campbell was assigned installation of electrical materials in various elements of the building under construction including lavatories, a children's playroom and the fire safety system. Very substantial and conflicting evidence was adduced respecting the quality of Campbell's work, Campbell's conduct on the job, the presence or lack of sufficient jobsite plans, and diagrams containing specifications for installation of certain items and the availability of supervision.

Mark Adams testified that on Tuesday or Wednesday, July 14 or 15, 1992, he held a regular weekly discussion with his brother in which Brad Adams asked him his opinion of Campbell and his work. Mark Adams testified that he told his brother that Campbell's performance did not seem consistent with his purported 20 years in the trade and that, in fact, Respondent had senior apprentices doing both more and higher quality work. Mark Adams further testified that he did not specifically recommend that Campbell be terminated nor come to believe that Campbell would be terminated as a result of their conversation inasmuch as those decisions were his brother's to make. Brad Adams testified as an adverse witness called by the General Counsel that he decided to terminate Campbell for two reasons: (1) ''nonproductivity,'' i.e., that it took Campbell longer to complete assigned tasks than it should have and, (2) for being out of his work area two or three times. He specifically denied any knowledge of Campbell's union activities at the time he determined to discharge him. Campbell was discharged on payday, Friday, July 17, 1992.

William Metzler, an apprentice electrician for Respondent at the time of the hearing, testified that he worked at the Project Thunder site in July 1992 and had been approached by Campbell twice on the job about joining the Union and called at his home by a union official. Thereafter, but during Campbell's employment, Metzler testified he had a conversation with Brad Adams in which he reported that Ed Campbell had talked to him and ''a few different people on the job'' about the Union and was organizing on the job. Brad Adams denied this conversation ever occurred or that he had in any manner acquired knowledge respecting Campbell's union activities prior to his discharge.

Metzler worked with journeyman electrician Richard Aronson during this period. Metzler could not recall if he had reported his conversation with Adams to Aronson: ''We might have talked about it.'' Richard Aronson at the time of the hearing was no longer employed by Respondent having left its employ to enter a union apprenticeship program. Further he had filed wage and hour claims against Respondent. Aronson testified that Metzler reported to him:

> That he had had a conversation with Brad Adams stating that Brad had been asking who was, you know, talking to everybody about organizing, and Bill had said that he and been approached by Ed Campbell.

Aronson further testified that later the same day or the next, he was present when Brad Adams came up to Metzler and said, ''he's out of here'' and then departed without further comment. Aronson recalled these conversations occurred before Campbell was discharged. Metzler was not asked about this latter event. Brad Adams denied making this statement.

Jeffrey Chong, a journeyman electrician and member of a separate constituent local of the International, worked for Respondent in July and August 1992. Soon after he commenced his employment he was contacted by the Union and recruited as a ''salt'' under terms similar to those of Campbell discussed, supra. Chong worked with apprentice Ben Conradson in July. Chong testified that after the morning meeting on July 20, 1992, discussed infra, he and his apprentice Ben Conradson had gone to work. In midmorning Brad Adams approached, called Chong down from a lift, and engaged him in a discussion respecting work progress. Chong testified:

> I believe I was the one that initiated the question, so, Brad, you know, where do I stand in working here anymore? And so Brad told me that the major difference between what I was doing—you know, what I was doing and what Ed Campbell was doing was that I was not, you know, trying to recruit his men for the union.

Chong testified that his apprentice was not a party to the conversation, but was behind the two men on the lift and appeared to be ''uncomfortable'' with his situation. Richardson recalled the circumstances of the Chong-Adams conversation, but testified he only heard part of the conversation and could not confirm Chong's testimony. Brad Adams also recalled the conversation but denied that any part of the conversation dealt with Campbell in any manner.

#### 2. Postdischarge events

Following Campbell's discharge the instant charge was filed. On August 21, 1992, the Regional Director approved an informal settlement agreement respecting the charge which provided, inter alia, for compliance with the terms of

[4] Campbell was to obtain employment with Respondent at project Thunder and once employed at the site generate interest and support for the Union, answer questions and provide the Charging Party with information including the names and phone numbers of employees on the Project Thunder job. In turn the Charging Party relieved Campbell from his obligation as a member to refrain from working for unorganized electrical contractors and augmented Respondent's wages so that Campbell received union contract wages plus an additional amount sufficient to allow Campbell to self-pay his health and welfare fringe contributions. Campbell's total remuneration in working for an unorganized employer was therefore in essence identical to that which he would have received had he been employed by an employer under contract with the Union.

the included notice. The notice provided in part that Respondent would: ''offer reinstatement to employee Ed Campbell.'' The settlement agreement did not otherwise address the particulars of reinstatement, i.e., the location of the job to be offered Campbell.

Campbell reported to the Project Thunder job early on the morning of August 24, 1992, and was referred to Respondent's local office. He was there told that he was to work at Respondent's Walmart Project in Salem, Oregon. The new site involved an increase in round-trip commuting distance from Campbell's home of some 60 miles. Respondent suggested the Salem project would be of longer duration than the Project Thunder job. Campbell reported as instructed later that day to the Salem site. After 2 days of employment and in the face of a dispute among the parties respecting the sufficiency of the Salem job under the terms of the settlement agreement, Campbell abandoned his employment.

Substantial testimony was received respecting the work remaining at Project Thunder at relevant times. Substantial numbers of workers were employed at the site at the time Campbell was offered the Salem employment. Respondent advanced the argument, contested by the General Counsel and the Charging Party, that at the time Campbell was offered the Salem position—before the later picketing and employee quits and before numerous job changes were submitted to Respondent by the general contractor, the job's electrician labor requirements were declining. In the event, however, substantial work was done at the job thereafter and both Respondent's electricians and outside contractor supplied electricians paid for by Respondent were busy for a substantial period.

### C. *The July 20, 1992 Prework Meeting*

The Monday morning following Campbell's Friday termination, July 20, 1992, the employees gathered before the start of work and were addressed by Brad Adams. The specifics of the meeting are in controversy.

Jeff Chong testified that Brad Adams initially told the employees that he desired to ''clear the air'' about the previous week and efforts to organize Respondent. Chong recalled Brad Adams assured the employees Respondent was not going to recognize the Union and that any employee thinking about the Union ''might as well get in their rigs and go.'' Richard Aronson and Ben Conradson corroborated the ''people who don't like it can leave'' allusion by Adams. Former Respondent journeyman electrician, Gary Koenig, who was neither at the time of the events nor the day of the hearing a member of a constituent local of the International, testified that Brad Adams told the employees ''if any of the workers there had intentions of going union, they could get in their trucks or vehicles and leave.''

Mark Adams testified that his brother simply told the employees in response to a question that Respondent had no plans to go Union, that they were a nonunion shop and planned to stay that way. Brad Adams recalled that he told the employees that ''anybody that wanted to go union was welcome to go and that was their decision'' and denied threatening employees.

Koenig testified that following the remarks described above, Brad Adams turned to employee Jeff Chong and asked him if he was going to go union. Koenig recalled that Chong answered that it was ''an option'' and thereafter the employees dispersed to commence work. Chong testified that the question was directed rather to Koenig and himself. Aronson testified that Adams polled all the employees respecting their union sympathies by a show of hands and that he was afraid to raise his hand.

Brad Adams testified that as the meeting was breaking up he separately asked Chong and Koenig what their intentions were respecting continued employment with Respondent. He testified he did so because:

> they had offered to me before that they had been union and they were considering going union, so that was—for my management decision, I needed to know that.

Mark Adams testified that his brother asked Koenig as the meeting was ending ''what his intentions were, because he needed to know if he was planning on going union or not and if he was going to leave our company.''

### D. *Analysis and Conclusions*

#### 1. The vitality of the settlement agreement

A threshold issue in considering the allegations of the complaint is the propriety of the Regional Director's action setting aside the settlement agreement. If this action was improper, the settlement agreement will be reinstated and act as a bar to any further consideration of the allegations. The sole issue respecting the settlement agreement was whether or not Respondent's offer of the Salem jobsite employment to Campbell was a sufficient offer of reinstatement under the terms of the settlement.

Two arguments were made on the issue: one legal the other factual. As a matter of law, the General Counsel and the Charging Party argue that Campbell was entitled to reinstatement at the site from which he was terminated, i.e., the Project Thunder site in Wilsonville, Oregon, and, failing receipt of an offer of a position at that location, the terms of the settlement agreement were not complied with. Respondent contends it was entitled to assign Campbell to the Salem job because it was a newer job with more work remaining whereas the Wilsonville job was winding down with little work remaining to do.

The meaning and interpretation to be given to the word ''reinstatement'' in the settlement agreement is that which the Board applies to the same word in determining what constitutes a sufficient offer of reinstatement in unfair labor practice cases generally. This is so because the parties were entering into a legal settlement of a charge alleging unfair labor practices under the Act on agency printed forms and were submitting the settlement for the approval of the Regional Director. Terminology used in such a context may fairly be held to bear the technical meanings of the trade. Language descriptive of actions to be taken in settlement of a unfair labor practice allegation—such as the term ''reinstatement''—are surely terms of art which carry the meaning assigned them by the Board in its decisions.

The Board holds that reinstatement is generally to the position the discriminatee previously held. A different position or a similar position at a different location or facility is normally insufficient. *Orit Corp.*, 294 NLRB 695, 699 (1989); *Professional Porter Co.*, 275 NLRB 12 (1985); *American Olean Tile Co.*, 265 NLRB 1625, 1628 (1982). This vener-

able Board doctrine[5] has met with court approval. *NLRB v. Jackson Farmers*, 457 F.2d 516, 518 (10th Cir. 1972); *NLRB v. Draper Corp*., 159 F.2d 294, 297 (1st Cir. 1947). In *NLRB v. Seligman & Associates*, 808 F.2d 1155 (6th Cir. 1986), enfg. in relevant part 273 NLRB 1216 (1984), the court considered the employer's argument that it believed in good faith that the employee would be better off reinstated at another location. The court noted at 1160:

> The difficulty is, however, that the option [to work at the original location or another] should have been that of the [discriminatees] as the injured party and not of [the employer] and that [the employer's] offer, coming on the heels of admitted violations of the Act, could very likely be seen by [the employer's] other employees as grudging compliance at best and, at worst, as punitive. An employer may not transfer employees for purposes of discouraging membership in a legal organization [citation omitted]. Reinstatement to another location after termination because of protected activity, absent a dominant legitimate business reason, would achieve the same result as a transfer to discourage union membership.

Respondent further argues at page 10 of its brief that the construction industry is sui generis and that:

> General Counsel has cited no authorities for the proposition that reinstatement in the context of the construction industry requires placement at a specific project.[4]

[4] This dilemma was considered in *Haberman Construction Co*., 236 NLRB [79 (1978) enf. denied 641 F.2d 351 (5th Cir. 1981)].

I do not find Respondent's argument persuasive. Thus, I decline to find that in construction or any other industry, an employer has the right to withhold reinstatement to the former position at the former location of employment absent evidence either that the job is no longer existent or for other ''dominant legitimate business reasons'' not present here. I find therefore the only basis for Respondent to have legitimately withheld reinstatement to the Project Thunder position would have been if the job no longer existed.

Turning to the factual issue of whether Campbell's position still existed at Project Thunder, I find that it did. Nor do I believe that Respondent argues to the contrary. Rather Respondent argues on brief at 13:

> But for subsequent massive change orders, and the intervening picket which resulted in 16 employees quitting, Mr. Campbell would have been a candidate for layoff shortly after reinstatement.

Respondent's argument is that, as of the time Respondent offered Campbell reinstatement, it believed Campbell's employment at Project Thunder would have been brief. The General Counsel contests the factual underpinnings of Respondent's argument and there is no doubt that subsequent events, irrespective of whether they were or should have reasonably been known to Respondent at the time Campbell was offered reemployment, increased the work at the project and extended the period that Campbell would have been employed.

I do not need to resolve the factual issue respecting the qualification of the time remaining on Project Thunder for Campbell absent his discharge beyond finding that the period was not so short as to render Campbell's Project Thunder position practically speaking no longer extant.[6] This is so because I find that Respondent as a matter of law is not entitled to conclude that, because the time remaining in a job at a particular location is short, that the job no longer exists. Rather I hold that the term ''reinstatement,'' as the Board has interpreted that term, requires that the employee be given his old job at the old location for the remainder of the period work is available. In the instant case that work assignment would have resulted in a substantial period of employment for Campbell.

Accordingly, I find that Respondent in failing to offer Campbell reinstatement to his former position[7] did not comply with the terms of the settlement agreement. I further find, therefore, that the settlement agreement was properly set aside and is not a bar to a consideration of the unfair labor practice allegations of the complaint on their merits.

### 2. The allegations of independent violations of Section 8(a)(1) of the Act

#### a. *Complaint allegations*

Paragraph 5 of the complaint states:

> On or about July 20, 1992 Respondent, by Brad Adams at Wilsonville, Oregon:
>
> (a) Threatened employees with discharge if they engaged in union and/or protected concerted activities,
>
> (b) Interrogated employees regarding their union sympathies.

#### b. *The alleged discharge threat*

As noted supra, several employees testified that Brad Adams told employees at the July 20, 1992 morning meeting that Respondent would not recognize the Union and, in various similar versions, that those employees who wanted the

[5] See, e.g., *Chase National Bank*, 65 NLRB 827, 829 (1946).

[6] Were it necessary to do so, I would favor the factual argument of the General Counsel that Respondent knew there was substantial work remaining to be done at Project Thunder as the time it denied Campbell his former job. The burden of proof respecting the nonexistence of the former employment is on Respondent. Further on this record I find that Respondent at the very least should have known of a significant portion of the work that was necessary to be done at the job. Thus, at the time the decision was made to offer Campbell reemployment, Respondent could fairly have anticipated that Campbell could have worked at the site for a substantial period before he would have been taken off the site as a result of job completion.

[7] Given that I have found that Campbell was entitled under the terms of the settlement agreement to his former job at Project Thunder, I shall make no findings whatsoever respecting the sufficiency of the Salem job offer. The General Counsel argued that position was insufficient because it added substantially to Campbell's work commute. Respondent argued that the distance issue was never raised by the Charging Party or Campbell. The record suggests Respondent was working at a number of sites in Oregon at the time.

Union could get in their vehicles and depart. Brad Adams denied making any statement that employees who wanted the union could simply get in their vehicles and leave. Rather he recalled telling employees that ''anybody that wanted to go union was welcome to go and that was their decision.''

I credit the versions of the employees set forth above. Their testimony on this point was essentially corroborative, their demeanor sound, and their recollections clear. While the record indicates that several of the employees were aligned in interest with the Union and against Respondent, I do not find that this effected their testimony respecting these events. The Adams' recollection of events, including a specific denial that Brad Adams made any reference to employees vehicles, was not equally persuasive. Their testimony is discredited where inconsistent with the employees.

Given the above findings, I further find Respondent's statements violate Section 8(a)(1) of the Act. The Board has regularly found that statements to employees that a union activist who is unhappy should seek work elsewhere violate Section 8(a)(1). *Rolligon Corp*., 254 NLRB 22 (1981); *Intertherm, Inc*., 235 NLRB 693, 693 fn. 6 (1978); *Sans Souci Restaurant*, 235 NLRB 604, 605–606 (1978); *Padre Dodge*, 205 NLRB 252 (1973). Thus I sustain the General Counsel's complaint paragraph 5(a).

c. *The alleged wrongful interrogation*

As set forth in greater detail supra, several employees testified that following his statements respecting Respondent's intentions not to recognize the Union and his suggestion that employees who did not like this could leave, Brad Adams asked employees Koenig and Chong if they were going to go union. Mark Adams specifically corroborated this testimony as to Koenig and Brad Adams essentially did so. While the Adams suggest the interrogation occurred out of the hearing of other employees as the group was breaking up, based on the employees' testimony, supra, which I credit, I find that other employees heard the questioning.

Respondent argues on brief at 23:

> The evidence does reflect that Adams interrogated two known Union supporters. They were lead people and he needed to know their plans. Each confirmed their interest in the Union, indeed Mr. Chong was a paid organizer and neither appears to have been coerced by this brief exchange. This claim should be dismissed.

The General Counsel, acknowledging the Board's *Rossmore House* decision (269 NLRB 1176 (1984)), argues that even if Koenig and Chong were known union supporters, the interrogation occurred in front of other employees and closely followed the violative threats of Brad Adams discussed supra.

Generally interrogation of employees respecting their union activities violates the Act for it, as the General Counsel argues on brief at 32, puts employees ''on the spot'' and suggests their union activities will be a factor in their continued dealings with their employer. This fear inevitably chills employees' Section 7 rights. Such factors are much less important when the employees are openly supportive of the Union. Respondent's arguments respecting the need or justification for the interrogation of Koenig and Chong and their public union sympathies are immaterial where, as I have found above, the two were interrogated in the presence of other employees who were neither known union supporters nor who could have realized from the Respondent's interrogation of Koenig and Chong that Respondent possessed arguably benign business reasons for questioning them.

Further, in agreement with the General Counsel, I find that the violative statements of Brad Adams immediately prior to the statements in issue herein lend additional support to a finding of a violation. Given all the above, I find that in the circumstances presented Respondent's interrogation violated Section 8(a)(1) of the Act. The General Counsel's complaint paragraph 5(b) is sustained.

3. The discharge of Campbell

The parties addressed two independent issues respecting the General Counsel's allegation in paragraph 6 of the complaint that Campbell was wrongfully discharged for his union activities. The threshold issue is whether Campbell—by virtue of his relationship with the Union—falls outside the protection of the Act. The remaining issue is, assuming Campbell is within the protections of Sections 7 and 8 of the Act, did his discharge violate the Act? These issues are discussed separately infra.

a. *Are ''salted'' union members, including Campbell, employees protected by the Act?*

Respondent argues that employees who are also paid employees and/or agents of a union are not ''employees'' within the meaning of the Act and therefore not protected against discharge for union activities. The General Counsel and the Charging Party argue to the contrary. Discussion of this interesting area is rendered unnecessary by the very recent and definitive rulings of the Board in *Sunland Construction Co*., 309 NLRB 1224 (1992), and *Town & County Electric*, 309 NLRB 1250 (1992). The relevant issues and cases are discussed by the Board in detail. Simply put, the Board finds that paid union organizers who obtain employment with employers are ''employees'' of those employers within the meaning of the Act and entitled to its full protection. Each of Respondent's employees is therefore fully entitled to the protections of the Act irrespective of any payer-payee relationship with the Union.[8]

b. *Was Campbell terminated in violation of the Act?*

1. Argument of the parties

The record with respect to the discharge of Campbell presents traditional factual disputes. The testimony has been set forth in some detail supra. The General Counsel has proved that Campbell engaged in union organizational activities at the jobsite and was discharged soon thereafter. Respondent does not dispute these facts.

Respondent contends that its agents were without knowledge of Campbell's union activities and took the decision to terminate him based on a management evaluation of his work performance. The General Counsel and the Charging Party challenge Respondent's assertions arguing there is direct evidence of Respondent's knowledge of Campbell's union ac-

[8] Such relationships are of course properly considered with other relevant factors in making credibility determinations and have been so considered herein.

tivities and of Respondent's union animus in terminating Campbell. The General Counsel and the Charging Party also challenge Respondent's assertion that Campbell's work performance was a basis for his termination.

### 2. Analysis and conclusions

The parties cite the Board's lead case establishing an analytical framework for considering discharge cases, *Wright Line*, 251 NLRB 1083 (1980). That case establishes that if the General Counsel establishes a prima facie case that an employee was terminated for protected activity, the burden shifts to Respondent to prove that the employee would have been terminated even had the protected activity not occurred.

I find the Campbell allegation on this record may be resolved by considering two critical testimonial conflicts described in greater detail supra. The first is the conflict framed by Metzler's assertion and Brad Adams' denial that Metzler told Adams before Campbell was terminated that Campbell was talking to employees on the job about the Union and the later ''he's out of here'' assertion attributed to Adams by Aronson. The second is the disputed conversation between Chong and Brad Adams occurring after Campbell's termination. Chong asserts and Brad Adams denies that Adams told Chong soon after the July 20, 1992 meeting that ''the major difference between what I was doing and what Ed Campbell was doing was that I was not, you know, trying to recruit his men for the union.''

Turning initially to the Metzler-Brad Adams conversation. I credit Metzler's version of events. Still employed by Respondent at the time of his testimony Metzler impressed me as an honest witness with a clear recollection of these particular events and a superior demeanor. So, too, I credit Aronson based on his convincing demeanor even noting his alignment with the Union and his opposition to Respondent. I do not believe either Metzler nor Aronson would have simply concocted or fabricated the statements they testified to. Brad Adams, in my view, has simply denied events which are inconvenient and inconsistent with Respondent's defense in the case.

Regarding the Chong-Brad Adams conflict, I reach the same conclusion. Chong did not have Metzler's disinterested perspective. Chong was clearly supportive of the Union and Campbell and, like Campbell, had made common cause with the Union and received financial remuneration for his efforts. While considering these facts and the record as a whole, I believe Chong's testimony respecting his conversation with Brad Adams both based on his sound demeanor and his clear memory of events. Brad Adams, who I have discredited previously where his testimony conflicted with employees, simply did not persuade me he was testifying from a memory of events rather than in accordance with a theory of defense.

Given these credibility resolutions, it is clear and I find that Campbell was engaging in union activity, that Respondent knew of his activities before his termination and that Respondent was not pleased with his actions. Under the Board's *Wright Line* analysis, therefore, the General Counsel has established a prima facie case and the burden shifts to Respondent to show that Campbell would have been terminated even absent his union activities.

The parties litigated at some length the quality and quantity of Campbell's work, the presence of plans and specifications on the job, the extent and availability of supervision, and related matters. While the testimony was in large part qualitative and subjective, I find no need to resolve the testimony to the extent it conflicts. I reach this conclusion because the record convinces me that Respondent did not in fact rely on Campbell's work skills in determining to terminate him.

Mark Adams testified that in commenting on Campbell's work skills to Brad Adams a few days before his termination, he did not seek Campbell's termination nor, after the conversation, did he expect it. Further, in the critical event in this element of the case, Brad Adams in effect reported back to Metzler that he had gotten rid of the union organizer Campbell and conceded to Chong that Campbell had been fired for union organizing. In neither conversation did he mention any dissatisfaction with Campbell's work.

Given all the above, I find that Respondent's asserted reasons for discharging Campbell were but pretext advanced to cloak the true antiunion motivation underlying his removal. It follows that Respondent has not born its burden of showing that Campbell would have been fired even if his union activities had not taken place. Accordingly, I find that Respondent discharged Campbell because of his union activities in violation of Section 8(a)(3) and (1) of the Act. The General Counsel's complaint paragraph 6 is sustained.

## REMEDY

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

I shall recommend that Respondent offer Edward Campbell full and immediate reinstatement to his former position at Project Thunder as a journeyman electrician.[9] Further Respondent shall be directed to make Campbell whole for any and all loss of earnings and other rights, benefits, and emoluments of employment he may have suffered by reason of Respondent's discrimination against him, 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.*, 138 NLRB 716 (1962).

Respondent shall also be required to withdraw, rescind, and expunge any and all references to Campbell's discharge from its files and notify him in writing that this has been done and that the discharge will not be the basis for any adverse action against them in future. *Sterling Sugars*, 261 NLRB 472 (1982).

Respondent shall also be required to preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security records, timecards, personnel records and reports and all other records necessary to analyze the amount of money due under the

[9] As discussed supra, Respondent may well have concluded the Project Thunder job by the time this decision becomes final. In those circumstances the particular job location to which Campbell should properly be reinstated, if any, as well as the similar issues of where, if at all, Campbell should have been transferred on his conclusion of work at Project Thunder and how long such employment would have continued—all such questions—are best deferred to the compliance stage of this proceedings. *Haberman Construction Co.*, 236 NLRB 79 (1978), enf. denied 641 F.2d 351 (5th Cir. 1981).

terms of the Order and to otherwise determine that the Order has been fully complied with.

Posting of remedial notices at Respondent's jobsites including the Project Thunder site, if still underway, shall be required. Further to ensure that all employees who were at the Project Thunder site during the period July 15 to July 20, 1992 and are still in Respondent's employ but are not now working at Respondent's jobsites have an opportunity to read the notice, Respondent shall be required to mail a copy of the notice to all of its current employees not now employed at any of Respondent's jobsites who worked at the Project Thunder site during the period indicated.

## 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 Union is a labor organization 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. By making threatening and coercive statements to employees at a July 20, 1992 meeting with employees.

b. Interrogating employees about their union activities.

4. Respondent violated Section 8(a)(3) and (1) of the Act by discharging Edward W. Campbell because of his union activities.

5. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

## ORDER

The Respondent, Tualatin Electric, Inc., Wilsonville, Oregon, its owners, agents, successors, and assigns, shall

1. Cease and desist from

(a) Engaging in the following acts:

(1) Making threatening and coercive statements to employees because of their involvement in union activities.

(2) Interrogating employees about their union activities.

(b) Discharging employees because of their union activities and the union activities of other employees.

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

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

(a) Offer immediate and full reinstatement to employee Edward W. Campbell to his former position at Project Thunder or, if that position no longer exists, to the same position on another of Respondent's projects to which Campbell would have been transferred at the conclusion of his work at the Project Thunder site, if any, but for Respondent's wrongful discharge of him.

(b) Make whole employee Edward W. Campbell for any and all losses incurred as a result of Respondent's unlawful termination of him, with interest, as provided in the

(c) Expunge from its files any and all reference to the discharge of employee Campbell and notify him in writing that this has been done and that the fact of his wrongful discharge will not be used against him in future personnel actions.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of money due under the terms of this Order and further to ensure that the terms of this Order have been fully complied with.

(e) Post at its main office and each of its jobsites where employees are currently employed copies of the attached notice marked ''Appendix.''[11] Copies of the notice, on forms provided by the Regional Director in English and such additional languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by Respondent's authorized representative, shall be posted by 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 Respondent to ensure that the notices are not altered, defaced, or covered by other material. Further Respondent shall mail copies of the notice to any of its employees not now employed on any of Respondent's projects but who worked at the Project Thunder Project at any time in the period July 15 to 20, 1992.

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

[10] 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 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

After a hearing at which we appeared and offered evidence and argument, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice at our main office and all our jobsites and to mail a copy of the notice to all our employees not now working on a jobsite but who were working at Project Thunder anytime during the period July 15 to 20, 1992.

Section 7 of the National Labor Relations Act gives employees these rights.

To organize
To form, join, or assist any union

To bargain collectively through representatives of their own choosing

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL abide by the following promises to you.

WE WILL NOT interfere with, restrain, or coerce our employees by telling them that if they support the International Brotherhood of Electrical Workers they might as well get in their vehicles and go to work somewhere else.

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT discharge employees because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights protected by Section 7 of the National Labor Relations Act.

WE WILL offer immediate reinstatement to employee Edward W. Campbell and WE WILL make him whole for any and all losses of wages, benefits, seniority, and any other emoluments of employment he may have lost, with interest, as a result of his improper termination.

WE WILL rescind, remove, and expunge all references to the improper discharge of employee Campbell in our records and WE WILL notify him in writing that this has been done and that our improper conduct will not a basis for any future personnel actions against him.

TUALATIN ELECTRIC, INC.