Eugene Iovine, Inc. *and* Local Union No.3, International Brotherhood of Electrical Workers, AFL–CIO. Case 29–CA–20057

April 30, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On March 10, 1998, Administrative Law Judge Michael A. Marcionese issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

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 briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

We agree, for the reasons set forth by the judge, that the Respondent's unilateral reduction of the employees' hours of work violated Section 8(a)(5) and (1) of the Act. Our dissenting colleague's contention that the Respondent had the right, or even the obligation, to continue its "past practice" is both factually and legally incorrect. First, as the judge noted, the Respondent failed to establish by record evidence both the specific circumstances surrounding the reduction of hours in May and June, 1996, and those surrounding reductions in hours in prior years. Thus, the judge correctly found that the Respondent failed to establish a past practice and further failed to establish that its 1996 reduction of hours was consistent with its conduct in prior years.

Secondly, the Respondent's decision to reduce employee hours admittedly involved management discretion. In this regard, the Respondent placed into evidence an affidavit of Patrick Bellantoni, a consultant of the United Electrical Contractors Association, of which the Respondent is a member. In explaining why its employer members generally reduced hours rather than lay off employees, Bellantoni stated:

> The reduced hours may be the result of a slow down in the work on a particular job which frequently happened during the holiday seasons, or the contractor may be in between jobs. Many of these contractors had public works jobs which may be shut down temporarily because of approvals needed on these types of jobs. When jobs were shut down, the employees may perform different work on the job sites, or the employees go to other job sites, working reduced hours. Other reasons for reduction of hours could be shipments of needed materials were not yet delivered, or having to wait for other trades to finish their work. Also there may be reductions in hours caused if employees were transferred temporarily into job sites where there were slowdowns or shutdowns.

As the judge found, under Bellantoni's explanation, there was no "reasonable certainty" as to the timing and criteria for a reduction in employee hours; rather, the employer's discretion to decide whether to reduce employee hours "appears to be unlimited."

The Board and the courts have consistently held that such discretionary acts are, as stated by the judge, "precisely the type of action over which an employer must bargain with a newly-certified Union." See *NLRB v. Katz*, 369 U.S. 736, 746 (1962) (employer must bargain with union over merit increases which were "in no sense automatic, but were informed by a large measure of discretion"); *Garment Workers Local 512 v. NLRB (Felbro, Inc.)*, 795 F.2d 705, 711 (9th Cir. 1986) (employer must bargain with the union over economic layoff, which is "inherently discretionary, involving subjective judgments of timing, future business, productivity and reallocation of work"); *NLRB v. Allis-Chalmers Corp.,* 601 F.2d 870, 875–876 (5th Cir. 1979) (employer must bargain over wage increase which did not result from "purely automatic" policy and was not pursuant to "definite guidelines"); *Adair Standish Corp*., 292 NLRB 890 fn. 1 (1989), enfd. in relevant part 912 F.2d 854 (6th Cir. 1990) (despite past practice of instituting economic layoffs, employer, because of newly certified union, could no longer continue unilaterally to exercise its discretion with respect to layoffs). Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) by unilaterally reducing employee hours.[2]

[1] In its brief in support of exceptions, the Respondent contends, inter alia, that the Board's decision in *American Diamond Tool, Inc.,* 306 NLRB 570 (1992), supports its defense that the Union waived its right to bargain over the Respondent's unilateral reduction of the employees' hours of work. We find no merit in this contention.

In *American Diamond*, the Board found that the union waived its right to bargain over the respondent's unilateral layoffs based on the following factors: the union had actual notice of the layoffs shortly after they occurred; the union had an opportunity to bargain about the layoffs at numerous bargaining sessions; the respondent engaged in good-faith bargaining; the parties reached agreement on a proposal that would have permitted the respondent unilaterally to lay off employees by inverse seniority; and the unilateral layoffs did not necessarily taint the bargaining. The Board concluded that these factors collectively presented a situation in which the union "had an opportunity to request bargaining about unilateral layoffs by the Respondent, failed without excuse to do so, and expressly signaled its willingness to permit such conduct in the future." The Board emphasized that its waiver finding was not based on any one factor "standing alone."

Here, in contrast, it is undisputed that the Union had no notice of, nor opportunity to bargain over, the reduction of hours before it occurred. Further, there is no evidence that there were subsequent bargaining sessions at which the Union had an opportunity to bargain over the reduction of hours, that the Respondent engaged in good-faith negotiations, or that the parties in fact bargained over the issue of the reduction of hours at subsequent bargaining sessions. In these circumstances, unlike *American Diamond*, we do not find that the Union waived its right to bargain over the Respondent's unilateral action.

[2] Our dissenting colleague incorrectly shifts the burden to the General Counsel to establish that the reduction of hours in 1996 was under

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Eugene Iovine, Inc., Farmingdale, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER HURTGEN, dissenting.

I do not agree that Respondent's action of reducing hours was unlawful under Section 8(a)(5).

Respondent's past practice included the practice of reducing employee hours (rather than laying off employees) whenever the amount of work was temporarily down. Of course, as my colleagues point out, there could be a multitude of reasons for the quantity of work being temporarily down. But, the past practice of reducing hours in this situation (rather than laying off) is the same, irrespective of the reason for the downturn of work.

Further, the fact that this past practice occurred under a predecessor union does not detract from the proposition that it was the past practice. Accordingly, when the current Union became the representative, Respondent had the right (indeed the obligation) to continue that past practice until reaching a contrary agreement or a good-faith impasse with the Union.

My colleagues rely upon *Aaron Bros. v. NLRB*, 661 F.2d 750 (9TH Cir. 1981). The case offers them no support. If the General Counsel establishes *a change* in wages, that will establish a prima facie case, and the burden will then shift to the employer to show that there was a past practice of making such changes. However, in the instant case, the General Counsel has not shown a change, i.e., he has not shown that the instant decision to reduce hours was different from prior decisions to do so. By way of contrast, if the General Counsel had shown that the employer's past practice was to reduce hours when work was down, and that the employer then took the more draconian step of laying off when work was down, that would show a change and would likely be violative. However, as noted above, the Respondent here followed the past practice of reducing hours when work was down. Since the General Counsel has not shown a change, he has not shown a violation.

Kathy Drew King, Esq., for the General Counsel.
Steven S. Goodman, Esq. and *Aryn J. Sobo, Esq.,* for the Respondent.
Victor McElroen, Business Representative, for the Charging Party.

circumstances different from those of past years. The Respondent raised its alleged past practice as an affirmative defense, and the burden is therefore on the Respondent to establish such defense. See *Aaron Bros. Co. v. NLRB,* 661 F.2d 750, 753 (9th Cir. 1981) ("The burden of proving that a wage increase falls within the longstanding practice exception [to *Katz]* is upon the employer").

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. This case was heard in Brooklyn, New York, on January 26, 1998. The charge was filed by Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (the Union), on June 11, 1996, and amended on November 14, 1996. The complaint was issued January 15, 1997, and amended September 4, 1997, alleging that Eugene Iovine, Inc. (the Respondent) violated Section 8(a)(1) and (5) of the Act by unilaterally reducing the hours of work of employees in the bargaining unit represented by the Union during a period of time in May and June 1996.[1] The Respondent, by its answer to the amended complaint filed September 12, 1997, denied violating the Act as alleged in the complaint.

At the hearing, the parties stipulated to the facts and waived the taking of testimony. In addition, Respondent offered into evidence, by stipulation, an affidavit from Patrick Bellantoni, identified as the former president of Local 363, Teamsters, (Local 363), which it relies upon for its defense.

On the entire record, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation, with its principal office and place of business in Farmingdale, New York, provides electrical contracting services to other business firms and governmental entities. The Respondent annually performs services valued in excess of $50,000 for various enterprises and governmental entities located in the State of New York which enterprises are directly engaged in interstate commerce as defined in the Act. The 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 and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On February 23,1993, the Board certified the Charging Party Union as the exclusive collective–bargaining representative of a multiemployer unit of employees employed by members of the United Electrical Contractors Association, a/k/a United Construction Contractors Association (the UECA).[2] Respondent has admitted in its answer to the complaint that the unit is appropriate, that the Union is, and has been since February 23, 1993, the 9(a) representative of the unit, that Respondent is a member of the UECA, and that it is obligated to have the UECA represent it in negotiating and administering collective-bargaining agreements with the Union.

On October 29, 1993, the Board ordered the UECA to bargain with the Union, upon request, concerning the terms and conditions of employment of employees in the unit.[3] The

[1] All dates are in 1996 unless otherwise indicated.

[2] The unit consists of all electricians, electrical maintenance mechanics, helpers, apprentices, and trainees employed in the electrical field employed by the employer-members of the UECA, but excluding all office clerical employees, guards, and supervisors as defined in the Act.

[3] *United Electrical Contractors Assn*., 312 NLRB 1118 (1993). The UECA had refused to bargain with the Union in order to attack the validity of the certification on the basis of its objections to the election. Those objections had been overruled in Case 9–RC–7191.

Board's Order was enforced by the Court of Appeals on September 2,1994. There is no dispute that the UECA and the Union have been engaged in negotiations for a collective–bargaining agreement since October 1994.

The parties stipulated that, for an as yet undetermined period of time beginning in May and ending in June, the Respondent reduced the working hours of its employees in the unit by 1 day a week, i.e., from 35 to 28 hours a week.[4] Respondent concedes, in the stipulation that it did so without prior notice to the Union and without affording the Union an opportunity to bargain regarding this change.

The parties further stipulated that the Respondent, which has been in business since 1965, had a collective-bargaining relationship with Local 363 from 1969 through 1992. The parties further stipulated that Local 363 was the representative of the same group of employees now represented by the Charging Party Union. Eugene Iovine, Respondent's president, is admitted to be an agent of Respondent within the meaning of the Act.

Bellantoni is currently a consultant for the UECA and previously served as an officer of Local 363 for several years, until 1994. In his affidavit, which is undated, Bellantoni states:

> It was a common practice among Iovine and other electrical contractors whose employees were represented by Local 363 to reduce hours of their employees rather than to lay them off completely for a period of time. Many of the employees employed by the contractors, including Iovine, worked for their respective employers for 15 to 20 years. The reduced hours may be the result of a slow down in the work on a particular job which frequently happened during the holiday seasons, or the contractor may be in between jobs. Many of these contractors had public works jobs which may be shut down temporarily because of approvals needed on these types of jobs. When jobs were shut down, the employees may perform different work on the jobsites, or the employees go to other jobsites, working reduced hours. Other reasons for reduction of hours could be shipments of needed materials were not yet delivered, or having to wait for other trades to finish their work. Also there may be reductions in hours caused if employees were transferred temporarily into job sites where there were slowdowns 20 or shutdowns. Normally the Union was not notified by an employer of its reduction in hours or the work; the Union was only notified if an individual employee had a complaint concerning the reduction.
>
> These reduction in hours as I have described rather than a layoff was a common practice in the industry for up to a month or 2. The employees would rather work reduced hours and get benefits instated of getting a layoff, and the contractors would have the crews available to work (sic). As a representative of Local 363, I was aware of and accepted this as a common practice in the industry.[5]

There is no evidence in this record concerning the circumstances surrounding, or the reasons for, the reduction in hours which occurred in May and June.[6]

The sole issue in this case is whether Respondent's unilateral change in unit employees' work hours, which occurred in the midst of collective-bargaining negotiations, was unlawful. Respondent argues that a different standard should apply to employer actions affecting employees in the construction industry because of the unique features of that industry; that Respondent was privileged to act unilaterally in this case because of a past practice with the predecessor Union; and that the Charging Party waived its right to bargain regarding the changes at issue here because it took no action in response to the change in employees' hours, other than filing the instant charge.

It is well settled that, once a majority of the employees in an appropriate unit select a union to represent them, their employer is obligated to bargain with that union regarding the employees' wages, hours, and terms and conditions of employment and may not unilaterally alter those terms. This is true even with respect to layoffs and changes in employees' work schedules over which the employer previously exercised unlimited discretion. *Adair Standish Corp*., 292 NLRB 890 fn.1 (1989), enfd. 912 F.2d 854 (6th Cir. 1990). Accord: *NLRB v. Advertisers Mfg. Co*., 823 F.2d 1086, 1090 (7th Cir. 1987). As the Court of Appeals noted in the latter case, such changes are not a matter of management prerogative, but are mandatory subjects of bargaining and, until there is an agreement setting forth the procedures for making such changes, a company that wants to lay-off employees, change their method of pay, or alter their work schedule, must bargain over the matter with the Union. See also *Carpenters Local 1031,* 321 NLRB 30, 31 (1996); *and Sheraton Hotel Waterbury*, 312 NLRB 304, 307 (1993), in which the Board held specifically that changes in employees' hours of work are mandatory subjects of bargaining.

The Respondent argues that, because it had a practice of unilaterally reducing employees' hours when work was slow, or there was a delay in delivery of materials, or a job was halted temporarily, it was free to continue to act unilaterally notwithstanding the employees' selection of the Charging Party to represent them. The Respondent argues that the fact that this practice was with the knowledge and acquiescence of the employees' prior bargaining representative, provided a further license to ignore the Charging Party. This argument has been rejected by the Board and the courts in *Adair Standish Corp*., supra, and *Porta-King Building Systems v. NLRB*, 14 F.3d 1258, 1261 (8th Cir. 1994). In the latter case, the past practice argument was rejected even though the same union had acquiesced in the practice while representing many of the same employees at the employer's prior location.

The cases relied upon by the Respondent are distinguishable. In *Advertisers Mfg. Co*., supra, the administrative law judge found numerous unlawful unilateral changes, but dismissed an allegation that Respondent unilaterally reduced employees'

[4] The parties have agreed that the exact dates that the change was in effect and the identity of employees affected may be left for determination in a subsequent compliance proceeding, should that be necessary.

[5] Because Bellantoni did not testify, subject to cross-examination, I cannot make a credibility resolution regarding the assertions in his affidavit. I have nevertheless assumed, for purposes of deciding this case, that the statements contained in the affidavit are true.

[6] In its brief, Respondent cites many facts which are not in evidence, in particular, "facts" regarding the causes of delays and lack of work in the construction industry generally and the need for Respondent to reduce hours in 1996. I can make no findings based on evidence which is not in the record.

hours in 1981.[7] The judge relied on the uncontroverted evidence that the only basis for the reduction of hours was lack of work and that this was consistent with a practice of reducing employees' hours only due to a lack of work. *Adair Mfg. Co.,* 280 NLRB at 1197. The Board adopted the administrative law judge's findings regarding this allegation without comment. Because the Board was silent regarding the judge's dismissal of the unilateral change allegation, it is unclear whether any exceptions were filed to the portion of the judge's decision relied upon by Respondent. The Court of Appeals decision enforcing the Board's order is also silent as to this allegation. As noted above, the Court did reaffirm the principal that an employer is not free to act unilaterally regarding terms and conditions of employment in the face of a newly certified Union. In *Matheson Fast Freight, Inc.*, 297 NLRB 63 (1989), the Board adopted pro forma the administrative law judge's finding that the employer's unilateral change in employees' start times did not violate the Act because no exceptions had been filed to that finding. Thus, in neither of these cases has the Board approved of conduct similar to the Respondent's conduct here. Moreover, in light of the Board's rejection of a past practice defense in *Adair Standish*, supra, and *Porta-King Building Systems*, supra, it is unlikely the Board would reach the same conclusion as the administrative law judges did in those cases relied upon by the Respondent.

In *Kal-Die Casting Corp.*, 221 NLRB 1068 (1975), the Board did expressly agree with the administrative law judge that the employer's "postelection but Recertification activity concerning routine production scheduling and adjustments relating to diminishing available hours of work" did not violate Section 8(a)(5). The Board noted the absence of evidence that the employer's activity after the election varied from its past practice or that the Union broached these issues with the employer at any time. The evidence of record in this case does not permit a finding that the Respondent's reduction in employees' hours in 1996 was consistent with any past practice, even if one existed. As noted above, there is no evidence in the record regarding the reason for the reduction in hours in 1996. Thus, even assuming Bellantoni's affidavit sufficient to establish the existence of a past practice, Respondent has not proved that its actions in 1996 were consistent with that practice.

I find further that Bellantoni's afffidavit, which is uncontradicted, does not establish the existence of a practice which would permit Respondent to act unilaterally. In order to find that a past practice has become a term or condition of employment, the Board generally requires that the practice be satisfactorily established by practice or custom. See *Exxon Shipping Co*., 291 NLRB 489, 493 (1988), and cases cited therein. In some cases, such as those involving payments of bonuses or merit increases, the Board has required that there be some reasonable certainty as to timing and criteria for the employer's action. See *Daily News of Los Angeles v. NLRB*, 73 F.3d 406 (D.C. Cir. 1996). In the present case, there is no established criteria upon which to determine when or if an employer-member of the UECA will reduce employees' hours. Thus, Bellantoni in his affidavit cites a number of events which might cause a reduction of hours and states that when, for example, a job is shut down, "the employees may perform different work on the job sites, or the employees go to other job sites, working reduced hours." The employer's discretion under this alleged practice appears to be unlimited. Such unlimited discretion is not a "practice" which has evolved into a term or condition of employment. Rather, as with the layoffs and other changes found unlawful in *Adair Standish,* supra, and *Porta-King Building Systems*, supra, it is precisely the type of action over which an employer must bargain with a newlycertified Union.

The Respondent argues that it should be permitted to act unilaterally to reduce its employees' hours of work because of the unique nature of the construction industry and the need for flexibility to respond to interruptions in the flow of work. Because the Board has not yet held that a construction industry employer has a lesser obligation than other employers to notify and bargain with unions representing its employees before changing their wages, hours and working conditions, I decline to accept Respondent's invitation to make new law. However, I note that the Board has already addressed the concerns raised by the Respondent in the context of the duty to bargain during negotiations for a first contract, precisely the situation here.

In *R.B.E. Electronics of S.D*., 320 NLRB 80 (1995), the Board held that where, during contract negotiations, an employer is confronted with an economic exigency compelling prompt action short of the type relieving the employer of its obligation to bargain entirely, the employer will satisfy its statutory obligation by providing the union with adequate notice and an opportunity to bargain. Once it does so, the employer can act unilaterally if the union fails to act promptly to request bargaining or the parties reach good-faith impasse. The Board further held that, in such time sensitive circumstances, bargaining need not be protracted. Because the Respondent admits it gave no notice to the Union before reducing its employees hours, it can not rely upon this limited exception to the duty to refrain from unilaterally changing employees terms and conditions of employment during contract negotiations. See also *Bottom Line Enterprises,* 302 NLRB 373 (1991).

The Respondent's third line of defense is its argument that the Union waived its right to bargain over the change in employees' hours. The acquiescence of the employees' former bargaining representative in the employer's unilateral action in the past is not binding upon the newly certified union. The Charging Party Union is not a successor to Local 393. There is no continuity in the organization, officers, or representatives between the two unions. This is not a case involving an affiliation or merger of unions. On the contrary, the employees freely chose to replace Local 393 with the Charging Party. As noted by the judge in *Porta-King Building Systems*, supra, this is a new unit with a new certification. What the other union did at another time when it represented these employees cannot be binding on this new unit and the labor organization the employees have chosen to represent them.

Finally, the Respondent argues that the Union waived its rights by failing to act in response to the change in hours. This argument might have some validity if there was any evidence in the record that the Union was on notice regarding the change with sufficient time to request bargaining. See *Mercy Hospital of Buffalo*, 311 NLRB 869, 872 (1993); *Kansas Education Assn.*, 275 NLRB 638 (1985). The Respondent has admitted, however, that it gave no notice to the Union and there is no evidence that the Union was aware of the change before it was implemented.

[7] The judge did find that the reduction in hours of employees in one department was unlawful because the evidence did not show that this change was consistent with past practice.

Because the Respondent's unilateral reduction in its employees' hours of work had a material and substantial impact on their wages, hours and working conditions, and because Respondent has failed to establish that it had a right to act unilaterally in this regard, I find that Respondent's 1996 reduction in hours of unit employees violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is, and has been at all material times, 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. At all times since February 23, 1993, the Union has been the exclusive collective–bargaining representative, within the meaning of Section 9(a) of the Act, of an appropriate unit of employees, including the electricians, electrical maintenance mechanics, helpers, apprentices, and trainees employed by the Respondent.
4. By unilaterally reducing the hours of work of its unit employees from 35 to 28 hours per week during May and June, 1996, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, to remedy the unlawful reduction of hours of unit employees, I shall recommend that Respondent be ordered to make whole any unit employees for losses they suffered as a result of the unlawful unilateral reduction in their work hours, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The identification of the employees affected and the precise amounts owed to them will be left for determination at the compliance phase of this proceeding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Eugene Iovine, Inc., Farmingdale, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally reducing the hours of work or otherwise altering the wages, hours, and other terms and conditions of employment of its unit employees represented by Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO without affording the Union notice and an opportunity to bargain.

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

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

(a) Before implementing any reduction in the hours of work or other changes affecting the wages, hours, and other terms and conditions of employment of unit employees, notify and, on request, bargain with Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field who are employed by employer-members of the United Electrical Contractors Association, a/k/a United Construction Contractors Association, but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the unilateral reduction in their hours of work which occurred on dates to be determined in May and June 1996, in the manner set forth in the remedy section of the decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Farmingdale, New York, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms. provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its - own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 1, 1996.

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

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 unilaterally reduce your hours of work or otherwise alter your wages, hours, and other terms and conditions

[8] 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.

[9] 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."

of employment without first affording Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO notice and an opportunity to bargain.

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

WE WILL, before implementing any reduction in your hours of work or other changes affecting your wages, hours and other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field who are employed by employer-members of the United Electrical Contractors Association, a/k/a United Construction Contractors Association, but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of the unilateral reduction in your hours of work which occurred on dates to be determined in May and June 1996, plus interest.

EUGENE IOVINE, INC.