Equipment Trucking Co., Inc., and Smith Trucking Company, Single Employer *and* Teamsters Local Union 916 affiliated with International Brotherhood of Teamsters, AFL–CIO. Case 14–CA–25052 (formerly 33–CA–12592)

September 28, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On December 17, 1998, Administrative Law Judge Lawrence W. Cullen 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 briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

1. Contrary to our dissenting colleague, we agree with the judge that the Respondent's vice president, Darrell Howard's March 23, 1998 comment to employee Larry Northrup was an unlawful implied threat of discharge. Howard's comment, that the Respondent's president would run the Company "any way she wanted, and if [he] didn't like it, find another job," was made in response to Northrup's statement of support for the Union and of concern that the withdrawal of recognition would adversely affect his retirement. The Board has long held that such statements by an employer implicitly threaten discharge because they convey the impression that the employer considers complaining about working conditions and engaging in union activity incompatible with continued employment. See *Padre Dodge*, 205 NLRB 252 (1973), and *Stoody Co.,* 312 NLRB 1175, 1181 (1993). Unlike our dissenting colleague, we also agree with the judge's conclusions that the Respondent's April 6, 1998 statement to known union supporter employee Jeff Thomas that he did not "appreciate his job much" constituted an unlawful threat of reprisals because of his union activities. In our view, the obvious coercive effect of this statement is not undercut by the fact that the Respondent did not elaborate on the threat. Further, the case cited by our colleague, *Standard Products Co.,* 281 NLRB 141, 148 (1986), enfd. in relevant part 824 F.2d 291 (4th Cir. 1987), is distinguishable as it did not involve a similar statement. As she previously stated, Member Liebman further finds *Standard Products* to be inconsistent with other case law and she would overrule it. See *Ross Stores,* 329 NLRB 573, 579 (1999) (Members Fox and Liebman, dissenting in part, enf. granted in part, and denied in part 235 F.3d 669 (D.C. Cir. 2001).

2. We agree, for the reasons fully set forth in *Carterair International,* 322 NLRB 64 (1996), that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition from the Union. We adhere to the view, reaffirmed by the Board in that case, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective bargaining representative of an appropriate unit of employees." Id. at 68.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such and order. See, e.g., *Vincent Industrial Plastics v. NLRB,* 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Bldg. Material v. NLRB,* 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos, Inc. v. NLRB,* 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent*, the court summarized the court's law as requiring that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' § 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." 209 F.3d at 738.

[1] In its exceptions, the Respondent argues that the judge abused his discretion by striking the Respondent's answer with respect to complaint allegations involving Brian McKinney and Chris Parker who are alleged to have been agents of the Respondent in the circulation of the decertification petition and to have made promises of wage increases and changes in benefits if the Union was decertified. At the hearing, the Respondent's attorney stated that the Respondent was aware McKinney and Parker were under subpoena and that when the two witnesses informed the Respondent that they did not plan to show up at the hearing, the Respondent had sent them out of town in the performance of their duties as truckdrivers. We agree with the judge's alternative findings that the testimony of the witnesses and reasonable inferences establish that McKinney and Parker acted as the Respondent's agents in circulating the decertification petition and promising wage increases and changes in benefits. We also agree with the judge's finding that by sending McKinney and Parker out of town with the knowledge that these two key witnesses were named in the complaint and under the subpoena, the Respondent became an active ally in their efforts to evade the subpoena and interfered with the Board process. Accordingly, we find that the judge did not abuse his discretion by striking the Respondent's answer regarding their conduct.

Chairman Hurtgen does not pass on this matter. He does not necessarily agree that the Respondent sent McKinney and Parker out of town for the purpose of interfering with Board processes. McKinney and Parker voluntarily told Respondent that they would not attend the hearing. Respondent then sent them out of town to perform a regular work assignment.

[2] We will modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co.,* 335 NLRB 142 (2001).

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair,* we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Employer's withdrawal of recognition. An affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation.

Moreover, we note that in addition to unlawfully withdrawing recognition, the Respondent's other unfair labor practices were serious and numerous. These included promising employees wage increases and changes in benefits if they decertified the Union; stating that it would never sign a contract with the Union; threatening employees with termination and/or reprisals for supporting the Union; informing employees that it was futile to select a union as their bargaining representative, that it had withheld wage increases because employees had selected the Union as their bargaining representative, and that it was granting employees a wage increase because they had decertified the Union; bypassing the Union and dealing directly with the unit employees; granting unilateral wage increases to its employees; and changing health insurance and other benefits for its employees. Although time has elapsed since these unfair labor practices were committed, many of them were of a continuing nature and would likely have a longlasting effect. The wage increases and improvements in benefits serve as a constant reminder of the Respondent's use of economic weapons to defeat the Union.

We further note that, as found by the judge, the March 20, 1998 decertification petition did not reflect employee free choice under Section 7, but the result of the promises of the Respondent's agents, McKinney and Parker. We find that these circumstances support giving greater weight to the Section 7 rights that were infringed by the Respondent's unlawful withdrawal of recognition.

(2) The affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining or to engage in any other conduct designed to further discourage support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease and desist order.

(3) A cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent's violations because it would permit a decertification petition to be filed before the Respondent had afforded the employees a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unfair in circumstances such as those here, where litigation of the Union's charges took a couple of years and many of the Respondent's unfair labor practices were of a continuing nature and were likely to have a continuing effect, thereby tainting any employees disaffection from the Union arising during that period or immediately thereafter. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Equipment Trucking Co., Inc., and Smith Trucking Company, Winchester, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(e).

"(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

[3] As set forth in his concurrence, Chairman Hurtgen would also authorize the Regional Director to appoint, at the Union's request, a mediator. The mediator would be directed, at the Respondent's expense, to participate in all bargaining sessions and to attempt to forge an agreement or, failing an agreement, to report to the parties and the Regional Director on the status of negotiations and the mediator's recommendations. We find the Chairman's proposal of interest. However, as the General Counsel has not sought this novel remedy and the parties have not had an opportunity to brief the issue, we would not address it at this time.

CHAIRMAN HURTGEN, dissenting in part and concurring in part.

I adopt the judge's findings in all but the following respects:[1]

1. The judge found that the Respondent violated Section 8(a)(1) based on statements by its vice president, Darrell Howard, to employee Larry Northrup. The judge found that, on March 23, 1998, while a petition was circulating to decertify the Union, Northrup stated that the Union was not hurting employees and that its absence would hurt employees (like Northrup) who were approaching retirement. In response, Howard told Northrup that "they was never going to sign a contract anyway, and it was Jeanne Bruner's company and she'd run it any way she wanted to, and, if [Northrup] didn't like it, [he could] find another job."

The judge found that Howard's comments to Northrup violated Section 8(a)(1) in two respects. The judge found that Howard's statement, that the Respondent would never sign a contract, unlawfully conveyed to Northrup the futility of employees' exercising their Section 7 right to union representation. The judge further found that Howard's comment that Northrup should get another job if he was unhappy with the way the Respondent was operating, additionally violated Section 8(a)(1) as an implied threat of discharge.

My colleagues rely on *Padre Dodge,* 205 NLRB 252 (1973); and *Stoody Co.,* 312 NLRB 1175, 1181 (1993). These cases offer them no support. The statement in *Padre Dodge* was *not* said to be a threat of discharge.[2] In *Stoody,* unlike here, the employer stated that the employee "should" find another job.

I agree that Howard's March 23 comments violated Section 8(a)(1) in that they unlawfully conveyed to employees the futility of Union representation. I also find that Howard's statement—that if Northrup did not like the fact that the Respondent would never sign a contract, he (Northrup) could find another job—reasonably would coerce Northrup in the exercise of his Section 7 rights. However, I find nothing in this latter comment, or the context in which it was made, which reasonably would be interpreted as impliedly threatening Northrup with discharge. At most, it suggested that Northrup would leave the Respondent's employ because of the circumstances there. Accordingly, I would reverse the judge's decision and order insofar as he finds that this March 23 incident constituted an 8(a)(1) implied threat of discharge.

2. The judge found that the Respondent violated Section 8(a)(1) based on Vice President Howard's April 6, 1998 comment to employee Jeff Thomas. The judge found that by telling Thomas that "you don't appreciate your job much," Howard unlawfully threatened him with unspecified reprisal because Thomas had not signed the decertification petition. I disagree.

I find that Howard's comments reasonably cannot be construed as a threat of reprisal. Telling an employee that he does not appreciate his job is, by its literal terms, too vague to signify a threat.[3] Nor does the context in which this statement was made reasonably indicate that it would be construed as a threat of reprisal. Indeed, after Northrup responded to Howard's comment, with "[Y]es, I do [appreciate my job]," Howard merely walked away, stating, "[T]hat's all I have to say." If anything, this rejoinder undercuts any notion that Howard's initial statement reasonably would be viewed as a threat. My colleagues say that the "obvious coercive effect" of the statement is not undercut by the fact that Respondent "did not elaborate" on it. As discussed, I view the statement as vague, not "obvious." Further, the response of Thomas and Howard's reaction thereto, if anything, point *away* from a finding of coercion.

Accordingly, I would dismiss this 8(a)(1) allegation.

3. Finally, although I would not find the 8(a)(1) violations discussed above, I do agree with the judge that the Respondent's unfair labor practices were serious and numerous, and agree with my colleagues that an affirmative bargaining order is warranted. *Caterair International,* 322 NLRB 64 (1996). Indeed, I find that further remedial relief is warranted.

After 2 years of bargaining, without an initial agreement having been reached, the Respondent engaged in a course of conduct that undermined any prospect of success in further bargaining. Specifically, the Respondent, among other things: promised employees wage increases and enhanced benefits if they decertified the Union; informed employees that it would never sign a contract with the Union; informed employees that it was futile to select union representation; bypassed the Union and dealt directly with employees; informed employees that wage increases had been withheld because they had selected union representation; unlawfully withdrew recognition from the Union; and unilaterally changed employees

[1] In addition to the following three instances, I adopt fn. 1 of the decision insofar as it states that it is unnecessary to rely on the judge's striking of the Respondent's answer to the complaint allegations involving its agents, Brian McKinney and Chris Parker.

[2] See *Padre Dodge,* 205 NLRB at 252, 254 (conclusions of law).

[3] *Standard Products Co.,* 281 NLRB 141, 148 (1986), enfd. in relevant part 824 F.2d 291 (4th Cir. 1987) ("[t]he statement standing alone . . . is somewhat vague, subject to interpretation to the listener . . . [S]tanding alone it does not rise to the level of a threat that would violate Section 8(a)(1)").

terms and conditions of employment in derogation of the Union's representational status and in an effort to deny employees union representation.

In these circumstances, I fear that it may be wholly inadequate to simply order the Respondent to remedy its violations and permit the parties to resume bargaining. As I stated in my concurrence in *Altorfer Machinery Co.,* 332 NLRB 130, 133 (2000): "The mere order may be insufficient to cause the Respondent to genuinely change its mind and view concerning the efficacy of union representation." See also *Burrows Paper Corp.,* 332 NLRB 82, 84 (2000) (concurring opinion).

In *Altorfer* and *Burrows* the respondent employers engaged in bad-faith and surface bargaining throughout negotiations. In those circumstances, I questioned whether merely sending the respondents back to the bargaining table likely would "change [their] attitude and demonstrated antipathy to collective bargaining,"[4] or change their minds regarding "the efficacy of union representation."[5] Concededly, this case differs from *Altorfer* and *Burrows* in that it does not center on bad faith bargaining for an agreement. However, it clearly does demonstrate a situation where the Respondent so repeatedly and systematically undermined the Union as bargaining representative, that there is serious question whether, without intervention, successful bargaining could occur.

For that reason, I would authorize the Regional Director to appoint, at the Union's request, a mediator for bargaining—chosen from a list of those qualified from an American Arbitration Association panel for the Regional Office area which includes the Respondent. The selection may be of a person mutually chosen by the parties, or through a procedure of alternatively striking names from the list. The mediator would be directed at Respondent's expense to participate in all bargaining sessions, and to attempt to forge an agreement. Failing such an agreement, after a period of time decided by the mediator, the mediator would render a report to the parties and the Regional Director on the status of negotiations, including matters agreed on, matters not agreed to and the positions of the parties thereto, and the mediator's recommendation with respect to the nonagreed on issues.

Christal J. Gulick, Esq., for the General Counsel.
Michael J. Bobroff, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me in Winchester, Illinois, on October 28, 1998, pursuant to a complaint filed by the Regional Director for Region 14 of the National Labor Relations Board (the Board) on June 30, 1998, as amended on October 15, 1998. The complaint is based on charges filed by Teamsters Local Union 916 affiliated with International Brotherhood of Teamsters, AFL–CIO (the Charging Party or the Union). The complaint, as amended, alleges that Equipment Trucking Co., Inc., and Smith Trucking Company, Single Employer (jointly as the Respondent or the Company and separately as Equipment Trucking and Smith Trucking) committed violations of Section 8(a)(1), (3), and (5) of the Act. Jeanne Bruner is the president of Respondent and Darrell Howard is the vice president of Respondent. Respondent has by its answer, as amended, denied the commission of violations of the Act. At the hearing Respondent moved to dismiss the allegations added by the amendment to the complaint 13 days prior to the hearing on the basis of its close proximity to the hearing date. I found no reason for granting this motion and it was denied at the hearing as the representatives of Respondent involved in the amended allegations were the same as those involved in the original complaint allegations and were present at the hearing and the amendment did not involve any complex allegations which could not be readily addressed by Respondent.

On the entire record in this proceeding, including my observation of the witnesses who testified and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

A. The Business of Respondent

The complaint alleges, Respondent admits, and I find that at all times material, Equipment has been a Delaware corporation, with its primary office and place of business located in Winchester, Illinois, and has been engaged in the transportation of heavy equipment and other products, that Smith Trucking has also been engaged in the transportation of heavy equipment and other products and that during the 12-month period ending May 31, 1998, Smith Trucking in conducting its aforesaid business operations has purchased and received at its Winchester, Illinois facility goods and materials valued in excess of $50,000 directly from points outside the State of Illinois and Equipment Trucking and Smith Trucking have each provided services in excess of $50,000 for enterprises within the State of Illinois, each of which enterprises meets a direct standard for assertion of jurisdiction by the Board. It is further alleged, admitted, and I find that at all times material that Equipment Trucking and Smith Trucking have been affiliated business enterprises with common officers, ownership, directors, management, and supervisors; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other and have interchanged personnel with each other; and, have held themselves out to the public as a single-integrated business enterprise and accordingly constitute a single-integrated business enterprise and a single employer within the meaning of the Act. Equipment Trucking and Smith Trucking have been employers

[4] 332 NLRB 82, 84.
[5] 332 NLRB 130, 133.

within the meaning of the Act and have engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. The Labor Organization

The complaint alleges, the Respondent admits, and I find that at all times material the Union has been a labor organization within the meaning of Section 2(5) of the Act.

C. The Appropriate Unit

The complaint alleges, Respondent admits, and I find that at all times material the following employees of Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All drivers and mechanics employed by Respondent at its Winchester, Illinois facility, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

It is further alleged and admitted and I find that on April 15, 1996, the Union was certified as the exclusive collective-bargaining representative of the unit and at all times since April 15, 1996, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

II. THE ALLEGED UNFAIR LABOR PRACTICES

This case involves alleged violations of Section 8(a)(1) by the issuance of threats and the promise of increases in wages and of the granting of benefits if the unit employees decertified the Union as their collective-bargaining representative and the circulation of a decertification petition by Respondent through two unit employees who are alleged to have been agents of the Respondent in the circulation of the decertification petition and to have made promises of wage increases and changes in benefits if the Union were decertified and Respondent is also alleged to have made threats of the futility of bargaining and obtaining a wage increase or improvements in benefits if the Union were not decertified. The two unit employees alleged to have served as agents of the Respondent in this regard are Brian McKinney and Chris Parker.

Immediately prior to the opening of the hearing in this case, the General Counsel announced that she had a problem with the attendance of McKinney and Parker who had been served with subpoenas ad testificandum by the General Counsel and Respondent's attorney then advised that these two witnesses had informed Respondent that they did not plan to show up at the hearing and that Respondent had sent them out of town in the performance of their duties as truckdrivers. I announced that I would strike Respondent's defense for its complicity in aiding their nonattendance and compliance with the subpoenas by dispatching them out of town. I also informed the parties that I would hear the case in its entirety and make alternative findings on the merits as well, in case the Board did not agree with my decision to strike the Respondent's answer. The General Counsel at the hearing and in brief supports my decision to strike Respondent's answer insofar as the role of these two witnesses are involved. The Respondent at the hearing and in brief opposes my decision to strike its answer and contends that it had no role in the two witnesses' failure and refusal to comply with the subpoenas, but merely sent them to work after they announced a fait accompli, that they would not attend the hearing. The Respondent thus contends that I have abused my authority in striking their answer.

In its brief the Respondent argues further that the General Counsel has not proved that the witnesses were in fact served with a subpoena. However, at the hearing the General Counsel asserted, these witnesses were under subpoena and it is clear that at the time Respondent made the work assignments for the day of the hearing, Respondent had been advised by Parker and McKinney that they had been subpoenaed by the General Counsel. It is obvious that Respondent was aware of the subpoenas having been served on McKinney and Parker as there would otherwise have been no statement made to Respondent by them that they did not plan to attend the hearing.

I find that by sending the employees out of town under these circumstances with the knowledge that these two key witnesses were named in the complaint, and were under subpoena the Respondent assisted them in their efforts to evade the subpoenas. Thus, the Respondent is not a neutral or a nonparticipant here. By sending these employees out of town on the day of the hearing Respondent became an active ally in their efforts to evade the subpoena and thus interfered with Board process. Whether the General Counsel would have otherwise been successful in seeking compliance with the subpoena is a matter of speculation but by removing these witnesses from the area, Respondent assured that they would not be available for the hearing, placing the General Counsel at a significant disadvantage in her prosecution of the complaint in this case if she elected to proceed without them and or causing unwarranted delay and expense to all concerned if the General Counsel sought enforcement of the subpoenas. Such interference with Board process is neither to be tolerated or rewarded. I, thus, reaffirm my ruling at the hearing but will limit the striking of the answer to any acts or statements attributable to McKinney and Parker. As stated at the hearing I will issue this decision based on the complaint allegations with respect to McKinney and Parker. However I will make alternative findings assuming arguendo that the Board disagrees with the striking of the answer to any allegations concerning the conduct of McKinney and Parker. There are ample Board and court precedents for striking defenses of an employer who in an analogous situation refuses to comply with subpoenas duces tecum, *Bannon Mills, Inc.*, 146 NLRB 611, 613 fn 4, 633–634 (1964); *Ingalls Shipbuilding,* 242 NLRB 417, 421 fn. 7 (1979); *American Art Industries*, 166 NLRB 943, 951–953 (1967), affd. 415 F.2d 1223, 1229–1230 (5th Cir. 1969), cert. denied 397 U.S. 990 (1970); *Hedison Mfg. Co. v. NLRB*, 643 F.2d 32 (1st Cir. 1981); and *Control Services,* 303 NLRB 481, 483 (1991). In *Louisiana Cement Co.,* 241 NLRB 536, 537 fn. 2 (1979), the Board precluded the defiant party from calling company officials and supervisors as its own witnesses where it had failed to comply with subpoenas calling for the testimony of these officials and supervisors.

In addition to the foregoing this case also involves allegations of violations of Section 8(a)(5) of the Act by the withdrawal of recognition from the Union as the collective-bargaining representative of the unit employees, by bypassing the Union and by direct dealing with the employees and by the

issuance of wage increases and the implementation of changes in benefits. The issuance of the wage increases and the granting of benefits are also alleged as violations of Section 8(a)(3) of the Act.

A. The 8(a)(1) Allegations

1. Complaint subparagraph 5A

The complaint alleges that between March 1 and 15, 1998, Respondent, by Vice President Darrell Howard, told an employee that Respondent would grant employees wage increases and change employees' benefits if employees decertified the Union.

As Brian McKinney who told other employees that he had received this promise from Howard did not appear and testify, no direct evidence regarding this allegation was presented, and the General Counsel does not seek a finding of a violation with respect to this allegation and I accordingly do not find a violation with respect to this allegation.

2. Complaint subparagraphs 5B and C

The complaint alleges that between about March 15 and 19, 1998, Respondent, by Brian McKinney and Chris Parker, at its facility and by telephone promised wage increases and changes in employees' benefits if employees decertified the Union.

The evidence established that between March 14 and 19 employees McKinney and Parker solicited the employees to sign a decertification petition and told them that Respondent would give the employees a $2-an-hour-wage increase with health insurance as good or better than insurance through the Union and either a 401(k) or a Roth IRA retirement plan. McKinney also told the employees that if they did not want the insurance, Respondent would give them an additional $1.50- to $2-an-hour-wage increase.

Employee Jack L. Gauges testified that on Saturday morning, March 14, at the shop Parker told him, "[H]e could get us a $2 an hour raise if we'd get rid of the Union." When Gauges told Parker he did not "want to lose the benefits we had and I wasn't sure," Parker said, "[T]hat Brian (McKinney) said we wouldn't lose our benefits, we'd have insurance." "He (Parker) said Darrell Howard'll make sure of that." The following Wednesday Parker called him at home in the evening and inquired whether Gauges "was going to sign the petition to get rid of the Union?" He told Parker he did not know. A few minutes later Gauges telephoned McKinney and "I asked him what was going on with the Union, that Chris had been talking to me about getting rid of it." McKinney said, "[T]hat was true" and that "he (McKinney) could get us a $2 an hour raise and they were also talking about a 401K or Roth plan." Gauges asked if they would put this in writing. McKinney said, "I doubt it, but I'll call them," and hung up. McKinney called him back 20 minutes later and said, "[T]hey wouldn't put it in writing." McKinney also said that, "[I]f anyone would ask, that they would deny it." Gauges then asked McKinney who "they" were and McKinney replied, "[T]he company." Gauges told McKinney he would think about signing the petition. A few minutes after his second conversation with McKinney, Parker called him again and told him that if he "was going to sign the petition, it'd be in Brian's (McKinney's) pickup the next day at work . . . in the front seat." Parker also told him the petition "had to be back in before Friday." The following week there was a letter in his pay envelope informing him of the wage increase. The letter did not contain any mention of a 401(k) or retirement plan. A day or two later he asked McKinney about the lack of a reference to retirement in the letter and McKinney said, "[H]e'd check into it for us."

Employee Ron Holmes testified that on Sunday evening, March 15, he was telephoned at home by McKinney who told him "[H]e was trying to get rid of the Union" and "[I]f we would get rid of the Union, we could get a raise." The raise would be $2 per hour and the employees "could get insurance and a 401(k) plan." He asked McKinney, "[H]ow he knew this" and McKinney replied, "[T]hat Darrell (Howard) told him this" and that "Darrell said that we could get a raise if we could get rid of the Union." He told McKinney he would think about it. Two or three days later he signed the petition presented to him at that time by McKinney in the Respondent's shop. He identified his signature on the petition at the hearing but testified that there was no writing on the top of the petition when he signed it. Nor was there a date beside his name which presently appears. Subsequently on Wednesday, March 25, he received a letter informing him of the $2-an-hour increase in his pay envelope. There was no mention of a 401(k) plan in the letter. He asked McKinney about this outside the Respondent's shop 2 or 3 days later and McKinney said, "[H]e'd look into it."

Employee Dick Davidson testified that on March 19, Parker spoke to him in Respondent's shop and said that he and McKinney were circulating a petition to get rid of the Union. He asked Parker why and Parker replied that the Union had not done anything for him (Parker). Parker told him that if it were signed, the employees would get a $2-per-hour raise and better insurance. He asked Parker who had said this and Parker replied that McKinney had said "they" had said this. He refused to sign the petition. On March 25, he received notification of the same pay increase that Parker had discussed with him. He then went to the Respondent's shop at his father's desk and discussed the raise with his father, Paul Davidson, and his brother, Rick Davidson, who are also employees and employees Jeff Thomas and John Bonch. While they were discussing the raise, Howard approached and talked to them about signing insurance forms. Thomas asked Howard about the retirement they were losing. Howard said, "[H]e was going to try to get us a retirement plan" and mentioned a "401(k)." Howard also said the new insurance would be better than the prior insurance.

Employee Jeff Thomas testified that about 11 a.m. on March 20th he learned of a petition being circulated to get rid of the Union. He then sought out McKinney and inquired as to what was going on with the petition. McKinney told him, "[H]e thought, if we got rid of the Union, we could get a $2 an hour raise, keep our insurance, and get a 401K or Roth IRA plan." On Wednesday, March 25, he learned of the pay raise from a letter enclosed with his paycheck and also that the Company would offer a health insurance plan. The letter also stated that the Respondent was going to offer a better insurance plan than the one the employees had through the Union.

Employee Larry Northrup testified that on March 20 he learned of the circulation of the decertification petition and

questioned McKinney about it. McKinney told him in the presence of Mark McGlauchen, "[T]he Union had been petitioned out, that it was a done deal, and there wasn't no more could be said." McKinney told them "[h]e was going to give us a $2 an hour raise and a hospital plan equal to what we had and a 401K plan." Northrup told McKinney that he "[c]ouldn't give us nothing, that he was just a driver same as I was." He asked McKinney if Howard, "[h]ad anything to do with it." McKinney "just winked at me and dropped his head."

Employee Mark McGlauchen testified that on Sunday, March 15, he was telephoned at home by McKinney who asked, "[W]hat I would think of getting a $2 an hour raise and insurance and either a Roth IRA or a 401K . . . and get out of the Union." McKinney said, "[I]f you don't need the insurance, you could probably get another $1 or $2 an hour on top of that." He asked McKinney, "[W]hat makes you think you can get that?" McKinney replied, "[W]e've been talking." He asked McKinney if he could get it in writing and McKinney said no and told him, "[Y]ou know why." He told McKinney, "[Y]ou can't put it in writing because you're negotiating without the Union, right, and he (McKinney) said that's right." He told McKinney he would not go along unless he got it in writing. McKinney said, "[T]hey can't put it in writing." On Tuesday, March 17, McGlauchen was telephoned at home by Parker who told him that "he wanted me and two or three other guys that lived in my area together to sign this paper and he wanted us to do it on Thursday evening." "He (Parker) said we needed to get it done Thursday evening because it had to be turned in by noon Friday." On Thursday, March 19, McGlauchen telephoned McKinney and inquired whether he had anything in writing and McKinney said he did not. McGlauchen then said he would not "go along with it." McKinney said, "I don't blame you for what you're doing, but its not a bad offer that they're offering and we've got enough signatures to do it without you, so don't worry about it." Subsequently, he learned of the wage increase when Howard handed him a letter (GC Exh. 4c) informing him of it and the options regarding insurance or an additional wage increase in lieu thereof. The additional wage increase in lieu of the insurance corresponded to a discussion he had with President Jeanne Bruner's husband a year prior in her presence in which McGlauchen told him he did not need the insurance as his wife had a better plan and Bruner's husband indicated this could be done.

Vice President Darrell Howard testified that he was aware of the circulation of the petition but otherwise disclaimed knowledge. I do not credit Howard's disclaimer of knowledge.

I credit the foregoing testimony of these current employees which was not rebutted by the Respondent and find it establishes that Respondent by McKinney and Parker promised wage increases and changes in benefits if the employees decertified the Union in violation of Section 8(a)(1) of the Act. It is clear from the timing and delivery of the same increase in wages and benefits changes by Respondent only 3 days after the receipt of the petition that the promises of wage increase and benefit changes made by McKinney and Parker were made with Respondent's knowledge and authorization. *Hooper's Chocolates*, 319 NLRB 437, 441 (1995).

3. Complaint subparagraphs 5D and E

Subparagraph 5D of the complaint alleges that about March 23, 1998, Respondent, by Vice President Howard at its facility, told an employee that Respondent would never sign a contract with the Union. Subparagraph 5E of the complaint alleges that on the same date Howard impliedly threatened an employee with termination because the employee supported the Union.

Employee Larry Northrup, a 30-year employee, testified that on March 20 he learned that a petition had been circulated to decertify the Union. He confirmed this with McKinney on that date. On March 23 he talked to Howard and told him, "[T]he union wasn't hurting us in any way and it (the withdrawal of recognition) was going to hurt a lot or a few of us that was due to retire It was going to cut into our retirement." Howard told him, "[T]hey was never going to sign a contract, anyway, and it was Jeanne Bruner's company and she'd run it any way she wanted to, and, if I didn't like it, find another job." Howard testified at the hearing that he told Northrup that "we didn't need to sign a contract because the union had been decertified." Howard did not otherwise address the statement attributed to him by Northrup. I credit Northrup's testimony as set out above. I find Howard's statement that Respondent never was going to sign a contract with the Union was violative of Section 8(a)(1) as it conveyed the message of futility of the exercise of the employees' rights under Section 7 of the Act. *Outboard Marine Corp.*, 307 NLRB 1333, 1335 (1992). I find that Howard's statement that Northrup should get another job if he did not like the way the Company was operating, was an implied threat of discharge and violated Section 8(a)(1) of the Act. *Stoody Co.*, 312 NLRB 1175, 1181 (1993).

4. Complaint subparagraph 5F

Subparagraph 5F of the complaint alleges that on or about April 6, 1998, Respondent, by Vice President Howard at its facility, threatened an employee with an unspecified reprisal for not signing a petition to decertify the Union.

The Union filed the initial charge in this case on March 26, 1998. Employee Jeff Thomas testified that on April 6, 1998, about 8 a.m. at the Illinois Valley Paving side (a company owned by Jeanne Bruner's father-in-law) Howard said to him, "[Y]ou don't appreciate your job much." Thomas responded, "[Y]es, I do." Howard said, "[T]hat's all I have to say and turned around and walked off." Thomas had been an observer for the Union at the 1996 election. Later on October 19, 1998, Thomas asked to speak to Howard and, "I told him I was tired of this shit of me being blamed for turning the company in to the Labor Relations Board and that I didn't have anything to do with it." Howard responded, "[T]hat we would be going to court real soon and he'd find out who had turned them in to the Labor Relations Board." Howard also said, "[I]f he was wrong about me, he'd apologize." Howard admitted at the hearing that on April 6 after the withdrawal of recognition he told employee Jeff Thomas, that he didn't appreciate his job very much.

I credit the testimony of Jeff Thomas as corroborated by Howard. I find that the evidence supports a finding that Howard linked Thomas' union activities to this threat of discharge and that Respondent thereby violated Section 8(a)(1) of the

Act. See *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 487 (1995), wherein a statement by a supervisor to a known union supporter, that the union could put the employee's job in jeopardy and that he should find another job, was violative of Section 8(a)(1) of the Act.

5. Complaint subparagraphs 5G, H, and I

The complaint alleges that Respondent President Jeanne Bruner and Vice President Howard, in a letter to employees, informed employees that it was futile to select a union as their collective-bargaining representative, that it had withheld wage increases because employees had selected the Union as their collective-bargaining representative, and informed employees that it was granting them a wage increase because they had decertified the Union.

It is undisputed that Respondent's March 23 letter to its employees (G.C. Exh. 4a-c) stated, "[A]s we told those of you who were with us in April of 1996 when the election was held, we do not believe this Union could do anything for you." I find Respondent violated Section 8(a)(1) of the Act by this statement which informed the employees it was futile to select the Union as their collective-bargaining representative.

The letter was also violative of Section 8(a)(1) of the Act by asserting that wage increases had been withheld because of the employees' selection of the Union. *Laidlaw Waste Systems*, 307 NLRB 52, 54 (1992). The letter was also violative of Section 8(a)(1) of the Act by its statement that Respondent was granting the wage increase and change in benefits because of the decertification of the Union, *Hooper's Chocolates*, supra.

6. Complaint subparagraph 5J

The General Counsel did not present any evidence which would have come through McKinney concerning subparagraph 5J which alleges that between March 23 and 30, 1998, Respondent by Vice President Darrell Howard at its facility informed an employee that it was withholding benefits because the Union had filed charges with the Board. I accordingly do not find a violation with respect to this allegation.

B. The 8(a)(3) and (5) Allegations

Facts

Respondent Equipment's employees have been represented by the Union for a number of years. Jeanne Bruner is the president and majority stockholder of Equipment. Darrell Howard is the vice president, and minority stockholder of Equipment. Howard is the owner of Smith Trucking and serves as dispatcher for both businesses. On April 15, 1996, the Union was certified to represent employees of both Equipment and Smith Trucking in a single unit. There had been no agreement reached between the parties on the initial collective-bargaining agreement for the unit. There had been several bargaining sessions between the parties from the time of the Union's certification until January 1998, with no discussion of economic items up to that time. There had been no wage increase or improvement in benefits during this period. Prior to the election in 1996 the Respondent had opposed the Union's selection as collective-bargaining representative in letters written to the unit employees.

Employee Mark McGlauchlen testified that on January 2, 1998, he told Howard he was considering leaving his employment with Respondent as a result of his dissatisfaction with the wages and benefits. Howard told him he did not want him to leave but "could understand that things weren't as good as they could be." Howard then went on to say, "[I]f you guys would forget this Union, things could be a lot better around here, there could be probably, a wage increase and things would be a lot better." I credit his testimony which was unrebutted.

The testimony of employees McGlauchen, Gauges, Holmes, Thomas, and Northrup as set out above in this decision establishes that Respondent fostered the circulation of the petition to decertify the Union. Respondent's letters of March 23, 1998, are as follows:

March 23, 1998

TO: Equipment Trucking Co. Tandem drivers

From: Jeanne Bruner and Darrell Howard

On Friday we received a petition from a majority of you that you no longer wish to be represented by Teamsters Local 916. We are happy that you decided to do this because as we told those of you who were with us in April of 1996 when the election was held, *we do not believe this union could do anything for you* and that *having a union would just delay any future wage increases*.

We want to let you know that *we will be increasing wage rates effective Monday, March 30, 1998.* We also want you to know that we are going to be *implementing new medical and dental insurnance* [sic.] coverage through GHP which you are now eligible for if you choose to be. For all of those who wish to participate, we will this week be having you complete insurance forms, which we will then send to the insurance company, and we will then be notifying you of the effective date for the new health insurance plan. It should become effective sometime in April. During the months which you are not working, you will be responsible for reimbursing the Company for the cost of the insurance.

The following are two different options we need you to choose from by filling out the attached form and returning it to us by March 30, 1998.

Option A:
- *Wage rate of $9.50/hour with medical and dental in surance*
- Medical exams and drug and alcohol tests will be the same as in the past
- *Time and a half will be paid after 40 hours per week*[1]

Option B:
- *Wage rate of $11.00/hour with no insurance*
- Medical exams and drug and alcohol tests will be the same as in the past
- *Time and a half will be paid after 40 hours per week*

[1] Prior to this overtime was paid on a daily basis for overtime worked in excess of 8 hours.

[Emphasis added.]

Please choose which option you want and return it to us as soon as possible.

Sincerely,

____
Jeanne BrunerDarrell Howard

__________ I choose Option A with insurance coverage.

__________ I choose Option B with no insurance coverage.

____________________ ________________
Signature Date

March 23, 1998

TO: Equipment Trucking Co. Tractor drivers

From: Jeanne Bruner and Darrell Howard
Note: The same identical body of the letter to Tandem Drivers.

The following are two different options we need you to choose from by filling out the attached form and returning it to us by March 30, 1998.

Option A:
- *Wage rate of $10.75/hour with medical and dental insurance*
- *Time and a half will be paid after 40 hours per week for everyone*
- Medical exams and drug and alcohol tests will be the same as in the past
- Paid holidays when the day before or the day after is worked

Option B:
- *Wage rate of $12.25/hour with no insurance*
- *Time and a half will be paid after 40 hours per week for everyone*
- Medical exams and drug and alcohol tests will be the same as in the past
- Paid holidays when the day before or the day after is worked

[Emphasis added.]

Please choose which option you want and return it to us as soon as possible.

Sincerely,

_/s/ Jeanne Bruner ________ /s/ Darrell Howard _______
Jeanne Bruner Darrell Howard

March 23, 1998

TO: Equipment Trucking Co. Mechanics

From: Jeanne Bruner and Darrell Howard

Note: The same identical body of the letter to Drivers.

The following are two different options we need you to choose from by filling out the attached form and returning it to us by March 30, 1998.

Option A:
- *Wage rate of $10.65/hour with medical and dental insurance*
- *Time and a half will be paid after 40 hours per week for everyone*
- Paid holidays when the day before or the day after is worked
- 1 week paid vacation after 1 year of service and 2 weeks paid vacation after 2 years of service for those of you who work at least 90% of the year.

[Emphasis added.]

Option B:
- *Wage rate of $12.15/hour with no insurance*
- *Time and a half will be paid after 40 hours per week for everyone*
- Paid holidays when the day before or the day after is worked
- 1 week paid vacation after 1 year of service and 2 weeks paid vacation after 2 years of service for those of you who work at least 90% of the year.

[Emphasis added.]

Please choose which option you want and return it to us as soon as possible.

Sincerely,

_/s/ Jeanne Bruner ________ /s/ Darrell Howard _______
Jeanne Bruner Darrell Howard

Analysis

This case involves the animus of the employer toward the employees' election of the Union and its efforts to dislodge it as collective-bargaining representative of the unit employees through the use of two unit employees to carry its message that wage increases and improvements in benefits would be forthcoming once the Union was removed from the picture. The employers' agents, Brian McKinney and Chris Parker, were utilized to circulate a petition to decertify the Union as the collective-bargaining representative of the unit employees with the promise of a $2-per-hour-wage increase, health insurance, or an additional hourly increase of $1.50 to $2 if the employees did not want the health insurance and a 4019(k) or Roth IRA retirement plan. The evidence establishes that the employees were told the petition must be signed by Thursday, March 19, to be presented to the Respondent's management on Friday, March 20. When the petition was tendered to Respondent on March 20, Respondent's representative immediately telephoned the Union on the same date and withdrew its recognition of the Union and canceled a negotiation meeting scheduled for Thursday, March 26, at which the parties had agreed to discuss wages. Additionally, the Respondent's president and vice president signed letters dated Monday, March 23, which were distributed to employees on their payday, Wednesday, March 25, in their pay envelopes. The letters informed the employees

of a $2-per-hour-wage increase, health insurance, or an additional $1.50-an-hour increase if they chose to waive their health insurance and also changed the commencement of the payment of overtime after eight hours of work per day to commence after 40 hours of work per week. Although the letters made no mention of pension benefits, Respondent's vice president, Darrell Howard, later informed the employees that Respondent would establish a 401(k) or Roth IRA pension after he was questioned by employee Thomas concerning the lack of reference to a pension in Respondent's letter of March 23. Thus, on receipt of the decertification petition Respondent delivered what had been promised by its agents McKinney and Parker in return for the decertification of the Union. The Respondent argues that the Respondent's promises can only be established by hearsay evidence on which no reliance should be placed and that any number of reasons could account for the similarity between the promises made by its agents and the improvements in wages and benefits delivered by Respondent upon its receipt of the decertification petition. I, however, conclude that the complaint allegations have been established. By virtue of Respondent's answer having been struck insofar as the allegations that McKinney and Parker acted as its agents in promising a wage increase, health insurance, and a 401(k), or other retirement plan if the employees signed the decertification petition, I find this is undenied. I further find that the testimony of the employees, relating the promises made by McKinney and Parker on Respondent's behalf, is entitled to both credence and weight[2] and may properly be relied on in establishing the violations. I find this testimony has been corroborated by reasonable inferences establishing that McKinney and Parker acted as Respondent's agents in circulating the petition and promising wage increases and changes in benefits in view of the virtually identical terms offered by McKinney and Parker on Respondent's behalf and the timing of the delivery by Respondent of those items promised following the withdrawal of recognition. Clearly Respondent's conduct in issuing its letter of March 23 granting the wage increase and offering health insurance or an additional hourly increase in pay in the alternative and Howard's subsequent verbal assurance that Respondent would obtain a retirement plan for the employees, constituted an affirmation of the promises made by McKinney and Parker on its behalf. *Dentech Corp.*, 294 NLRB 924, 925–926 (1989).

I thus find that Respondent violated Section 8(a)(1) of the Act by the promises of a wage increase and improvements in benefits in return for the employee's rejection of the Union as their collective-bargaining representative. I find that the Respondent's direct dealing with its employees, Respondent's withdrawal of recognition and refusal to bargain with the Union on the basis of the decertification petition, the grant of the unilateral increase in wages, changes in insurance benefits, and the changing of the overtime policy were each violative of Section 8(a)(5) and (1) of the Act. A decertification petition obtained by unfair labor practices such as these cannot be relied on to assert a good-faith doubt of majority status, *Hooper's Chocolates*, supra. It is well established that an employer may not bypass the certified collective-bargaining representative of its employees and deal directly with the employees. An employer may not make threats or promises to employees concerning their engagement in concerted activities or their rejection of their collective-bargaining representative.

It is well established that an employer may rely on a decertification petition as grounds for withdrawing recognition to establish a good faith doubt of the Union's majority in the absence of unfair labor practices on its part which contributed to the employees' disaffection with the Union. In this case the Respondent's unfair labor practices directly contributed to the Union's loss of majority by virtue of the promises of its agents McKinney and Parker as set out above. The petition to decertify the Union could not be relied on as it was tainted by the involvement of Respondent in its creation through its agents McKinney and Parker. *Lee Lumber & Bldg. Material Corp.*, 322 NLRB 175 (1996), affd. in relevant part 117 F.3d 1454 (D.C. Cir 1997); *Tocco Inc.*, 326 NLRB 1279 (1998). *Choctawhatchee Electric*, 274 NLRB 595 (1985).

Since the withdrawal of recognition was unlawful, the unilateral changes were also unlawful and violative of Section 8(a)(5) and (1) of the Act. Moreover the increase in wages and changes in benefits were also violative of Section 8(a)(3) and (1) of the Act as they were motivated by Respondent's animus against the Union and Respondent's efforts to deny the employees union representation. A prima facie case has been established that the wage increase and changes in benefits were unlawfully motivated and Respondent failed to offer any legitimate reason for instituting these wage increases and changes in benefits. *Holly Farms Corp.*, 311 NLRB 273, 274 (1993).

CONCLUSIONS OF LAW

1. Respondent Equipment Trucking Co., Inc. and Smith Trucking Company, constitute a single employer and an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Teamsters Local Union 916, affiliated with International Brotherhood of Teamsters, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All drivers and mechanics employed by Respondent at its Winchester, Illinois facility, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

At all times since April 15, 1996, the Union has been the exclusive collective-bargaining representative of the employees in the above-described unit within the meaning of Section 9(a) of the Act.

[2] *Northern States Beef*, 311 NLRB 1056 fn. 1 (1993), quoting "Administrative agencies ordinarily do not invoke a technical rule of exclusion but admit hearsay evidence and give it such weight as its inherent quality justifys." *Alvin J. Bart & Co.*, 236 NLRB 242 (1978); *Dauman Pallet Inc.*, 314 NLRB 185, 186 (1994), wherein the Board stated that it has long held that hearsay evidence will be admitted "if rationally probative in force and if corroborated by something more than the slightest amount of other evidence," citing *RJR Communications*, *Inc.*, 248 NLRB 920, 921 (1980); *Livermore Joe's Inc.*, 285 NLRB 169 fn. 3 (1987).

4. Respondent violated Section 8(a)(1) of the Act by:

(a) Telling an employee that Respondent would grant employees wage increases and change employees' benefits if the employees decertified the Union.

(b) Its agents, Brian McKinney and Chris Parker, promising employees wage increases and changes in benefits if they decertified the Union.

(c) Telling an employee that Respondent would never sign a contract with the Union.

(d) Impliedly threatening an employee with termination because the employee supported the Union.

(e) Threatening an employee with unspecified reprisal for his support of the Union.

(f) The issuance of letters to employees informing them that it was futile to select a union as their bargaining representative, that it had withheld wage increases because employees had selected the Union as their bargaining representative, that it was granting employees a wage increase because they had decertified the Union.

5. Respondent violated Section 8(a)(1) and (3), and (5) of the Act by granting wage increases to its employees and changing the health insurance and overtime pay benefits of its employees.

6. Respondent violated Section 8(a)(1) and (5) of the Act by:

(a) Its agents, Brian McKinney and Chris Parker, bypassing the Union and dealing directly with the unit employees by offering them wage increases and changes to employees' benefits if they signed a petition to decertify the Union.

(b) Withdrawing its recognition of the Union and refusing to bargain with the Union as the exclusive collective-bargaining representative of the Unit at a time when there were unremedied unfair labor practices which caused the Union's lack of support and in reliance on a decertification petition which had been unlawfully initiated by its agents on its behalf.

7. The above unfair labor practices in conjunction with Respondent's status as an employer affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in violations of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative actions to effectuate the purposes of the Act and post the appropriate notice.

It is recommended that Respondent rescind its withdrawal of recognition from the Union, that it bargain with the Union for a reasonable time, that on request by the Union it rescind any or all of the unilateral changes and restore the status quo, and that it make the employees whole for any loss of earnings or benefits sustained by them as a result of the withdrawal of recognition and implementation of unilateral changes in its employees' terms and conditions of employment in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[3]

Counsel for the General Counsel has in her brief requested that I include in the recommended order modified language regarding Respondent providing records for computing backpay. Whereas the standard backpay order requires Respondent to "preserve and make available," its payroll and other records for computing backpay, which would not require that Respondent "provide" the records, the General Counsel seeks to shift to Respondent the burden of collecting and providing these records to the Regional Office, thus placing the cost of this on the wrongdoer. General Counsel also requests that the Respondent be ordered to provide to the Region an electronic copy of the records to the Region in the event that Respondent already maintains the necessary payroll records in digital form. I grant General Counsel's request for the modified order as within the Board's remedial power to issue this order and find that this is not unduly burdensome and that any burden caused to Respondent thereby should properly be placed on it as the wrongdoer in this case. I rely on the cases cited by General Counsel as follows:

> *Virginia Electric & Power Co. v. NLRB,* 319 U.S. 533, 539 (1943); *Fibreboard Corp. V. NLRB,* 379 U.S. 203, 216 (1964); *NLRB v. Rutter-Rex Mfg. Co., Inc.,* 396 U.S. 258, 262–263 (1969); *Sure-Tan, Inc. v. NLRB,* 467 U.S. 883, 898–899 (1984); *Road Sprinkler Fitters Local 669 v. NLRB,* 789 F.2d 9, 16 (D.C. Cir. 1986); *Mathews v. Eldridge,* 424 U.S. 319, 348 (1976); *NLRB v. Carolina Food Processors, Inc.,* 81 F.3d 507, 510 (4th Cir. 1996); *NLRB v. Brown Transport Corp.,* 620 F.Supp. 648, 653–654 (N.D. Ill. 1995*); EEOC v. Maryland Cup,* 785 F.2d 471, 477 (4th Cir. 1986); *The Electronic Agency and the Traditional Paradigms of Administrative Law,* 44 Admin. L. Rev. 79 (1992).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Equipment Trucking Co., Inc. and Smith Trucking Company, Single Employer, of Winchester, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Issuing threats to its employees of termination, unspecified threats of reprisal, the futility of their support for a union.

(b) Making promises of wage increases, or changes in benefits if the employees sign a petition to decertify the Union.

(c) Bypassing the Union and engaging in direct dealing with the unit employees concerning their wages and benefits and other terms and conditions of employment.

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[3] Under *New Horizons*, interest is computed at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[4] 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.

(d) Withdrawing recognition from and refusing to bargain with Teamsters Local Union 916, affiliated with International Brotherhood of Teamsters, AFL–CIO on behalf of the employees in the appropriate unit.

(e) Unilaterally granting increases in wages and instituting changes in health insurance and overtime pay benefits and other terms and conditions of employment without bargaining these increases in wages and changes in benefits and other terms and conditions of employment with the Union.

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

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

(a) Rescind its withdrawal of recognition from the Union.

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

> All drivers and mechanics employed by Respondent at its Winchester, Illinois facility, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

(c) On request by the Union, rescind any or all unilateral changes unlawfully implemented and restore the status quo.

(d) Make its employees whole for any loss of earnings or benefits they may have sustained as a result of the Respondent's unfair labor practices, with interest, as set out in the remedy.

(e) Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in digital form, necessary to analyze the amount of backpay due under the terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

(f) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 14, 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 January 1, 1998.

(g) 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.

[5] 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.

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 issue threats of termination to our employees, or unspecified threats of reprisal, because of their support of Teamsters Local Union 916, affiliated with International Brotherhood of Teamsters, AFL–CIO and will not threaten them with the futility of their support of the Union.

WE WILL NOT make promises of wage increases or changes in health insurance or retirement benefits if the employees sign a petition to decertify the Union.

WE WILL NOT withdraw recognition from Teamsters Local 916, affiliated with International Brotherhood of Teamsters, AFL–CIO and refuse to bargain with the Union concerning the rates of pay, wages, hours, and terms and conditions of employment of our employees in the following appropriate unit:

> All drivers and mechanics employed by Respondent at our Winchester, Illinois facility, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT bypass the Union and engage in direct dealing with our employees concerning their wages and benefits and other terms and conditions of employment.

WE WILL NOT institute unilateral increases in wages and changes in health insurance and overtime pay benefits and other terms and conditions of employment without bargaining these increases in wages and changes in benefits and other terms and conditions of employment with the Union.

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 rescind our withdrawal of recognition from the Union.

WE WILL, on request recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the above-described unit.

WE WILL, on request by the Union, rescind any or all unilateral changes in wages, benefits, hours, or other terms and conditions of employment and restore the status quo.

WE WILL make our employees whole, with interest for any loss of earnings or benefits they may have suffered as a result of our withdrawal of recognition from the Union and our institution of unilateral changes in the wages, benefits, hours, or other terms and conditions of employment.

EQUIPMENT TRUCKING CO., INC. AND SMITH TRUCKING COMPANY