

**A. J. Librera Disposal Cartage and Trucking, Inc.
d/b/a A. J. Librera Disposal Service, Inc. and
Danny W. Bennett**

Metro Disposal Service, Inc. and Danny W. Bennett.
Cases 30-CA-5090 and 30-CA-5131

February 5, 1980

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND TRUESDALE

On September 21, 1979, Administrative Law Judge Walter H. Maloney, Jr., issued the attached Decision in this proceeding. Thereafter, Respondent A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc., filed exceptions and a supporting brief.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc., Milwaukee, Wisconsin, and Respondent Metro Disposal Service, Inc., Milwaukee, Wisconsin, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached Appendixes A and B are substituted for those of the Administrative Law Judge.

¹ In the absence of exceptions thereto, we affirm the rulings, findings, and conclusions of the Administrative Law Judge and adopt his recommended Order in regard to Respondent Metro Disposal Service, Inc., *pro forma*.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

Following a hearing at which all parties had an opportunity to present evidence and cross-examine witnesses, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice. We intend to abide by the following:

WE WILL NOT discharge employees because they have engaged in a strike or in other concerted protected activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act. These rights include the right to engage in self-organization; to form, join, or assist any labor organization; to bargain collectively through representatives of their own choosing; and to engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from the exercise of any or all such activity.

WE WILL make whole Danny W. Bennett and Leon Lopetkiewicz for any loss of pay or benefits which they have suffered up to February 28, 1979, by reason of their unlawful discharge, with interest.

A. J. LIBRERA DISPOSAL CARTAGE AND
TRUCKING, INC. D/B/A A. J. LIBRERA
DISPOSAL SERVICE, INC.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

Following a hearing at which all parties had an opportunity to present evidence and cross-examine witnesses, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice. We intend to abide by the following:

WE WILL NOT refuse to hire applicants for employment because they have engaged in strike activity or because they have demonstrated sympathy with individuals who have engaged in strike activity.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act. These rights include the right to engage in self-organization; to form, join, or assist any labor organization; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from the exercise of any or all such activity.

WE WILL offer Danny W. Bennett, Leon Lopetkiewicz and Thomas R. Wetzel, Jr., immediate employment in positions similar to the ones which they held with A. J. Librera Disposal Service, Inc., and WE WILL make them whole for any loss of pay suffered by them by reason of our failure to hire them, with interest.

METRO DISPOSAL SERVICE, INC.

DECISION

FINDINGS OF FACT

I. STATEMENT OF THE CASE

WALTER H. MALONEY, Jr., Administrative Law Judge: This case came on for hearing before me in Milwaukee, Wisconsin, upon a consolidated unfair labor practice complaint,¹ issued by the Regional Director for Region 30 and later amended,² which alleges that both Respondents were joint employers and that they violated Section 8(a)(1) of the National Labor Relations Act, as amended. More particularly, the consolidated complaint alleges that Respondents discharged Librera employees Danny W. Bennett, Leon Lopetkiewicz, and Fred Rushing because they had engaged in a strike to protest alleged shortages in their paychecks and that Respondent Metro thereafter refused to hire Bennett, Lopetkiewicz, and Wetzel either because they had struck Librera or had sympathized with Librera strikers. Respondents deny that they were or are joint employers. They claim that the individuals named in the consolidated complaint were laid off on February 20, 1979, for lack of work and that

¹ The principal docket entries herein are as follows:

Charge in Case 30-CA-5090 filed by Danny W. Bennett, an individual, against Respondent A. J. Librera Disposal Cartage and Trucking, Inc. (herein sometimes called Librera) on February 21, 1979; charge in Case 30-CA-5131 filed by Bennett against Respondent Metro Disposal Service, Inc. (herein sometimes called Metro), on March 16, 1979; consolidated complaint issued against both Respondents by Regional Director for Region 30, on April 27, 1979; answer filed by Respondent Librera on May 7, 1979; answer filed by Respondent Metro on June 6, 1979; amendment to consolidated complaint issued by Acting Director, Region 30, on July 13, 1979; answer to Amendment to consolidated complaint filed on July 25, 1979; hearing held in Milwaukee, Wisconsin, on August 1, 1979.

² Respondents, and each of them, admit, and I find, that Respondent Librera is a Wisconsin corporation which maintained its principal place of business in Glendale, Wisconsin, where it was engaged in the business of providing refuse disposal services in the metropolitan Milwaukee area. Respondent Metro is a Wisconsin corporation which maintains its principal

place of business at Franklin, Wisconsin, where it is engaged in providing refuse disposal services in the metropolitan Milwaukee area. During the past calendar year both Metro and Librera individually derived in excess of \$50,000 from services performed within the State of Wisconsin for customers who purchased directly from points and places outside the State of Wisconsin goods and services valued in excess of \$50,000. Accordingly, Metro and Librera are, respectively, employers engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

II. THE UNFAIR LABOR PRACTICES ALLEGED

Librera is small family-owned and operated business which was founded in 1946 by A. J. Librera.³ Late in February 1979, when the events in this case took place, Librera operated trash collection routes in the northern portion of Milwaukee County. It had approximately 585 customers and employed 5 drivers. The parties agree that one of the drivers, Thomas R. Wetzel, Jr., was a foreman, although the work performed by Wetzel was about the same as the duties of the other drivers.

In the summer of 1978, to head off an organizing drive by Teamsters Local 200, Librera entered into a written contract, signed by Bennett and former driver Robert Burbey, which covered certain terms and conditions of employment of its drivers. Under one provision of the contract, Librera was obligated to pay a "snow bonus," namely, a premium of \$10 per day whenever the snow was deep enough to require street plowing by public authorities.

In January 1979, Librera entered into negotiations for the sale of the business to Respondent Metro, a much larger trash removal concern which operated in the southwestern section of Milwaukee County. Negotiations were conducted on behalf of Metro by its president and sole stockholder, Peter Vanderveld. Coincidentally, these negotiations came to a head just at the time Librera employees got into a dispute with their employer over Librera's alleged failure to make certain "snow" bonus payments and its alleged failure to pay Bennett the full amount he felt was due and owing for week's work.

In the late afternoon of Friday, February 16, Bennett returned to the Librera garage, parked his truck, and received his paycheck. After examining the check, Bennett felt he had been shorted by about \$40 and that his helper had also been shorted. He ran over to see A. J., who was just about to drive away, and voiced a complaint. A. J. simply said that he had to leave and drove off. Thereafter, Bennett complained bitterly about his check to driver Fred Rushing,

³ The president of the Librera corporation is A. J. Librera, husband of Carmela Librera and father of Thomas Librera. Carmela Librera is the secretary of the corporation and performed clerical chores in the company office. Thomas Librera is vice president and was the principal operating manager of the business. For convenience, where any of the Libreras are referred to individually in this Decision, I will use their first names or initials. They were generally addressed by employees in this manner and are so described in the record.

who had also just received a check. Rushing also felt that he had been shorted by not receiving a "snow bonus."

After commiserating with each other for a while they decided to call the Librera home to talk with A. J. Rushing placed the call and reached Tom. He asked to speak with A. J., but the latter had not yet arrived home. Rushing complained to Tom that his paycheck and Bennett's paycheck were short. Tom told Rushing that he would have to take up the complaint with A. J. While the two were talking, Bennett was shouting into the phone loud and obscene terms to the effect that he was tired of being shorted and being given the runaround, and that, if the matter were not settled, the men would not show up for work on Monday. Rushing did not repeat this latter threat. It is not certain whether Tom heard Bennett over the phone. In any event, Tom assured Rushing that the matter would be straightened out on Monday.

Shortly thereafter A. J. returned to the garage. Rushing and Bennett complained directly to him. A. J. told him that they would have to take up their complaint with Tom. Bennett argued with him, saying it was A. J. and not Tom who had made out the checks. A. J. irritated Bennett was telling him that he had not worked all the hours for which Bennett was claiming credit. At this point, the phone rang and Bennett answered it. The call was placed by Tom, who asked to speak with his father. Bennett took advantage of the opportunity by shouting into the phone more complaints about his check and Rushing's check. Tom told Bennett that the matter would be straightened out on Monday. When Tom asked again to speak with his father, Bennett told him that A. J. had left.

Shortly thereafter, both of the Libreras came into the garage. Tom went directly into the bathroom and Bennett started hollering at him while he was detained in that location. When Tom emerged, he told Bennett that he was very busy and was on his way to his sister's birthday party but that he would straighten out Bennett's complaint on Monday. I credit the corroborated statement of Bennett that there "might not be a Monday." Tom testified that he did not hear Bennett make that remark but he had a clear recollection of everything else that Bennett was shouting at him.

In fact, Tom and A. J. were not going to a birthday party but were having dinner with Vanderveld and Vanderveld's lawyer to discuss the sale of the assets and goodwill of the Librera company to Metro. The parties came to a tentative agreement concerning the sale of the routes and the goodwill of the firm, and both had an oral understanding that the trucks would be submitted to various individuals for appraisal and sold for a value derived from the appraisals.

Over the weekend, Bennett tried unsuccessfully on several occasions to reach the Libreras to discuss the question of shortages in checks. While rumors of a sale of the firm had arisen from time to time, neither Bennett nor any of the other drivers had any knowledge over that weekend that a sale was imminent, nor were they aware that Metro was dickering to buy the Company.

* In fact, Bennett had been off for about 2 months with a back injury. He was eligible for workmen's compensation but had not received any weekly benefits as of February 19. He had returned to work the previous week at the

On Monday morning, Bennett, Wetzel, Lopetkiewicz, and Rushing did not report for work. By common agreement they met at a cafe to discuss their situation. Only one driver, James Jenders, actually reported for work. None of the four absentee drivers went near the garage throughout the day and none of them contacted any of the Libreras until about 5 p.m.

As the day wore on, Tom became quite upset by the failure of the drivers to report and his inability to service his customers. He attempted to contact drivers without success. About 11:30 a.m. Tom called Vanderveld and told him what had happened. He asked Vanderveld if Metro could lend him some drivers to man his routes. At first Vanderveld declined and asked if Metro could lend him some drivers. Eventually, Vanderveld was able to pull about three of his men from other duties and dispatch them to the Librera garage, from whence they began to drive Librera trucks on the Librera trash collection routes.

During one of several phone conversations between them on February 19, Vanderveld told Tom that he was surprised about what had happened, inasmuch as the Libreras had previously assured him that they had competent and reliable employees. He reminded Tom that the sale of the business had not been firmed up and insisted upon a \$30,000 reduction in the purchase price. Tom agreed.

About 5 p.m., the four absent drivers began to call the garage at 15-minute intervals to report that they had been or were sick. About this same time, Vanderveld arrived at the Librera garage and was told that the absent drivers had just called in sick. He expressed irritation and disbelief at this excuse and told Tom categorically that he did not want to hire any Librera drivers when Metro took over because of the "stunt" they had just pulled. He also told Tom that he had the choice of firing his drivers that night or facing them in the morning. Tom then contacted the absentee drivers by phone and fired them. In the case of Lopetkiewicz, his neighbor, Wetzel, relayed the message. When Tom spoke with Bennett he stated the conversation by complaining that the men had not come in, to which Bennett replied that he was sick and that his back was bothering him.⁴ Bennett offered to come in the following morning but Tom told him not to do so, saying that the business was being sold. Bennett then asked whether he was supposed to go to work for the new owner. Tom replied that the buyer would not want employees who had pulled what the four Librera drivers had just pulled, adding that Bennett had not called in sick until 5 p.m. and that no one was dumb enough to believe a sick report which was not made until the end of a workday. Bennett pleaded with Librera to be taken on by the Metro company but Librera simply replied that Metro did not want anyone who had done what Bennett had done. Bennett then told Tom that he would come to the garage the following day to pick up a termination slip.

By the time Tom had called Rushing, Rushing had already received a telephone message from Wetzel to the effect that the four absentee drivers had been fired. Tom complained to Rushing that none of the drivers except Jim Jenders had showed up for work and that he had to get

urging and insistence of Tom, who had promised to pay him partly in cash in order not to establish a work record which would interfere with the payment of compensation benefits.

drivers from another source to take their place. He told Rushing that he was fired but that he could check with Terry Miller, the general manager of Metro, if he was interested in going to work for Metro. Tom informed Rushing that Miller would be at the Librera garage at 6 a.m. the following morning.

When Tom called Wetzel, he told him that it was very obvious that everyone took sick at the same time and then informed Wetzel that he was fired. Wetzel offered to report for work the following day but Librera declined the offer, saying that Metro drivers would be running the routes. He did instruct Wetzel to bring back the walkie-talkie radio that had been issued to him.

On the following morning, Rushing came to the garage at 6 a.m. and asked Miller for a job. Miller hired him immediately and put him to work driving a truck. Rushing continued to drive until March 15 when he was fired. Bennett, Lopetkiewicz, and Wetzel showed up in the middle of the morning and asked Tom for their jobs. Tom said that the matter was now out of his hands and informed them that, if they wanted to go to work for Metro, they would have to go to the Metro office, which is located at the other end of Milwaukee County, and apply personally to Metro. Tom told them that he would have talked with them about the shortages in their paychecks if they had only come to work on Monday. Bennett said that Tom knew what they were doing right from the beginning. Tom said he could have straightened out the matter but implied that now it was too late. He also said he felt sorry for them because Metro did not want them as employees. Bennett asked him why they should drive 35 miles to the Metro office to make an futile application. Tom replied that maybe they would hire them. He gave out termination slips which said that the employees in question were "fired" for lack of work.

For the next 8 days, Librera operated the business in name only. It collected the customer service charges and used its trucks, trash cans, and dumpsters. However, the routes were driven by Metro employees acting under Metro supervision. Metro then billed Librera for the labor costs incident to this arrangement. Metro used the services of Rushing and Librera driver James Jenders, who was permanently hired, and used 4 or 5 other employees to make up the balance of the labor force which serviced the Librera routes. I credit the uncontradicted testimony of Rushing that Metro hired new employees to drive Librera routes during this period of time. On March 1, Metro formally took over the Librera business pursuant to written agreements which provided for the purchase by Metro of Librera equipment, its goodwill and customer lists, and personal covenants by A. J., Tom, and Carmela that they would not engage in the trash removal business in Milwaukee and adjacent counties for a period of 5 years. Metro then began to merge the former Librera routes with some of its own. The Librera corporation still exists with a changed name, but A. J. and Tom now confine their activities to hauling from construction and excavation sites as they are contractually barred from the trash hauling business.

¹ Even after listening to the entire testimony found in this record Tom still said that at no time did he ever know that his employees were on strike and that he never learned or surmised to the day to the hearing herein why his employees were on strike.

On February 20, Bennett, Lopetkiewicz, and Wetzel drove together to the Metro office for the purpose of filing job applications. Bennett did not in fact file an application but waited in the office while Lopetkiewicz and Wetzel filled out forms and were interviewed by Miller. Wetzel was acquainted with Linda Dostal, the receptionist at the Metro office, by virtue of the fact that both of them had previously been employed by another trash collection company.

During the course of Wetzel's interview with Miller, Miller asked Wetzel what the drivers had "pulled" at Librera. Wetzel replied that Tom was a snake and that he never lived up to the contract he made with the drivers after they had voted to reject the Teamsters. Miller explained to Wetzel that Metro was going to try to merge the Librera routes with its own routes. He also stated that they had hired some men on a trial basis and were going to see how they would work out. He asked Wetzel about his own work experience. In the course of this discussion, it came out that Wetzel and Miller had both worked for the same company where Dostal had formerly worked. Wetzel told Miller he had been fired by that company. When Wetzel left, Miller told him in effect that Metro had no openings and suggested that he call back later. Wetzel did call Miller a few weeks later but was informed that there were still no openings. Thereafter Wetzel never called back and was never contacted by Metro.

Lopetkiewicz was also interviewed by Miller. In the course of the interview, he told Miller that he had a broken rib. Miller told Lopetkiewicz that Metro would contact him in a couple of weeks when he was able to work. However, Metro never called and Lopetkiewicz was never hired.

On February 22, Bennett went to the Librera garage and, upon advice of his attorney, presented Tom with a handwritten note, signed by the drivers who were not working, in which they made an unconditional application for employment. Tom told him on that occasion that the matter was out of his hands because Metro was supplying all of his drivers.

III. ANALYSIS AND CONCLUSIONS

While Tom may have professed ignorance of what was happening¹ on February 19, it is indisputable that, on that day four of his drivers were engaged in a strike to protest the wages that they were being paid (or not being paid) by Librera. Striking for such a purpose is the most fundamental of rights protected by Sections 7 and 13 of the Act. To discharge an employee² for engaging in such protected concerted activity is a classic example of a violation of Section 8(a)(1) of the Act. It is quite immaterial that the discharges come about because the work of striking employees is contracted out to another employer. Certain gloss upon the statute indicates that the General Counsel must shoulder the burden of establishing that Respondents knew that the drivers were engaged in a strike prior to the time it discharged them in order to establish a violation. *Diagnostic Center Hospital Corp. of Texas*, 228 NLRB 1215 (1977);

² In his amendment to the complaint, the General Counsel deleted an allegation that Wetzel was discharged in violation of Sec. 8(a)(1) of the Act because Wetzel was alleged to be a supervisor.

Enamel Products and Plating Company, 236 NLRB 1611 (1978). The burden is an easy one in this case.

On Friday, February 16, Bennett, speaking on behalf of himself and other employees, literally shouted his complaint about being short changed into Tom's ear. Tom replied by saying that he was busy but the matter would be adjusted on Monday. I credit Bennett's corroborated testimony that he told Tom that "there might not be a Monday," a phrase which could indicate nothing other than the possibility of a strike if the complaint was not satisfactorily resolved. When Monday came, four of Librera's five drivers were nowhere to be found. These facts alone should have demonstrated to the most obtuse observer that Librera's disgruntled employees were acting in concert and that the source of their unhappiness was alleged shortages in their paychecks. Vanderveld had no doubt that the "sickout" was a strike. He characterized it as a "stunt" and insisted that Tom fire the offending strikers immediately. Tom made essentially the same statements to Bennett that Vanderveld had made to him when he phoned Bennett to tell Bennett that he was fired. His comments on the following morning to the three drivers who came to the garage to get their termination slips also indicated an acute awareness that they were acting in concert and that they were protesting shortages in their checks. Accordingly, I conclude that Tom was well aware that his employees had been engaged in concerted protected activity when he fired them and that he did so upon the insistence of Vanderveld, whose leverage as a prospective purchaser far outweighed any pressure which could be applied by his employees. It is equally pointless for Metro to contend that it did not know that the four drivers were striking Librera. It was Metro who supplied replacements for striking Librera employers. It was Vanderveld who told Tom that their sick excuse was phony, and it was Vanderveld's general manager who discussed the strike with Wetzel at an employment interview.

On the same evening that Tom fired the four strikers, Vanderveld not only insisted that Tom do so but also told him pointblank that they would not be hired by Metro because of the "stunt" they had pulled. Vanderveld did hire nonstriker Jenders and relented with respect to Rushing, but it appears from the record that Rushing was gone from the Metro payroll within 3 weeks of his initial employment. Having made up his mind that the "instigators," as Vanderveld termed them, would not be hired, anything which occurred thereafter in the guise or character of employment interviews was purely a charade. Bennett recognized the interviews to be such and refused to participate. He accompanied his coworkers to the Metro office just for the ride. The Act does not require that he perform the futile act of filing an application which is destined for rejection in order to retain or perfect his standing as a discriminatee. Accordingly, I conclude that, when Metro refused to hire Bennett and Lopetkiewicz because they had engaged in concerted protected activities, and when it refused to hire Wetzel because he sympathized employees

⁷ The parties agree that Wetzel was a supervisor for Librera. Accordingly, his discharge by Librera was not alleged in the amended complaint to be a violation. However, Wetzel applied to Metro for a nonsupervisory position, he stood *vis-a-vis* Metro as any other job applicant whose right to engage in

who were engaging in concerted protected activities, Metro violated Section 8(a)(1) of the Act.⁷

The General Counsel alleges that Librera and Metro were joint employers and that each should be held vicariously responsible for the unfair labor practices of the other. As will be seen hereinafter in the remedy section, it is not necessary to address this issue in order to provide a full remedy to the discriminatees, and I decline to do so.

Upon the foregoing findings of fact, and upon the entire record herein considered as a whole, I make the following:

CONCLUSIONS OF LAW

1. Respondent A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc., and Metro Disposal Service, Inc., and each of them, are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By discharging Danny W. Bennett, Leon Lopetkiewicz, and Fred Rushing because they engaged in protected concerted activities, the Respondent, A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc., violated Section 8(a)(1) of the Act.

3. By refusing to hire Danny W. Bennett and Leon Lopetkiewicz because they had engaged in protected concerted activities, and by refusing to hire Thomas W. Wetzel because he had sympathized with employees who engaged in protected concerted activities, Respondent Metro Disposal Service, Inc., violated Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices have a close, intimate, and substantial effect on interstate commerce, within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I will recommend that they be ordered to cease and desist therefrom and to take *certain* affirmative actions designed to effectuate the purposes and policies of the Act. Because the unfair labor practices found herein demonstrate a general disregard by both Respondents of the fundamental statutory rights of employees, I will recommend to the Board so-called broad 8(a)(1) orders designed to suppress any and all violations of that section of the Act. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979). Respondent Librera quit the trash hauling business on February 28, 1979, and is prevented by contract from engaging in such business for a period of 5 years. Accordingly, it would be pointless to recommend an order requiring reinstatement of employees by this firm. Metro took over the business on March 1, 1979, and there is ample evidence that jobs were available as of February 20, when Wetzel and Lopetkiewicz filed their applications. Accordingly, I will recommend that Metro be required to offer immediate employment to Bennett, Lopetkiewicz, and Wetzel.

protected concerted activities is protected by the Act. It is clear that Vanderveld lumped Wetzel with the other striking Librera drivers when he labeled them as "instigators" and that his reason for not hiring Wetzel was the same as his reason for not hiring Bennett and Lopetkiewicz.

With respect to backpay, Librera went out of business for nondiscriminatory reasons on February 28. Accordingly, its backpay liability should terminate on that date⁸ and Metro's backpay liability should commence on March 1, when its full responsibility for the operation of the Librera trash collection routes began. With respect to Wetzel, who would lose a week's pay under the strict application of this rationale, I will recommend that his backpay period commence running on February 21, when the discrimination against him by Metro effectively began. The amounts for which the respective Respondents are liable in order to make these employees whole for loss of pay or benefits which they have suffered should be computed in accordance with the *Woolworth* formula,⁹ with interest thereon at the adjusted prime rate used by the U.S. Internal Revenue Service for tax payments. *Florida Steel Corporation*, 231 NLRB 651 (1977); *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). I will also recommend that Respondents be required to post a notice informing their employees of their rights and of the remedy in this case.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record herein considered as a whole, and pursuant to Section 10(c) of the Act, I make the following recommended:

ORDER¹⁰

A. Respondent A. J. Librera Disposal Cartage and Trucking, Inc. d/b/a A. J. Librera Disposal Service, Inc., Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees because they have engaged in a strike.

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

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Make whole Danny W. Bennett and Leon Lopetkiewicz for any loss of pay or benefits suffered by them by reason of the unfair labor practice found herein, in the manner described above in the section entitled "Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll and other records necessary to analyze the amounts of backpay due under the terms of this order.

(c) Post at Respondent Librera's garage and office in Glendale, Wisconsin, copies of the attached notice marked

"Appendix A."¹¹ Copies of said notice, on forms provided by the Regional Director for Region 30, after being duly signed by a representative of Respondent Librera, shall be posted immediately upon receipt thereof, and shall be maintained by Respondent Librera for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Librera to insure that said notices are not altered, defaced, or covered over by any other material.

(d) Notify the Regional Director for Region 30, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

B. Respondent Metro Disposal Service, Inc., Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to employ applicants for employment because they have engaged in a strike or because they have sympathized with employees who have engaged in a strike.

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

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Offer immediately to Danny W. Bennett, Leon Lopetkiewicz, and Thomas R. Wetzel, Jr., positions similar to the ones which they held with Respondent Librera and make them whole for any loss of pay suffered by them by reason of the unfair labor practices found herein, in the manner described above in the section entitled "Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll and other records necessary to analyze the amounts of backpay due under the terms of this Order.

(c) Post at its Franklin, Wisconsin, office copies of the attached notice marked "Appendix B."¹² Copies of said notice, on forms provided by the Regional Director for Region 30, after being duly signed by a representative of Respondent Metro, shall be posted immediately upon receipt thereof and shall be maintained by Respondent Metro for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Metro to insure that said notices are not altered, defaced, or covered over by any other material.

(d) Notify the Regional Director for Region 30, in writing, within 20 days from the date of this Order, what steps Respondent Metro has taken to comply herewith.

⁸ As Rushing suffered no interruption in his employment other than the day he was on strike, it does not appear that any backpay is due and owing to him.

⁹ *F. W. Woolworth Company*, 90 NLRB 289 (1950).

¹⁰ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹¹ In the event that 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."

¹² See fn. 11, *supra*.