

P. E. Van Pelt, Inc. d/b/a Van Pelt Fire Trucks and Don Borrelli and William W. Qualls. Cases 32-CA-333 (formerly 20-CA-13291) and 32-CA-390 (formerly 20 CA-13398)

September 29, 1978

DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On June 16, 1978, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed limited exceptions and brief in partial support of the Administrative Law Judge's Decision.

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 briefs and has decided to affirm the rulings, findings,¹ 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 the Respondent, P. E. Van Pelt, Inc. d/b/a Van Pelt Fire Trucks, Oakdale, California, its officers, agents, successors, and assigns, shall take action set forth in the said recommended Order.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings. We have further considered Respondent's contention that the rulings and findings of the Administrative Law Judge are the result of bias in this proceeding. We have carefully considered the record and the attached Decision and reject these charges of bias alleged by Respondent.

Member Truesdale finds it unnecessary to pass on the Administrative Law Judge's statement that Ruthman is "a likely member of any bargaining unit to grow out of the union campaign."

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This consolidated matter was heard before me in Stockton, California, on February 22, 23, 24, and 27, 1978. The charge in Case 32 CA 333 was filed on August 18, 1977, by Don

Borrelli, and that in Case 32 CA 390 on September 15 by William W. Qualls, each acting in his individual capacity (Borrelli and Qualls). The complaint issued on November 1, was amended on November 16 and during the hearing, and alleges that P. E. Van Pelt, Inc., d/b/a Van Pelt Fire Trucks (Respondent) has violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (Act).

The parties were permitted during the hearing to introduce relevant evidence, examine and cross-examine witnesses, and argue orally. Post-trial briefs were filed for the General Counsel and for Respondent.

I. JURISDICTION

Respondent is a California corporation engaged in the modification and repair of fire trucks at a plant in Oakdale, California. It annually purchases materials and supplies of a value exceeding \$50,000 directly from outside California, and has annual sales exceeding \$50,000 to customers outside California and to cities in California.

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

II. LABOR ORGANIZATION

Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO (Union) is an organization in which employees participate and which exists for the purpose of representing employees in dealing with employers concerning wages, hours, and other terms and conditions of employment.

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

III. ISSUES

The complaint alleges that Respondent violated Section 8(a)(1) at various times in May, June, and July, 1977 by creating the impression that its employees' union activities were under surveillance, by interrogating its employees concerning their union activities, by threatening its employees with discharge for engaging in union activities, by promising benefits to its employees to undermine their support of the Union, and by announcing and granting a general wage increase to undermine employee support of the Union.

The complaint further alleges that Respondent violated Section 8(a)(3) and (1) on August 5, 1977, by causing Borrelli and Qualls to quit in circumstances amounting to constructive discharge because of their union activities.

The answer denies any wrongdoing.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. Backdrop

Respondent's plant normally processes about 15 fire trucks at a time, 12 undergoing modification and 3 undergoing repair. There are about 50 production employees, spread over 11 departments. The steel department, with about 15 employees, is the most populous, followed by the assembly department, with about 8. The other departments have from one to four employees. Each department has a

leadman, so called, who takes orders from Wayne Kindred, the production supervisor. Borrelli and Qualls were in the steel department when they quit. That department's leadman is Darold Stewart.

It is undisputed that Kindred is a supervisor for purposes of the Act. Others in the management hierarchy include Barry Jett, corporate treasurer; Clayton Wilms, plant manager and accountant; and Nip Dallas, corporate president. Whether Stewart, as leadman in the steel department, is a statutory supervisor is in dispute, the General Counsel contending yes and Respondent no.

There have been several unsuccessful attempts over the years to organize Respondent's production employees. The latest stirrings began in April or May 1977 and received impetus in early June, when the Union assigned Harry Shadoan, a business representative, to direct the effort. Shadoan remained in that role for perhaps 6 weeks. Probably the most conspicuous "landmark" in the organizational push occurred on July 18, when Shadoan mailed identical letters to all the employees, describing the advantages of unionization and urging that they sign and return authorization cards, which were enclosed.

The organizational drive had resulted in neither a recognition demand nor a petition for NLRB election to the time of trial.

B. *The Alleged Independent Violations of Section 8(a)(1)*

1. Paragraphs 6(a), (b), (d), and 9

Paragraph 6(a) of the complaint alleges that, on about May 8, June 9, and June 16, 1977, Darold Stewart "created the impression in the minds of employees that they were under surveillance for engaging in union activities." Paragraph 6(b) alleges that, on about June 16 and July 20, 1977, Stewart "threatened employees with discharge if they continued to support the Union." Paragraph 6(d) alleges that, on about July 20, 1977, Stewart "interrogated employees about their union activities and the union activities of other employees." Paragraph 9 alleges that Respondent violated Section 8(a)(1) in each instance.

The evidence. Qualls testified that, sometime early in the union campaign, he asked Stewart why Kindred was "right behind . . . every time I go into the bathroom," and that Stewart replied: "Probably because . . . he thinks you are such a good organizer." Stewart denied making that response, testifying that he said: "I don't think he would follow you, Bill, not to the bathroom."

Qualls also testified that, just before the 2-week vacation shutdown from June 17 to July 5, he asked Stewart if there were any truth to rumors that Qualls and Borrelli were to be laid off, and that this exchange ensued:

Stewart: "No, now that this union stuff has died down. It has, hasn't it?"

Qualls: "As far as I know. What makes you think I've got anything to do with the Union?"

Stewart: "Well, I'm smart enough to know that you're behind it, and so are the other guys in the office."

Stewart denied Qualls' version, testifying that Qualls asked him what Kindred would do if he knew that Qualls and

Borrelli were "involved in union activity," and that he answered: "He would probably can your ass." Explaining this answer, Stewart testified:

I guess I got prejudiced feelings towards the Union, and if a guy worked for me and he was not Company, I would fire him.

Qualls further testified that, the day following Shadoan's July 18 mailing, he heard Stewart ask another employee if he had received it, after which Stewart directed this to Qualls: "How about you, Qualls? No, you wouldn't get one; you're the one who mailed them out." Qualls could not recall the identity of the other employee with certainty, thinking it may have been Ken Burton. Burton, called by Respondent, denied being party to such an incident, and Stewart denied the whole affair.

Stewart is credited that he made the "can your ass" remark. Otherwise, to the extent that their versions conflict, Qualls is credited that the events occurred substantially as he related. His testimony was convincingly detailed and lucid, and his demeanor bore conviction, whereas Stewart, while remarkably candid about his antiunion feelings, often was evasive and unimpressive in overall demeanor.¹

Borrelli testified that, a day or two after the July 18 mailing, he, too, was asked by Stewart if he had received an "envelope" in the mail. Borrelli added that he feigned ignorance of Stewart's point of reference, prompting Stewart to say, "Don't play dumb"; and that he, Borrelli, eventually said that he had not received one, but that others had. Stewart ended the conversation, according to Borrelli, by saying it was none of Borrelli's business after Borrelli had asked if he had received an envelope and intended to sign an authorization card.

Borrelli testified of a second conversation with Stewart, later in the same week, in which Stewart said that some of the union organizers "would be going down the road" if they kept it up. A coworker, Charles Beckham, testified that he "got in on the tail end of" this, and heard Stewart say "something about the union organizers would be hitting the road or going down the road or something to that effect."

Stewart denied both conversations of which Borrelli testified. Borrelli, whose recall, demeanor, and overall sincerity generally were of a high order, is credited for much the same reasons that Qualls has been credited over Stewart; and, as concerns the latter conversation, because of Beckham's corroboration as well.

Stewart concededly asked another employee, Edward Gardner, if he had received the July 18 mailing and if he was going to sign a union card.

As earlier noted, the parties are in disagreement over Stewart's supervisory status. He is the ranking person in the steel department, which, as mentioned, has about 15 employees. He receives \$7.83 per hour, as against \$7.38 for the other leadmen and \$6.93 for journeymen generally. Asked the reason for his higher wage, Stewart testified at one point that it was "because I do a good job," and at another: "I have more men to work with and it causes me greater problems and frustrations." Jett, asked the same question, testi-

¹ Burton's denial does not invalidate this resolution. Qualls did not purport to make a conclusive identification of him, beyond which Burton's testimonial demeanor suggested a greater fealty to Respondent than to the truth.

fied that Stewart "has greater knowledge of the area he is working in [than do the other leadmen], and if mistakes are made in there . . . they are much more costly than if they are made farther down the line."

Stewart testified that he examines production orders as work comes into the steel department, and then "I try to pick people" to do the work in accordance with their background doing similar tasks. As the work progresses through the department, he continued, he "look[s] at the work to make sure there is some quality that goes into" it. He expanded that he walks "throughout the steel shop and I will notice somebody that he has got a definite problem and I will stop and make a suggestion as to how to correct it." He was at pains to testify that he never gives an order—"it is a request." In addition, the employees commonly take questions and problems to him—"a lot of silly questions," as he put it.

Respondent would have it that Kindred, Stewart's immediate supervisor, is the lowest ranking supervisor in the plant. Kindred's responsibilities are plantwide—"anything that pertains to the functioning of the operation of the plant I handle." Kindred testified that he spends about 90 percent of his time "constantly moving around" in the production areas of the plant, of which between 45 minutes and 2 hours daily is spent in the steel department on an "in and out" basis.

While contending that no one beneath him has the authority to make independent decisions, Kindred conceded that Stewart has the "discretion" to assign work in the steel department "to whoever is available or whoever he thinks can handle it." In this regard, Kindred admitted that, unlike Stewart, he has "no way of knowing who's going to be coming off the other truck and ready to go again," and that "there are a number of things in the plant that occur on a day-to-day basis that [he] just wouldn't be in any position to know about." Similarly, Stewart testified that he does not go to Kindred with every problem that comes up—"I have got a brain and I am pretty clever."

Kindred continued that when employees in the steel department are "completely out of work, they'll go to Darold" for assignment and that if there is no work for them in the steel department, Stewart will so inform Kindred, who then assigns them interdepartmentally. Both Kindred and Stewart testified that Stewart is without power to hire or fire or discipline, or to recommend same. Kindred added, however, that he will always "back up" the leadmen in case of insubordination from those in their departments.

Borrelli credibly testified that, when he was elevated to journeyman, Kindred told him that Stewart had recommended it. Robert Shaw credibly testified that Stewart said to him, in August 1977 that if he "ever caught [Shaw] grinding without a face shield one more time, [Shaw would] be out the door."² Kindred himself testified of responding, when told by Qualls about the incorrect installation of some

ladder brackets, that Qualls should "just speak to Darold about it"—"I wasn't going to interfere."

Conclusions. Although Kindred and Stewart struggled mightily, in their testimony, to depict Stewart as a cipher, it is concluded that he is a supervisor and that Respondent therefore is responsible for his conduct.

Indicative of his supervisory status, Stewart receives 45 cents more per hour than the other leadmen and 90 cents more than journeymen generally, is over a substantial number of employees—15—on a daily basis, makes assignments and oversees work in a manner requiring a significant degree of judgment from time to time, has at least some say in promotions, and enjoys Kindred's backing when faced with insubordination. Beyond that, if Kindred were the immediate supervisor of all 50 or so of Respondent's production employees, as Respondent contends, there would be a gross disproportion between rank-and-file employees and supervision, and many would be without effective supervision much of the workday because of the broad scope of Kindred's responsibilities otherwise and the complexity of Respondent's operation. *Luke's Supermarket, Inc.*, 228 NLRB 763 (1977); *Screwmatic Inc.*, 218 NLRB 1373, 1373-74 (1975); *Stephens Produce Co., Inc. and Temple Stephens Company*, 214 NLRB 131, 132-33 (1974); *Dexter Foods, Inc., d/b/a Dexter IGA Foodliner*, 209 NLRB 369, 370-73 (1974); *Bel-Air Mart, Inc., a Subsidiary of Mammoth Mart, Inc.*, 203 NLRB 339, 342 (1973).

Stewart's supervisory status established, it is concluded that he violated Section 8(a)(1) as alleged. More specifically, it is concluded that he unlawfully created an impression of surveillance by:

(a) Saying to Qualls, when asked why Kindred seemed to be following him into the bathroom, that it was "probably because . . . he thinks you are such a good gainzer."

(b) Saying to Qualls, after asking if "this union stuff has died down," that he was "smart enough to know that you're behind it, and so are the other guys in the office."

Saying to Qualls, after asking if he had received Shadoan's mailing: "No, you wouldn't get one; you're the one who mailed them out."

It also is concluded that Stewart uttered unlawful threats by telling Qualls that Kindred "would probably can your ass" if Qualls' and Borrelli's union activities were known, and by telling Borrelli that organizers "would be going down the road" if they persisted; and that he engaged in unlawful interrogation by asking Qualls if "this union stuff has died down," and by asking Borrelli, Qualls, and Gardner, and apparently another employee, if they had received Shadoan's mailing.

2. Paragraphs 6(c), 6(h), 6(i), and 9

Paragraphs 6(c) and 6(h) of the complaint allege that, on about June 3, 1977, Wayne Kindred "interrogated employees about their union activities and the union activities of other employees," and "promised benefits to employees for not engaging in union activity." Paragraph 6(i) alleges that, on about June 3, 1977, Michael Nelson, an employee acting as an agent of Respondent, "promised benefits to employ-

² Stewart testified that the safety committee, of which he is member, had established a policy that three warnings for a safety violation would result in discharge; and that he said to Shaw: "I am only going to ask you three times to wear your face shield, and then I am going to report it to Wayne [Kindred] and Wayne is going to let you go." Shaw's demeanor was more convincing than Stewart's, and the content of his testimony seemed perfectly plausible, while Stewart's rendition rang of contrivance.

ees if they would cease from engaging in union activities." Paragraph 9 alleges that Respondent violated Section 8(a)(1) in each instance.

The evidence. Michael Nelson testified that, while he was working in the cab of a truck in the assembly department on June 3, Kindred asked him through the cab window what "the problem" was. Nelson assertedly replied that he did not know what Kindred was talking about, prompting Kindred to state that there was going to be "a union card-signing party" that night and again to ask Nelson what "the problem" was. Nelson answered, as he recalled, that he "felt" that "one of the problems" might be that the employees "didn't get a cost-of-living raise" at the first of the year.

Kindred responded, according to Nelson, that he thought he could get the employees a cost-of-living raise if they would refrain "from signing these cards"; Nelson asked if he should "say something to the guys in the shop" about it; and Kindred told him not to get involved and left.

Nelson's version continued that Kindred returned a few minutes later and said he "sure wished that those guys would hold off on signing these cards"; that he "felt sure" he could get them a raise. Nelson testified that he again asked if he should speak to the employees about it, and that Kindred replied, "Yeah, why don't you go out and tell them . . . to hold off on signing" because a raise was in prospect.

Nelson testified credibly and without refutation that he thereupon spoke with at least four employees—Borrelli, John Burton, Edward Gardner, and George Tonolla—telling each in substance that Kindred thought he could get them a raise if they would "hold off on signing the cards."

Kindred admittedly asked Nelson what "the problem" was, explaining as he did that "we've got a lot of dissatisfied people here" and that it was his job as production supervisor "to find out what the problem is and get the problem taken care of." Kindred testified that he directed the question to Nelson because he "listens and is interested" and was "one of the guys that was discouraged." Kindred added that he could not recall Nelson's response, or if the cost of living was mentioned.

A while later, according to Kindred, he again spoke with Nelson, stressing that he "wanted to get to the root of the problem" and asking Nelson's aid "to get this thing ironed out." Nelson stated, as Kindred recalled, that he thought it was "money problems," that a cost-of-living raise was "overdue." Kindred admittedly replied that he was "sure" a raise was "in the making," and urged Nelson to "get to those guys that are discouraged, disgusted, and talk to them and not have them do anything drastic until we can see what we can do about it."

Kindred testified that, by "anything drastic," he meant that he did not want "to get [a] third party involved." Pressed by the General Counsel to state whom he thought such a third party might be, he answered: "I don't know, sir." Kindred denied making any reference to card-signing, or saying he thought the employees would get a raise if they did not sign cards, or directing Nelson to tell the employees not to sign cards.

To the extent that their versions differ, Nelson is credited. His testimony was rich in plausible, internally consistent detail, and was verified in major respects by Kindred—most notably by Kindred's admittedly asking that Nelson urge his coworkers, lest a "third party" become involved, to

desist from "anything drastic until we can see what we can do about" getting them a raise.

Conclusions. It is concluded that Kindred violated Section 8(a)(1) as alleged by asking Nelson what "the problem" was in the context of a forthcoming "card-signing party," and by holding out the prospect of a wage increase in the same context.

It is further concluded that Nelson, by carrying out Kindred's request that he tell the employees "to hold off on signing" because a raise was in prospect, was serving in an agency capacity, and that his conduct consequently violated Section 8(a)(1) as alleged. *J. A. Conley Company*, 181 NLRB 123 (1970).

3. Paragraphs 6(g) and 9

Paragraph 6(g) of the complaint alleges that Respondent announced a pay raise on about June 3, 1977, and granted it on about June 10, "to encourage employees to abandon their support of the Union." Paragraph 9 alleges that Respondent violated Section 8(a)(1) in each instance.

The evidence. On June 3, Respondent posted a Memorandum to All Employees announcing that "a general wage and salary increase of 7% is effective 5/30/77." The raise was reflected in paychecks that issued June 10.

The weight of evidence leaves no doubt that the June 3 memorandum was posted a matter of minutes after the conversations between Kindred and Nelson described in the preceding segment. Nelson testified that he first saw it perhaps 10 to 20 minutes after last talking with Kindred, and "just a few minutes after" his resultant disclosures to John Burton and George Tonolla that Kindred thought he could get them a raise if they would "hold off signing the cards"; Borrelli, that he first saw it about 10 minutes after Nelson had conveyed that information to him; and Edward Gardner, that he first saw it when he clocked out that evening. Kindred himself conceded that his conversations with Nelson preceded the posting and that both "could have been the same day."³

Jett testified that the idea of a raise first was considered on June 3, "right at the end" of a meeting "on other items" attended by him, by the company president, Dallas, and by Wilms; that this portion of the meeting lasted 10 to 15 minutes; that the Union was not mentioned during the deliberations; and that the Memorandum to All Employees was prepared and posted immediately after the meeting. Both Jett and Kindred testified that Kindred had no part in the decision. Jett adding that while he and Kindred are in frequent daily contact, Kindred had never told him before the raise decision that the employees were unhappy or that a union campaign was underway. Neither Dallas nor Wilms testified.

Respondent admittedly has no pattern of general wage increases. There were nine such increases from May 8, 1972, through the one in question ranging in amount from 5 to 7 percent, the last previous being 5 percent on August 2, 1976.

Conclusion. It is concluded that the announcement and granting of the wage increase violated Section 8(a)(1) as

³ Kindred made this concession with reluctance, earlier testifying that the posting could not possibly have occurred the day of his conversations with Nelson and that 1 or 2 weeks "could have" elapsed between the two.

alleged. Kindred's conversations with Nelson, the appearance of the raise announcement shortly after those conversations, the precipitate nature of the decision, and the absence of any pattern of increases demonstrate beyond doubt that the union situation was the motivating factor.

4. Paragraphs 6(e), 6(f) and 9

Paragraph 6(e) of the complaint alleges that on about July 20 and 21, 1977, Benny Ruthman, an employee acting as an agent of Respondent, "interrogated employees about their union activities and the union activities of other employees." Paragraph 6(f) alleges that, on about July 25, 1977, Ruthman "created the impression in the minds of employees that they were under surveillance for engaging in union activities." Paragraph 9 alleges that Respondent violated Section 8(a)(1) in each instance.

The evidence. One of the employees, Robert Shaw, testified that, shortly after the July 18 mass mailing, as he passed the parts counter on his way to clock in, Ruthman asked from behind the counter if he had received his "union booklet" yet; that he replied that he did not know what Ruthman was talking about; and that Kindred, standing opposite the counter from Ruthman, interjected: "Oh, I bet you don't."

Shaw testified that, the next day, in the same circumstances, Ruthman asked a coworker, Tommy Edwards, who was behind Shaw in line, if he had received a union card in the mail; that Edwards answered that he did not know what Ruthman was talking about; and that Kindred, again standing across the counter from Ruthman, stated: "Well, if you didn't receive it, somebody must have beaten you down to the mailbox."

Although professing an inability to recall the incidents, Ruthman admitted it is "possible" that he asked Shaw and Edwards the questions attributed to him. He denied, however, that Kindred ever made remarks of the sort assigned to him; and Kindred denied that he was ever around when Ruthman engaged in interrogation of this nature. Edwards, no longer on the payroll, did not testify.

Shaw's description of the incidents is credited. His demeanor was excellent, and his recital full of convincing detail. Ruthman's testimony, on the other hand, seemed more tailored to Respondent's wishes than to the truth; and Kindred's veracity was betrayed by a penchant for evasion, several instances of which are noted in this decision.

On a Monday shortly thereafter, as Qualls entered the plant after a weekend of visiting employee homes in aid of the Union, Ruthman greeted him: "Hey, Billy, I hear you burnt three tanks of gasoline out this weekend, trying to get votes."⁴ Ruthman then said, referring to union materials placed on Jett's desk by some of the employees: "I hear three or four envelopes already went to the office."⁵

Ruthman and Kindred are brothers-in-law, next-door neighbors, and friends. They also commute to and from work together. Kindred testified that they "make it a prac-

lice" never to talk shop except on the job, and that they discussed the Union only once, when he asked Ruthman in late July if he had been "contacted about organizing the plant." The General Counsel does not contend that Ruthman is a supervisor.

Conclusions. It is concluded that Ruthman's interrogations of Shaw and Edwards about the Shadoan mailing violated Section 8(a)(1) as alleged. Kindred was present both times, and by his comments upon Shaw's and Edwards' replies and by his relationship to Ruthman gave them reason to believe that Ruthman was on a mission for management. *Stewart & Stevenson Services, Inc.*, 164 NLRB 741, 742 (1967).

It is additionally concluded, however, that Ruthman's remarks to Qualls about burning "three tanks of gasoline" and about the "three or four envelopes" in the office did not violate the Act as alleged. There is no evidence that they were prompted by or made in the ratifying presence of management, and the record suggests that the information on which they were based came from banter among the employees that morning, rather than from management. To attribute Ruthman's conduct to Respondent in these circumstances would be to "muzzle" him concerning the union drive simply because of his relationship to Kindred—a result ignoring his Section 7 rights as an employee and a likely member of any bargaining unit to grow out of the union campaign. *F. M. Broadcasting Corp.*, 211 NLRB 560, 565 (1974). See also *Western Sample Book and Printing Co., Inc.*, 209 NLRB 384, 385, fn. 1 (1974).

C. The Alleged Violations of Section 8(a)(3)

1. The evidence

Borrelli was hired in October 1975 as a helper in the body department. He was transferred to the steel department in January 1976, and achieved journeyman status in July 1976. He did most of the heliarc welding in the plant. Kindred testified that Borrelli "caught on real good" and "did well" in his work. Qualls first worked for Respondent in 1971-72, quitting after about a year. He was rehired in October 1975, as a helper in the body department, became a journeyman in about July 1976, and was transferred to the steel department in May 1977. Kindred testified that Qualls, too, was "a good employee." Both quit on August 5, 1977, in circumstances contended by the General Counsel to amount to unlawful constructive discharges.

Borrelli and Qualls were prime movers in the latest organizational drive. Qualls triggered the drive by contacting an official of the Union, Gerald Steel, in April or May 1977, after which he met with the Union's Shadoan several times in his home, espoused the need for representation to his coworkers in the plant, provided Shadoan with employee addresses preliminary to the July 18 mailing, and devoted a weekend in late July to calling on employees in their homes about signing union cards. Borrelli likewise engaged in in-plant advocacy of the Union, aided the July 18 mailing by looking up addresses, and attended one of the Shadoan meetings at Qualls' home.

Their disclaimers notwithstanding, officials of Respondent learned of the union agitation no later than June 3,

⁴ Tr. p. 797, l. 7, hereby is corrected to read "three tanks" instead of "three tons".

⁵ Jett testified that, after the July 18 mailing, he "found a whole stack of envelopes" on his desk.

when the unlawful wage increase was decided upon.⁶ The precise date or dates that Borrelli's and Qualls' involvement became known is unclear, although plainly weeks before they quit. A tell-tale sign, perhaps, was Kindred's testimony that the work of both began to fall down in May, which happened to coincide roughly with the organizational onset, particularly since he was at a loss to support this assertion in other than the most nebulous of terms,⁷ and since employers have been known to perceive shortcomings not previously seen when union activity begins.

More concretely, Kindred admittedly knew about Borrelli by mid-July, when an unidentified employee complained that Borrelli was being "pushy" about the Union;⁸ and Stewart's conversations with Qualls, discussed above in the context of Section 8(a)(1), revealed his awareness of Qualls' and Borrelli's sympathies and activities as far back as June. Stewart conceded, moreover, that the identity of those behind the Union was "very common knowledge" around the plant, to which Kindred added that there are "a lot of rumors" in the plant and that they are "likely to get around pretty fast."

The weight of evidence leaves no doubt that Respondent harbors a considerable union animus. This was revealed by the unlawful wage increase in June, by Stewart's "can your ass" remark to Qualls later in June, by Stewart's comment to Borrelli in late July that some of the organizers "would be going down the road" if they persisted, and by Stewart's unabashed antiunionism generally. Although more remote, animus also was revealed by Kindred's remarks to Borrelli in 1976, when Borrelli asked for a raise, that Borrelli would "have to wait until the people in the office let their feathers get unruffled" following an abortive organizational try. Kindred elaborated on that occasion that Jett had been going to fire Borrelli until he satisfied himself that Borrelli had had "nothing to do with it."⁹

Even though they quit on the same day, Borrelli and Qualls did not leave at the same time, or pursuant to a joint plan. Borrelli quit before the end of his shift, in the early afternoon of the 5th, telling Kindred at the time that he was being "harassed." He assertedly made the decision the day before, upon Stewart's intimating that he had made a production error while fabricating some live lines.¹⁰ Qualls left after Borrelli, but also before shift's end, having decided to

⁶ Despite the overwhelming evidence that the wage increase was designed to blunt the union drive, Jett and Kindred both testified that they did not learn of the drive until after Shadoan's July 18 mailing.

⁷ Kindred testified that the first sign of slippage in Borrelli's work, in May, was his carelessness in fashioning some truck steps. This was "no big deal," according to Kindred, although he assertedly mentioned to Borrelli that the steps were "drooping." From then on, Kindred stated, Borrelli's performance was generally "loose" or lacking in attention, although there was "nothing to put a finger on."

The first sign of deterioration in Qualls' case, Kindred testified, was when an unidentified employee cut a hand on a weld that Qualls supposedly had not ground adequately. Pressed by the General Counsel for other signs of erosion in Qualls' work, Kindred acknowledged that there was "nothing major, nothing even to make mention of."

⁸ Kindred initially testified that he learned of Borrelli's and Qualls' involvement "not while they were there" - i.e., after they had quit. Only later, after much equivocation and with great reluctance, did he admit to the mid-July report of Borrelli's being "pushy" about the Union.

⁹ This is Borrelli's credited version of Kindred's remarks. Kindred denied making them, and Kindred and Jett denied their underlying substance. Both the content and style of Kindred's and Jett's testimony suggested frequent resort to falsehood. Borrelli was the most credible of the three.

¹⁰ Live lines are partitions installed on fire trucks to separate hoses.

do so moments before because he felt he was being treated unfairly.

Both Borrelli and Qualls received written warnings for production mistakes a few days before quitting. It is Respondent's policy, never implemented, that three warnings can result in discharge. Jett testified that production errors had become of such concern on about August 1 that he directed Kindred to "keep track" of them for purposes of seeking their elimination. Kindred testified at one point that there was "a rash of errors" at that time; at another, that production mistakes "are not that uncommon"; and at yet another, anomalously, that "there was none" except for those by Borrelli and Qualls and by helpers.¹¹ Stewart testified that there are "all sorts of production mistakes." Yet, except for three "write-ups" against Borrelli and one against Qualls, detailed below, not a single written warning issued in 1976 and 1977 for production error.¹² Such a warning will issue, according to Kindred, only if the offending conduct "looks like it's becoming a habit."

Facts pertinent to the individual situations of Borrelli and Qualls follows.

Borelli. On June 9, Kindred spoke to Borrelli about a grinding disk that apparently had been left in a truck's foam tank the previous April 16. The oversight had been detected after the truck's delivery, and was reported to Respondent on the 9th by the recipient fire chief; and Kindred felt he had isolated Borrelli's responsibility by checking work records. Borrelli, although testifying of unvoiced doubts that he was at fault,¹³ did not contest the accusation—"Okay, I guess I'm the one to blame" and told Kindred he would try to be more careful. Stewart also spoke to Borrelli about the incident, saying that "a report" would be placed in his personnel file, but that he would not be written up.

Stewart to the contrary, a written warning, dated June 14 and prepared by Kindred, was placed in Borrelli's file. It states:

Borrelli was told by D. Stewart to clean and grinded stainless steel foam tank on Florin trucks on 4-16-77. This was after he already had been told to do it. After the truck was delivered the Chief from Florin brought back a bag of metal and grinding discs out of the foam tank. This was on 6-9-77. [Borrelli] at that time was told that he was to carelessness and check over his jobs when he was finished.

Kindred testified that he "actually made the decision to formally put it on the paper" on the 14th, Jett having directed him to "make a record." Jett did not specify that a written warning issue, according to Kindred, but Kindred wrote it in that manner just the same, explaining that "that's the form I had, so I used it." Kindred first testified that he showed the warning to Borrelli "on or around the 14th," only to state later that this testimony was incorrect and that Borrelli "did not see this warning report."

¹¹ Helpers, who comprise about 10 percent of the work force, reputedly are not subject to written warning for production errors because still learning.

¹² Unless one warning issued to an employee for using too many bolts can be so considered. Kindred seemed in doubt about calling that a production error. A number of written warnings issued for such things as tardiness and absenteeism, talking too much, lack of interest in work, etc.

¹³ Another employee had worked on the truck with him.

Borrelli's performance next came up for discussion on July 28, when he was summoned before Kindred and Stewart and shown another written warning, to be placed in his file. This one, prepared by Kindred and cosigned by Stewart,¹⁴ cites the June 14 warning as Borrelli's first and this as his second, and contains this general comment:

Borrelli has been getting more and more careless recently. When a mistake or other problem has been brought to his attention he has not indicated he would try to improve. He just talks back and doesn't seem to be interested in doing better next time.

Particularizing, the July 28 warning describes Borrelli's latest transgressions this way:

On 7-18-77 D. Stewart talk to Borrelli about a set of battery box's he build out of aluminum diamond plate. Borrelli did the job wrong and Stewart explain to him that he wasted about \$75.00 of aluminum. Borrelli said to Stewart ("Well why don't you fire me") Stewart said "no I don't think I need to do that but you should know so you can be more careful in the future.

On 7-19-77 D. Stewart talk to Don Borrelli about wasting aluminum filler rod. Stewart explained to him, he was to save all pieces of rod and put on welding machine in a certain place. On 7-26-77 Stewart brought a hand full of pieces that he found on the floor after Borrelli had welded aluminum running boards.

Kindred testified that he decided to issue this warning because Borrelli's work "had fell off" and because he was "getting upset and pushy and going around with a frown on his face." Kindred elaborated that Borrelli had been "getting more and more careless recently with his mistakes," yet conceded that he had observed no signs of inattention between June 9 and July 28. He nevertheless insisted that he had detected a certain "carelessness" by Borrelli, but could not cite anything specific as illustrative.

Kindred told Borrelli during the July 28 meeting that his work had been slipping and suggested that he might be "happier someplace else." Kindred also expressed displeasure with Borrelli's horseplay, mentioning an incident the previous week when he shocked a coworker "in the ass" with the heliarac welder. Borrelli asked if all this was being raised "over the union conflict," and both Kindred and Stewart denied that it was. Kindred said that, this being Borrelli's second write up, he would be "out the door" should there be another.¹⁵

Regarding the battery-box mistake mentioned in the July 28 warning, Borrelli admittedly made a one-eighth of an inch mismeasurement, requiring that the project be redone. He detected the error himself and called it to the attention of Stewart, who then reported it to Kindred ostensibly in keeping with Jett's edict to "keep track of" production mis-

¹⁴ Explaining Stewart's participation, Kindred testified: "I do it for a witness purpose only when I have a discussion with an employee who I feel I'm going to have a problem with or we're not going to see eye to eye over it. I have a witness there for my own protection. . . ."

¹⁵ This is Borrelli's credited version of the meeting. Kindred denied suggesting that Borrelli might be happier elsewhere, that he said Borrelli would be fired if there were another write-up, and that there was any reference to the union situation. Stewart testified that no mention was made of further warnings or of the union situation. As earlier indicated, Borrelli was generally a convincing witness, while Kindred and Stewart were not.

takes. Stewart testified that he did not think that Borrelli "would be wrote up for it."

Concerning Borrelli's alleged waste of filler rod, which is used in welding, Kindred and Stewart testified that Kindred and called Stewart's attention to filler-rod waste in early June. Stewart testified that he consequently cautioned those who weld, Borrelli among them, to guard against waste. Then, on July 19, so the story goes, Kindred noticed that Borrelli had dropped reusable lengths on the floor, causing them to be unfit for further use, and told Stewart to talk to him about it. Stewart did speak to Borrelli, telling him, as Borrelli credibly recalled, that he was not to discard any pieces, even those too short for reuse, on the floor.¹⁶

On July 26, Stewart supposedly gathered up and delivered to Kindred "half a dozen pieces" ranging in length from 12 to 24 inches, representing that Borrelli had thrown them on the floor. There is no evidence, however, that Borrelli was confronted with this bundle, during the July 28 meeting or any other time. Rather, Kindred testified that he showed Borrelli several pieces 12 to 14 inches long that he had picked up. Borrelli testified, on the other hand, that Kindred displayed some pieces 4 or 5 inches long--i.e., too short for further use--and, consistent with Stewart's earlier directive, scolded him for dropping any pieces on the floor. Borrelli assertedly protested that everybody threw the short pieces on the floor, which is true, and that it was "no big deal." He testified that he did not throw reusable lengths on the floor.

Borrelli is credited that he did not throw reusable pieces on the floor and that Kindred's rebuke focused on expended rods. The warning document speaks of "all pieces of rod," and Kindred partially corroborated Borrelli by testifying that he did talk of disposing the short pieces in an orderly way "rather than toss them on the floor, if it's handy." Beyond that, had Stewart truly amassed a number of discards 12 to 24 inches long, it is inconceivable that Kindred would not have flaunted them during the July 28 meeting. Further, as previously noted, Borrelli's overall credibility was substantially more impressive than Kindred's; and, finally, the weight of all evidence indicates that Borrelli by now had become a target of petty harassment, a circumstance giving his testimony about the filler rods special plausibility.

Just as Stewart did not think Borrelli would be written up over the battery-box matter, he thought that Kindred "would talk to him" about the filler-rod waste, "but that is it."

As for Borrelli's horseplay, mentioned by Kindred in the July 28 meeting but not in the written warning, Borrelli admittedly shocked a coworker in the manner related. Stewart had seen this, and reported it to Kindred. The record established that horseplay in the plant is pandemic, assumes many forms, and generally is tolerated. The record also established that Stewart seldom if ever reports it to Kindred and himself participates at times.

On about August 1, Stewart told Borrelli that, by failing to paint under some compartment caps, he had done less than a journeyman job. Borrelli responded that the neglect

¹⁶ Stewart testified that he spoke to Borrelli only in terms of keeping "the usable stuff off the floor," and that he made no comment about pieces too short for reuse. As indicated before, Borrelli seemed the more reliable witness of the two, and so is credited.

was not his, and later ascertained that Benny Ruthman had done the work in question. Upon being so informed, Stewart told Borrelli to mind his own business.

As earlier stated, Borrelli decided to quit on August 4, when he felt that Stewart had falsely accused him of error in the fabrication of some live lines. The accusation, according to Borrelli, was followed by Stewart's making three trips to the scrap bin during the next 20 or 30 minutes, as if seeking supporting evidence. Stewart testified that he merely asked Borrelli where the other live lines were, a "normal procedure," and that, while he may well have gone to the scrap bin, that had no sinister purport—"I must go there 16 times a day."

Borrelli told Kindred of his decision to quit on the afternoon of the 5th, saying it was "best" that he leave in view of "everything that's going on and everything around here." Borrelli theorized that he was being "harassed" because of his union activities, which Kindred promptly denied. Kindred testified that he told Borrelli that he did not "think it would be necessary" that he quit.

Even though Borrelli by then was long gone, Kindred placed still another written warning in his file on September 2. It states:

On 9 2-77 Truck #2632 Livermore was in assembly dept. and we found that a [illegible] comp't shelf that Borrelli had made was 2" too narrow. We had to make and install new one. Using 22" x 72" of 12 ga. cold roll and 2 hr. labor.

Kindred testified that the mistake had been reported to him by the leadman in the assembly department, George Tonolla, and that he was able to fix the blame on Borrelli "by checking back in my records in the office to see who worked on that job." Borrelli was never apprised of this warning.

Asked by the General Counsel why he went to this trouble after Borrelli had quit, Kindred evaded that he "prepared it for my own advantage . . . just to have it . . . because I thought I might want it." He later testified that he did it because Qualls had told Stewart on August 5 that he was going to the NLRB, and that he, Kindred, "tied the two together."

Borrelli testified that, beginning in April or May, Stewart began assigning him such menial tasks as sweeping and picking up hoses; and that, after Shadoan's July 18 mailing, Stewart began directing him to close windows and turn off lights as well. He admitted, however, that he was not the only journeyman asked to do these things and that they were not difficult or time-consuming—"it was just the idea." He once asked Stewart why it took a journeyman to sweep the floor, and Stewart answered: "Because I said so." Stewart recalled a number of instances and circumstances in which journeymen were asked to sweep, and testified concerning lights and windows that "almost nightly I am asking two or three guys to pitch in and give us a hand."

Qualls. On August 2, Kindred prepared and presented to Qualls a written warning stating:

7-30-77 B. Qualls was given a job to make and install 2 steps on job #2632 Livermore. D. Stewart explained and give him drawing showing size or location. On 8-2-77 the truck was check over to see if it was completed.

It was found that B. Qualls made the step 1" wider and they hit the cab when it was raised up. B. Qualls is a journeyman and should be doing journeyman work. The step had to be done over.

Kindred told Qualls during the attendant conversation that, as a journeyman, he was "capable of better work." Qualls asked why this warranted his being written up, and Kindred said that Respondent was "trying to keep records of all mistakes." Kindred adopted a different explanation during his testimony, stating that the monitoring of production mistakes "had nothing whatsoever to do with" the Qualls warning; that it issued simply to "advise him that he can do better."

Qualls did not deny that he made the mistake as described. He detected it in the first place and reported it to Stewart, who in turn told Kindred. Stewart testified that he told Kindred because he had been instructed to report production errors. Stewart added that he was "surprised" that Qualls "got wrote up over it"—"I didn't think [Kindred] would take it that far." Kindred estimated that the mistake cost \$50 in material, plus 1-1/2 to 2 hours of labor, and acknowledged that it was "not an uncommon mistake." Stewart testified that "it was not a costly mistake."

Later on August 2, or perhaps the next day, Qualls told Stewart of a production mistake made by Ken Burton, and asked if Burton would be written up. Stewart replied that Qualls should mind his own business; then, about a half hour later, told Qualls that Burton would not be written up because still a helper. Explaining why he initially told Qualls to mind his own business, Stewart testified:

Well, I was involved in my own work and it was a simple mistake, and I didn't see any great problem to production, so I didn't think Wayne [Kindred] would want to be bothered with little stuff.

Then, on August 5, Qualls told Stewart of a production error made by Barry Orzalli and Clyde Frazee the day before. Stewart again told him to mind his own business. Countering that it was his business inasmuch as he had been written up for a mistake that was "a lot less costly," Qualls declared that, unless Orzalli and Frazee were written up, he was going to the NLRB. With that, he quit.¹⁷

Seeing Qualls leave, Edward Gardner asked Stewart what had happened. Stewart said that Qualls "just walked out," and Gardner observed that he hated to see a man lose his job like that. Stewart responded: "Well, I guess all the union representatives have left."¹⁸

Explaining why he quit, Qualls testified:

I felt I was being harassed and receiving unfair treatment, and I knew that Borrelli had received numerous employee warnings and I saw no reason to stay and get a bunch of them written up on me.

¹⁷ Contrary to Qualls, Stewart testified that Qualls did not report the Orzalli-Frazee mistake, but instead reported that someone had just "screwed up" half a sheet of metal. Stewart continued that his investigation failed to validate the report. Qualls is credited based on credibility considerations earlier noted.

¹⁸ This is Gardner's credited version of the exchange. Stewart denying the remark about union representatives, Gardner, still on the payroll, seemingly had nothing to gain by testifying adversely to Respondent, and was impressive in demeanor and recall as well. Stewart's mendacity has been noted.

2. Conclusions

It is concluded that neither Borrelli nor Qualls was constructively discharged in violation of Section 8(a)(3).

Extracting from *Crystal Princeton Refining Company*, 222 NLRB 1068, 1069 (1976):

There are two elements which must be proven to establish a "constructive discharge." First, the burdens imposed upon the employees must cause, and be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's union activities.

Taking the second element first, it is evident that the written warnings against Borrelli and Qualls, and the picking at Borrelli otherwise, were prompted by their union activities. As earlier indicated, both were known to be prime movers in the union drive as early as June, if not before; Respondent has a decided antipathy to becoming organized; and there was no history of like treatment for other employees despite the prevalence of production mistakes. Kindred's explanation that Borrelli received the July 28 warning because he was "getting upset and pushy" is particularly revealing of discriminatory motivation alongside Kindred's other testimony about a previous employee complaint of Borrelli's being "pushy" over the Union. That Borrelli's July 28 and Qualls' August 2 warnings were improperly motivated is further suggested by their temporal proximity to the July 18 Shadoan mailing and by Stewart's admitted surprise that they issued. And the closeness in time of Borrelli's June 14 warning to early June wage increase suggests that they were part of the same union-chilling scheme.¹⁹

It also is evident, at least as concerns Borrelli that if not trying to induce resignation, Respondent was pleased enough when it happened to seek to insure its permanence. Given the three-warning discharge policy, that can be the only reason for placing the third warning in Borrelli's file weeks after his departure.

It is the first element of constructive discharge—"a change in his working conditions so difficult or unpleasant as to force him to resign"—that is not satisfied in this case. Even allowing for an improperly motivated increase in menial tasks assigned to Borrelli, the content of his and Qualls' jobs did not undergo major adverse changes, and it cannot be said that the improper warnings and other harassment made their situations "so physically or emotionally impossible" as to license their receiving the benefits of discharge while quitting. *Crystal Princeton Refining Company*, *supra* at 1069. As noted in *Central Casket Co.*, 225 NLRB 362, 363 (1976), the Act provides an "appropriate and direct remedy" for most infringements of Section 7 rights without need for employees to quit, and the infringements inflicted on Borrelli and Qualls certainly come within this grouping. See generally *G. A. Dress Co.*, 225 NLRB 60, 70 (1976):

¹⁹That Borrelli was not told of the June 14 warning until receiving a second on July 28 does not militate against its having a union-chilling purpose. Rather, it indicates that Respondent was "sandbagging" Borrelli with an idea of placing him in unwitting jeopardy under the three-warning discharge policy.

United Service Corporation d/b/a Forest Park Ambulance Service, 206 NLRB 550 (1973); *F. W. Woolworth*, 204 NLRB 396 (1973); *Avondale Shipyards, Inc.*, 162 NLRB 421, 428-429 (1967); *J. W. Mays, Inc.*, 147 NLRB 942 (1964).

Although the written warnings to Borrelli and Qualls were not alleged as violations, the circumstances of their issuance were fully litigated. Consequently, it having been concluded that they were prompted by antiunion considerations, it is now concluded that they violated Section 8(a)(3) and that they are properly remediable in this proceeding.

CONCLUSIONS OF LAW

1. By imparting to its employees the impression that their union activities were under surveillance, by stating to its employees in substance that they would be discharged for engaging in union activities, by interrogating its employees concerning their union activities, and by promising and granting a wage increase to its employees to induce their withdrawal of support from the Union, all as found herein, Respondent in each instance violated Section 8(a)(1) of the Act.

2. By issuing written warnings to Borrelli on June 14, July 28, and September 2, 1977, and to Qualls on August 2, 1977, all as found herein, Respondent in each instance violated Section 8(a)(3) and (1) of the Act.

3. These unfair labor practices affect commerce within Section 2(6) and (7) of the Act.

4. Respondent did not otherwise violate the Act.

ORDER²⁰

The Respondent, P. E. Van Pelt, Inc., d/b/a Van Pelt Fire Trucks, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Imparting to its employees the impression that their union activities are under surveillance, or stating to its employees in substance that they will be discharged for engaging in union activities, or interrogating its employees concerning their union activities, or promising or granting wage increases to induce its employees to withdraw their support from Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO, or any other labor organization.²¹

(b) Issuing written warnings to its employees because of their union activities.

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

2. Take this affirmative action:

(a) Remove from its records, including the personnel files

²⁰All outstanding motions inconsistent with this recommended Order hereby are denied. 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.

²¹This Order shall not be construed as requiring that the unlawful wage increase be rescinded.

of Don Borrelli and William W. Qualls, any reference to the written warnings that issued to Borrelli on June 14, July 28, and September 2, 1977, and to Qualls on August 2, 1977, as well as the warnings themselves, and notify Borrelli and Qualls in writing that it has done so and that the warnings have been retracted.

(b) Post at its plant in Oakdale, California, the notice which is attached and marked "Appendix."²² Copies of the notice, on forms provided by the Regional Director for Region 32, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily are posted. Reasonable steps shall be taken by Respondent to insure that the notices are not altered, defaced or covered by any other material.

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

The complaint is dismissed to the extent that violations have not been found.

²² In the event that this Order is enforced by a judgment of the 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

A hearing, in which we participated and had a chance to give evidence, resulted in a decision that we had committed certain unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, and this notice is posted pursuant to that decision.

Section 7 of the National Labor Relations Act gives all employees the following rights:

- To organize themselves
- To form, join, or support unions
- To bargain as a group through a representative they choose

- To act together for collective bargaining or other mutual aid or protection

- To refrain from any or all such activity except to the extent that the employees' bargaining representative and employer have a collective-bargaining agreement which imposes a lawful requirement that employees become union members.

WE WILL NOT impart to our employees the impression that their union activities are under surveillance, or state to our employees in substance that they will be discharged for engaging in union activities, or interrogate our employees concerning their union activities, or promise or grant wage increases to induce our employees to withdraw their support from Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO, or any other labor organization.

WE WILL NOT issue written warnings to our employees because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in their exercise of rights under the Act.

WE WILL remove from our records, including the personnel files of Don Borrelli and William W. Qualls, any reference to the written warnings that issued to Borrelli on June 14, July 28, and September 2, 1977, and to Qualls on August 2, 1977, as well as the warnings themselves, and notify Borrelli and Qualls in writing that we have done so and that the warnings have been retracted.

P. E. VAN PELT, INC. D/B/A VAN PELT FIRE TRUCKS