

**Servomation, Inc. and Music, Amusement & Vending Machine Operators Div., Freight Checkers, Clerical Employees & Helpers Union Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.** Cases 32-CA-201 (formerly 20-CA-12754) and 32-RM-3 (formerly 20-RM-2114)

July 21, 1978

### DECISION, ORDER, AND DIRECTION

BY CHAIRMAN FANNING AND MEMBERS JENKINS  
AND PENELLO

On April 19, 1978, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and General Counsel filed limited cross-exceptions and a supporting brief.

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,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order as modified herein.<sup>2</sup>

### 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, as modified below, and hereby orders that the Respondent, Servomation, Inc., Berkeley, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(e):  
“(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.”
2. Substitute the attached notice for that of the Administrative Law Judge.

### DIRECTION

It is hereby directed that the Regional Director for Region 32 open and count the ballot cast by Peggy Wilcox at the election conducted in Case 32-RM-3 (formerly 20-RM-2114) on May 10, 1977, issue a re-

vised tally of ballots, and issue an appropriate certification based on such revised tally.

<sup>1</sup> 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 resolution with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd, 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

In the last paragraph of his recitation of the facts, the Administrative Law Judge inferred that the three striking employees "obviously" voted for the Union, and the three nonstriking employees voted against it. This finding is without factual support in the record, and we do not rely on it.

<sup>2</sup> In par. 1(e) of his recommended Order, the Administrative Law Judge uses the narrow cease-and-desist language, "like or related," rather than the broad injunctive language, "in any other manner." The Board traditionally provides in cases involving discriminatory discharges. The discharge of an employee for engaging in union or protected concerted activities is an unfair labor practice which goes to the very heart of the Act. We shall, therefore, modify the Administrative Law Judge's recommended Order to require Respondent to cease and desist from in any other manner infringing upon the rights guaranteed to its employees by Sec. 7 of the Act. See *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (C.A. 4, 1941).

### APPENDIX

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

After a hearing in which all sides had the opportunity to present their evidence, the National Labor Relations Board has found that we have violated the law and has ordered us to post this notice and to carry out its terms.

WE WILL NOT coercively interrogate employees concerning their union sympathies and activities.

WE WILL NOT threaten employees with loss of employment or with relocation of their work because they exercise their rights under the Act to join or maintain membership in Music, Amusement & Vending Machine Operators Div., Freight Checkers, Clerical Employees & Helpers Union Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other union, or to engage in other concerted activity protected under the Act.

WE WILL NOT promise benefits to employees in an attempt to dissuade them from supporting a union.

WE WILL NOT discriminate against any employee in his or her hire or tenure of employment in order to discourage membership in any labor organization.

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 Act. These rights include the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other protected concerted activities for their mutual aid and protection.

WE WILL offer full and immediate reinstatement to Peggy Wilcox to her former job or, if it no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings she may have suffered as a result of her unlawful termination by us, with interest thereon.

SERVOMATION, INC.

## DECISION

### STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On October 31 and November 1 and 2, 1977,<sup>1</sup> I conducted a hearing at San Francisco, California, to try issues raised by a complaint issued on July 14 pursuant to a charge filed by Music, Amusement & Vending Machine Operators Div., Freight Checkers, Clerical Employees & Helpers Union Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America,<sup>2</sup> on April 15 and a challenge to ballot cast by Peggy Wilcox in an election conducted on May 10.

Servomation, Inc.,<sup>3</sup> terminated Wilcox on April 8; her challenged ballot is determinative of the election (the vote was 3-3); the complaint alleged that the Company violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (hereinafter referred to as the Act), because it terminated Wilcox because of her union activities and further alleged that the Company violated Section 8(a)(1) of the Act by interrogating an employee concerning employee union activity, threatening an employee with closure or relocation of the accounting department if the employees in that department secured union representation, and promising an employee the accounting department employees would receive wage increases if they rejected union representation.

The Company contended it terminated Wilcox for economic reasons, denied that the alleged interrogation, threat, and promise occurred, denied that it committed any violation of the Act, and requested that the complaint be dismissed, the challenged ballot rejected, and certification of the election results issue.

Inasmuch as the issue of whether or not Wilcox was terminated because of her union activities is dispositive of both the ballot challenge and the complaint allegation that termination violated the Act, on July 14 Cases 32-CA-201

and 32-RM-3 were consolidated for purposes of hearing and resolution.

The basic issues before me are whether Wilcox was terminated because of her union activities and whether or not the alleged interrogation, threat, and promise occurred.

The parties appeared by counsel at the hearing and were afforded full opportunity to produce evidence, examine and cross-examine witnesses, argue, and file briefs. Briefs have been received from the General Counsel and the Company.

Based upon my review of the entire record, observation of the witnesses, perusal of the briefs, and research, I enter the following:

### FINDINGS OF FACT

#### I JURISDICTION AND LABOR ORGANIZATION

The complaint alleged, the answer admitted, and I find that at times material the Company, a Delaware corporation, was engaged in the retail sale of food and beverages throughout the United States and operated a facility in Berkeley, California; that during the calendar year 1976 it received gross revenues in excess of \$500,000 and during the same period purchased and received goods in California which originated outside of California valued in excess of \$50,000; and that, on the basis of the foregoing, the Company was an employer engaged in commerce in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. The complaint further alleged, the answer admitted, and I find that at times material the Union was a labor organization within the meaning of Section 2(5) of the Act.

#### II THE ALLEGED UNFAIR LABOR PRACTICES

##### A. Facts

The Company does business nationally, selling food and beverages at retail through vending machines and cafeterias at industrial plants, office buildings, hospitals, colleges, etc.<sup>4</sup> For purposes of administration, its operations are divided along geographical lines into five divisions. The Western Division consists of states in the western United States, extending from Texas in the south to Alaska in the north, and at times pertinent was headed by a company vice president, George Lane. The Western Division, in turn, is divided into three regions. Region one encompasses the area extending from northern California to and including Alaska, and at times pertinent was headed by John Snodgrass. Region one in turn is divided into six districts located at Anchorage, Alaska; Seattle, Washington; Portland, Oregon; Modesto, California; Stockton, California; and Berkeley, California. The latter district, known as the Bay Area District, takes in the San Francisco Bay Area, extending south to Mountain View, California; north to Santa Rosa, California; west to the Pacific Ocean; and east to Berkeley, California and other communities ringing the east side of the Bay. At times pertinent Harlan Nicolay was

<sup>1</sup> Read 1977 after all further date references omitting the year.

<sup>2</sup> Hereafter called the Union.

<sup>3</sup> Hereafter called the Company.

<sup>4</sup> The Company also operates the Red Barn restaurants.

in charge of the Bay Area District.<sup>5</sup> While at times past the District had three branches, one at San Francisco, a second at Berkeley, and a third at Mountain View, in early 1974 the San Francisco branch was closed and its operations consolidated with those of the Berkeley branch.

Prior to 1972 the regional and district managers in the Western Division controlled both the vending operations and the cafeteria operations within their territories; commencing in 1972, however, a dining service department was established within the division to run the cafeteria operations under a manager (Fred Niven) responsible directly to the division chief, Lane. The major cafeteria accounts administered by the District were transferred to the new department not long after it was formed, with the District retaining four or five small accounts in this category. Thus in the fall of 1977, the District was primarily engaged in the business of soliciting vending accounts, installing and servicing the machines, filling the machines with prepackaged foods and beverages, securing and packaging the products at a central warehouse, collecting receipts from the machines, calculating and paying commissions to the owners of the premises where the machines were located, paying for food, service, etc., and accounting for its operations. To conduct its operations, the District employed salesmen to solicit and service accounts, routemen to replenish the machines and collect receipts therefrom, deliverymen to replenish supplies at hostess-served locations,<sup>6</sup> mechanics to service its equipment, warehousemen, clerical employees, etc.

This case involves the clerical workers employed by the District at its Berkeley headquarters.

In the fall of 1976, there were seven clericals employed there: Dorothy Piper, telephone operator/receptionist;<sup>7</sup> Erica Alridge and Gisela Woodruff, bookkeeper/clerks; Cornelya Brown Avery Ferguson, bookkeeper/accountant; Norine Norris, secretary/clerk; Brenda Couey and Peggy Wilcox, route clerks. The seven clericals worked directly under Richard Hannon, district controller.<sup>8</sup> Ferguson was the most highly skilled and most experienced of the seven clericals; she had considerable training and experience prior to entering the District's employ and was responsible for journal entries, posting to the general ledger, balancing entries, calculating and posting accruals, preparing financial reports, analyzing cost of merchandise sold by product line, etc. Woodruff was a regular, part-time employee (normally she worked every Tuesday, Thursday, and Saturday for a total of 25 hours per week) whose primary function was to take care of accounts payable; i.e., assemble the invoices, secure totals, issue checks, etc. She also did payroll. She spent an average of 20 hours per week on accounts payable and 5 hours per week on payroll. Alridge's primary function was the calculation of commissions due the owners of the properties where machines were in operation. She also maintained field inventory records and prepared location and manual account<sup>9</sup> monthly profit and

<sup>5</sup> Hereafter called the District.

<sup>6</sup> At some locations the District maintained hostesses with the responsibility of maintaining a full supply of food and beverage items and collecting receipts.

<sup>7</sup> Piper also dispatched mechanics by radio-telephone.

<sup>8</sup> I find that at times pertinent Lane, Snodgrass, Nicolay, and Hannon were supervisors and agents of the Company acting on its behalf.

loss statements. Couey had responsibility for securing daily reports from each routeman of the number of food and beverage items he secured from the warehouse and delivered to each machine on his route, the number sold, and his collections. She also maintained perpetual warehouse inventory on those items. Wilcox performed the same service with respect to the hostess accounts for approximately 4 hours per day and spent the balance of her time as relief for Piper; assistant to Couey, Ferguson, and Alridge as need arose; and miscellaneous other assignments.<sup>10</sup> Norris' work was primarily secretarial, and Piper's work was telephone operator/dispatcher/receptionist.

In late fall of 1976, Ferguson informed Hannon and her coworkers that she was planning to leave the Company's employ in late spring or the summer of 1977.

In November 1976, the District lost the Kaiser Hospitals account, which reduced the number of hostess accounts handled by Wilcox.

Wilcox, who had earlier expressed to Hannon her interest in developing accounting skills and enrolled in an introductory accounting class at the University of California at Berkeley at company expense with Hannon's approval, approached Hannon in late 1976 with the idea of training her in Ferguson's work, inasmuch as Ferguson was leaving the following year. Hannon approved of the idea, provided Wilcox could train Piper to assume Wilcox's work on the hostess accounts.<sup>11</sup> Wilcox assented and Hannon instructed Piper to begin such instruction. Wilcox commenced training Piper in December 1976 and, with Hannon's approval, turned over the work in question to Piper in February 1977.<sup>12</sup> At that point, Wilcox began to spend most of her time working in the accounting office on the second floor<sup>13</sup> learning the general ledger work from Ferguson.<sup>14</sup>

In March, Wilcox and some of the other clericals<sup>15</sup> made contact with the Union with a view toward securing representation. About that time, Couey, in a conversation with Hannon, asked Hannon what would happen if the clericals sought union representation.<sup>16</sup> Hannon replied that the Company might make Berkeley a one-girl office, moving the district accounting work (other than the route accounting) to Modesto.<sup>17</sup>

<sup>9</sup> The cafeteria accounts.

<sup>10</sup> The cigarette stamp report (monthly), budget (biannual), inventory (monthly), profit and loss statement (monthly), sales tax report (quarterly), food order recapitulations (daily, weekly, and monthly), etc.

<sup>11</sup> Piper previously had done such work.

<sup>12</sup> Piper continued to function as receptionist/switchboard operator/dispatcher in addition to handling the hostess accounts.

<sup>13</sup> Piper and Couey worked on the first floor, as had Wilcox while handling the hostess accounts.

<sup>14</sup> She also worked with Piper on occasion when Piper needed advice or assistance, assisted the other clericals as the need arose, and continued to perform the other accounting work she previously had.

<sup>15</sup> The union supporters among the seven clericals were Wilcox, Couey, Piper, and Woodruff, as shall be developed later.

<sup>16</sup> Couey had questioned Hannon the previous December on why the clerical who handled the route and hostess accounts at the Mountain View branch was represented by the Teamsters local which represented the routemen and deliverymen there and received the same contract benefits the drivers had; Hannon explained that was the way it had always been; i.e., the Teamsters had secured recognition as the representative of both the clericals and the drivers at the San Francisco and Mountain View branches, but the Teamsters local in Berkeley had not.

<sup>17</sup> I credit Couey's testimony to this effect; she was a straightforward witness.

During that same month (March), Wilcox approached Ferguson and suggested that since Ferguson was leaving anyway, she wouldn't lose anything by joining Wilcox and the others in seeking union representation. Ferguson replied that she could not support the Union on religious principles. Within a half hour of that conversation, Ferguson discussed, as she put it, the "pros and cons" of union representation with Hannon. It was a wide-ranging discussion which included, *inter alia*, the subject of "centralization"<sup>18</sup> of accounting functions, with mention that such "centralization" occurred (with a corresponding loss of employment by the affected clericals) when the San Francisco branch was closed; loss of employment by employees called out on strike by their union representative at Ferguson's previous place of employment; and their mutual agreement that union representation was not desirable.<sup>19</sup> Ferguson subsequently informed Wilcox and other clericals that the Company would undoubtedly assign the accounting work other than route accounting of the Bay Area District to the Modesto District, the nearest district performing such functions, in the event the clericals secured union representation.

Near the end of the month (March), Ferguson announced that she had changed her mind and was not going to leave the Company's employ. Couey in Wilcox's presence asked Hannon what effect Ferguson's change of mind was going to have on her employment. Hannon assured them Wilcox would continue to have a job, working on the ledger and other accounting work, while Ferguson would continue to handle the work she had been doing since February.<sup>20</sup> He repeated this assurance to Wilcox in a later conversation that month. Wilcox continued on ledger work through the week of March 29-April 1.

On Thursday, March 30, the Union mailed a letter to the Company advising the Company that it represented a majority of the District's clerical employees at the Berkeley office and requesting recognition and bargaining for a contract covering their wages, rates of pay, hours, and working conditions. The Union's letter was received by Nicolay on Monday, April 4. Nicolay was disturbed by the letter and advised Snodgrass and Hannon of its contents; Snodgrass expressed opposition to union representation of the clericals, stated that union representation was neither necessary nor desirable, and instructed Nicolay to deny the Union's request for recognition and demand an election.

Later the same day, Nicolay asked Piper why the clericals wanted to join the Union and when Piper replied that the employees sought representation to improve their wages and benefits, stated that the accounting department might be closed and the accounting work transferred to

Modesto if the office went Union. Piper stated that would be a foolish reaction over just seven girls.<sup>21</sup> Between the date the Company received the Union's recognition letter (April 4) and the date of the subsequent election (May 10), Nicolay discussed the Company's "centralization" of all district accounting in southern California at Long Beach with several clerical employees.

On April 6, the Company denied the Union's recognition request.

While Wilcox continued on Monday, April 4, with the work commenced on April 1 of making ledger entries necessary to close the ledger for February (normally a 2-week process), on Tuesday, April 5, Hannon took her off ledger work and directed her to assist Alridge in her work. No work on the ledger was performed on Wednesday, April 6. Wilcox asked Hannon whether she should resume work on the ledger that day and was instructed to continue assisting Alridge. The next day (Thursday, April 7), Ferguson worked on the ledger. The following day, Wilcox approached Hannon and asked what was going on, to tell her straight out what was wrong. Hannon replied that since Ferguson was staying, there wasn't enough work to continue Wilcox in the Company's employ. Wilcox reminded Hannon of his statement just a short time previous, when Ferguson announced she was staying, that he was going to continue her on the ledger and continue Ferguson on other work. Hannon stated that the District would no longer be handling the manual accounts.<sup>22</sup> Wilcox replied that he knew that months ago. Hannon stated again that there was not enough work for Wilcox and her check was being prepared. Wilcox was not employed by the Company thereafter.

Since Wilcox's termination, the duties she previously performed (ledger entries, cigarette tax report, budget work, inventory work, profit and loss statement, sales tax report, food order recapitulation, etc.) have been performed by Hannon, Ferguson, Alridge, Woodruff, Couey, and Piper.

Nicolay testified that he instructed Hannon in February to lay off one of the Berkeley clericals in view of the projected transfer of the District's four remaining manual (cafeteria) accounts to the Western Division's dining service department<sup>23</sup> and the loss of several vending accounts.<sup>24</sup>

Hannon testified that he received Nicolay's alleged in-

<sup>21</sup> I credit Piper's testimony to this effect; she was a convincing witness.

<sup>22</sup> There were four manual (cafeteria) accounts handled by the District at the time; the management and accounting for three of the four were turned over to the division's dining service department on May 1 and the fourth on July 1; the dining service department's accounting was handled at the Long Beach offices of the Company.

<sup>23</sup> As noted heretofore, three of the manual accounts were transferred on May 1 and the fourth on July 1; all district accounting work on these four accounts was performed by Alridge and Woodruff.

<sup>24</sup> Between July 1 and December 31, 1976, the District lost 10 vending accounts grossing \$1,455,000, including the Kaiser Hospitals account, which alone grossed \$792,000. However, the District accounting staff was reduced by one in August 1976 (Charles Patton, assistant district controller, left at that time; Patton prior to leaving did general ledger work, account analyses, reports, and statements, and assisted Hannon in checking and supervising the work of the seven clericals; this work was redistributed among Hannon and the seven clericals after Patton's departure); between January 1 and March 31, 1977, the Company secured five new accounts grossing \$233,000 and secured seven more new accounts between April 1 and October 31.

*Continued*

<sup>18</sup> Both Nicolay and Snodgrass used this term to describe the company practice of having a single district perform accounting functions other than daily route accounting for additional districts; for example, the Modesto district office performs the district accounting functions other than route accounting for both the Modesto and Stockton Districts; the Seattle district office performs such functions for the Seattle and Portland Districts; etc.

<sup>19</sup> While Ferguson was somewhat evasive in her testimony, she conceded the accuracy of these statements set forth in her pretrial affidavit and repeated them in essence. Her testimony in this regard is credited.

<sup>20</sup> Account analysis, financial statements, reports, budget, asset inventory, etc.

struction in March and did not act upon it until April 8, when he decided to lay off Wilcox because she, while senior to Ferguson, could not assume all of Ferguson's work, and the other clericals, all senior to Wilcox, were doing satisfactory work.

None of the clericals were notified of the alleged instruction or decision until Wilcox was informed the day of her layoff; no document memorializing the alleged instruction was produced at the hearing.

The workday (Monday, April 11) following Wilcox's termination, the Company filed a petition with the Regional Office (Case 32-RM-3) seeking an election to determine if the Union represented a majority of its office clerical employees at its Berkeley District office. Two days later (on Wednesday, April 13), the Union began to picket the Company's offices for recognition; Wilcox, Couey, Piper, and Woodruff were on the picket line; Ferguson, Alridge, and Norris went through the picket line and worked. Seeing Piper on the picket line, Nicolay demanded to know what she was doing on the picket line, stating that she belonged inside performing the work the Company paid her for. Piper replied that there were some things a person had to do.

The four striking employees returned to work and the picket line was terminated on Friday, April 15, on company and union agreement to a consent election.

On May 2, Nicolay and Snodgrass summoned the Berkeley clerical employees to a meeting. Snodgrass described the Company's wage, health and welfare, and profit-sharing plans and programs; union initiation fees, dues, and assessments; the impact of a union shop agreement; the usual practice followed by a union in the event a company refuses to agree to its proposals (strike); stated that the Company was not obligated to agree to anything; stated that strikers were ineligible for unemployment benefits; and stated that the employees did not need union representation at Servomation to achieve fair benefits and treatment.

Shortly after the meeting, Nicolay and Piper had a conversation at her desk. Piper commented that the meeting had been pleasant and informative. Nicolay advised her to think seriously about union representation, that the Company provided a lot of benefits, it was "not going to forget our office workers as far as annual raises,"<sup>25</sup> and the employees did not have to have a union to secure those things. Piper replied that she hated to have to go to the Union to get increased benefits, but it seemed the only thing to do at the time.

The election was held on May 10. Norris was away on vacation. The Company contacted and persuaded her to interrupt her vacation and fly at its expense to vote in the election, which she did. The vote was three to three, with the three employees who struck and picketed obviously voting for union representation and the three clericals who refused to strike and picket voting against it. The swing vote of Wilcox, the fourth striker and picketer, was chal-

lenged on the ground that she had been terminated prior to the election.

## B. Analysis and Conclusions

### 1. The alleged interrogation and threat

I have entered findings that on April 4, Nicolay asked Piper why the clericals wanted to join the Union and when she replied that they sought representation to improve their wages and benefits, stated that the Company might close the accounting department and transfer its work to Modesto.

I find that statement ample support for a conclusion that the Company thereby interrogated an employee concerning the employees' union activities and threatened that employee with loss of work and jobs in the accounting department through relocation or "centralization" of such work at Modesto in the event that they secured union representation, thereby violating Section 8(a)(1) of the Act.

### 2. The alleged promise

I have entered findings that on May 2, Nicolay responded to Piper's comment that the preceding meeting between Snodgrass, Nicolay, and the clericals had been pleasant and informative with the suggestion that Piper think seriously about union representation, that the Company provided many and was not going to forget its office employees as far as annual raises were concerned. I have also entered findings that Hannon conducted periodic employee evaluations (at least annually) and granted increases based on his evaluation of their job performance (not granting increases if he decided the employee's work performance did not so warrant, and vice versa).

While Nicolay's statement was ambiguous and did not directly promise definite increases to the clericals at their forthcoming evaluations, it certainly implied that such increases would be forthcoming as an inducement to refrain from support of the Union.

I therefore find that the Company further violated Section 8(a)(1) of the Act by Nicolay's May 2 implied promise of certain wage increases to the clericals at their next performance reviews to induce them to refrain from or withdraw union support.

### 3. The Wilcox termination

The question here is whether the Company terminated Wilcox's employment when it did to rid itself of a union supporter prior to its bid for an election among its clericals or for valid economic reasons. As in all cases where motive is the issue, circumstantial evidence must be analyzed to reach a conclusion.

It is clear that prior to Wilcox's termination, the Company lost one major vending account (Kaiser Hospitals) and several less substantial vending accounts; the transfer of its four remaining manual accounts out of the District was anticipated; Piper had absorbed Wilcox's route accounting work; and Ferguson's decision to remain in the Company's employ relieved the Company of any need to train Wilcox to assume Ferguson's full range of duties.

1977, grossing \$211,000, while losing only four accounts between January 1 and October 31, 1977, grossing \$147,000.

<sup>25</sup> Hannon periodically reviewed the work performance of the clericals and, if he felt such performance so warranted, granted wage increases.

However, it is equally evident that Wilcox at no time did any accounting work connected with the four small, manual accounts serviced by the District's accounting staff; most of the vending accounts lost prior to Wilcox's termination were lost prior to December 31, 1976, particularly the largest of such accounts (Kaiser), along with a trained accountant who was not replaced (Patton); a substantial number of new vending accounts were secured in the first quarter of 1977 (and additional new accounts were secured thereafter); Hannon assured both Couey and Wilcox after Ferguson's decision to stay became known that the Company had sufficient work in the accounting department to keep both Ferguson and Wilcox occupied; and Wilcox continued to perform ledger work and the accounting work other than route accounting that she performed prior to moving up to the second-floor accounting office on a full-time basis.

One may readily ask on these facts what significant event or change affecting the accounting office occurred in early April 1977 to precipitate Hannon's precipitate discharge of Wilcox without advance warning or notice. The answer is clear—the Company's receipt on Monday, April 4, of the Union's demand for recognition and bargaining. The day after the receipt of the letter, Hannon relieved Wilcox of her duties on the ledger; 3 days later, Hannon terminated Wilcox, a union supporter; and 2 days after that, the Company petitioned for an election among the remaining six clericals, three union supporters and three nonsupporters.

The Company contends that Nicolay issued instructions to Hannon to lay off an accounting employee prior to Wilcox's termination, and that Hannon simply decided on April 8 to implement that instruction. The Company also contended that neither Nicolay nor Hannon had any knowledge that Wilcox was a union supporter prior to her termination.<sup>26</sup>

I find it difficult to credit Hannon's professed unawareness of any interest among the employees in union representation prior to April 4 in view of his admitted conversations with Couey and Ferguson prior to that date concerning union representation of the route accounting clerk at Mountain View and her receipt of the benefits of the IBT contract covering the drivers, the possibility that the Company would "centralize" the district accounting (other than route accounting) if the Berkeley clericals sought and secured union representation, and the undesirability of such representation. Hannon conceded that he regularly fraternized with the seven clericals at lunch, breaks, etc., and maintained constant communication with them; it is clear that he and Ferguson (a nonsupporter of the Union) were in close communication and freely discussed both on- and off-the-job concerns. Ferguson conceded that she approached Hannon and addressed him on the subject of union representation immediately after Wilcox approached her and sought her support of Wilcox's effort to secure union representation of the clericals.

<sup>26</sup> Nicolay and Hannon testified that they had no inkling that there was any interest in union representation among the clerical employees until Nicolay received the Union's recognition and bargaining demand on April 4.

On these facts, I find Hannon's denial of any union activity among the clericals in general and Wilcox in particular incredible; in a small unit of this type, it is reasonable that the employees would be discussing such an important subject on the job and that Hannon would be informed not only of the employee interest in the subject, but also which employees were most favorably inclined toward such representation, and I so find and conclude.<sup>27</sup>

Insofar as the alleged instruction is concerned, it is noted that Nicolay stated that he issued the instruction in February while Hannon testified that he received it in March; it was not memorialized; no employee was ever made aware of it; and Hannon conceded that he informed Couey and Wilcox *after the date the alleged instruction was given* that Wilcox's continued employment was assured despite Ferguson's announcement of her decision to stay in the Company's employ. On these facts, I find that no instruction was issued for Wilcox's termination nor was Wilcox selected for termination until the Union's recognition letter was received and, further, that Wilcox was selected for termination to reduce the number of union supporters among the clerical employees.

I therefore find and conclude that the Company terminated Wilcox's employ on April 8 because of her support of the Union and thereby violated Section 8(a)(1) and (3) of the Act.

#### CONCLUSIONS OF LAW

1. At all times pertinent, the Company was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization within the meaning of Section 2(2), (5), (6), and (7) of the Act.

2. At times pertinent Lane, Snodgrass, Nicolay, and Hannon were supervisors and agents of the Company acting on its behalf.

3. The Company violated Section 8(a)(1) of the Act by Nicolay's April 4 interrogation of Piper concerning the reasons why the Berkeley clerical employees were interested in union representation and his threat that the Berkeley general accounting work might be transferred to Modesto if the Berkeley clericals sought and secured union representation.

4. The Company violated Section 8(a)(1) of the Act by Nicolay's May 2 implied promise to Piper that the Berkeley clericals would receive wage increases at their performance evaluations as an inducement to refrain or withdraw from supporting the Union.

5. The Company violated Section 8(a)(1) and (3) of the Act by Hannon's April 8 termination of Wilcox's employment to reduce the number of union supporters among the Berkeley clerical employees.

6. The above unfair labor practices affected commerce as defined in the Act.

#### THE REMEDY

Since findings of unlawful company interrogation, threat, promise, and employee termination have been en-

<sup>27</sup> Cf. *The Pembeck Oil Corporation*, 165 NLRB 367 (1967); *Wiese Plow Welding Co., Inc.*, 123 NLRB 616 (1959).

tered above, I shall recommend the issuance of an Order directing the Company to cease and desist from such unlawful conduct, to post appropriate notices to its employees promising so to do, and to make the terminated employee whole by offering her reinstatement to her former job or, if that job no longer exists, to a substantially equivalent job, with all seniority and other rights and privileges restored, plus reimbursement to her of all wages and other benefits she has lost between the date of her termination and the date of her reinstatement, with the lost wages and interest thereon computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>28</sup>

In view of my findings that Wilcox was unlawfully terminated and direction that she be restored to company employment as though her employment had never been interrupted, I further recommend that the Regional Director be directed to open and count the ballot cast by Wilcox at the May 10 election, issue a revised election tally, and certify the results of such tally to the parties.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I recommend the issuance of the following:

#### ORDER <sup>29</sup>

The Respondent, Servomation, Inc., Berkeley, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their reasons for seeking and securing representation by the Union.

(b) Threatening its employees with relocation or transfer of their work to another location and consequent loss of employment if they seek and secure representation by the Union.

(c) Promising its employees wage increases at their performance reviews as an inducement to refrain or withdraw from seeking and securing representation by the Union.

(d) Terminating its employees who support the Union in order to reduce the number of union supporters among its employees and intimidate those who are retained.

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

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

(a) Offer Peggy Wilcox reinstatement to her former job or, if that job no longer exists, to a substantially equivalent job, with full restoration of her seniority and other rights and privileges.

(b) Make Peggy Wilcox whole for any loss of earnings she may have suffered as a result of her termination as provided in the section of this Decision called "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records necessary to determine the amount of payments or other obligations due under this Order.

(d) Post at its place of business in Berkeley, California, copies of the attached notice marked "Appendix."<sup>30</sup> Copies of that notice, on forms provided by the Regional Director for Region 32, shall be signed and posted immediately upon their receipt and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that the notices are not altered, defaced, or covered by any other material.

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

The Regional Director for Region 32 is directed to open and count the ballot cast by Peggy Wilcox at the election conducted in Case 32-RM-3 on May 10, 1977, to issue a revised tally of ballots, and to issue a certification to the Company and the Union based upon such revised tally.

<sup>28</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

<sup>29</sup> 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.

<sup>30</sup> 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."