

Wisconsin Packing Company and Jerome Gibson, James Carey, and Billy G. Carey. Cases 30-CA-3801-1, 30-CA-3801-2, and 30-CA-3801-3

August 23, 1977

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND
WALTHER

On March 29, 1977, Administrative Law Judge Eugene George Goslee issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and General Counsel filed a brief in answer to Respondent's exceptions.

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

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,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, Wisconsin Packing Company, Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall take the 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.

DECISION

STATEMENT OF THE CASE

EUGENE GEORGE GOSLEE, Administrative Law Judge: These consolidated cases came on to be heard before me at Milwaukee, Wisconsin, on February 14 and 15, 1977, upon a complaint¹ issued by the General Counsel of the National Labor Relations Board and an answer filed by Wisconsin Packing Company, hereinafter sometimes called the Respondent. The issues raised by the pleadings relate to whether or not the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended,

¹ The consolidated complaint in this proceeding was issued on December 16, 1976, upon separate charges filed on September 22, 1976, and duly served on the Respondent.

by failing and refusing to reinstate the charging individual employees upon the cessation of a strike and their unconditional applications to return to work. Briefs have been received from the General Counsel and the Respondent, and the briefs have been duly considered.

Upon the entire record in this proceeding, and having observed the testimony and demeanor of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. PRELIMINARY MATTERS; COMMERCE, JURISDICTION, AND LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that (1) the Respondent is engaged in the meat processing industry at its plants at Milwaukee, Wisconsin; (2) at all times material the Respondent has been a member of a multiemployer association known as the Milwaukee Independent Meat Packers Association; (3) that in the year preceding the issuance of the complaint the employer members of the Association collectively purchased goods and materials in interstate commerce valued in excess of \$50,000; and (4) the Respondent is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The complaint also alleges, the answer admits, and I find that Meat & Allied Food Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES ALLEGED

The background evidence in this proceeding reflects that a strike was called against the Respondent on January 25, 1975, and from that date until about April 26, 1976, the charging individuals Jerome Gibson, James Carey, and Billy G. Carey concertedly ceased work and participated in the strike. Although denied by the Respondent by its answer, the stipulated documentary evidence in the record reflects that on April 29, 1976,² Jerome Gibson and James Carey made a written application for reinstatement and on May 4, 1976, a similar written application was made by Billy G. Carey. The applications for reinstatement were made on forms provided by the Respondent. Jerome Gibson indicated on the form that his last job classification before the strike was the kill floor, that he desired reinstatement to his former job when a position became available, but that he would accept reinstatement in a different job for which he was qualified if his former position was not currently available. James Carey indicated on his application that the last classification he worked in was trimmer, and he applied for reinstatement when a job in his former classification became available, and also affirmatively indicated that he would accept a job in another classification. Billy Gene Carey listed his last classification as head boner, affirmatively indicated his desire for a job in that classification, but answered that he would not accept employment in another classification. The record further reveals that the three charging employ-

² All dates hereinafter are in 1976, unless specified to the contrary.

ees were the most senior of the Respondent's employees on the kill floor who participated in the strike, and that they were reinstated according to their seniority on November 29, each in the job classification held prior to the commencement of the strike.

The essentials of this case center on the General Counsel's contention that Gibson and the Careys were denied reinstatement upon application and thereafter because the Respondent granted employment preference to replacement employees who were hired during the course of the strike. Involved in this primary issue are several employees who were allegedly granted leaves of absence and allowed to return to work after the charging employees made their unconditional applications, as well as a larger number of striker replacements who were laid off, but recalled after Gibson and the Careys applied to return to work. Some of the evidence bearing on this issue was adduced through the General Counsel's primary witness, Luther Anderson.

At times material to this case Luther Anderson was employed by the Respondent as assistant superintendent at its Oregon plant; his duties included supervision of the kill floor where Gibson and the Careys were employed prior to the strike. During the same relevant period Eugene Kulaga was employed as plant superintendent at the Oregon location. Anderson and Kulaga were terminated by the Respondent in September for reasons which will be discussed below in conjunction with the credibility resolutions arrived at herein.

One of Anderson's duties during the strike was the hire of replacement employees, and those hires included Hector Godinez, Prospero Ramirez, and Gonzalo Hernandez. Godinez was hired as a legger, Ramirez as a head washer, and Hernandez as a shackler. According to Anderson each of these jobs fell within a broader classification of all-round helper, which included such additional jobs as trimming, washing cattle, and boning heads.

Anderson further testified that in October 1975, with the use of an interpreter, Hector Godinez informed him that there was an illness in his family and that he had to go to Mexico for a couple of weeks. Anderson told Godinez that if he left for Mexico he would be terminated and would no longer be employed by Wisconsin Packing. Godinez left at the end of the day, Anderson wrote terminated on his timecard and initialed it. Anderson informed Plant Manager Harry Siegelman of the termination, and Siegelman approved.

In February, again through the use of an interpreter, Anderson told Gonzalo Hernandez that he had been previously warned about absenteeism and tardiness, and further told Hernandez that he was terminated. In May, Prospero Ramirez informed Anderson that he and his brother had to go to Mexico and would not be coming back. Through the interpreter Anderson told Ramirez that he would be treated as having quit his employment.

In July Anderson and Kulaga informed Plant Manager Siegelman that there was a necessity for more help, that the supervisors were being overworked, and that if the Company wanted production more employees were needed. Anderson discussed the possibility of calling back some of the employees who had been previously terminated.

After making a telephone inquiry at the Respondent's Butler plant, Siegelman gave instructions to hire back the terminated employees, but to avoid trouble with the Union the employees were to be rehired with full seniority. Anderson further suggested that Siegelman consider bringing back some of the strikers, because of the need for experienced employees who would be immediately available. Siegelman replied, "The hell with the strikers, let them stay out there." Siegelman also instructed Anderson and Kulaga to call back the terminated employees and mark them up as having been on leaves of absence. Through relatives and friends Anderson made contact with Godinez, Ramirez, and Hernandez. The three individuals returned to work on the kill floor in the classifications in which they had previously been employed. The record reflects that Godinez was reemployed on or about September 22, that Hernandez returned to work on August 3, and Ramirez on September 7.

In addition to the three identified individuals discussed above, the documentary evidence in the record reflects that three other replacement employees were allegedly carried in a leave of absence status during times material to these cases, and were returned to work between the dates when Gibson and the Careys made unconditional application and were returned to their jobs. Elias Dominguez was hired on July 25, 1975, as a helper-headwasher; was laid off on February 27; recalled on March 26; was given a leave of absence on the same date; and returned to work on July 13. Ascensio Lira was hired on March 13, 1975; was transferred to the kill floor as an all-round helper on June 23; was given a leave of absence on June 25; and returned to work on September 13. Lazaro Mendez was hired by the Respondent on June 20, 1975; was transferred to the kill floor as a helper on October 13, 1975; was granted a leave of absence (or quit) on February 19, and returned to work on the kill floor during the week ending July 17.

It is the Respondent's contention that Ramirez and Godinez were on *bona fide* leaves of absence approved by the Company, and were recalled to work when those leaves of absence expired. In the case of Hernandez, the Respondent contends that he was laid off, not discharged, and was recalled to work during the week of August 7, when his services were needed. In support of this contention, and through Plant Manager Siegelman, the Respondent introduced timecards for the three employees purporting to show the personnel actions relevant to their departures and recalls. In the case of Prospero Ramirez, the timecard for the week of May 29 contains the entry "5/20 Mexico," with an arrow pointing to the right-hand side of the card, and the initials EK, for Eugene Kulaga. The timecard for Hector Godinez for the week of October 11, 1975, contains a similar notation, "10/6 Mexico," with an arrow and the initials EK. In the case of Gonzalo Hernandez the timecard for the week of February 14 contains the notation "Lay-off," and the timecards for the following 3 weeks contain the same entry, albeit in different handwriting and without hyphenation. Siegelman admitted in his testimony that he could not identify the handwriting on Hernandez' timecard, and it is clear that he did not make the entries on the timecards of Godinez and Ramirez. Eugene Kulaga did not testify in this proceeding.

Godinez did not testify in this proceeding, but the record does reflect testimony adduced by the Respondent through Gonzalo Hernandez and Prospero Ramirez. Hernandez testified that he was hired on June 25, 1975, as a shackler, but was laid off on January 25 by Eugene Kulaga with the explanation that there was not enough work, but that he would be recalled when work picked up. Hernandez confirmed that he was recalled to work on August 3 by Kulaga.

Ramirez testified that he was hired in February 1975 on tripe, but after 6 months was transferred to the kill floor as a head washer and trimmer. According to Ramirez his mother became ill in May, necessitating a trip to Mexico, where he was accompanied by his brother Manuel. Admittedly, Ramirez made no direct contact with the Respondent to advise of his plans, but sent word by his son, Olira, that his mother was sick and he had to go to Mexico. Olira Ramirez did not testify in this proceeding, and there is no evidence of whom he allegedly talked to or what he reported concerning his father's absence or intended date of return to work.

There is the necessity here to assess the value to be accorded to the testimony of Luther Anderson, as compared to the documentary and testimonial evidence proffered by the Respondent. The Respondent contends that all of Anderson's testimony should be discredited because he was discharged by the Respondent for reasons which reflect adversely on his honesty and integrity. In this connection Anderson testified that he was discharged by Siegelman on September 13. At the termination interview Siegelman read a document to Anderson accusing him of engaging in several counts of theft, mail fraud, and extortion under Federal and state criminal statutes. Siegelman indicated to Anderson that the underlying problem was Nate's Cleaners, a contractor used by the Respondent for custodial work. Anderson admitted in his testimony that he had been paid by Nate's Cleaners for work performed, and that he performed such work for Nate's after his regular working hours for the Respondent, and that he was not paid by the Respondent for the same time. Siegelman affirmed that he discharged Anderson, as well as Eugene Kulaga, and acknowledged that he read the contents of the letter referred to by Anderson at the termination interview.

There is no evidence in this record that criminal charges of any nature have been lodged against Anderson, and there is a similar lack of evidence that Anderson has been convicted of any crime cognizable for impeachment purposes within the provisions of Rule 609 of the Federal Rules of Evidence. The most the record reveals here is that Anderson was employed by one of the Respondent's subcontractors, that he performed custodial functions during hours he was not employed by Wisconsin Packing, and that he was paid for his services by the subcontractor. This is not evidence that Anderson's activities were in derogation of his employment responsibilities to the Respondent, and neither his conduct prior to or subsequent to his termination is grounds for discrediting his testimony. As a witness, Anderson's demeanor, candor, and responsiveness were succinctly superior to the qualities of the witnesses produced by the Respondent.

Credibility aside, there are more persuasive reasons here to accept the versions of events, conversations, and circumstances related by Anderson, and to reject the contrary evidence adduced by the Respondent. The Respondent's reliance on the validity of the leaves of absence is predicated in part on entries made on the timecards of employees Ramirez and Godinez. The timecards were introduced through Plant Manager Siegelman, who admittedly had no firsthand knowledge of the facts of the alleged leaves of absence or the entries made on the card. The best and only reliable evidence of the facts and the entries on the cards was the testimony of Eugene Kulaga. Kulaga was not called as a witness and there is nothing in the record to support even a presumption of his unavailability.

There is reason, moreover, to question the validity of the alleged leaves of absence themselves. Prospero Ramirez testified that he left on an emergency for Mexico on May 24, leaving instructions with his son to notify the Company that he would return in approximately 1 month. Olira Ramirez did not testify concerning to whom he gave the information, or what information he provided. Eugene Kulaga was the ostensible recipient of the information supposedly transmitted by Olira Ramirez, but Kulaga did not testify. The fact is that, contrary to the anticipated absence of 1 month, Prospero Ramirez did not return to the job until September 7, and there is no evidence to support a finding that he had any contact with the Respondent during the intervening period of 3-1/2 months. Under these circumstances I find it inherently improbable that the Respondent would have continued Ramirez' employment status over this period of time, and even more incredible that the Respondent would have recalled Ramirez to work with full seniority and other rights and privileges previously enjoyed. The case of Hector Godinez is even more critical. Godinez took a leave of absence on October 6, 1975, supposedly with the approval of Kulaga. Neither Godinez nor Kulaga testified, and the record is silent as to the length of time of Godinez' intended absence and the contemplated date he proposed to return to his employment. Similarly, in the cases of Elias Dominguez, Ascensio Lira, and Lazaro Mendez, who were on leaves of absence for periods of 3 months or more, there is no record evidence of what arrangements they made with the Respondent, the reasons for the leaves of absence, or the intended date of their return to work. Considering the rigidity with which the Respondent set up and applied its policy for recalling the strikers, I find it impossible to believe that the Company allowed its employees to take indiscriminate and open end leaves of absence with the stipulation that they could return to work with full seniority at any future time they chose. Furthermore, in the light of the lengths of time those who were allegedly on leaves of absence were off the Respondent's payroll, and in the absence of evidence that the Respondent knew with some definitiveness when the employees would return to

their jobs, it had the obligation under the principles of *Laidlaw*³ to offer the jobs to unrecalled strikers.⁴ Accordingly, I find that the truth with respect to the so-called leaves of absence is clearly approximated in the scope of the testimony adduced from Luther Anderson. Those ostensibly granted leaves of absence were in fact terminated, and rehired with full seniority to forestall recall of Gibson and the Careys.

There is also present in this proceeding the issue of whether the Respondent abrogated its legal obligation to Gibson and the Careys by transferring or recalling laid-off employees for jobs which the strikers were capable of performing and for which they had unconditionally applied. There is documentary evidence in the record, taken from the Respondent's personnel records, which list nine employees who were recalled from layoff and/or transferred from other departments to kill floor work after the date on which Gibson and the Careys made application to return to work. The dates of these transfers and recalls fall within the period from June 1 through September 27, and clearly bolster the testimony of Luther Anderson that the Respondent had a definite need for kill floor employees during the entire summer and fall. All of the employees transferred or recalled during this period had less seniority than any of the three unrecalled strikers, and the Respondent has made no showing that those recalled or transferred were more experienced, more reliable, or more skilled than Gibson and the Careys. On the contrary, the greater seniority of the three unrecalled strikers, and their classifications and functions performed prior to the strike, indicates exactly the opposite. The evidence also reveals that those transferred or recalled to the kill floor were employed in classifications for which the unrecalled strikers had applied for, and for which they were clearly qualified. On his application to return to work Billy Carey specified that he desired recall as a head boner, a function within the classification of all-round helper. The Respondent's personnel records reflect that one Samuel LeFlore was hired on November 25, 1975, for work in the cooler, was laid off on March 5, and was rehired on June 1 as a helper-head boner. Again, one Willie Lee was hired on October 8, 1975, worked in the boning department, and was transferred to the kill floor in the classification of (tongue trimmer) head boner on September 6.

Both Jerome Gibson and James Carey specified in their applications to return to work that they would consider recall in classifications other than those they held at the time the strike commenced. The evidence is that Gibson's prestrike classification was utility man, a highly skilled job requiring ability to perform all of the more skilled functions on the kill floor. James Carey's prestrike classification was trimmer, an upper level classification requiring a high degree of skill. Nevertheless, as the record reflects, from June 1 through September 27 the Respondent recalled from layoff or transferred seven employees to jobs on the kill floor in the classifications of tongue trimmer, all-round helper, helper, and other classifications requiring the exercise of lesser skills.

It appears to be the Respondent's contention that it was privileged to recall laid-off employees and to transfer employees from other departments to the kill floor without regard to the recall rights of the strikers. In support of this contention Plant Manager Siegelman testified that layoffs and recalls under the Respondent's personnel policies are based upon plantwide seniority. Employees employed in one classification within a department may be transferred or recalled from layoff to another classification or department if they are qualified to perform the work. Ostensibly, the Respondent's program for recall of the strikers, which was not implemented until November, was predicated on the same seniority considerations. The strikers were to be recalled in order of plant seniority in the classifications held prior to the strike but, if there were no vacancies in those classifications, the strikers were entitled to recall in order of seniority in any classification for which they were qualified. Gibson and the Careys were the most senior of the kill floor employees who applied to return to work after the conclusion of the strike, and the record is clear that each had greater seniority than the employees who were recalled from layoff or transferred to the kill floor after the effective date of their applications to return to work. There is nothing here from which to infer, moreover, that Gibson and the Careys were less than fully qualified to perform any and all of the functions performed by the nonstrikers whom the Respondent preferred. On the contrary, as expressed above, the opposite inference is required.

As to the Respondent's legal contention, it is clearly established that economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent replacements retain their status as employees and are entitled to reinstatement when jobs become available.⁵ The only exceptions to the general rule are where the strikers have acquired regular and substantially equivalent employment, or where the employer can sustain his burden of proof that the failure to offer reinstatement was for legitimate and substantial business reasons. Neither exception is a factor in this proceeding.

Under the rule of *Laidlaw*, as expressive of the principles established by the Supreme Court in *Fleetwood Trailer*,⁶ Gibson and the Careys maintained their employment status as economic strikers when they perfected their unconditional application to return to work, and in the enjoyment of this status they are entitled to be treated fairly and uniformly with the nonstrikers with respect to seniority and other benefits of the employment relationship. The Respondent has a plantwide seniority system pursuant to which employees are laid off, recalled, and transferred to other jobs according to plantwide seniority. The Respondent here could not have strictured the strikers' employment status by depriving them of their accrued seniority, or by granting the striker replacements superseniority.⁷ The Respondent's conduct here is indeed tantamount to that proscribed in *Erie Resistor*. In the face of clearly unconditional applications to return to work, the Respondent violated its own seniority policies by recalling

³ *The Laidlaw Corporation*, 171 NLRB 1366 (1968).

⁴ *Ace Drop Cloth Co., Inc.*, 178 NLRB 664, 669 (1969).

⁵ *Laidlaw Corp.*, *supra*, enf.d. 414 F.2d 99 (C.A. 7, 1969), cert. denied 397 U.S. 920 (1970).

⁶ *N.L.R.B. v. Fleetwood Trailer Company Inc.*, 389 U.S. 375 (1967).

⁷ *N.L.R.B. v. Erie Resistor Corp. et al.*, 373 U.S. 221 (1963).

and transferring employees of less seniority for jobs which Gibson and the Careys were clearly qualified to perform—superseniority actually if not nominally. The Respondent's conduct here with respect to the unreinstated strikers is also the essential equivalent of that found violative by the Board in *Transport Company of Texas*.⁸ There the employer recalled the economic strikers, but in a subsequent reduction in force selected the strikers for layoff while retaining nonstrikers and striker replacements. Unlike the instant case, the employer in *Transport Company* had no seniority policy, but the Board found nevertheless that the selection of the strikers for layoff placed them in a subordinate position solely on the basis of their participation in the strike, and the conduct violated the Act. The Respondent's treatment of the strikers here is the equivalent of a grant of superseniority to replacements and nonstrikers prohibited by *Erie Resistor*, as it is the equivalent of treating them as new hires proscribed by the Board and the Court in *Laidlaw*.⁹

The General Counsel argues on the basis of testimony adduced from Luther Anderson that the Respondent had positions available and was obligated to reinstate Jerome Gibson and James Carey immediately after they made application for reinstatement on April 29. Anderson did testify that after the strike began the Respondent was never able to fill the positions of utility man and trimmer with qualified replacements, and that these positions were filled on a catch-as-catch-can basis with nonstrikers or replacement employees who lacked the necessary skills. From my review, however, the record here is inadequate to support the General Counsel's contention. Anderson's testimony does reflect that these jobs were manned by various nonstrikers or replacements during the strike, but the record does not reflect who, if anyone, was employed in the classifications of trimmer and utility man after Gibson and James Carey applied to return to work.

Upon the whole of the record and all of the relevant and material evidence I find and conclude that the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act by failing and refusing to reinstate Jerome Gibson, James Carey, and Billy G. Carey to their former or substantially equivalent positions of employment after the said employees had made an unconditional application to return to work and the Respondent had jobs available for them. In terms of the time span when such reinstatement offers should have been made by the Respondent, I have found above that, contrary to the Respondent's contention of a leave of absence, Prospero Ramirez terminated his employment to go to Mexico on May 24, 1976. James Carey had the most seniority of the strikers who applied for reinstatement; he had agreed to accept and was qualified for the job in the classification of logger, which Ramirez abandoned, and James Carey was clearly entitled to that job as an economic striker who retained his employment status. The Respondent had two additional vacancies on June 1 in the classification of helper-head boner and helper which it filled by recalling laid-off employees Samuel

LeFlore and Ronald Hogen and transferring them to jobs on the kill floor for which Jerome Gibson and Bill G. Carey had applied and were clearly capable of performing.

III. THE REMEDY

Having found above that the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative actions to remedy the unfair labor practices and to effectuate the policies of the Act.

As I have found that the Respondent discriminated against Jerome Gibson, James Carey, and Billy G. Carey by failing and refusing upon their unconditional application to reinstate them to their former or substantially equivalent jobs, I shall order that the Respondent make the said employees whole for any loss of earnings they may have suffered by reason of the discrimination against them. The backpay due the said employees shall accrue from the date the Respondent had jobs available for them as found herein, shall be computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and shall bear interest as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

As the Respondent's unfair labor practices go to the very core of employee rights protected by Section 7 of the Act, I shall also order that it cease and desist in any other manner from interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by the National Labor Relations Act.

CONCLUSIONS OF LAW

1. The Respondent, Wisconsin Packing Company, is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, Local No. 248, Meat and Allied Food Workers, is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to reinstate Jerome Gibson, James Carey, and Billy G. Carey to their former or substantially equivalent positions of employment after said employees had made unconditional applications and when jobs were available for them, the Respondent violated Section 8(a)(3) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record in this proceeding, and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the following recommended:

⁸ 177 NLRB 180, enf. 438 F.2d 258 (C.A. 5, 1971).

⁹ The Respondent's reliance on the Board's decision in *Brooks Research & Manufacturing, Inc.*, 202 NLRB 634 (1973), as support for its contention that it was legally privileged to recall laid-off employees before recalling the strikers is clearly misplaced, and the decision more clearly supports an opposite contention.

ORDER ¹⁰

The Respondent, Wisconsin Packing Company, Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating against Jerome Gibson, James Carey, and Billy G. Carey, or any other employee who engages in protected concerted activities, by failing and refusing to reinstate said employees upon their unconditional applications to their former or substantially equivalent positions.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

2. Take the following affirmative actions to remedy the unfair labor practices and to effectuate the policies of the Act.

(a) Make Jerome Gibson, James Carey, and Billy G. Carey whole for any loss of earnings they may have suffered by reason of the discrimination against them, said backpay to accrue from the dates specified in this Decision, and to be computed and bear interest as prescribed in the Remedy section hereof.

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

(c) Post at its offices at Milwaukee, Wisconsin, copies of the attached notice marked "Appendix."¹¹ Copies of said notice, on forms provided by the Regional Director for Region 30, after being duly signed by its representatives, shall be posted by the Respondent immediately upon receipt thereof, and shall be maintained by the Respondent 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

Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

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

¹¹ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

WE WILL NOT refuse to reinstate Jerome Gibson, James Carey, Billy G. Carey or any other employee who has engaged in concerted activities protected by Section 7 of the National Labor Relations Act after said employees have made unconditional applications to return to work and we have jobs available for them.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL make Jerome Gibson, James Carey, and Billy G. Carey whole for any loss of earnings they may have suffered by reason of our discrimination against them.

WISCONSIN PACKING
COMPANY