

Banks Engineering Company, Inc. and United Electrical, Radio and Machine Workers of America.
Cases 6-CA-9230 and 6-RC-7462

September 12, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND MURPHY

On March 2, 1977, Administrative Law Judge Melvin J. Welles issued the attached Decision in this proceeding. Thereafter, Respondent filed 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 brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge, to modify his remedy,² 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, Banks Engineering Company, Inc., Export, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that Case 6-RC-7462 be, and it hereby is, severed from Case 6-CA-9230, and transferred to the Regional Director for Region 6 for further processing.

MEMBER MURPHY, concurring in part:

I agree with my colleagues and the Administrative Law Judge, for the reasons set forth in the Administrative Law Judge's Decision, that Respondent violated Section 8(a)(1) of the Act by promising benefits to employees to dissuade them from supporting the Union and violated Section 8(a)(1) and (3) of the Act by discriminatorily laying off five employees on May 7, 1976. I do not agree, however, with the further finding that the layoff of employee Regis Murphy on June 1, 1976, also violated Section 8(a)(3) and (1).

With respect to Murphy's layoff, the Administrative Law Judge stated that "it lacks the 'timing' of the May 7 layoffs, in terms of the General Counsel demonstrating a *prima facie* case." Nonetheless he found that Murphy's layoff "was the culmination

and continuation of the May 7 layoffs, and cannot be viewed any differently," because the effect was the same in that it reduced the number of employees in the unit prior to the election. However, the General Counsel's *prima facie* case was established on the basis of the timing of the May 7 layoffs, 1 day after Respondent's receipt of the Union's demand for recognition, and in the context of a promise of benefits to discourage activity. Inasmuch as this crucial timing element is lacking in the layoff of Murphy, and in the absence of any evidence relating Murphy's layoff to the earlier terminations and unfair labor practices, I conclude that the General Counsel has not made out a *prima facie* case that his layoff was discriminatorily motivated.³ I would, therefore, dismiss this allegation of the complaint.

¹ Our dissenting colleague would find lawful the June 1, 1976, layoff of Regis Murphy. In our view the Administrative Law Judge was plainly correct in stating that "having concluded that the five employees laid off on May 7 were discriminatorily laid off, it makes no sense to conclude that the later layoff was economically motivated." If Respondent's economic justification for the layoff of the five was contrived, the same justification can hardly be different for the slightly later layoff of the one, Murphy.

² In accordance with our decision in *Florida Steel Corporation*, 231 NLRB 651 (1977), we shall apply the current 7-percent rate for periods prior to August 25, 1977, in which the "adjusted prime interest rate" as used by the Internal Revenue Service in calculating interest on tax payments was at least 7 percent.

³ I do not agree with my majority colleagues' apparent conclusion that Respondent has the burden of coming forward with evidence in support of its assertion that Murphy's layoff was caused by Respondent's decline in business. For, unless and until the General Counsel makes a *prima facie* showing that the layoff was discriminatorily motivated, Respondent is under no obligation whatsoever to adduce evidence contrary to the General Counsel's allegations.

DECISION

STATEMENT OF THE CASE

MELVIN J. WELLES, Administrative Law Judge: Case 6-CA-9230 is before me pursuant to charges filed on May 10, 1976, and amended on July 15, 1976, and a complaint issued on July 28, 1976, alleging violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended. In Case 6-RC-7462, an election was conducted on July 8, 1976, pursuant to an Agreement for Consent Election, which resulted in one vote for the Petitioner, one against it, and five challenged ballots. Thereafter, the Petitioner filed timely objections to the election. On July 30, 1976, the Regional Director issued an order directing a hearing on the objections and challenged ballots, and also ordered that Case 6-RC-7462 be consolidated with Case 6-CA-9230. A hearing was held before me in Pittsburgh, Pennsylvania, on November 23 and December 7, 1976. Thereafter, Banks Engineering Company, Inc.,¹ filed a brief.

Upon the entire record, including my observation of the witnesses, I make the following:

¹ The name of Respondent appears as amended at the hearing.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT AND THE LABOR ORGANIZATION INVOLVED

Respondent, a Pennsylvania corporation (at the time of the events in this case it was a sole proprietorship), is engaged in the distribution and nonretail sale of fluid power at its place of business in Export, Pennsylvania. During the 12-month period preceding the issuance of the complaint herein, Respondent sold and shipped goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania. I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. United Electrical, Radio and Machine Workers of America, the Charging Party in Case 6-CA-9230 and the Petitioner in Case 6-RC-7462, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The Facts*

On January 15, 1976, Respondent's production employees presented a list of "benefits" they were seeking to Respondent's president, Ed Banks, requesting a meeting on January 31 to discuss them. On receiving the list from the employees, Banks said to them, "This looks like a union."² Employee Kunzler told Banks there was "no feeling towards joining a union." On January 21, 1976, Banks met with the employees. According to Alekna, Banks told the employees he saw "no need for a pension program," that he did not believe in any "regular pay schedule, that if you wanted a raise, to come and see him personally," that he did not believe in sick pay, for it "would be taken advantage of, it would be like another five days vacation," and that hospitalization would be discussed at another date. Banks said that January 31 was not long enough to permit him to reply to the employees' demands, for he had to "talk it over" with his father, John Banks.³

Banks did not get back to the employees on any of these matters until after the employees agreed not to punch in, early in April, without an agreement from Banks to talk with them about the demands. Banks then promised the employees he would meet with them "the middle of April." According to Banks, he also told the employees that he and his wife were working to find the employees a better benefit plan and that it took time to accomplish all that. Banks testified that he had numerous meetings with both his father and his wife between January and April concerning the group's demands, with particular reference to hospitalization and pensions, and that he called various insurance companies and hospitalization organizations (e.g., Blue

² Employee Alekna testified that Banks said, "I smell a union." The two versions are not so dissimilar, in terms of their bearing on this decision, to necessitate resolution.

³ Banks' version of this meeting, on direct examination, was rather cursory. He went into more detail on cross-examination, confirming in large part Alekna's testimony regarding this January 21 meeting and adding that he told the employees he would "look into" paid holidays and the "vacation schedule."

¹ This does not include the meeting with only the production employees early in April, referred to above.

Cross). Banks also designated an employee to get information about "safety shoes."

Three meetings were held by Banks in April with all employees.⁴ At the first, on April 7, a Blue Cross representative was present; he explained to the employees their present coverage and left literature about other plans or changes that were possible. On April 22 and 29, meetings of the same general nature were held with a Prudential representative, James Fidele, present to discuss and explain his company's health care plan. It was indicated by Ed Banks at the April 22 meeting that the plan would be put into effect unless there were serious objections and that the April 29 meeting would be the occasion for the latter, if any, to be voiced. Banks then announced the plan's effectiveness, as of June 1, at the April 29 meeting. He also told the employees at that time, according to him, that the Company was very serious about incorporating, and that a pension plan would follow.⁵

On April 29, employee Alekna called Union Representative Edmund Bruno and arranged for a meeting to be held on May 3. Eight of Respondent's employees, Alekna, Kline, Dewalt,⁶ Sansonetti, Sevier, Hayford, Clark, and Murphy, were at this meeting and all signed union cards. At another union meeting held on May 5, one more employee, Ed Moore, signed a union authorization card, and a determination was made to request Respondent to recognize the Union. That same day, Bruno wrote to the Company requesting recognition, the letter being received by the Company "sometime in the afternoon" the next day, May 6. Later that afternoon, shortly before 5 p.m., Ed Banks convened all the employees at a meeting. Banks told the employees (according to Alekna) that the Company would be incorporated, that there would be a pension plan and "other benefits." He made no mention of possible layoffs or of lack of orders at this meeting. Employee Regis Murphy corroborated Alekna's testimony, adding to it respecting specific benefits, "I think an increase in wages and possibly vacation, better insurance plan."⁷ Ed Banks himself confirmed that he told the employees that the Company had decided to incorporate, that they were proceeding with the pension plan, and that "there would be other benefits."

The next day Respondent laid off employees Alekna, Dana Clark, Dave Hayford, Dave Sansonetti, and Wil Sevier, calling these employees in toward the end of the workday and telling them that they were being laid off for lack of work. A sixth employee, Regis Murphy, was laid off by Banks on June 1, being told that the Company was running low on business and that Banks had planned to lay him off the week before but let it go because of the Memorial Day holiday.

The Union subsequently filed a petition for an election and one was held on July 8. Its results were as follows: one

⁵ Although there is some conflict in the testimony of the various witnesses as to precisely what was said at this meeting, I accept Ed Banks' version, which was essentially confirmed by Prudential agent Fidele.

⁶ Dewalt's ballot at the July 8 election was challenged.

⁷ On cross-examination, Murphy indicated uncertainty whether vacations or a wage increase were specifically mentioned by Banks, and that he was sure only of the fact that Banks spoke of increased benefits.

vote for Petitioner, one vote against, and five challenged ballots. Four of the challenges, those of Sansonetti, Sevier, Alekna, and Murphy, were of employees alleged to have been discriminatorily discharged. A fifth, Dewalt, was challenged because his name did not appear on the list of eligible voters.

The day before the election, employee William Kline, still employed at the time of the hearing herein, spoke with Ed Banks, who explained to Kline that the Company was not making as much as it should, but that he "hoped in the future to build it back up and hire back a couple of men." Banks, on cross-examination, indicated that he could well have said that he was going to hire "new shop employees."

The foregoing facts constitute the General Counsel's "affirmative case" with respect to the complaint's allegations that Respondent violated Section 8(a)(1) by promising benefits to its employees on May 6, and Section 8(a)(3) and (1) by laying off five employees on May 7 and a sixth on June 1.

Respondent defends as to the 8(a)(1) allegation by pointing to the various meetings held, both with employees and among management personnel, as part of the "entire program of increases in economic benefits which took place between January and May," all demonstrating, so Respondent argues, that Respondent's motive for its May 6 "discussions" was not to interfere with its employees' union organizational campaign, and was not based on the Union's demand for recognition received a few hours earlier.

With respect to the 8(a)(3) allegations, Respondent asserts that the layoffs were wholly economic in nature, necessitated by declining business in the Company's fluid power production operations and brought to a head by the final decision of its biggest customer, Bailey, not to place a large order with Banks, a decision communicated to Banks on the morning of May 7. The testimony with respect to Respondent's defenses will be evaluated in the ensuing discussion.

B. Discussion

1. The violation of Section 8(a)(1)

As the facts set forth above show, and on this there is no dispute, within a few hours after Respondent received the Union's request for recognition, President Ed Banks called all the employees to a meeting and announced that the Company would be incorporated and there would be a pension plan and "other benefits." Even though Respondent had been working on increasing benefits for its employees, the evidence shows that it took a short work stoppage in April to get Respondent to "meet" with respect to the January demands, that Banks did not "get back to" the employees in the few weeks he had promised at the early April meeting, and that the employees then went to the Union, with virtually all of them signing union cards. The almost immediate holding of a meeting following the Union's demand for recognition cannot be viewed other than as directly responsive to that demand. There had been no meeting scheduled for that day nor were any insurance agents coming to speak with the employees. Even assuming that Respondent's promise of "other benefits" meant no

more than what had previously been discussed, there had not prior to May 6 been any promise of other benefits, specific or nonspecific. On the record as a whole, I am convinced that the purpose of the May 6 meeting, with its announcements of the specific benefits and other benefits to employees, was for the purpose of dissuading the employees from further union activity, and that Respondent thereby violated Section 8(a)(1) of the Act.

2. The violation of Section 8(a)(3)

The following sequence of events — (1) 9 of the approximately 10 production employees joined the Union on May 3 and 5; (2) the union demand for recognition was received by Respondent on the afternoon of May 6; (3) President Banks met with employees later that afternoon to announce benefits; and (4) 5 employees were laid off on May 7 — without more, establish a *prima facie* case of discrimination with respect to the May 7 layoff. As Respondent notes in its brief, the burden of proof of refuting that *prima facie* case then shifted to it.

The key to the General Counsel's case being the timing of the discharges in relation both to the Union's demand for recognition and the May 6 meeting with employees, Respondent can satisfactorily carry its burden only by demonstrating at least a reasonable explanation for the five layoffs occurring on May 7.

There is ample evidence, presented by Respondent, to show that its fluid power production work had fallen off. Koppers Company, which had been responsible for approximately 20 percent of Respondent's production work during 1975, had not given any new orders to Respondent since 1975, there was no prospect of any future orders, and all work on old business from Koppers had been completed by March 1976. Several small customers, such as the Lee Norris Company, which had given Respondent about 5 percent of its production work the preceding year, had not come through with any new orders since 1975. Respondent's biggest customer had been the William Bailey Company, a subsidiary of Millcraft Industries. In April 1976, Millcraft formed a subsidiary corporation, National Fluid Systems, Inc., which was to produce the same type of equipment as Respondent. According to Ed Banks, he found out about the formation of National Fluid Systems in the early part of April, and had his office manager verify that National Fluid Systems was owned by Millcraft. At that time, Respondent had pending with Bailey a bid (the Fairfield job). According to Ed Banks, his first talk with anyone from the Bailey Company was with Don Howell, who dealt with Banks with respect to Banks' bids for Bailey work, on May 5. Banks testified that Howell told him on that date that Millcraft had purchased National Fluid Systems, that Banks replied he was aware of it, and Howell said that Banks "would or could not get the Fairfield order." That same day, according to Banks, he wrote a memorandum to his father, John Banks, recommending "that we consider a major reduction in our employment until such time that business picks up This is in view of Millcraft's purchase of National Fluid Systems (automation) — We are losing the Bailey account since they are owned by Millcraft also" The memorandum goes on to state that Koppers had not given

any new orders to the Company since 1974 (the testimony shows 1975), and concludes by recommending that "we immediately reduce our shop employees . . . by 50%, and . . . front office by one office person."

As noted above, Respondent received the Union's demand for recognition on the afternoon of May 6, and held the employee meeting about benefits later that same afternoon. The next day, May 7, according to Ed Banks, he received a call from Howell informing him that the decision had been made to give the Fairfield job to National Fluid Systems. Because of this call from Howell, Banks testified, the Company proceeded with the plan outlined in the May 5 memorandum and laid off five employees.

Howell testified that, on May 10, he actually wrote the requisition to National Fluid Systems for the work Respondent had bid on with Bailey. He said that "Some time prior to that I had talked with Ed Banks and told him that we had formed a company and this could affect our business relationship and it was quite possible that the new company would get the order for the hydraulic systems. I am sure it was only a short time prior to my writing the order because I really didn't know until maybe—it had to be less than a week before I had written as to where the order definitely would go." He then stated that it was the "Wednesday, Thursday, or Friday before the week of May 10 that he told Banks that he "would not get that order [the Fairfield order]." Howell went on to testify that, at some previous time, he had told Banks that Bailey had formed a company of its own, but that he was not sure that this new company would get the order which Banks had bid on. On cross-examination, it was brought out that Howell had stated, in an affidavit to a Board agent, "On or about April 15th I told Ed Banks, president of Banks Engineering Company, of this transaction that National Fluid Systems Corporation would obtain Bailey's business which had formerly gone to Banks Engineering Company. Ed Banks said he had heard something about this transaction." Howell verified, on the stand, that he did have a conversation with Banks in April (the "middle of April, it could have been a week later, it could have been a week earlier") but stated that, "I overlooked a word in here, I guess, because when I told Ed Banks about this originally my statement was to him that this company could obtain our business, although I was hoping that our business would continue as it had in the past . . . So I would say that what has happened here is that I have overlooked a word in here and it should have said 'could obtain Bailey's business.' "

Both on cross-examination and on redirect examination, Howell was quite unsure of the precise dates or the contents of his conversations with Ed Banks, a conclusion I reach from his testimony that "I cannot say for sure" whether National Fluid Systems was discussed with Banks on May 5; "I don't really know" whether he telephoned Ed Banks on May 5; "I may have called him to tell him I was coming or something, I'm not really sure," again with reference to a possible May 5 telephone call; "I cannot say specifically whether it was after that [May 5] or not, I

suspect it was but I'm not sure," with reference to when he notified Banks he was not getting the Fairfield job.

As indicated earlier, there is ample evidence that, even apart from the Bailey order upon which Respondent had submitted a bid, Respondent's production business had declined so that by the beginning of April it had lost its second largest customer, Koppers, and several smaller customers, and from March to May its production employees had been averaging about 30 percent of their time weekly in maintenance-type work, as against a normal average of less than 5 percent on maintenance-type work. These facts, particularly when coupled with Respondent's knowledge, by the middle of April, that Millcraft had set up National Fluid Systems, which knowledge surely must have indicated a strong possibility that Banks would not get the Bailey work,⁸ would have made a layoff or discharge of many of the production workers in the middle of April appear to be an eminently sound and prudent economic move. But Respondent did not lay them off or discharge them at that time; rather, it kept all the employees on the payroll until the day after the Union's demand for recognition was received, and then laid off approximately half of them.

The General Counsel having supplied one explanation—the Union's recognition demand—for the selection of May 7 as the day to lay off half the employees, it was incumbent upon Respondent to supply some other reasonable explanation for the selection of that date—something more than what had been the situation for some time with respect to Koppers' business, as well as some other relatively small customers, and something more than what the handwriting on the wall already indicated was the case with respect to Bailey's business. Respondent's attempt to show a different explanation, a telephone call from Howell the morning after the Union's demand was received to the effect that the "Fairfield job" was definitely going to National Fluid Systems, would, if demonstrated to have been the fact, have completely demolished the General Counsel's explanation and furnished a convincing basis for the May 7 layoff occurring on that day. I am convinced, however, that no such phone call was made by Howell to Banks on May 7. Even accepting Howell's explanation of his statement to the Board agent having been not precisely what he said (a matter of "could" rather than "would"), his confirmation of the talk having been about the middle of April, which also comports with his testimony that "sometime previous to this" (the "this" being early in May) he told Banks that "we had formed a company of our own," contradicts Banks' testimony that the first he heard from Howell about National Fluid Systems was on May 5. Indeed, Banks' timetable, with Howell on May 5 telling him that Banks might not get the work, only 2 days later telling him it was definite that Banks would not get the work, and the actual requisition by Bailey to National Fluid Systems only 3 days after that, sounds extremely unlikely.

I conclude that Howell did *not* inform Banks, on May 7, that the Bailey business was definitely lost to Respondent, but that he had already informed Banks, as his affidavit states, that Respondent would not get that business, about

⁸ Why else, indeed, would Banks have had his office manager check out National Fluid Systems to determine whether that company actually was set up to perform the same type of work as Banks Engineering Company?

the middle of April. Whatever the precise words used by Howell at that time, I am convinced that they conveyed much more than a mere possibility of the work in question going to National Fluid Systems instead of to Banks Engineering Company.

In the light of that conclusion, which I believe is impelled by all the evidence, Respondent's attempt to show an explanation for the May 7 layoff other than the receipt of the Union's demand for recognition on May 6 has failed. I find, accordingly, that the General Counsel's *prima facie* case has not been rebutted, that the layoff of May 7 was caused by the Union's demand for recognition of May 6, and that Respondent thereby violated Section 8(a)(3) and (1) of the Act.

As to the June 1 layoff of Regis Murphy, although it lacks the "timing" of the May 7 layoffs, in terms of the General Counsel demonstrating a *prima facie* case, having concluded that the five employees laid off on May 7 were discriminatorily laid off, it makes no sense to conclude that the later layoff was economically motivated. The June 1 layoff, that is, was the culmination and continuation of the May 7 layoffs and cannot be viewed any differently. I find, accordingly, that Respondent also violated Section 8(a)(3) and (1) of the Act by laying off Regis Murphy on June 1.

C. The Challenges and the Objections

Having found that Respondent discriminatorily laid off employees Sansonetti, Sevier, Alekna, and Murphy, I find that the challenges to their ballots should be overruled. With respect to Jack Dewalt, whose ballot was challenged because his name did not appear on the list of eligible voters, I find, on the rather meager testimony in the record, that he was in fact a supervisor and I shall accordingly sustain the challenge to his ballot. If, when the Regional Director shall have opened and counted the ballots as to which I have overruled the challenges, the Union receives a majority of the valid votes cast, there would be, of course, no need to rule on the Union's objections to the election, based on Murphy's discharge within the critical period. In the event that the Union does not receive such a majority, then, with Murphy's discharge also having been found violative of Section 8(a)(3) and (1), I would recommend that the election be set aside.

CONCLUSION OF LAW

Respondent, by promising benefits to employees to dissuade them from supporting the Union and by discriminatorily discharging or laying off employees David Hayford, Wilbert Sevier, David Sansonetti, Dana Clark, James Alekna, and Regis Murphy, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

THE REMEDY

I shall recommend that Respondent cease and desist from its unfair labor practices, and post appropriate notices. Having found that Respondent discriminatorily laid off the employees set forth above, I shall recommend that Respondent offer reinstatement to them, with back-pay, computed as provided in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis PlumJing & Heating Co.*, 138 NLRB 716 (1962).

The General Counsel's request for a bargaining order was made in the alternative. He stated at the hearing that "If, in fact, it is found that the alleged discriminatees were, in fact, discriminated [sic] for unlawful reasons and their ballots be counted in the election, it should be obvious that if, in fact, that is the decision, no remedial bargaining order would be necessary." In the light of that statement, I shall not issue any bargaining order herein. If the Union does not in fact receive a majority when the ballots, as to which I have overruled the challenges, are opened and counted, the General Counsel may move to reopen Case 6-CA-9230 to request a bargaining order.

Upon the foregoing findings of fact, conclusion of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁹

The Respondent, Banks Engineering Company, Inc., Export, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, laying off, or in any other manner discriminating against employees because they have engaged in union activities.

(b) Promising benefits to employees to dissuade them from union activities.

(c) In any other manner interfering with, restraining, or coercing their employees in the exercise of their rights protected by Section 7 of the Act.

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

(a) Offer James Alekna, Dana Clark, Dave Hayford, Dave Sansonetti, Wil Sevier, and Regis Murphy immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered, in the manner set forth in the section hereof entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of backpay due under the terms of this recommended Order.

⁹ 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.

(c) Post at its place of business in Export, Pennsylvania, copies of the attached notice marked "Appendix."¹⁰ Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by an authorized representative of the Company, shall be posted immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places at all locations 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.

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

IT IS FURTHER ORDERED that Case 6-RC-7462 be severed from Case 6-CA-9230 and transferred to the Regional Director for Region 6 for further processing.

¹⁰ 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 discharge or otherwise discriminate against any employees because of their union activities.

WE WILL NOT promise our employees benefits to dissuade them from union activities.

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

WE WILL offer reemployment to James Alekna, Dana Clark, Dave Hayford, Dave Sansonetti, Wil Sevier, and Regis Murphy, and WE WILL pay them for losses they suffered as a result of our having discharged them.

BANKS ENGINEERING
COMPANY, INC.