

**Zurn/N.E.P.C.O. and Northern Michigan Building & Construction Trades Council and its affiliated Unions.** Cases 7-CA-33443, 7-CA-33672, 7-CA-33838, 7-CA-33920, 7-CA-33982, 7-CA-34089, and 7-CA-34532

August 22, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

This case presents issues arising from efforts by several building trades unions to organize the Cadillac, Michigan worksite of the Respondent, Zurn/N.E.P.C.O., and from Zurn's actions in opposition to those efforts. In a series of three attached decisions, Administrative Law Judge Karl H. Buschmann found that Zurn violated Section 8(a)(1) of the Act on numerous occasions by threatening and interrogating employees and applicants for employment, by prohibiting employees from wearing union insignia, and by enforcing a no-solicitation rule in a discriminatory manner. The judge also found that Zurn violated Section 8(a)(3) by laying off its pipefitting crew because they engaged in union organizing activities. Applying the principles set out by the Board in *FES*, 331 NLRB 9 (2000), *enfd.* 301 F.3d 83 (3d Cir. 2002), the judge in his second supplemental decision further found that Zurn violated Section 8(a)(3) by discriminating in hiring against applicants with union backgrounds.<sup>1</sup>

The Board has considered the judge's decisions and the record in light of the parties' exceptions and briefs,<sup>2</sup> and has decided to affirm the judge's rulings,<sup>3</sup> findings,<sup>4</sup>

<sup>1</sup> The judge arrived at the same legal conclusion in his initial and supplemental decisions, which issued prior to *FES*. Pursuant to the Board's second remand, the judge reaffirmed his earlier decisions using the analysis prescribed in *FES*.

<sup>2</sup> We deny the Respondent's motion to strike the Charging Party's cross-exceptions and brief. We find that while the Charging Party's exceptions and brief do not conform exactly to the Board's Rules and Regulations, they are not so deficient as to warrant striking.

<sup>3</sup> We find no merit in the General Counsel's exceptions to the judge's denial of his motion to consolidate this proceeding with Case 12-CA-15833, *et al.* The judge denied the motion on May 12, 1994, the final day of hearing, on the ground that consolidation would not result in a speedier or more efficient disposition of both cases. In any event, since the Board issued its decision in Case 12-CA-15833 (*Zurn/N.E.P.C.O.*, 329 NLRB 484 (1999)), several years ago, the entire matter is moot.

We likewise reject the Respondent's claim that the judge deprived it of procedural due process by granting the General Counsel's numerous complaint amendments made during and after the hearing. As the judge found, the granted amendments did no more than specify persons or matters substantially encompassed within the complaint or amended complaint and were fully litigated. Moreover, the Respondent has not demonstrated that it was surprised by, or denied ample opportunity to prepare a defense to, any of the amendments.

and conclusions as modified, and to adopt the judge's recommended Order as modified and set forth in full below. Specifically, we agree with all of the 8(a)(1) violations found by the judge except for his finding that Zurn unlawfully enforced its no-solicitation rule. We also agree with the judge that Zurn's layoff of the pipefitters violated Section 8(a)(3). And, as we explain in detail below, we find that Zurn discriminated against union applicants in hiring, but only in certain instances. Unlike the judge and our dissenting colleague, we do not find that Zurn operated its entire hiring process in a discriminatory manner.<sup>5</sup>

I. FACTS

A.

A local consortium contracted with the Respondent, a general contractor headquartered in Washington State and Maine, to build a cogeneration plant in Cadillac, Michigan. Before it started hiring for the project in April 1992,<sup>6</sup> the Respondent entered into an arrangement with a State agency, the Michigan Employment Security Commission (MESC), to register applicants for jobs at the project and to process their applications. In late January, after numerous union members had attempted to apply for jobs directly, the Respondent informed the Charging Party Unions that it would not be accepting direct applications, but instead that MESC would process all applications. The Unions (Boilermakers, Carpenters, Electricians, Ironworkers, Millwrights, Pipefitters, Sheet Metal Workers, and Operating Engineers) then began sending their members to the MESC office to register for positions. Ultimately, at least 439 applicants affiliated with the Unions registered with MESC. See Second Supplemental Decision, appendices A and B.

Under the regular MESC job-placement procedure, applicants registered for jobs by going to the MESC office in Cadillac and filling out a MESC registration form (Form 2511) listing their job skills and work experience. MESC officials would interview the applicants and enter the information on a computer. Employers could then request MESC to refer registrants with appropriate job

<sup>4</sup> The parties have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>5</sup> Member Liebman agrees with the majority's adoption of the judge's decision, as modified, except that she dissents separately from the majority's failure to find that Zurn's manipulation of its hiring policy demonstrates an overall pattern of discrimination against union applicants.

<sup>6</sup> Unless otherwise stated, all dates refer to 1992.

skills, and the MESC computer would generate a list of registrants (in order of their expressing an interest in working for a particular employer, or of their registration dates). MESC would contact the individuals, who would be called into the office to fill out a generic work application for a position, which would be forwarded to the requesting employer.<sup>7</sup>

The Respondent, however, came to a special arrangement with MESC called a “custom referral agreement.” Under this arrangement, instead of referring qualified individuals to the Respondent in the order in which they registered, MESC agreed to honor Respondent’s priority hiring system. This system, known as policy 303, gives priority in hiring to qualified applicants who are present or former employees of the Respondent, or who have appropriate work experience and have been referred by current managers, supervisors, or employees of the Respondent.<sup>8</sup> Thus, MESC would register individuals with priority under policy 303 and refer them to the Respondent on a “name call” basis ahead of other, nonpriority registrants (even those who had registered before the priority registrants).

#### B.

In April, construction work began on the Cadillac project with the hiring of 4 electricians and then 13 pipefitters. Several carpenters and individuals in other crafts were also hired in the first few months.

In May, the Charging Party began scheduling regular organizing meetings with the Respondent’s employees, which were attended by 13 pipefitters and several carpenters. On May 18, the Respondent’s resident manager

<sup>7</sup> MESC’s original policy was that registrations stayed active in the system for 30 days. In late February 1992, MESC extended the active period to 6 months. However, the active period was extended an additional 6 months whenever the registrant had contact with the MESC office in question.

<sup>8</sup> Policy 303 is contained in the Respondent’s field policies and procedures. It states that:

Consideration of qualified applicants will be prioritized as follows:

1. Current Company employees who are eligible for continued employment with the Company, and have obtained an approved release by the Resident Manager.
2. Former Company employees eligible for rehire.
3. Individuals who have appropriate prior work experience recommended by a current Company supervisor or manager.
4. Individuals who have appropriate work experience recommended by current employees.
5. Individuals who have applicable work experience in the construction of cogeneration or power plants.
6. Individuals who have applicable work experience on industrial construction projects.
7. Individuals qualifying for JTPA or T.
8. All other qualified applicants.

Within each of the above categories, consideration of qualified individuals within the immediate local area will be given first.

assembled the employees and announced that soliciting was prohibited and threatened to fire anyone caught soliciting. A few days later, the Respondent laid off its electricians.<sup>9</sup>

On June 2, several of the Unions notified the Respondent of their organizing efforts and identified their employee organizers. Sometime in early June, the pipefitting crew began wearing union insignia on the jobsite. On June 12, the Charging Party notified the Respondent’s superintendent that seven pipefitters, among others, were members of the organizing committee, and that it was demanding recognition on behalf of the Respondent’s employees at the Cadillac jobsite.

On June 18, the Unions held a rally at the Respondent’s gate, which was attended by pipefitting crew members on their lunchbreak. The pipefitters returned to work wearing union insignia. That afternoon, the Respondent laid off the entire pipefitting crew, assertedly for lack of work. In July, the Respondent hired two firms to complete the piping work.

After laying off the pipefitters, the Respondent began its main hiring of construction craft workers to build the plant, i.e., carpenters, boilermakers, ironworkers, millwrights, pipefitters, and operating engineers (as well as others), with the last hires occurring in April 1993.

#### C.

Unfair labor practice charges were filed against Zurn on July 1, September 2, October 19, November 13, and December 4. On December 5, several of the Respondent’s employees struck over the Respondent’s alleged labor law violations, including its failure to hire union applicants. Other employees and individuals joined the strike activity. On December 8, the Charging Party contacted the Respondent and made an unconditional offer to return to work.<sup>10</sup> Around December 9, MESC discontinued making “name call” referrals to the Respondent, reverting to its usual “first in, first referred” method in reaction to the Respondent’s requesting 70 more “name call” applicants on a preferred basis.

After the strike began, the Respondent attempted to contact 39 union applicants, identified as discriminatees in the Union’s charges filed with the Board, with alleged offers of employment. Respondent’s personnel manager, Louis Sullivan, telephoned the applicants around December 8. His successor, Tom Brigham, sent followup letters on December 23, with responses due by December 30 (later January 4, 1993). Many of these applicants

<sup>9</sup> There are no exceptions to the judge’s finding that the Respondent’s layoff of its electricians was lawful.

<sup>10</sup> The record indicates, contrary to the judge’s finding, that the Charging Party withdrew its offer on December 16.

expressed interest in employment, but only one was ultimately hired.

#### D.

The judge found that, over the course of the Cadillac project, approximately 1700 persons registered with MESC to work for the Respondent, and 1057 completed MESC Form 2511. Four hundred thirty nine of those applicants had union backgrounds. The Respondent hired 202 employees in the trades that the Union sought to represent: carpenters, millwrights, ironworkers, pipefitters, boilermakers, electricians, and operating engineers. Fifty of the successful applicants had union backgrounds. According to Respondent's Exhibit 57, 169 of those hired, including 17 with union backgrounds, were hired pursuant to the Respondent's special referral arrangement with MESC. The remaining 33 were hired according to MESC's regular referral processes; of those, 15 had union backgrounds.<sup>11</sup>

The Cadillac project was completed in August 1993. The Respondent never recognized the Unions as the representatives of any of its employees on that job.<sup>12</sup>

## II. DISCUSSION

### A. Nonhiring Allegations

The judge found that the Respondent violated Section 8(a)(1) in numerous respects: by unlawfully interrogating applicants for employment about their union backgrounds, threatening job loss or other reprisals for union adherents, directing unlawful warnings at both employment applicants and current employees, and prohibiting employees from wearing union stickers on their hardhats. We adopt those findings, for the reasons discussed by the judge.<sup>13</sup> We also agree with the judge's finding that the

<sup>11</sup> In all, 276 individuals were hired in Respondent's workplace, including supervisors, secretaries, and members of trades that the Union was not seeking to represent. Of those, 212 were name-calls or other preferred categories. The other 64 were referred by MESC according to its regular processes; of those, 24 had union backgrounds.

<sup>12</sup> There is no 8(a)(5) allegation.

<sup>13</sup> In adopting the judge's finding that the Respondent's ban on hardhat stickers violated Sec. 8(a)(1), we rely on *Windemuller Electric*, 306 NLRB 664, 669-670, enf. denied 34 F.3d 384, 394 (6th Cir. 1994), and *Reno Hilton Resort*, 319 NLRB 1154 fn. 4 (1994). While the Sixth Circuit denied enforcement in *Windemuller*, holding that the employer possessed the right to ban stickers on company-owned hardhats, the rule here applied to "all employees' hard hats,"—not merely those owned by the Respondent. Indeed, the Respondent does not cite any record evidence in support of its exceptions that it owned the hardhats covered under its rule.

We find it unnecessary to address the General Counsel's cross-exceptions regarding the judge's failure to find that three other statements made by the Respondent's supervisory and managerial personnel violated Sec. 8(a)(1). Any further violations would not affect the remedy.

Respondent violated Section 8(a)(3) by laying off its pipefitting crew in June.<sup>14</sup>

However, we disagree with the judge's finding that the Respondent unlawfully disciplined employee Donald Diekman for engaging in union solicitation at work, even though it allowed solicitation for the United Way campaign. Although an employer may not prohibit employees from engaging in union solicitation while regularly permitting them to solicit for other causes, the Board has recognized "isolated 'beneficent acts' as narrow exceptions to a no-solicitation rule." *Hammary Mfg. Corp.*, 265 NLRB 57 fn. 4 (1992). We find that the United Way solicitation here comes within this limited exception. Accordingly, we shall dismiss this allegation.

### B. Hiring Allegations

These allegations chiefly concern whether the Respondent unlawfully discriminated against union applicants through policy 303. Specifically, the consolidated complaint alleges that Zurn failed and refused to hire and consider for hire qualified applicants seeking employment in the boilermaking, carpentry, electrical, ironworking, millwright, operating engineer, pipefitting, and sheet metal crafts at the Cadillac jobsite because of their membership in or affiliation with the Charging Party Union or other labor organization. The judge found that the Respondent's hiring policy was both inherently discriminatory and discriminatorily applied.<sup>15</sup> The Respondent excepts, arguing, inter alia, that it consistently followed policy 303, a companywide, facially neutral hiring policy established prior to the events here and applicable to all its projects. The Respondent contends that this policy of providing preferential hiring status to current and former employees, and to nonemployees who have been recommended by company managers, supervisors, or employees was not discriminatory in any respect. For the reasons discussed below, we do not agree completely with either the judge or the Respondent.

As the judge correctly found in his Second Supplemental Decision, in order to establish a discriminatory refusal-to-hire violation, the General Counsel must establish:

<sup>14</sup> In adopting this finding, however, we do not rely on the fact that the layoff occurred immediately after a union rally at the Respondent's jobsite. The record reflects that the Respondent ordered the pipefitting crew's last paychecks prior to the rally.

<sup>15</sup> The judge found that the Respondent did not violate the Act by refusing to consider either the applications submitted by the Unions in bulk, or individuals' direct applications. In exceptions, the Union and the General Counsel argue that the Respondent did not consistently follow this practice and that it was a pretext for discrimination. We adopt the judge's finding for the reasons stated in his decision.

(1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants.

*FES*, 331 NLRB at 12. If the General Counsel meets this initial burden, the burden shifts to the respondent to show that it would not have hired the applicants even in the absence of their union activity or affiliation. *Id.*

We adopt the judge's finding that the General Counsel met his initial burden as to the first two *FES* elements. Thus, it is undisputed that the Respondent was hiring and that the union applicants had the relevant training and experience for the positions to be filled. As to the final element, we agree with the judge that union animus infected a number of the Respondent's hiring decisions, and that the Respondent has failed to show that it would have made those same decisions in the absence of the applicants' union affiliation. Unlike the judge, however, we do not find the Respondent's hiring policy was inherently discriminatory or that union animus pervaded the Respondent's entire application of the policy.

1. Respondent's policy 303 is not inherently discriminatory

The judge found the Respondent's hiring policy to be inherently discriminatory. In his supplemental decision, he observed that

Policy 303 . . . by its terms gave preference to present and past employees and referrals by its own employees, including management. Policy 303 on its face provides for the preferential hiring of applicants who have a connection with Respondent's work force. And that work force is not unionized. The Board has found in similar circumstances that the practical effect of such a priority hiring system is "to preclude employment of union members." *D.S.E. Concrete Forms*, 303 NLRB 890 fn. 2 (1991), *enfd.* [mem.] 21 F.3d 1109 (5th Cir. 1994).

The judge found that "Policy 303 itself is discriminatory, as shown by the record's statistical evidence, Respondent's expert testimony and the practical consequences of its application." We disagree.

Policy 303 does not, either by its terms or by its necessary operation, discriminate in hiring among individuals on the basis of union membership or nonmembership.

As the Board found regarding an earlier version of the Respondent's priority hiring policy, policy 303 "does not on its face preclude or limit the possibilities for consideration of applicants with union preferences or backgrounds." *Zurn/N.E.P.C.O.*, 329 NLRB 484 (1999). Similarly, in *Custom Topsoil, Inc.*, 328 NLRB 446, 447 (1999), the Board found that an employer had not discriminated on the basis of union activity when it differentiated between "stranger" and "familiar" applicants, but not between union and nonunion applicants.

Policy 303 does give preference to applicants who are either current or previous employees of the Respondent, and, thus, are "known quantities" to the Respondent, or who are known to the Respondent's managers, supervisors, and current employees who are willing to vouch for them as potential employees. In our view, that is a rational hiring practice for an employer that is trying to attract a qualified, dependable work force, and does not necessarily indicate an invidious motive. See *Belfance Electric*, 319 NLRB 945, 946 (1995) (employer's policy of hiring friends, relatives, and business acquaintances instead of complete strangers "hardly irrational" and "consistent with human nature"). Indeed, the Board has recognized, as a valid defense to an allegation of anti-union discrimination in hiring, an employer's reliance upon a neutral hiring policy much like Zurn's. *Brandt Construction Co.*, 336 NLRB 733 (2001), *enfd.* sub nom. *Operating Engineers Local 150 v. NLRB*, 325 F.3d 818, 833-834 (7th Cir. 2003). If an employer can rely on a priority hiring policy as a legitimate nondiscriminatory reason not to hire an applicant, it follows that such a policy cannot be inherently discriminatory.

Moreover, the record does not indicate that the Respondent implemented policy 303 for discriminatory reasons. Policy 303 and its predecessors were in existence long before the Cadillac project began, and there is no evidence that it was devised in order to avoid hiring union adherents. As for the practical effects of policy 303, it is true, as the judge noted, that since the Respondent is a nonunion employer, its former employees and applicants referred by current managers, supervisors, and employees would tend not to be union supporters. But this circumstance would not necessarily blacklist union supporters. Nor would it necessarily lead to a nonunion work force. Because the Respondent operates all across the United States, it could not be certain that its prior employees or their referrals would be able to travel to a new, distant worksite. Consequently, a nondiscriminatory application of its policy could require the Respondent to consider lower priority applicants: those with appropriate work experience, but without prior employee status or referrals. That, in fact, was what happened on

the Cadillac project. The Respondent hired 33 such individuals—15 with union backgrounds—for openings in the trades which the Unions sought to organize, through MESC’s normal referral process, i.e., not because of the Respondent’s preferential process.

Moreover, the actual operation of policy 303 resulted in the hiring of 17 union supporters, or just over 10 percent of the 169 priority hires in the relevant categories. The judge discounted these hires as mainly occurring prior to the onset of the Unions’ organizing campaign in June. In our view, however, the fact that these hires occurred at all indicates that the hiring policy *itself* did not constitute such an impermeable barrier to union applicants as to be inherently discriminatory.<sup>16</sup>

Because we find policy 303 to be facially lawful, not implemented for discriminatory reasons, and not inherently discriminatory against union applicants, we shall not order that it be rescinded.

## 2. Application of policy 303

In his original decision, the judge found that, since early June, when the Unions began their organizing efforts, the Respondent violated Section 8(a)(3) by its assertedly discriminatory application of policy 303. The judge relied on evidence regarding the Respondent’s antiunion motivation, including its unlawful layoff of the pipefitters, its antiunion statements, interrogations (both by its own managerial and supervisory personnel and by its agent MESC), the disparate application of its hiring policy, the use of a “custom referral” system to subvert the MESC referral process, and out-of-state recruiting to avoid hiring union applicants from the local area. In addition, the judge relied on direct evidence of discrimination against certain specific union applicants. In his second supplemental decision, the judge reconsidered his findings in light of *FES*, supra, and found that the General Counsel had met the criteria for establishing both refusal-to-hire and refusal-to-consider violations. He also found that the Respondent had failed to establish that it would not have hired the union applicants even absent their union affiliations.

<sup>16</sup> The Board’s decision in *D.S.E. Concrete Forms*, supra, 303 NLRB 890, does not require a different result. The judge in that case found that the practical effect of policies largely giving priority to former or existing employees of the respondent company or another allied company was to preclude employment at the jobsite by union members. *Id.* at 897. However, in affirming the judge, the Board stated that it only agreed with the judge on the particular facts of the case: the employer had specifically defended on the ground that union members would not work on a nonunion job, but the General Counsel had rebutted that defense by establishing that the union had waived that restriction for the particular job at issue. *Id.* at 890 fn. 2.

### a. Deviations from policy 303

As the judge found, it is clear that Zurn was hiring in the trades that the Unions were attempting to organize and that the union applicants had the experience and training required for the positions for hire. It is also clear that Zurn harbored antiunion animus. For the General Counsel to meet the criteria for a refusal-to-hire case under *FES*, however, he must demonstrate that Zurn’s antiunion animus contributed to its decision not to hire the union applicants. 331 NLRB at 12.

As we discuss below, beginning in June, Zurn departed from policy 303 in 23 instances, either by hiring nonunion applicants who lacked any priority under policy 303 or by failing to hire union applicants who should have been afforded preference in hiring.<sup>17</sup> We find that, in those instances, the General Counsel has shown that antiunion animus infected Zurn’s hiring decisions. According to Zurn, policy 303 was designed “to select the most qualified applicant for the job opening.” By departing from the criteria set forth in policy 303, the Respondent on those occasions, failed to implement the policy’s stated purpose.

First, as the judge found, 11 nonunion applicants were hired despite their having little or no experience in the job categories in which they were hired, and in the face of the availability of highly qualified union members who were registered with MESC.<sup>18</sup> Almost all of these

<sup>17</sup> The applicants hired by the Respondent in departure from policy 303 are listed in App. A.

In his Second Supplemental Decision, the judge stated that the Respondent hired “as many as 70 [nonunion candidates] who had little or no experience in their job categories.” He made no findings, however, as to specific instances of such hiring (other than those he identified in his original decision). We have reviewed App. C to the judge’s Second Supplemental Decision and have found numerous instances in which employees were hired who may have lacked relevant experience. Some of those, however, were hired before the union organizing campaign began, and some were applicants with union backgrounds. Nearly half were hired into helper positions, for which pertinent craft experience would seem to be less crucial. Moreover, some of the information in the judge’s App. C appears to be inconsistent with information on employment applications. In these circumstances, and in the absence of particularized findings by the judge or argument by the parties, we shall not attempt to determine which, if any, of the hires listed in the judge’s App. C actually lacked relevant experience.

<sup>18</sup> Joseph Kinney, Dan Dronzek, William Douglas, Samuel Gibson, Peter Caisse, Martin Fisher, Ken Carter, Kelly Bennett, Bryce Friess, James Vaughn, and Vickie Hilliard.

We do not rely, however, on the judge’s findings concerning the Respondent’s alleged departure from policy 303 in hiring applicants David Forsgren, Leonard Bowen, or Mark Eisenga for three carpenter positions in the spring of 1992, despite their having little or no experience as carpenters. The judge specifically found that the Respondent’s use of policy 303 to avoid hiring union applicants began in early June, when the Union commenced its effort to organize the Respondent’s employees at the Cadillac site. Since all three of these employees were

hires came from outside of the State of Michigan, despite policy 303's specific provision that "[w]ithin each of the above categories, consideration of qualified individuals within the immediate local area will be given first." See footnote 7, *supra*.

The Respondent also deviated from its policy in the case of three other nonunion applicants, to whom it offered employment or hired with no referrals or actually altered their applications to indicate, falsely, that they had referrals.<sup>19</sup> The Respondent's manager, Tom Brigham, also conceded that in December 1992, he hired seven applicants from nonpolicy 303 sources without going through MESC at all.<sup>20</sup>

Finally, we adopt the judge's findings that the Respondent departed from policy 303 by failing to rehire Jeff Kruse and Gary Macy even though, as former Zurn employees, they should have had priority in hiring. Kruse and Macy are carpenters. Both were union supporters. Kruse, a former employee of the Respondent, registered for carpenter positions on April 16. He had earlier sent an application directly to the Respondent in January and filled out an application at the MESC office in August. The Respondent sent Kruse a letter in September stating that prior messages had been left and that he should make immediate contact with the Respondent. The judge found, however, that the Respondent had not in fact left any prior messages.

The Respondent argues that it did not discriminate against Kruse because it offered him a job by letter on September 10 to which Kruse did not reply. We reject this argument as irrelevant. Even assuming that the September 10 letter constituted an offer of employment, we agree with the judge that, as a former employee of the Respondent, Kruse should have received priority consid-

hired before that time, we do not find that these departures from the policy discriminated against union applicants.

<sup>19</sup> Millard Howell, Stan Brigner, and Richard Fortin. In fact, the Respondent offered Howell a job over the phone (which he ultimately refused) before he even registered with MESC.

We agree with the Respondent that the record does not support the judge's finding that the parties stipulated that 12 other job applications had been falsified to indicate referrals. The parties stipulated only that those applications bore certain markings concerning referrals, not that they had been altered to indicate nonexistent referrals.

<sup>20</sup> Donald Diekman, Jeff Pugh, Jimmy Penix, Jay Culpepper, Nathan Campbell, Shawn Childress, and William Greene. The judge also found that the Respondent hired Diekman with a false claim of referral and that the Respondent altered the applications of both Campbell and Green to show false referrals.

We do not rely on the judge's finding that Richard Patrick was hired based upon a false referral. As a current employee of the Respondent, Patrick was in the highest priority status for hire.

eration under policy 303 for carpenter and carpenter helper positions that were available prior to September.<sup>21</sup>

Macy was hired by the Respondent on May 26 as a carpenter. He was laid off on November 12. Although millwright positions opened in December, Macy was not offered one of them, even though he had experience as a millwright. As a recently laid-off employee of the Respondent, Macy possessed a priority status for a millwright position. The Respondent's unexplained failure to offer him such a position constituted another deviation from policy 303.

Thus, on the 23 occasions recounted above, there was at least one union applicant who would have been hired under a nondiscriminatory application of policy 303. See Appendix A. We find that, each time the Respondent deviated from the policy, its decision was motivated in part by antiunion animus.

We also agree with the judge that the Respondent failed to demonstrate that it would have rejected the union applicants even in the absence of their union affiliations. The Respondent has defended its decisions chiefly on the basis that they were made in conformance with policy 303. In these 23 instances, that defense clearly has no merit—the Respondent did not, in fact, follow the policy in those instances.

The Respondent has raised other defenses to its failure to hire specific union applicants. We reject those defenses as well.<sup>22</sup>

#### James Bragan

James Bragan registered with MESC on September 4, for various craft positions. The Respondent departed from its priority hiring policy in hiring other applicants despite the availability of Bragan and other union applicants.<sup>23</sup> The Respondent asserts that Bragan was not a

<sup>21</sup> Whether or not the September 10 letter constituted a valid offer, the judge found that Kruse had found other employment by this time. This circumstance could serve to toll any backpay owed to Kruse.

<sup>22</sup> In rejecting the Respondent's individual defenses as to union applicants James Bragan, John Card, Harold Greenleaf, and Jeffrey Westphal and concluding that the Respondent acted with discriminatory motive in failing to hire them, we do not necessarily find that, absent discrimination, the Respondent would have hired or rehired these individuals. It is possible that other union applicants in the appropriate categories might have been hired instead. We will leave to compliance which union applicants would have been hired and would thus be entitled to both instatement and backpay. See *FES*, *supra* at 14. We note that applicant James Bragan, who is in the pool of applicants for many of the positions discussed above, is entitled to instatement and backpay outright for those positions in which he was the only union applicant and another position which the Respondent subsequently offered to him and then withdrew the offer.

<sup>23</sup> Specifically, the Respondent departed from its policy when it offered employment to Millard Howell and hired William Douglas, Dan Drounzek, Samuel Gibson, Peter Caisse, Stan Brigner, Kelly Bennet,

bona fide applicant because he was a paid union organizer who applied during the December strike; i.e., he possessed a “disabling conflict” for employment with the Respondent. *Sunland Construction Co.*, 309 NLRB 1224 (1992). We reject this argument for three reasons. First, Bragan had registered with MESC and had been refused employment by the Respondent before the December strike. Second, the Respondent had at least ostensibly offered work to Bragan during the strike, thus, belying its contentions that he was disqualified. Finally, even if a disabling conflict exists, it can be an effective defense under *FES* only when the employer has proved that it actually relied upon the conflict in refusing to hire the applicant. *Aztech Electric Co.*, 335 NLRB 260, 263–265 (2001), *enfd.* in relevant part sub nom. *Contractors Labor Pool, Inc. v. NLRB*, 323 F.3d 1051, 1060–1061 (D.C. Cir. 2003). Given that the Respondent ostensibly offered to employ Bragan during the strike, we find that it did not actually rely upon his status as a paid union organizer in denying him employment.

#### John Card

John Card registered with MESC for boilermaker positions on February 27 and July 15, and the Respondent departed from its priority hiring policy in hiring other applicants despite his (and others’) availability.<sup>24</sup> The Respondent asserts that it lawfully refused to hire Card because: (1) his initial application had lapsed under its rule stating that applications would be valid for only 30 days, and (2) he failed to reapply in December when it offered him a position. We reject both of these defenses. According to his MESC record, Card was actively registered from February 27, 1992, until June 1, 1993; therefore, if the Respondent had not discriminated against Card, it would have contacted him for a position and he could have filed a new application. As for Card’s alleged failure to contact the Respondent, the judge found that it had refused to hire Card in December, thus, implicitly crediting his testimony that he had attempted to contact the Respondent’s personnel manager from the guard shack on its property.

#### Harold Greenleaf and Jeffrey Westphal

Harold Greenleaf registered for boilermaker positions on March 19 and re-registered on July 15. Jeffrey Westphal registered for boilermaker positions on July 15. The Respondent departed from its hiring policy during the period Greenleaf and Westphal were registered when it

offered employment to other applicants.<sup>25</sup> Both men also filled out several applications in response to the Respondent’s job offer letters in December. The Respondent rejected those applications because Greenleaf and Westphal had written “volunteer union organizer” on the applications. The Respondent sent the applications back and informed Greenleaf and Westphal why it had rejected their applications.

The Respondent argues that it lawfully refused to hire both applicants because they had placed extraneous information on their applications. The Respondent states that its usual practice was to tape over any extraneous information written by applicants on their applications and then process those applications, but that it suspended this practice during the strike because of the press of work processing applications and simply refused to process any applications submitted with extraneous information. We reject the defense. We assume *arguendo* that an employer can lawfully have a policy of nondiscriminately precluding all extraneous information on an application, and can lawfully refuse to hire a person who violates that policy.<sup>26</sup> We distinguish that policy from one which discriminates against union information.

However, the Respondent’s practice here was to tape over any extraneous information, rather than refuse to hire the applicant involved. The Respondent says that it deviated from its “tape over” practice because it became too burdensome during the strike. We reject this argument. In light of the antiunion animus discussed above, we conclude that the Respondent’s asserted reason for the deviation from “taping over” was pretextual.

To summarize, we find that in 23 instances, the Respondent deviated from policy 303 by failing to hire qualified union applicants and, instead, hiring applicants without union backgrounds who were not entitled to priority consideration under the policy. We also find that those 23 decisions were motivated in part by antiunion animus, and that the Respondent has failed to show that it would have made those same decisions in the absence of the applicants’ union affiliations. We, therefore, adopt the judge’s finding that the Respondent violated Section

Bryce Friese, and Donald Diekman instead of Bragan. See fns. 17–19, *supra*.

<sup>24</sup> The Respondent offered employment to Millard Howell, and hired Dan Drounzek, William Douglas, Samuel Gibson, Peter Caisse, Ken Carter, and Stan Brigner. See fns. 17–19, *supra*.

<sup>25</sup> The Respondent offered employment to Millard Howell and hired Dan Drounzek, William Douglas, Samuel Gibson, Peter Caisse, Ken Carter, Stan Brigner, and Jeff Pugh. See fns. 18–20, *supra*.

<sup>26</sup> Member Liebman disagrees with this assumption. As the judge correctly stated, the Board has held the opposite, that an employer violates the Act when it rejects applicants for identifying themselves as voluntary union organizers on their applications. See *Mainline Contracting Corp.*, 334 NLRB 922, 923 (2001); *Irwin Industries*, 325 NLRB 796, 797 (1998); but see *Boilermakers v. NLRB*, 127 F.3d 1300 (11th Cir. 1997) (policy banning extraneous information on applications is lawful).

8(a)(3) and (1) by failing to hire union applicants on those occasions.

*b. Hiring decisions conforming to policy 303*

Unlike the judge, however, we do not find that the incidents in which the Respondent departed from policy 303 are sufficient to establish that the entire policy was being used to avoid hiring union applicants. After all, the evidence indicates that the Respondent generally followed policy 303's priority criteria in hiring. Out of 169 hiring decisions made other than through MESC's normal processes, we have found only 23 in which the Respondent failed to follow the priorities set forth in policy 303. As we have found, policy 303 on its face does not discriminate on the basis of union membership or affiliation, and its stated hiring priorities are rationally related to the goal of hiring a competent, reliable work force. Accordingly, we find that in the great majority of instances in which the Respondent hired in accordance with those priorities, it did so in order to achieve that goal, and not with a motive to discriminate against union applicants. In other words, we find that only when the Respondent deviated from the hiring policy was its conduct motivated by union animus. Consequently, we reverse the judge insofar as he found that the Respondent violated Section 8(a)(3) even when it hired applicants pursuant to the priority categories as laid out in policy 303.

Our dissenting colleague believes that the 23 deviations from the policy yield an inference that the entire hiring process was unlawfully motivated. We believe that where, as here, the policy itself is lawful, the General Counsel must show individual discriminatory deviations (as with the 23) in order to prove violations. Concededly, the exception to this principle is a case where the discriminatory deviations are so massive that one can infer that the entire process is unlawfully motivated. That was true in *Fluor Daniel, Inc.*, 333 NLRB 427 (2001), enf'd. 332 F.3d 961 (6th Cir. 2003), cert. denied 125 S.Ct. 964 (2005), but it is not true here. That case involved the employer's failure to hire union applicants at two jobsites, one at an Exxon refinery and the other at an Arizona Public Service Company (APS) nuclear facility. Some 2800 individuals were hired at the Exxon site, and 962 at the APS site. There, as here, the employer engaged in some discriminatory treatment of union applicants. In contrast with this case, however, *Fluor Daniel* deviated from its facially neutral hiring protocols more than 3000 times at the Exxon site, and at least 892 times at the APS site, always to the benefit of nonunion applicants. All told, in other words, the number of deviations from *Fluor Daniel's* stated hiring policy was actually greater than the total number of employees hired at

the two sites. Under those circumstances, the Board and court were warranted in concluding that the employer's entire hiring system was infected with union animus. We decline to draw that conclusion here, where those circumstances plainly do not exist.<sup>27</sup>

In sum, we find that the Respondent deviated from its policy 303 on 23 occasions, and these deviations were for the purpose of avoiding hiring union supporters. We, therefore, find that the union-affiliated applicants who had valid MESC registrations for the 23 positions were shown to have been denied employment unlawfully. However, as noted above, we have not found the overall referral process to be either inherently discriminatory or to have been operated in a discriminatory manner.<sup>28</sup>

Our dissenting colleague faults the Respondent for seeking applications from persons who would be preferred under policy 303, in circumstances where there are extant applications from persons who are not preferred under that policy. However, there is nothing in policy 303 that forbids this process of seeking of applications from preferred persons. Indeed, given the legitimate reasons for having preferred categories, it is obviously legitimate for an employer to seek out preferred persons even where there are nonpreferred persons who have applied. For, to the extent that this process succeeds, the employer will have a preferred person rather than a non-preferred person. And, the fact that the preferred person is out-of-state is irrelevant. The policy operates to favor local preferred people over nonlocal preferred people. It does not operate to favor nonpreferred local people over preferred nonlocal people.

Our colleague also says that even if policy 303 was neither inherently discriminatory, nor adopted for unlawful reasons, it does not follow for her that hiring decisions apparently consistent with the policy are lawful. However, it is not the Respondent's burden to show that hiring decisions are lawful. The burden is on the General Counsel to show that hiring decisions were unlawful.

At bottom, the dissent simply repeats (sometimes over and over again) the unfair labor practices of the Respondent, and then leaps from those repetitions to the conclusion that the entire hiring process was unlawful. Concededly, there can be cases where massive wholesale

<sup>27</sup> Our dissenting colleague says that there were only 27 deviations from the 30-day application rule in *Fluor Daniel*, supra. However, the more significant point is that there were almost 2100 deviations from the various hiring protocols.

<sup>28</sup> Our dissenting colleague's assertion that the lesson of our holding is that employers can discriminate "on a large scale" and perhaps prevail before the Board, does not contribute to a dispassionate analysis of this case. We have endorsed the decision in *Fluor Daniel*, and the lesson of that case is that large-scale discrimination (or indeed any discrimination) will be remedied by this Board.

violation lead to the conclusion that the entire hiring process is tainted. See *Fluor Daniel*, supra. However, absent that scenario, the General Counsel must prove each and every violation. That was not accomplished here.

### 3. Other refusal-to-hire violations

We also find that, in addition to departing from its hiring policy, the Respondent specifically discriminated against applicants Sean Redner, Tony Perez, Gerald Richard, Lori Custer, and Joe Van Dyke.<sup>29</sup> In finding these violations, we rely on the judge's findings in his original decision that the Respondent's conduct concerning those individuals indicated an antiunion motivation and on the Respondent's failure to show that it would have refused to hire them even in the absence of their union affiliations.

#### a. Sean Redner

Sean Redner, an electrician, was a former employee of the Respondent. He registered for an electrician position on February 11 but was not hired. The Respondent argues that it refused to hire Redner because his MESC registration, which remained effective for only 30 days, had already lapsed when it began hiring electricians in late April. In fact, the judge found that the Respondent encouraged him to submit his resume directly, and that one of its supervisors later told him that his application—despite his priority status as a former Zurn employee—had been set aside with other union applications in order to avoid the risk of hiring a union applicant. We rely on this credited admission in concluding that the Respondent discriminatorily refused to hire Redner.<sup>30</sup>

#### b. Tony Perez and Gerald Richard

The judge found that the Respondent demonstrated antiunion motivation in its conduct of job interviews with Tony Perez and Gerald Richard. Thus, the Respondent's personnel manager questioned Perez regarding his union status and initially offered to hire him if he passed a drug test. Perez passed the test, but the personnel manager later told him the Respondent could not use him because of his union affiliation. Similarly, the Respondent's field superintendent questioned Richard about his union status, and when Richard affirmed it, stated, "I'm done . . . I've heard enough" and left the building. The Respondent did not hire Richard. We rely on these findings

<sup>29</sup> Except for Redner, these employees are among the 23 discriminatees who were previously discussed.

<sup>30</sup> We do not find that the Respondent's failure to hire Redner was the result of manipulating policy 303 to avoid hiring union applicants. The failure to hire Redner occurred in the spring. Even under the judge's finding that the Respondent used policy 303 in a discriminatory fashion, that use began later.

in adopting the judge's finding that the Respondent refused to hire Perez and Richard for discriminatory reasons.

#### c. Lori Custer

Lori Custer registered with MESC for several positions on February 6, and updated her registration in September. The Respondent offered work to her in early January 1993, but argues that it was unable to employ her because she was unavailable. Contrary to this argument, we adopt the judge's finding that the Respondent withdrew its job offer after Custer accepted it. The falsity of Zurn's explanation lends support to the finding that antiunion animus contributed to its failure to hire Custer, and we so find.

#### d. Joe Van Dyke

Joe Van Dyke registered with MESC on January 27 as an electrician but was not hired. The Respondent argues that Van Dyke's MESC registration had lapsed (pursuant to MESC's 30-day rule which applied to registrations prior to February 27) at the time it was hiring electricians. The Respondent also contends that no animus can be found in its failure to hire Van Dyke because it hired union applicants for three of the four electrician positions filled.<sup>31</sup> We reject both arguments. The judge relied on direct evidence that the Respondent had discriminated against Van Dyke because of his union status, and it does not appear that the Respondent actually relied on the 30-day rule. (Van Dyke had submitted a Zurn application in February and was interviewed for a position.) Moreover, his MESC registration record does not show that his registration became inactive until July 26, 1992. That the Respondent hired several union electricians does not negate the strong evidence that the Respondent discriminated against Van Dyke because of his union status. *St. Alphonsus Hospital*, 261 NLRB 620, 634 fn. 32 (1982), and cases cited.

### 4. Refusal-to-consider allegations

The complaint alleges that the Respondent violated Section 8(a)(3) by refusing to consider the union applicants, in addition to refusing to hire them.<sup>32</sup> We find no merit in this allegation.

In *FES*, supra, the Board announced that, to establish a discriminatory refusal to consider, the General Counsel must show that the employer excluded applicants from a hiring process and that antiunion animus contributed to the decision not to consider the applicants for employ-

<sup>31</sup> One electrician-helper was hired as well.

<sup>32</sup> The judge found that the Respondent refused to hire the union applicants who testified at the hearing, and refused to consider those who did not. We find no basis whatsoever for this arbitrary distinction.

ment. If the General Counsel makes this showing, the burden shifts to the employer to prove that it would not have considered the applicants even absent their union activity or affiliation. 331 NLRB at 15.

We find that the General Counsel has failed to prove that the Respondent excluded the union applicants from its hiring process. First, there is no evidence that any union applicants were denied the opportunity to register with MESC and to be considered along with nonunion applicants for positions with the Respondent. Although the Respondent filled most positions through its priority hiring policy, we have found that that policy was facially nondiscriminatory and that, in the great majority of instances, the Respondent applied policy 303 in a nondiscriminatory fashion. And even in those instances in which we have found that the Respondent did discriminate in hiring against union applicants, we find no basis for concluding that those applicants were excluded from the Respondent's hiring process altogether. Accordingly, we shall dismiss this allegation.

#### AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and take certain affirmative action necessary to effectuate the policies of the Act.<sup>33</sup> Specifically, we shall order the Respondent to offer reinstatement to the members of the pipefitting crew whom it unlawfully laid off. We shall also order the Respondent to offer employment to the union applicants whom it would have hired but for its unlawful discriminatory practices.

As Appendix A indicates, there were more qualified individuals with union backgrounds who registered with MESC, or submitted applications to the Respondent, than positions that were denied for discriminatory reasons. As the Board held in *FES*, supra at 14:

Where the number of applicants exceeds the number of available jobs, the compliance proceeding may be used to determine which of the applicants would have been hired for the openings.

Thus, we shall leave to compliance the determination of which discriminatees would have been hired for the relevant openings.<sup>34</sup>

<sup>33</sup> App. B is an alphabetical listing of the applicants discriminated against by the Respondent's departure in 23 instances from its hiring policy.

<sup>34</sup> Under the circumstances of this case, especially the length of time since the completion of the project, we shall not apply the presumption of continued employment in the construction industry. *Dean General Contractors*, 285 NLRB 573 (1987). Instead, we find it more appropriate to match each discriminatee to a hired applicant, as shown in App. A, and then track each slot as it actually provided employment. *Jet Electric Co.*, 338 NLRB 650, 658 (2002).

In this regard, we have found that the Respondent initially offered James Bragan, Lori Custer, and Tony Perez employment on the Cadillac project but then reneged on its offers. As there can be no doubt, on this record, that Bragan, Custer, and Perez would have been employed but for the Respondent's unlawful discrimination, they are entitled, at a minimum, to reinstatement in the positions that they were offered and backpay based on what they would have earned in those positions. Similarly, we also rely on direct evidence of discriminatory motivation in finding that the Respondent refused to hire Sean Redner, Gerald Richard, and Joe Van Dyke because of their union status or activities. Accordingly, we find that Redner, Richard, and Van Dyke are also entitled to reinstatement and appropriate backpay for the positions to which they applied and in which there was direct evidence of discriminatory conduct.<sup>35</sup>

The remaining discriminatees will be entitled to a different remedy. We shall order the Respondent to place them in the positions they would have been in, absent discrimination, for consideration for future openings, to consider them for openings in accord with nondiscriminatory criteria, and to notify them, the Charging Party, and the Regional Director of future openings in positions for which the discriminatees applied or substantially equivalent positions. *FES*, 331 NLRB at 14, 15.

Finally, we shall order the Respondent to make the discriminatees whole for any lost earnings as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The construction project in Cadillac is complete, and the Respondent has ceased operations at that location. Accordingly, we shall order the Respondent to duplicate and mail notices to all MESC registrants and all former employees employed by the Respondent at that location since the start of the project. See *Pan American Electric, Inc.*, 328 NLRB 54, 60 (1999).<sup>36</sup>

<sup>35</sup> We have also included these applicants, when appropriate, among the discriminatees for other positions for which they might have been hired, absent the Respondent's discriminatory conduct. We leave to compliance the determination of whether they are entitled to reinstatement and backpay for these positions.

<sup>36</sup> We shall modify the judge's recommended Order to be consistent with our decision in *Ferguson Electric Co.*, 335 NLRB 142, 143 (2001), and to substitute the Board's standard remedial language for other portions of the judge's recommended Order. Further, we shall substitute a new notice in accordance with our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 177 (2001), enf. 354 F.3d 534 (6th Cir. 2004).

## ORDER

The National Labor Relations Board orders that the Respondent, ZURN/N.E.P.C.O., Cadillac, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating, through its agents at the Michigan Employment Security Commission, job applicants about their union backgrounds.

(b) Coercively interrogating employees and job applicants about their union sympathies and affiliations.

(c) Threatening employees with the loss of jobs or other reprisals because of their union support.

(d) Prohibiting employees from wearing union stickers, union buttons, or other union insignia on their hard hats and their clothing.

(e) Discriminating against employees because of their union activity by laying them off and failing to recall them to their former jobs.

(f) Discriminatorily refusing to hire job applicants because they are union members or sympathizers, or because they worked in establishments which had union contracts, and discriminatorily applying a facially neutral hiring policy in such a way as to discriminate against suspected union applicants or sympathizers.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days from the date of this Order, offer James Bragan, Lori Custer, Tony Perez, Sean Redner, Gerald Richard, and Joe Van Dyke instatement to the positions to which they applied or, if those positions no longer exist, to substantially equivalent positions.

(b) Make James Bragan, Lori Custer, Tony Perez, Sean Redner, Gerald Richard, and Joe Van Dyke whole for any loss of earnings and other benefits sustained by reason of the discrimination against them, in the manner set forth in the amended remedy section of this Decision and Order.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to hire James Bragan, Lori Custer, Tony Perez, Sean Redner, Gerald Richard, and Joe Van Dyke, within 3 days, thereafter, notify them in writing that this has been done and that the refusal to hire them will not be used against them in any way.

(d) Offer instatement to 23 additional discriminatees, whose identity is to be determined in the compliance stage of this proceeding, consistent with the remedy section of this Decision, to the positions to which they ap-

plied or, if those positions no longer exist, to substantially equivalent positions.

(e) Make whole the 23 discriminatees whose identity is determined in the compliance proceeding, for any loss of earnings and other benefits suffered as a result of the unlawful discrimination suffered against them, in the manner set forth in the amended remedy section of this Decision.

(f) Consider the remaining discriminatees for future job openings that arise subsequent to the beginning of the hearing in accord with nondiscriminatory criteria, and notify the discriminatees, the Charging Party, and the Regional Director for Region 7 of such openings in positions for which the discriminatees applied, or substantially equivalent positions, in the manner set forth in the amended remedy section of this Decision and Order.

(g) Remove from its files any reference to the unlawful refusal to hire the discriminatees, and notify them in writing that this has been done and that the refusal to hire them will not be used against them in any way.

(h) Within 14 days from the date of this Order, offer the pipefitters Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, Shawn O'Hara, Allen Randle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey reemployment in the positions they held at the time they were discriminatorily laid off, or if those positions no longer exist, to substantially equivalent positions.

(i) Make Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, Shawn O'Hara, Allen Randle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey whole for any loss of earnings they may have suffered by reason of the discrimination against them as set forth in the amended remedy portion of this Decision.

(j) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs of Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, Shawn O'Hara, Allen Randle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey and, within 3 days, thereafter, notify them in writing that this has been done and that the refusal to hire them will not be used against them in any way.

(k) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic

form, necessary to analyze the amount of backpay due under the terms of this Order.

(l) Within 14 days after service by the Region, post at its corporate headquarters in Washington State and in the State of Maine and in the Cadillac office of the Michigan Employment Security Administration copies of the attached notice marked "Appendix C."<sup>37</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous place, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. The Respondent shall also duplicate and mail, at its own expense, a copy of the notice to all known registrants and all current employees and former employees employed by the Respondent on the Cadillac, Michigan power plant since January 1, 1992.

(m) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

MEMBER LIEBMAN, dissenting in part.

The record here demonstrates that Zurn engaged in a determined effort to prevent unionization of the Cadillac project, by discriminating wholesale against qualified union applicants. Today's decision means that this unlawful effort has largely succeeded. Where the evidence is overwhelming, the majority does find a few individual instances of discrimination. But the majority fails to recognize the significance of the *pattern* of violations displayed in this case. The lesson for unscrupulous employers is clear: If you intend to discriminate, do so on a large scale and take your chances with the Board.

#### I. FACTUAL BACKGROUND

Zurn contracted with a local consortium to build a cogeneration power plant in Cadillac, Michigan. Before it began hiring employees in April 1992,<sup>1</sup> Zurn arranged with the Michigan Employment Security Commission

(MESC), a State agency, to register applicants for jobs at the project and to process their applications. In response to applications for employment by union members, Zurn informed the Unions that MESC would process all applications; ultimately at least 439 union applicants would register with MESC for jobs at the Cadillac project in the relevant categories.<sup>2</sup>

Zurn has a hiring policy, called policy 303, under which it gives priority in hiring, first to applicants whom it currently employs; next to applicants whom it formerly employed; then to applicants who have been referred by its current supervisors and employees; and finally to other qualified applicants. Within each of the priority categories, local applicants are to be preferred. Because Zurn is a nonunion employer, application of this policy leads, predictably, to the hiring of a largely nonunion work force.<sup>3</sup>

Zurn persuaded MESC to adopt a custom referral or "name-call" procedure, under which Zurn could bypass MESC's normal referral system and give preference to applicants with priority under policy 303. Zurn told MESC that the purpose of the "name-call" procedure was to enable it to give priority in hiring to employees coming off its other jobsites. In practice, however, Zurn did not limit its use of the name call procedure to current employees; instead, it used the procedure to largely avoid hiring through MESC's normal procedures. In December 1992, MESC discontinued the name-call procedure, citing concerns that Zurn had used it to avoid hiring union applicants. MESC's concerns were well founded, because the procedure had long since become tainted with Zurn's antiunion animus.

As detailed in the majority's opinion, throughout the Cadillac project Zurn engaged in conduct demonstrating its overt antiunion animus. Indeed, the majority rightly concludes that much of this conduct constituted violations of the Act. From January 1992 onward, employees of MESC, acting as Zurn's agents, repeatedly interrogated applicants about their prior employment with unionized employers. Zurn's managerial and supervisory agents also directly interrogated and threatened Union applicants and hires regarding their union activities. In April, Zurn issued a work rule prohibiting employees from wearing union insignia on their hardhats. At various times thereafter, Zurn's managers and supervisors, by their direct statements, indicated that the Company was refusing to hire applicants because of their union status. In early June, after the Unions began openly or-

<sup>37</sup> If 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."

<sup>1</sup> Unless otherwise stated, all dates refer to 1992.

<sup>2</sup> See the Second Supplemental Decision, Apps. A and B.

<sup>3</sup> Because I would find that Zurn's application of its hiring policy was discriminatory, I would find it unnecessary to pass on the judge's finding that the policy was also inherently discriminatory.

ganizing on the construction site, Zurn laid off its pipefitting crew, which had exhibited strong union support, and subcontracted its remaining work. Then Zurn filled subsequent pipefitting positions with “name-call” referrals who possessed lower priority status under the Respondent’s policy 303 than the laid off crewmembers. From September on, Zurn’s managers and supervisors threatened union adherents with job loss and other reprisals. In October, Zurn’s superintendent directed unlawful warnings to both employment applicants and current employees. The seriousness of Zurn’s animus is revealed by one of these incidents in which its personnel manager called union applicants, “fucking union dogs” and, even more bluntly, when a supervisor told two employees that “you do what you’ve gotta do and I’ll do what I’ve gotta do, but the job won’t go Union.”

Most tellingly, as the majority finds, Zurn departed from its priority policy at least 23 times in hiring nonunion applicants. (As I will explain, the majority finds these instances of discrimination unlawful, but still concludes that adherence to policy 303, and not antiunion animus, explains those hiring decisions that appear consistent with the policy.)

Merely noting the number of divergences from policy 303, however, does not give a true picture of Zurn’s manipulation of its hiring process. The record reveals that Zurn supervisors aggressively pursued referrals in order to generate applicants who could be given priority, and even processed, under the guise of referrals, nonreferred out-of-state applicants who themselves had initiated inquiries to Zurn regarding employment. In some cases, described in the majority’s opinion, the “referrer’s” name on numerous applicants appears either to have been altered or unknown to the applicants, according to some applicants’ own testimony.

Zurn’s manipulation of its hiring policy went further. Under policy 303 as written, an *applicant* who is a current or former Zurn employee is given preference over an applicant who is a stranger to Zurn. Nowhere does policy 303 suggest that, even if qualified, nonpreferred *applicants* are present and available for work, Zurn may nevertheless go out and beat the bushes in an attempt to find *nonapplicants* who would have been afforded preference if they had applied. Yet, that is exactly what Zurn did here. Despite having hundreds of qualified union applicants available for almost immediate employment (and despite policy 303’s local area preference), Zurn actively sought and hired nonunion employees from out-of-state, many of whom had not even applied for jobs at the Cadillac site. Seventy-five percent of Zurn’s hires in the relevant crafts were from out-of-state. To facilitate this influx, Zurn also broke with its normal practice and

paid the travel expenses of nonunion recruits from out-of-state rather than hire local applicants with union backgrounds. As a result, many of the nonunion hires that appear, on the surface, to have been consistent with policy 303 were, in fact, additional departures from it, because the individuals hired were not true applicants covered by the policy.

Further, the actual application of policy 303 undercuts any claim that the hiring priorities genuinely served a legitimate purpose—preferring familiar, proven applicants over untested strangers—as opposed to simply serving as an excuse to prefer nonunion applicants over union applicants. For example, Tom Brigham, Zurn’s personnel manager, referred Jimmy Penix to be hired as a pipefitter on December 14. That same day, Penix referred Richard Fortin for a pipewelder position. Two days later, Fortin in turn referred Ronald Blackburn for another pipefitter position. These referral “chains” occurred on several occasions. Of course, while this finagling was going on, there were scores of highly qualified *union* applicants locally available for hire.

Despite its efforts to manipulate the policy, in December 1992, Zurn abandoned the priority system altogether, ostensibly because several union members employed on the project had gone on strike to protest Zurn’s unlawful conduct, including its refusal to hire union applicants. Zurn then feigned offers to hire 39 applicants, alleged by the Charging Party to be discriminatees. In the event, however, only 1 of those applicants was actually hired, despite widespread interest on the part of all 39 in working for Zurn. In several instances, Zurn engaged in deceptive tactics, giving applicants short deadlines (over the Christmas and New Year’s holidays) in which to respond, and revoking at least one offer after it had been accepted. After going through this deception, Zurn then elected to wait until January 1993 to hire a crew of nonunion pipefitters from a job in upstate New York.

In short, Zurn’s conduct demonstrates a wholesale effort to avoid unionization of the Cadillac project.

## II. ANALYSIS

This case is governed by the analytical framework for refusal-to-hire allegations established in *FES*, 331 NLRB 9 (2000), *enfd.* 301 F.3d 83 (3d Cir. 2002).<sup>4</sup> My dis-

<sup>4</sup> The General Counsel must show (1) that the employer was hiring, or had concrete plans to hire, at the time of the allegedly unlawful conduct; (2) that the union applicants had experience or training relevant to the announced or generally known requirements for the positions for hire (or that the requirements were either not uniformly adhered to or were pretextual); and (3) that antiunion animus contributed to the decision not to hire the union applicants. If the General Counsel makes that showing, the burden shifts to the employer to prove that it would not have hired the applicants even absent their union affiliation or activity. 331 NLRB at 12. The majority properly recognizes that

agreement with the majority turns on the third *FES* element: the connection between antiunion animus and the decision not to hire union applicants. The majority acknowledges a nexus, but concludes that it only extended to the 23 cases where Zurn deviated from policy 303. The issue, then, is whether Zurn's antiunion animus was narrowly confined—involving scattered instances—or whether it extended to all of Zurn's hiring decisions in the relevant crafts. The evidence here establishes a pattern and practice of discrimination, in which policy 303 served simply as an instrument to avoid hiring union applicants.

Zurn had a pool of over 400 union applicants registered in MESC's database. Why did Zurn fail to hire these readily available and highly qualified applicants? The answer is either that either Zurn's (mostly) neutral application of policy 303 happened to produce a largely nonunion work force (this is Zurn's only explanation), or that Zurn manipulated its hiring process to avoid hiring union members. The majority's conclusion that Zurn discriminated just some of the time—when it had a strong incentive to discriminate consistently and so avoid unionization, despite the large pool of union applicants—ignores the clear pattern reflected in Zurn's entire course of conduct.

Zurn's actions demonstrate that its primary goal in hiring was to avoid the unionization of the Cadillac project, even if that meant not hiring the best qualified work force. The evidence of Zurn's antiunion animus, only some of which is recounted earlier, is dramatic. Apart from the hiring decisions at issue, it includes repeated interrogations, threats, and warnings; the layoff of the pipefitting crew; a personnel manager's reference to "fucking union dogs"; the blunt statement "the job won't go union"; and bad-faith job offers to union applicants. This evidence hardly suggests that the transparently discriminatory hiring decisions found unlawful by the majority were out of step with Zurn's usual practice.

Even if policy 303 was neither inherently discriminatory, nor adopted for unlawful reasons, it does not follow that any (much less every) hiring decision apparently consistent with the policy was lawful. The majority focuses narrowly on the facial neutrality of policy 303 and on the legitimate purposes it *could* serve. But a neutral policy may be applied to achieve discriminatory ends, and that is just what happened here. When adhering to policy 303 would keep union applicants out, Zurn adhered to it; otherwise, Zurn either manipulated the policy

or ignored it. As described, the evidence here demonstrates that Zurn:

- (1) manipulated Policy 303 by aggressively seeking to generate applicants who could be given priority, regardless of the ostensible purposes of the policy;
- (2) applied Policy 303 disparately by refusing to give [sic] Union applicants the priority that they were entitled to; and
- (3) deviated from Policy 303 repeatedly, thus undermining any claim that its hiring decisions generally were driven by the policy, rather than by antiunion animus.

Zurn manipulated policy 303. The policy was supposed to operate as a mechanism to choose among applicants, not to recruit them. As for referrals, the policy presumably gave them priority because they were known quantities. Zurn told MESC that the purpose of the "name-call" procedure was to give priority to employees coming off its other jobsites. The policy favored local applicants, within each priority category. Contrary to all of these principles, Zurn beat the bushes for "applicants," the great majority from outside Michigan, who could be given priority over union MESC registrants. It utilized chains of referrals, resulting in new hires referring new hires and so on—undermining any notion that the persons hired (always nonunion) were chosen because Zurn could be confident of their abilities. Zurn's affirmative action for nonunion employees apparently troubled MESC, and it should trouble the majority here.

Zurn disparately applied policy 303, refusing to hire union applicants even when they should have been given priority (e.g., Kruse, Macy, and the pipefitters). Zurn's disparate application of policy 303, which the majority does recognize, by itself constitutes sufficient evidence that animus infected all of its hiring decisions.<sup>5</sup> It is well established that disparate application of policies to disfavor union applicants and favor nonunion applicants evidences unlawful motive. *Fluor Daniel, Inc.*, 333 NLRB 427, 440 fn. 78 (2001), *enfd.* in relevant part 332 F.3d 961, 970–971 (6th Cir. 2003), *cert. denied* 125 S.Ct. 964 (2005); *M. J. Mechanical Servies*, 325 NLRB 1098, 1105 fn. 18 (1998); *Monfort of Colorado*, 298 NLRB 73, 79–80 (1990), *enfd.* in relevant part 965 F.2d 1538 (10th Cir. 1992).

Finally, as the majority recognizes, Zurn deviated from policy 303 in other respects, hiring applicants who had

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Zurn had openings in the targeted mechanical trades and that the union applicants had the relevant experience or training.

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<sup>5</sup> Although the judge relied on other evidence of animus, the Board has held that disparate treatment, by itself, can support a *prima facie* case of discrimination. *New Otani Hotel & Garden*, 325 NLRB 928 fn. 2 (1998).

little or no experience in the relevant job categories, hiring applicants who were not in fact referred (falsifying some applications in the process), and going outside policy 303 (and the MESC process) entirely to hire other applicants.

Zurn's repeated failures to follow policy 303 preclude it from relying on the policy to defend even those decisions that *do* appear to conform to it. (This is Zurn's sole defense.<sup>6</sup>) As the Board and the courts have recognized, in the cases cited earlier, an employer cannot rely on a neutral policy as a defense to an allegation of antiunion discrimination unless it *consistently* follows the policy. It is Zurn's burden to show that it would not have hired the union applicants, even in the absence of their union activities or affiliation, because of policy 303. Against a background of strong antiunion animus, Zurn cannot carry that burden, because the record establishes that, again and again, it deviated from that policy.<sup>7</sup> The only reasonable inference from the actual application of policy 303, considered in context, is that the policy was a tool for discrimination.

The Sixth Circuit's decision in *Fluor Daniel, Inc. v. NLRB*, 332 F.2d 961, 970–971 (6th Cir. 2003), is of special relevance here. There, in the course of hiring 2800 persons, the employer deviated from its 30-day application rule in the case of 27 nonunion applicants, but applied the rule consistently against union-affiliated applicants. *Id.* The court rejected the employer's argument

<sup>6</sup> Zurn does not contend that the unsuccessful union applicants lacked the required training and experience or were less qualified than the successful nonunion employees.

<sup>7</sup> That is not to say that an employer must adhere unswervingly to a policy or practice in order to rely on it as an affirmative defense. Thus, in *Kelly Construction of Indiana*, 333 NLRB 1272 (2001), the Board found that an employer's single deviation from a hiring policy was "isolated and marginal" and did not mean that the policy was not applied in a neutral manner. (I dissented on other grounds.) Similarly, in *Synergy Gas Corp.*, 290 NLRB 1098, 1103 (1988), the Board rejected an allegation of disparate treatment, finding that a single known deviation from a disciplinary policy "appears to be an anomalous occurrence." In contrast, in *Avondale Industries*, the Board rejected the employer's argument that there was no disparate treatment because instances of its consistent application of the policy outnumbered its departures. 329 NLRB 1064, 1066 (1999). The Board stated that to rebut the General Counsel's case, instances of disparate treatment must be shown to "so few as to be an anomalous or insignificant departure from a general consistent past practice." *Id.*

that its deviations from the rule were *de minimis*.<sup>8</sup> In contrast to *Fluor Daniel*, where the employer deviated from a hiring policy less than 1 percent of the time, Zurn failed to follow policy 303 over 10 percent of the time in hiring nonunion instead of union applicants.<sup>9</sup> It is impossible to treat such wholesale departures from policy 303 as "isolated," "marginal," "anomalous," or "insignificant."<sup>10</sup>

### Conclusion

The majority correctly finds that Zurn discriminated in every instance where it deviated from its priority hiring policy or demonstrated antiunion animus against specific applicants. But the record compels the much broader finding that Zurn violated Section 8(a)(3) each time it hired a nonunion applicant, instead of a qualified union applicant, after June 1992 when the union organizing campaign began. The majority acknowledges a few trees here and there, but denies the existence of a forest. It finds individual, seemingly isolated, instances of discrimination against union job applicants, but misses the obvious: that Zurn/N.E.P.C.O. manipulated its entire hiring process to avoid hiring qualified union applicants—who were readily available, in large numbers—in order to avoid the unionization of the Cadillac, Michigan project.

Accordingly, I dissent.

<sup>8</sup> The court specifically held that the Board's decision in *Kelly Construction*, *supra*, did not support the employer because it did not apply its rule uniformly and because its deviations from the rule could not "be considered [j]either isolated nor marginal." *Id.* at 971.

<sup>9</sup> In an attempt to distinguish *Fluor Daniel*, *supra*, the majority argues that the employer there departed from its hiring preference policy far more often than from its 30-day application rule. But that is beside the point: the court clearly—and *separately*—found that the employer demonstrated a discriminatory application of the 30-day rule by departing from it a mere 1 percent of the time. That conclusion plainly supports a finding that, by departing from policy 303 some 10 percent of the time, Zurn systematically applied that policy to exclude union applicants.

<sup>10</sup> See *fn.* 7 and 8, *supra*.

## APPENDIX A

## APPLICANTS HIRED IN DEPARTURE FROM HIRING POLICY

## I. Departures in which the Board determined that applicants with lesser priority were hired over union applicants.

<i>APPLICANT HIRED</i>	<i>DATE</i>	<i>HIRED AS</i>	<i>REGISTERED UNION APPLICANTS WITH ACTIVE MESC REGISTRATIONS</i>
Joseph Kinney	9/3/92	Boilermaker-Helper	Payne; Trudeau; VanSlambrouer.
Dan Dronzek	9/11/92	Boilermaker	Adair; Berg; Bragan; Bridget; Bublitz; Burger, David; Burger, Fred; Caplinger; Card, John; Card, Michael; Card, Robert; Cogswell; Custer; Danula; Dodge; Greenleaf; Hintz; Hubbard; Ivey; Kraenzlain; Kuznicki; Larson; Lee; Long; Louzon; McAlpine; McDonald; Montie; Ricards; Schoudt; Shorkley; Valentine; Strawn; Westphal; Wright.
William Douglas	10/12/92	Boilermaker	Adair; Berg; Bragan; Bridget; Bublitz; Burger, David; Caplinger; Card, John; Card, Michael; Card, Robert; Cogswell; Custer; Danula; Dodge; Hintz; Hubbard; Ivey; Kraenzlain; Kuznicki; Larson; Lee; Long; Louzon; McAlpine; McDonald; Montie; Ricards; Schoudt; Shorkley; Valentine; Strawn; Westphal; Wright.
Samuel Gibson; Peter Caisse	10/16/92	Boilermaker	Adair; Berg; Bragan; Bridget; Bublitz; Burger, David; Caplinger; Card, John; Card, Michael; Card, Robert; Cogswell; Custer; Danula; Dodge; Hintz; Hubbard; Ivey; Kraenzlain; Kuznicki; Larson; Lee; Long; Louzon; McAlpine; McDonald; Montie; Ricards; Schoudt; Shorkley; Valentine; Strawn; Westphal; Wright.
Martin Fischer	10/20/92	Structural Welder	Adair; Andrews; Armstrong; Arndt; Bragan; Baudoux; Davenport; Ford; Hamilton, Bradley; Hamilton, Brett; Johnson, David; Koscielecki, Daniel; Macy, Gilbert; Marshall, Lee; McAlpine; Perez; Schoudt; Sorenson, Rodney; Taylor, Tom; Valentine.
Ken Carter	10/28/92	Boilermaker	Adair; Berg; Bragan; Bridget; Bublitz; Burger, David; Caplinger; Card, John; Card, Michael; Card, Robert; Cogswell; Custer; Danula; Dodge; Hintz; Hubbard; Ivey; Kraenzlain; Kuznicki; Larson; Lee; Long; Louzon; McAlpine; McDonald; Montie; Ricards; Schoudt; Shorkley; Valentine; Strawn; Westphal; Wright.
Stan Brigner	10/21/92	Boilermaker	Adair; Berg; Bragan; Bridget; Bublitz; Burger, David; Caplinger; Card, John; Card, Michael; Card, Robert; Cogswell; Custer; Danula; Dodge; Hintz; Hubbard; Ivey; Kraenzlain; Kuznicki; Larson; Lee; Long; Louzon; McAlpine; McDonald; Montie; Ricards; Schoudt; Shorkley; Valentine; Strawn; Westphal; Wright.
Kelly Bennet	11/9/92	Pipefitter-Helper	Bragan.
Bryce Friese	11/9/92	Pipefitter-Helper III	Bragan.
Millard Howell	11/17/92	Boilermaker	Adair; Berg; Bragan; Bridget; Bublitz; Burger, David; Caplinger; Card, John; Card, Michael; Card, Robert; Cogswell; Custer; Danula; Dodge; Hintz; Hubbard; Ivey; Kraenzlain; Kuznicki; Larson; Lee; Long; Louzon; McAlpine; McDonald; Montie; Ricards; Schoudt; Shorkley; Valentine; Strawn; Westphal; Wright.
Donald Diekman	12/7/92	Pipefitter	Armstrong; Ashby; Benjamin; Bennett; Border; Bragan; Burnell; Carney; Cook; Custer; Dahlvig; Danula; Dehring; Dickens; Dreyer; Eberle; Garrison; Guenthardt; Hagerty; Hanel; Havens; Hazen; Jipping; Kaplinger; Kelley; Klein; Kline; Kuznicki; Melius; O'Hara, Michael; Ostrander; Peer; Peterson; Salisbury; Schaub; Sharp, Terry; Stanick; Sutlif; Vandwelinde; Weaver, Randy; Welch; Western; Yost.
Jeff Pugh	12/12/92	Boilermaker	Adair; Berg; Bragan; Bridget; Bublitz; Burger, David; Burt; Caplinger; Card, John; Card, Michael; Card, Robert; Cogswell; Custer; Danula; Dodge; Hintz; Hubbard; Ivey; Kraenzlein; Kuznicki; Larson, L; Lee; Long; Louzon; McAlpine; McDonald; Montie; Myers; Ricards; Schoudt; Shorkley; Valentine; Strawn; Westphal; Wright.
Jimmy Penix	12/16/92	Pipefitter	Armstrong; Ashby; Benjamin; Bennett; Border; Bragan; Bryan; Burnell; Childs; Carney; Cook; Custer; Dahlvig; Danula; Dehring; Dickens; Donovan; Dreyer; Eberle; Garrison; Gillman; Guenthardt; Hagerty; Hanel; Havens; Hazen; Jipping; Kaplinger; Kelley; Klein; Kline; Kuznicki; Letherer; McKenna, P.; Melius; O'Hara, Michael; Ostrander; Peer; Peterson; Raetz; Rosenberry; Salisbury; Schaub; Sherven; Stanick; Super; Sutlif; Vandwelinde; Vine; Weaver, Randy; Wendling; Western; Yost.
Richard Fortin	12/17/92	Pipewelder	Ashby; Benjamin; Cook; Donovan; Dickens; Finney; Garrison; Havens; Gillman; Klein; Myers; Nye; Schaffer.

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

<i>APPLICANT HIRED</i>	<i>DATE</i>	<i>HIRED AS</i>	<i>REGISTERED UNION APPLICANTS WITH ACTIVE MESC REGISTRATIONS</i>
Jay Culpepper	12/17/92	Pipefitter	Armstrong; Ashby; Benjamin; Bennett; Border; Bragan; Bryan; Burnell; Childs; Carney; Cook; Custer; Dahlvig; Danula; Dehring; Dickens; Donovan; Dreyer; Eberle; Garrison; Gillman; Guenthardt; Hagerty; Hanel; Havens; Hazen; Jipping; Kaplinger; Kelley; Klein; Kline; Kuznicki; Letherer; McKenna, P.; Melius; Myers; O'Hara, Michael; Ostrander; Peer; Peterson; Raetz; Rosenberry; Salisbury; Schaub; Sherven; Stanick; Super; Sutlif; Vandwelinde; Vine; Weaver, Randy; Wendling; Western; Yost.
Nathan Campbell; Shawn Childress	12/18/92	Pipewelder	Ashby; Benjamin; Cook; Dehring; Dickens; Donovan; Finney; Gillman; Klein; Nye; Schaffer; Western.
William Greene	12/18/02	Ironworker	Adair; Arndt; Battle; Bragan; Donovan; Hamilton, Bradley; Hamilton, Brett; Hardy; Marshall; Perez; Stawicki; Valentine.
James Vaughn	1/13/93	Pipefitter-Helper	Bragan.
Vickie Hilliard	1/18/93	Pipefitter-Helper	Bragan.

II. Departures in regard to the Respondent's failure to hire Jeff Kruse, a former employee, who applied on 4/16 for carpenter positions.

<i>APPLICANT HIRED</i>	<i>DATE</i>	<i>REGISTERED UNION APPLICANTS</i>
Kim Ludwig	4/21	Benoit; Bishop; Coopshaw; Cox; Davis; Harju; Holmes; Itzen; Kitchen; Koscielecki, Kevin; Kruse; Macy, Gary; Mattis; Nemethy; Radden; Sharp, Robert; Simons; Walsh.
Helmut Lackermayer	4/28	Benoit; Bishop; Coopshaw; Cox; Davis; Holmes; Itzen; Kitchen; Koscielecki, Kevin; Kruse; Macy, Gary; Mattis; Nemethy; Radden; Sharp, Robert; Simons; Walsh.
Gary Macy; Mark Eisena; Daniel Woodhead	5/26; 5/27; 5/27	Benoit; Bishop; Coopshaw; Cox; Davis; Holmes; Itzen; Kitchen; Koscielecki, Kevin; Kruse; Mattis; Nemethy; Radden; Rienas; Sharp, Robert; Slaghula; Simons; Walsh.
Daniel Premo	6/22	Benoit; Bishop; Coopshaw; Cox; Davis; Holmes; Itzen; Kitchen; Koscielecki, Kevin; Kruse; Mattis; Nemethy; Radden; Rienas; Sharp, Robert; Slaghula; Simons; Vandyke, Michael; Walsh.
Manuel Langston	9/10	Benoit; Bishop; Cox; Davis; Holmes; Itzen; Kitchen; Kruse; Nemethy; Radden; Rienas; Slaghula; Vandeusch; Vandyke, Michael; Sharp, Robert; Simons.

III. Departures in regard to Gary Macy, whom the Respondent did not hire for millwright positions after his layoff as a carpenter on 11/12/92, despite his priority status.

<i>APPLICANT HIRED</i>	<i>DATE</i>	<i>REGISTERED UNION APPLICANTS (MESC Registration Date)</i>
Roger Poole; James Poole;	12/19; 12/12	Jackson, Robert; Macy, Gary; Richard; Stracka.

APPENDIX B

Alphabetical listing of applicants  
discriminated against by the Respondent's  
departures from policy 303

Adair, Larry P.	Davenport, James A.	Kline, Donald	Rosenberry, David L.
Andrews, James	Davis, Chester	Koscielecki, Daniel	Salisbury, Jay
Armstrong, John	Dehring, David J.	Koscielecki, Kevin	Schaffer, Jeffrey
Arndt, Anthony W.	Dickens, Kary Lee	Kraenzlein, Gerald	Schaub, Robert
Ashby, David	Dodge, William	Kruse, Jeffrey	Schoudt, Ronnie
Battle, James P.	Donovan, Eugene	Kuznicki, Robert	Sharp, Robert A.
Baudoux, Robert M.	Dreyer, Leonard R.	Larson, Larry	Sharp, Terry L.
Benjamin, Kenneth	Eberle, Kenneth W.	Lee, Tommy	Sherven, Norman
Bennett, Rick D.	Finney, Rich	Letherer, John R.	Shorkley, Henry
Benoit, John F.	Ford, William	Long, Gaines	Simons, Nevin
Berg, James	Garrison, Ralph	Louzon, Lawrence	Slaghula, James A.
Bishop, George	Gillman, William J.	Macy, Gary	Sorenson, Rodney
Border, David E.	Greenleaf, Harold	Macy, Gilbert	Stanick, Duane
Bragan, James	Guenthardt, Gerald	Marshall, Lee	Stawicki, Robert
Bridget, Cleland	Hagerty, Richard	Mattis, Marshall F.	Stracka, Tim N.
Bryan, Giles D.	Hamilton, Bradley	McAlpine, Jack	Strawn, Clinton
Bublitz, Gary	Hamilton, Brett	McDonald, John	Super, John J.
Burger, David B.	Hanel, Donald	McKenna, Patrick	Sutlif, Kirk
Burger, Fred	Hardy, Charles J.	Melius, Rodney	Taylor, Tom
Burnell, Russell	Harju, David	Montie, Floyd L.	Trudeau, Douglas
Burt, Donald	Havens, Raymond	Myers, Danny L.	Valentine, Jonathan
Caplinger, Leslie A.	Hazen, Tim A.	Nemethy Sr., Steven R.	Van Dyke, Michael
Carney, Thomas Lee	Hintz, Gregory A.	Nye, James	VanSlambrouer, Clayton J.
Card, John	Holmes, Donald L.	O'Hara, Michael	Vandwelinde, Paul C.
Card, Michael	Hubbard, Zane	Ostrander, Leo	Vine, Terry J.
Card, Robert	Itzen, Daniel F.	Payne, George	Walsh, John M.
Childs, Gary	Ivey, George	Peer, Samuel T.	Weaver, Randy
Cogswell, William	Jackson, Robert	Perez, Tony	Welch, Larry R.
Cook, James D.	Jipping, Arie	Peterson, Alan S.	Wendling, Randy Charles
Coopshaw, Robert J.	Johnson, David	Radden, Rex C.	Western, Gary R.
Cox, Ray L.	Kaplinger, Jarvis	Raetz, Rick R.	Westphal, Jeffrey
Custer, Lori	Kelley, Albert W.	Ricards, William	Wright, John
Dahlvig, H. Ray	Kitchen, Wallace	Richard, Gerald	Yost, James G.
Danula, Harry	Klein, Douglas	Rienas, Robert D.	

APPENDIX C

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively interrogate, through our agents at the Michigan Employment Security Commission, job applicants about their union background.

WE WILL NOT coercively interrogate employees and job applicants about their union sympathies and affiliations.

WE WILL NOT threaten employees with the loss of jobs or other reprisals because of their union support.

WE WILL NOT prohibit employees from wearing union stickers, union buttons, or other union insignia on their hardhats and their clothing.

WE WILL NOT discriminate against employees because of their union activity by laying them off and failing to recall them to their former jobs.

WE WILL NOT discriminatorily refuse to hire job applicants because they are union members or sympathizers, or because they worked in establishments which had union contracts, and discriminatorily apply a facially neutral hiring policy in such a way as to discriminate against suspected union applicants or sympathizers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer James Bragan, Lori Custer, Tony Perez, Sean Redner, Gerald Richard, and Joe Van Dyke instatement to the positions to which they applied or, if those positions no longer exist, to substantially equivalent positions.

WE WILL make James Bragan, Lori Custer, Tony Perez, Sean Redner, Gerald Richard, and Joe Van Dyke whole for losses sustained by reason of our discrimination against them, plus interest.

WE WILL, within 14 days, from the date of the Board's Order, remove from our files any reference to the unlawful refusal to hire James Bragan, Lori Custer, Tony Perez, Sean Redner, Gerald Richard, and Joe Van Dyke, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the refusal to hire them will not be used against them in any way.

WE WILL offer instatement to 23 discriminatees whose identity is to be determined in the Board's compliance proceeding, to the positions to which they applied or, if those positions no longer exist, to substantially equivalent positions.

WE WILL make the 23 discriminatees whole for any losses sustained by reason of our discrimination against them, plus interest.

WE WILL consider the remaining discriminatees for future job openings in accord with nondiscriminatory criteria, and notify them, the Charging Party, and the Regional Director for Region 7 of the Board of such openings in positions for which the discriminatees applied, or substantially equivalent positions.

WE WILL remove from our files any reference to the unlawful refusal to hire the discriminatees, and WE WILL notify them in writing that this has been done and that the refusal to hire them will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, offer the pipefitters Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, Shawn O'Hara, Allen Randle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey reemployment in the positions they held at the time they were discriminatorily laid off, or if those positions no longer exist, to substantially equivalent position.

WE WILL make Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, Shawn O'Hara, Allen Randle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey whole for any loss of earnings they may have suffered by reason of the discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful layoff of Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, Shawn O'Hara, Allen Randle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the refusal to hire them will not be used against them in any way.

#### ZURN/N.E.P.C.O.

*Joseph P. Canfield, Esq. and Cynthia Beauchamp, Esq., for the General Counsel.*

*Michael C. Towers, Esq. and William F. Kaspers, Esq. (Fisher & Phillips), of Atlanta, Georgia, for the Respondent.*

*Kenneth A. Knox, Esq. (Fisher & Phillips), of Fort Lauderdale, Florida, for the Respondent.*

*Peter T. Kotula, Esq., of Detroit, Michigan, for the Attorney General.*

*Michael J. Stapp, Esq. and Mary Elizabeth Metz, Esq. (Blake & Uhlig, P.A.), of Kansas City, Kansas, for the Charging Party.*

#### DECISION

##### STATEMENT OF THE CASE

KARL L. BUSCHMANN, Administrative Law Judge. This case was tried in Grand Rapids, and Cadillac, Michigan, intermittently from June 21, 1993, to May 10, 1994, upon several complaints which were consolidated and amended by order of the General Counsel. The complaint in Case 7-CA-33443 issued on July 1, 1992, is based upon charges filed on July 1, 1992, by the Northern Michigan Building & Construction Trades Council and its affiliated Unions (the Charging Party, the Unions, or Union). The complaint in Case 7-CA-33672 is based upon charges by the same Unions filed on September 2, 1992. The cases were consolidated by order of October 9, 1992. An Order consolidating cases, amended consolidated complaint, issued on December 9, 1992, following another charge filed by the Unions on October 19, 1992. Additional charges were filed by the Unions in Cases 7-CA-33920 and 7-CA-33982 which resulted in an Order consolidating cases, second amended con-

solidated complaint and notice of hearing, dated December 29, 1992. The Unions filed a charge on January 6, 1993, in Case 7-CA-34089 resulting in a complaint, dated February 10, 1993, which was consolidated with the prior complaints by Order, dated February 11, 1993. Additional charges were filed in Case 7-CA-34532. The complaint in that case was consolidated with the prior complaint by order of June 8, 1993.

The complaints charge the Respondent, Zurn/N.E.P.C.O., and the Michigan Employment Security Commission (MESOC) as agent, with approximately 20 violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The allegations include threats of reprisals or loss of jobs because of the employees' union support, coercive interrogations, unlawful prohibitions against union solicitations, discriminatory layoffs and discharges and refusals to hire boilermakers, pipefitters, and ironworkers because of their union affiliations.

The Respondent filed timely answers to the complaints, admitting the jurisdictional allegations and denying that the Company had engaged in unfair labor practices.

The General Counsel was permitted, over the Respondent's objections, to amend the complaint with 16 additional allegations, including the discriminatory refusals to hire applicants from the following crafts, carpenters, millwrights, electricians, sheet metal workers, and operating engineers.

Upon the record as a whole, including my observation of the witnesses and the briefs filed by the General Counsel, the Union and the Respondent, I make the following findings of fact and conclusions of law

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent, Zurn/N.E.P.C.O. is a Washington corporation headquartered in Redmond, Washington, and Portland, Maine, and a jobsite in Cadillac, Michigan. As a general contractor in the building and construction industry, it built a cogeneration facility at the Cadillac jobsite. With purchases and receipts of goods and materials valued in the excess of \$50,000 from points outside the State of Michigan during the 12-month period ending July 31, 1992, the Respondent admittedly was and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Northern Michigan Building & Construction Trades Council and its affiliated Unions, AFL-CIO, is a chartered organization composed of member unions, i.e., boilermakers, pipefitters, ironworkers, electricians, carpenters, millwrights, sheet metal workers, and operating engineers. Each of the Unions is and has been a labor organization within the meaning of Section 2(5) of the Act.

##### II. FACTS

In the early 1990's a partnership, including Beaver Plant Operations, several other companies, certain individuals, and the City of Cadillac, developed plans to build a cogeneration power plant in Cadillac, Michigan, and contracted with a construction company, known as Townsend and Bouton (also appearing in the record as Townsend & Bodham or Townsend and Bottum) (Tr. 2845-2846, 4675-4715). Townsend and Bouton entered into a project agreement with the Northern Michigan Building

& Construction Trades Council for the hiring of the necessary labor force for that project. The original plan for the plant envisioned the production of steam for a sawmill and electricity. The Northern Michigan Trades Council had assisted Kaiser Industries, one of the partners for the Cadillac project, to lobby the local legislature to enact favorable legislation, involving water treatment for ground water-contamination, to facilitate the construction in downtown Cadillac (Tr. 2849, 4691). The Union's efforts in this regard contributed to parties' willingness to enter into the prehire agreement with the Union to utilize craftsmen from Northern Michigan (Tr. 2849). The plans to build the cogeneration plant by Townsend and Bouton fell through and the partnership turned to Zurn/N.E.P.C.O. to build a power plant in Cadillac. Upon hearing in late 1990 or early 1991 that Zurn had been selected, Charles Westphal, vice president of the Northern Michigan Building and Construction Trades Council, contacted the president of Zurn/N.E.P.C.O., Don Butynski, and requested that Zurn honor the project agreement of its predecessor. Westphal recalled the conversation as follows (Tr. 2851-2852):

He indicated to me that they were a merit shop contractor. I asked him if he was aware that there was a project agreement in place, and whether he was going to honor it. He said that he wasn't going to honor it.

I asked him if there was a possibility that I could sit down with him and talk about the project, that my intention was to secure work for my members in northern Michigan. I explained to him that in the last six, seven years we had built roughly ten or twelve Cogens in northern Michigan.

Had an outstanding work force that lived in the area. I offered to send him letters from different developers and different banks and different contractors, letters of commendation that was addressed to us. We had brought every project in under budget and ahead of schedule, indicating that there was qualified crafts in all areas of expertise.

I would like to talk to him about getting our members employed, even though he was a merit shop contractor.

....

He indicated that—he said that it would be tough for him to sit down and talk with me about an arrangement in Cadillac because of the charges that were filed by my International in various locations, especially [P]edrickstown.

On January 26, or 27, 1992, several union officials, including Westphal, Bob Wuelfing, business manager for the Electrical Workers (IBEW), and Bill Tuinstra met with Butynski and Charles Caulkins, an attorney for Zurn in Pittsburgh, Pennsylvania. Again the Union attempted to persuade Zurn to use qualified craftsmen from the northern Michigan area. Butynski repeated that an agreement along those lines was possible only if the Union were to drop its charges in Pedrickstown. The meeting ended when the Union indicated its reluctance to withdraw the pending charges.

In the meantime, through local publicity, the Cadillac project attracted local jobseekers. An article written by Mark Lagerway appeared in the Cadillac Evening News, describing an

interview with Zurn's marketing manager, James Hewitt. The paper quoted Hewitt as follows:

Hewitt said contracting as much as 90 percent of the construction work force locally will help the local economy and provide project partners a pool of qualified workers to stay with the plant once it begins operating.

Lagerway testified and confirmed Hewitt's statement that Zurn would hire local labor for up to 90 percent of the necessary work force (Tr. 1562, GC Exh. 80).

Wuelfing and Jeff Kruse, a representative of the Carpenters Union, called Hewitt about job possibilities in Cadillac. They were informed by Walter Neal, Zurn's personnel manager, that the Company would accept applications on Zurn forms (Tr. 1990, 2484, 2604). As a result, they as well as other union members, sent resumes and applications directly to Zurn. Several unions and their representatives encouraged their members who wanted jobs with Zurn to meet at the Olson's Motel in Cadillac, Michigan, to fill out Zurn applications. More than 100 applications were sent to Zurn directly by letter of January 28, 1992 (GC Exh. 139). Among the applicants were sheet metal workers, carpenters, iron workers, and electricians. However, by letter of January 31, 1992, Neal returned all the applications to the Charging Party stating that Zurn would hire at the Cadillac project and that the Michigan Employment Security Commission (MESC) in Cadillac would process the applications (Tr. 4841-4846, GC Exh. 141). Zurn had requested the MESC to process all job applicants on its behalf.

According to the Respondent, the MESC acted as a special agent for Zurn in accepting and registering job applicants for the Zurn project. Registrants filled out a form to indicate their job skills and work experience. An employer like Zurn, was then able to request referrals from the MESC for the necessary job skills.

Union representatives accordingly sent their members who needed jobs to the MESC to register. They were then asked to return to the Olson's Motel to fill out a small questionnaire for the Union showing the date of registration, whether they were hired and whether they identified themselves as union members (GC Exh. 140).<sup>1</sup>

During the interviews with officials at the MESC, many job applicants were asked whether they were members of a union or whether they had a union background.

In February 1992, Sean Redner called Neal at the Company's Portland, Maine office expressing interest in working for Zurn. During the conversation Neal indicated that he would accept Redner's resume for consideration at the Cadillac jobsite. Redner sent his resume to Neal within a few days.

Tuinstra and Westphal encouraged their union members to do likewise. They collected resumes from their membership and sent them to Neal. Tuinstra sent approximately 100 resumes by letter of March 23, 1992, and Westphal sent 44 applications by letter of March 12, 1992 (GC Exh. 142, Joint Exh.

<sup>1</sup> That job applicants completed the slips of paper after they returned from the MESC was supported by the testimony of numerous witnesses who stated that they had filled out a particular slip or observed others filling out their slips and could identify their signatures.

1). Neal returned both sets of applications within a few days with the remark that the MESC would process all applications (Joint Exh. 3, GC Exh. 143).

Actual construction work began sometime in April 1992, although the official ground breaking ceremony was held on May 14, 1992. The first employees to be hired were electricians. Four were hired from the MESC referral system, including Christine Gallandt. According to her undisputed testimony, Larry Sullivan, Zurn's personnel manager at the jobsite, assured her during the initial interview that her job would last from 10 to 12 months (Tr. 605, 7752). Gallandt had disclosed on her job applications that her prior employment included unionized companies. The Respondent maintains, however, that it had planned to subcontract the electrical work from the beginning.

The next complement of employees to be hired were pipefitters to perform the underground piping system. John O'Hara, who possessed certain necessary licenses including a class 4 boilermaker's license, was hired as foreman. Subsequently Zurn hired 13 pipefitters. During the interviewing process with Zurn officials, several pipefitters were told that their jobs would last from 1 to 2 years. They worked up to 12 hours a day and 6 or 7 days a week.

In May 1992, the Union began to schedule regular organizing meetings with Zurn employees with the intention to organize the Cadillac jobsite. In attendance were the 13 pipefitters and several carpenters. Several of the employees signed union authorization cards. Union stickers and buttons were distributed to the employees during the meetings.

On or about May 18, 1992, Leon Greer, the resident manager for Zurn, assembled the employees at the Cadillac jobsite and lectured them about solicitation on the job. He told them that solicitation was prohibited and anyone caught soliciting would be looking for another job (Tr. 684). A few days later, the Respondent subcontracted the electrical work to a nonunion contractor and the electricians, including Christine Gallandt, were laid off after only 7 days of work.

By letter of June 2, 1992, addressed to Leon Greer, superintendent, and signed by union representatives, for the boiler-makers, ironworkers, sheet metal workers, carpenters, and operating engineers, the Company was officially notified of the unions' efforts to organize the Cadillac facility. The letter identified six employees, including Chester Brown, operating engineer, Gary Macy and Kim Ludwig, carpenters, Peter Bellecy, surveyor, Leonard Bowen, laborer, and Christine Gallandt, electrician (GC Exhs. 137, 165).

While none of the pipefitting crew had been identified in the letter as union organizers, the entire crew began to wear union insignia, such as badges and stickers on the jobsite in early June 1992. Richard Toller, who was the mechanical superintendent and oversaw the piping crew, testified that management was aware of their union support (Tr. 5992). In addition, the Union notified Leon Greer by letter of June 12, 1992, that additional employees, especially seven pipefitters were members of the organizing committee (GC Exh. 160(a)). By letter of June 12, 1992, Westphal also sent a letter to Greer, demanding recognition on behalf of Respondent's employees at the Cadillac jobsite (GC Exh. 167). The demand was rejected (GC Exh. 170).

On June 18, 1992, the Union held a rally outside the company gate attended by more than 200 demonstrators. Also on June 18, 1992, the entire crew was laid off, including their foreman John O'Hara. The layoff followed the union rally. All pipefitters on the job, except for their foreman, had joined the rally during their lunchbreak. They returned wearing union stickers which were handed out during the picketing.

Contrary to the repeated representations by management that the pipefitters' work would last for 1 to 2 years and even though the underground piping system was not completed, the crew was assembled shortly after the union demonstration and informed that they were laid off effective immediately for "lack of work." Up until that moment, the crew had worked overtime up to 12 hours a day and 6 or 7 days a week.

Gayle Hare, superintendent of piping, told one of the pipefitters that the layoff occurred because of the Union.<sup>2</sup> The Respondent decided to subcontract the piping work and hired two firms, Northern Boiler and MAT Mechanical<sup>3</sup> to complete the piping work in July 1992.

On July 15, 1992, the Union held another rally in an effort to have their members hired. Approximately 200 people attended. Union Representatives Westphal and Lee urged the guard at the entrance gate to the building site to accept job applications. The guard, after making a telephone call, informed the group that they had to apply through the MESC.

When union numbers applied at the MESC office, they noticed that many job applicants received preferential treatment. They were interviewed ahead of other job seekers and quickly processed ahead of the others.

In September the MESC sponsored an advertisement in the local papers seeking boilermakers and millwrights for the Zurn project. Yet approximately 40 union boilermakers had already registered with the MESC but were not contacted for such job openings. When the union representatives inquired at the MESC, its director, Josie Bennett, informed the Union that all boilermakers had been incorrectly classified at the MESC and were therefore not referred to Zurn.

By letter of September 17, 1992, Westphal informed Leon Greer that "a minimum of 40 boilermaker journeymen and apprentices and numerous building trades members" had registered and are available in response to the advertisement (GC Exh. 174). However, the letter was never answered by Zurn.

On September 21, 1992, several of the union representatives again met with Respondent's President Don Butynski to discuss the employment of the Union's members. Again, Butynski conditioned their employment on the settlement of the charges filed in the Pedrickstown jobsite. In September, Zurn offered to rehire many of the pipefitters who were laid off. But none were reinstated to their former jobs as pipefitters. Instead they worked as welders or boilermaker helpers.

On December 5, 1992, many of the Zurn employees left their jobs and engaged in a strike. The picket signs accused Zurn of violating labor laws. Three days later, on December 8, 1992,

Westphal communicated in writing "an unconditional offer to return to work under the same terms and conditions of employment" (GC Exh. 177).

On December 9, 1992, the Board issued another complaint against Zurn charging it with unfair labor practices. At about the same time, the MESC discontinued processing "name calls" or pre-designated job applicants specifically requested by Zurn. The decision was not made because of a strike, but faced with Zurn's request to process 70 "name call" applicants who would have been given preferential referrals by the MESC, it notified Zurn orally that henceforth it would refer applicants only a "first in first referred" basis in accordance with its usual practice (Tr. 3861, GC Exh. 218).

Approximately 1700 individuals with various job skills were registered at the MESC seeking employment with Zurn. It could have hired its work force from that pool of individuals (Tr. 7587).<sup>4</sup> The Respondent's total work force consisted of 276 employees including supervisors and secretaries (Tr. 7589-7590). According to Zurn all except 64 employees were hired on that project on a priority basis, that is 212 of the work force were "name-calls" or other preferred employees and 64 were referred by the MESC as regular applicants in accordance with its normal procedure (R. Exhs. 147, 148, 151, R. Br. p. 17). None of its boilermakers on the job for example were hired through the regular MESC process, they all were priority referrals. Only 24 of the 64 regularly hired candidates had a union background according to the Respondent (R. Exhs. 148, 149).

According to the Union, the Respondent hired 202 employees, not counting supervisors or secretaries, in such job categories as millwrights, boilermakers, pipefitters, electricians, riggers, welders, laborers, operating engineers, carpenters, and ironworkers (CP Exh. 16). The Union also submitted a list of 523 applicants who were not hired allegedly because of their prior union background or a showing of union support (CP Exh. 19).<sup>5</sup>

### III. THE ALLEGATIONS

The consolidated complaint, as amended, alleges numerous 8(a)(1) allegations as well as allegations of Section 8(a)(3) and (1) mainly in relation to the layoff of the piping crew, and the layoff or discharges of certain other employees, as well as the Respondent's refusal or failure to hire numerous applicants with union backgrounds. The allegations in the consolidated complaint were repeatedly amended during the hearing stage of the case. Certain of the amendments<sup>6</sup> are contested. The issues presented are:

<sup>4</sup> One thousand fifty seven registrants had completed MESC form 2511 (Tr. 3927). The record contains an exhibit showing 1731 registered individuals (R. Exh. 152, Tr. 7505).

<sup>5</sup> This list was based upon various documents, including MESC documents, bulk applications sent to Zurn, questionnaires filled out by union members, Zurn documents, bulk resumes, and the Union's out-of-work lists. The Respondent has questioned the reliability of some of the underlying documentation.

<sup>6</sup> The following amendments proposed by General Counsel are denied: unlawful promises made by Sullivan and Charles Owens; conditioning the hiring of employees on withdrawal of charges. That testimony was permitted over Respondent's objection and with the understanding that it was not alleged in the complaint (Tr. 140-142); video-

<sup>2</sup> O'Hara denied making this statement. But his lack of candor and general uncertainty during his testimony renders his denial not credible (Tr. 6047).

<sup>3</sup> MAT Mechanical was also referred to as MAP Mechanical.

Whether the Respondent violated Section 8(a)(1) of the Act by threatening its employees by the following supervisors: Gayle Hare on June 18, 1992; Larry Sullivan in August and October 1992; William McDowell on September 18, 1992; Jim Chittum on October 22, 1993; Richard Toller on December 3, 1992; Dave Walls in September 1992; and Leon Greer in May 1992.

Whether employees were coercively interrogated by: Larry Sullivan in August 1992 (Tony Perez), in June 1992 (Rockford Jones, Gerald Richard), in September 1992 (Robert Cook), and in September 1992 (Rockford Jones); by David Walls in June 1992, by Bill King in late 1992; by John Petty and from January to April 1992 by MESC officials of numerous registrants.

Whether the Respondent violated the Act by an unlawful solicitation policy and prohibitions against union stickers and buttons.

Whether the Respondent violated Section 8(a)(1) and (3) of the Act by the following layoffs: May 21, 1992, of electricians, including Christine Galland;<sup>7</sup> on June 18 all pipefitters (Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, John O'Hara, Shawn O'Hara, Allen Radle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyme Woolsey); and the discharge on December 2, 1992, of Roger See, and the discipline of Donald Diekman.

Whether the Respondent violated Section 8(a)(1) and (3) of the Act by discriminatory refusals to hire job applicants in the iron working, boilermaking, pipefitting crafts, as well as those in the carpenter, millwright, electrician, sheet metal worker, and operating engineer crafts, including but not limited to: Jeffrey Westphal, Harold Greenleaf, James Bragan, Jeffrey Kruse, Gerald Richard, Joe Van Dyke, Lori Custer, Tony Perez, Sean Redner; and the discriminatory refusal to recall or rehire: John Corwin, John O'Hara, Charles Kaiserlian, Mark Berens, Gary Macy, Everett Woolsey,<sup>8</sup> and as well as the discriminatory treatment of Phil Harmon and Stanley Brigner.

Whether the Respondent violated the Act by unlawfully subcontracting the piping work and the electrical work.

During the hearing, the General Counsel moved to amend the amended, consolidated complaint to allege that Zurn's priority hiring policy (policy 303) or word of mouth hiring system is discriminatory (Tr. 5429). The Respondent objected. I stated as follows (Tr. 5433):

I think that what I am going to do is not rule [it] on your motion at this time. Mr. Towers is on notice that you are making that motion for an amendment to the com-

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taping of pickets and promises of benefits was not offered as an amendment during the hearing. See, Respondent's Motion to Strike Counsel for General Counsel's New Allegations, dated February 24, 1995, and General Counsel's Response, dated April 26, 1995.

<sup>7</sup> The electricians' layoff was offered as an amendment to the complaint but a ruling was withheld (Tr. 683). The issue was fully litigated and the Respondent has addressed the substantive issue of the allegation (R. Br. 153). The amendment should have been, and it is hereby, granted.

<sup>8</sup> The complaint alleges that Woolsey was unlawfully laid off, but it does not specifically state that the Respondent unlawfully failed to recall or rehire him. That issue is, however, implicit in the allegation of the complaint and was fully litigated.

plaint. You can make that motion even at the end of the case. And what I would suggest that you do is that you make this motion in your brief, and I'll consider it at that time.

The General Counsel argues in his brief that the Respondent's policy was unlawful as applied on the Cadillac site, and the Charging Party argues that such a policy is inherently destructive of employees' rights. The Respondent introduced its personnel policy into the record in its defense to the complaint's allegation that it unlawfully failed to hire union applicants. The legality of the policy is therefore in issue irrespective of a specific amendment to the complaint. Furthermore, the Respondent was on notice that the General Counsel would challenge the policy as unlawful and had ample opportunity to and did respond to the substantive issue. The issue is implicit and inextricably intertwined with the allegations in the complaint. Upon further reflection, I hereby grant the General Counsel's motion and reject the Respondent's argument that it was procedural error for me to withhold a ruling. The Respondent has made no showing of prejudice. I also deny the Respondent's motion and memorandum to dismiss counts based on *res judicata*, dated April 27, 1995.

#### IV. THE UNFAIR LABOR PRACTICES

Was Zurn NEPCO—in its own words—the innocent victim of the “most concentrated attack to date on traditional merit shop hiring practices”—subjected “to the union’s web of traps” and “in your face bully tactics combined with abuse of Board procedures”—“set up” and targeted by “the union’s trained agents,” who “scripted, casted, staged, and choreographed countless scenes,” where “members of the mob [referring to job applicants] created a chaotic scene at the MESC offices,” “baited MESC personnel,” used “mass-mailed counterfeit” applications and engaged in “the violent union strike on December 5, 1992” without any “genuine desire to seek employment?”<sup>9</sup> Or did the Union in spite of its all out efforts simply fail to get its local members employed by an out-of-state contractor whose fixed price bid was based on nonunion labor costs and, as an experienced “merit shop” employer, used all its skills and ingenuity to shut out the Unions as soon as they made a public effort to organize the employees. A fair reading of the voluminous and sometimes inconsistent record evidence supports the second scenario. While the Respondent as a nonunionized employer, was free to use legitimate means to remain “a merit shop” and while several allegations have not been substantiated, it is clear that Zurn’s relationship with the MESC was that of a principal and an agent whose misconduct is imputable to the employer, and that Zurn, at whose behest the agency relationship was created, exceeded proper bounds of conduct and violated the Act. Zurn unlawfully laid off the entire piping crew, and it used its priority hiring policy, the MESC relationship, its recruitment of applicants from outside the State of Michigan, and other methods to avoid hiring qualified individuals because of their union background. It also

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<sup>9</sup> The quoted material are selected statements which Respondent’s attorneys used in their brief.

engaged in threats, interrogations and discriminatory treatment of employees because of their union support.

#### A. Zurn's Agency Relationship with the MESC

The complaint alleges and the record shows that the MESC acted as Zurn's agent. The MESC (Michigan Employment Security Commission) is a state agency with offices in various locations in Michigan, including Cadillac. One of its functions, the employee placement service, is to register applicants for jobs and, upon request by an employer, known as job order, to provide him with a list of qualified individuals giving due considerations to an applicant's veteran status and time of registration. At Zurn's request, the MESC agreed to process all individuals seeking employment at the Cadillac project. Described by Zurn as a custom referral agreement, it required the MESC to honor Zurn's priority hiring system which, as described in more detail below, discriminated against regular applicants in favor of prior Zurn employees and referrals by Zurn employees sometimes referred to as "name calls." All regular applicants were required to register with the MESC and complete a standard Form 2511. They were then interviewed by MESC personnel, who entered the relevant information on a computer. Josie Bennett, district manager, explained the process as follows (Tr. 85-86):

And they were given the same forms as any one else to—registering for work with our office.

During the course of the interview, if they expressed an interest in working with this employer they were assigned a special code, an office use code, which indicated their pref—their interest in working at the co-generation plant.

In addition, they were given an occupational code or codes which was assigned on the basis of their prior work experience and or education.

And these things were entered in to the computer. At the time we received a job order from the Employer for a specific occupation we then went to the computer and generated a list of names of individuals under that office use code and under the appropriate occupational classification.

From that printout we contacted names of individuals, asking them if they were interested in working for the Employer. If they were, they were called in to the office, they were given initially—I'm saying initially, at the time of this report they were being given another MESC form to complete. An MESC 25-50, which is a work application. We call it a generic work application form.

And upon completion of that form the applications were given to the Employer.

Zurn admitted "that MESC employees identified in the complaint were its special agents for the narrow purpose clearly defined in the custom referral agreement between Zurn N.E.P.C.O. and MESC" (R. Br. 91). That relationship carried with it certain implications for which Zurn must assume the ultimate responsibility.

#### B. MESC as an Agent of ZURN/N.E.P.C.O.

Section 2(13) of the National Labor Relations Act states that "[i]n determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." 29 U.S.C. §152 (13). The 1947 Taft-Hartley amendments added Section 2(13) to the Act "in order to avoid a narrower interpretation of agency authority which would require actual instigation, participation, or ratification." *Iron Workers (J. W. Reinforcing)*, 317 NLRB 817 (1995), citing 93 Cong. Rec. 6858-6859. The Board applies common law principles of agency when determining whether an agency relationship exists. *Allegheny Aggregates*, 311 NLRB 1165 (1993).

The restatement defines a special agent as an "agent authorized to conduct a single transaction or a series of transactions not involving continuity of service." Restatement (Second) Agency § 3(2) (1958). Having stipulated that MESC was special agent, it is only necessary to examine whether or not that relationship makes Zurn responsible for any unlawful interrogations by MESC. If it can also be determined that MESC discriminated against applicants in referring them to Zurn or in any way preventing their consideration for employment, Zurn should also be held responsible for these actions.

Apparent authority is created "... as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf. . ." Restatement (Second) Agency §27 (1958, Comment). In *NLRB v. Donkin's Inn*, 532 F.2d 138, 141 (9th Cir. 1976); *Alliance Rubber Co.*, 286 NLRB 645, 646 (1987), the Board held that apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to do the acts in question. According to the Board, two criteria must be satisfied before apparent authority is created: (1) some manifestation by the principal to a third party, and (2) the third party must believe that the extent of the authority granted to the agent encompasses the contemplated activity. *Allegheny Aggregates*, supra. *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82, 83 (1988). Restatement (Second) Agency §8 (1958).

The two part Board test for the creation of apparent authority, is clearly met in this case. First, Zurn unquestionably manifested itself to the applicants. Newspaper articles announced not only Zurn's plan to build a power plant in Cadillac, but also that its hiring would be done through MESC. Furthermore, applicants who applied directly to Zurn were instructed to register through the MESC office, as were union officials who sent applications in bulk to Walter Neal. Zurn's practice of phoning job orders to the MESC and furnishing the MESC with Zurn applications bolstered the authority of the MESC to act on Zurn's behalf.

This application process proves the second element of the test. It gave the applicants a reasonable basis for believing that MESC's conduct in the application process was taken on Zurn's behalf. When applicants were asked about their union background or were informed that their union affiliation made

it unlikely that they would be hired, they reasonably believed that these representations were sanctioned by Zurn.

#### C. *Unlawful Interrogation During the MESC Interview*

The Board has held that "... questions involving union membership and union sympathies in the context of a job interview are inherently coercive and thus interfere with Section 7 Rights." *Service Master*, 267 NLRB 875 (1983). The Board has reasoned this is so because "[a]n employment interview is not an abstract discussion forum, or an occasion for chance or casual conversation. . . ." *Bendix-Westinghouse Automotive Brake Co.*, 161 NLRB 789, 791-792 (1966).

The record shows that many of the applicants were interviewed by MESC about their union membership.

For example, Douglas Klein applied for employment at Zurn by going to the MESC. He was interviewed at MESC by Penny Bassi (Paddock) and questioned whether he was a union member. She closely inspected his journeyman's card and recorded certain information. Klein was not contacted about a job. Timothy Corradin was interviewed by an MESC official named Robert Buttis. He questioned Corradin whether he belonged to a union. When he replied that he was a member of a union, the MESC agent appeared to write the information on a sheet of paper. Corradin was not interviewed by Zurn for a job. Paul Sivits went to the MESC to fill out an employment application form and was interviewed by a man who asked whether he was a union member. Sivits replied, yes. The MESC interviewer inquired why he had not put that information on the application. Sivits replied, "I was leery that they wouldn't consider me for employment" (Tr. 1094). Even though Sivits was a veteran and should have been given priority, he was never contacted about a job. James Griswold was interviewed by a lady at the MESC. Her first question was whether he was union or nonunion. Griswold testified that this question startled him and he said, "what difference that made." She said: "Well, if you're union, no sense in me filling this out because it wouldn't go any further than there." Griswold then replied that under those circumstances he was not union because he needed a job. He listed on his application his prior employers which were all union employers. He was never offered a job at Zurn.

Zance Hubbard was interviewed twice at the MESC and questioned each time about this union affiliation. At a second interview, Penny Bassi (Paddock) asked him whether he belonged to a union. Timothy Gapen was asked during the interview process at the MESC by Penny Bassi. Whether he belonged to a union. Gapen then asked Penny to give him a statement showing that she had asked him that question. She wrote it on the back of her business card. Shortly thereafter, he observed her speaking to a man working in the office named Al Matthews who approached him and said that Penny was not supposed to have asked him that question. Dick Jocoby, a carpenter was interviewed by a woman interviewer. Even though he wore a union button and hat, she asked him about his union affiliation. When he said that he was a union member, she said, "you won't be hired" (Tr. 2160). Other applicants who testified that they were interrogated about the union at the MESC were Bill Drake, Lori Custer, Roy Lambert, Thomas Mason, Marvin Radtke, Paul LeVasseur, Thomas Bejeck, Richard Biggs,

Stanley Saxton, and William Cogswell. Most of the questioning occurred in January and February 1992. It is clear that based on its prior experience involving Bill Tobias, an MESC staff member, the Agency knew that such conduct was unlawful.

Penny Bassi testified that she recorded the applicants' union background information membership on the computer records of the MESC in order to credit the applicant's length of experience in a craft. It is clear, however, that the MESC could have assigned the level of experience in a particular craft without resorting to their union experience. On the basis of the foregoing, as well as the other evidence showing the Respondent's antiunion animus, I find that the MESC as agent and Zurn violated Section 8(a)(1) of the Act. *Rossmore House*, 269 NLRB 1100 (1984), *affd.* 706 F.2d 267 (5th Cir. 1985). There is no evidence that the Respondent disavowed these interrogations. To the contrary, as shown below, Respondent's management engaged in similar conduct.

#### D. *The Electrical Crew*

According to the General Counsel's amended complaint, the Respondent unlawfully subcontracted the electrical work at the Cadillac project and improperly laid off the electricians.

The record does not support these allegations. The electricians were among the first employees to be hired at the Cadillac project. Among the three or four electricians was Christine Gallandt who testified that the initial work was considered temporary work. It consisted of "doing grounding of the trailer, temporary lighting around the yard, hooking up portable generators for the men out in the field" (Tr. 7753). Although she was told by management, Larry Sullivan, that the job could last for 10 to 12 months, her employment lasted from May 12 to May 21, 1992, when she was laid off. The record shows that the electrical work was subcontracted to Windemuller Electric.

The Union did not begin its organizational efforts at the Cadillac project until the end of May. It held meetings, distributed union stickers, and obtained signed authorization cards. The Company was notified by letter of June 2, 1992, that several employees, including Christine Gallandt, electrician, Gary Macy and Kim Ludwig, carpenters, Chester Brown, operating engineer, and two others were on the Union's organizational committee. While the Company was accordingly aware of Gallandt's union activity, the record shows that the layoff occurred on May 21, 1992. By that time, the Company had already decided to subcontract the permanent electrical work. The record therefore does not support the allegation that the layoff was union related.

#### E. *The Pipefitters*

Following the electrical crew, the pipefitters were the next largest employee contingent to be hired at the Cadillac project. Its foreman, John O'Hara was hired in April 1992. By June 16, 1992, a crew of 13 pipefitters had been hired.<sup>10</sup> Many of them were told that their jobs would last from 1 to 2 years. For example, in early June, Larry Rose spoke to Larry Sullivan, the personnel manager, stating that he "had a full time job and that

<sup>10</sup> The Respondent refers to 14 pipefitters.

[he] would not leave that job for temporary employment"; Sullivan assured Rose "that the job would last at least a year" (Tr. 806). Yet he worked 6 days and was laid off with the entire pipefitting crew. The sudden layoff was also inconsistent with the statement by Gayle Hare, the piping superintendent, who told O'Hara that he was "projecting between 30 and 35 fitters and 10 welders for the piping crew" (Tr. 322). Leon Greer, resident manager and highest company representative at the Cadillac project, told O'Hara that the crew was going to do everything it can "in house" (Tr. 330, 369). Indeed, a fabrication shop was constructed on site where the necessary prefabrication of piping could have been performed. New materials had been ordered to be used for "on-site" fabrication which had actually started. The crew was working 10 to 12 hours a day 6 or 7 days a week. Yet during the afternoon on June 18, 1992, with incomplete welding projects and half finished welds, Zurn laid off the entire crew with the explanation of "lack of work."

During the noontime, the Union held a demonstration outside the building site in which the pipefitters participated.

According to the Respondent the layoff occurred "[c]oincidentally on the 18th [after] many workers from all crafts engaged in lunch time picketing" (R. Br. 26). Admitting that it had knowledge of the organizing activity by members of the pipefitting crew, the Respondent states that it occurred "well after the decision to subcontract" the above-ground piping had been made. The underground piping was nearly finished in June—according to the Respondent—so that the crew was only performing "fill-in-work."

The Respondent's scenario, as well as Hare's testimony about "fill-in work," is, however, unconvincing and implausible in the face of overwhelming evidence showing that the abrupt layoff within hours of the Union's picketing on the same day was actually motivated by the Respondent's realization that its existence as a merit shop employer was at stake. The record shows that the Employer became aware of the union support among the pipefitting crew and consequently laid off the entire crew.

The Respondent's effort to demonstrate that it would have laid off the crew even in the absence of any union considerations is not convincing. *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. den. 455 U.S. 989 (1982). Indeed, I regard the Respondent's defense as totally disingenuous so that the issue does not even rise to that of a dual motive.

As already noted, around June 10, 1992, most members of the pipefitting crew began to wear union buttons and union stickers on their hard hats. Gayle Hare noticed it and questioned John O'Hara about his son Shawn O'Hara, as recalled by John O'Hara (Tr. 331): "Gayle Hare approached me one morning. We were walking down the driveway and he says, what's this deal with [Sean] wearing this union button?" In another instance, David Walls, boilermaker foreman, confronted Alan Radle, a pipefitter, and said, "If you wear that button, all it's going to do is cause you problems" (Tr. 781).

By letter dated June 12, 1992, the Union formally notified the Employer that seven pipefitters were engaged in organizing activities. The most public display of union support occurred on June 18, 1992, during the noon lunchbreak when the Union

had assembled a group of more than 200 demonstrators and job applicants outside the Respondent's building site for a brief rally.

The entire pipefitting crew and a few members of other crafts left the fence enclosed jobsite at noon and joined the union rally during their lunchbreak. They were received with a standing ovation and cheering by the demonstrators. Management observed the scene and noticed the pipefitters with union stickers as they returned through the gates. Management videotaped the entire event, including the participants and their cars' licenses.

The Respondent took swift action. It assembled the crew "in the so-called fab shop" at about 2 p.m. Gayle Hare informed them to collect their tools and in his words, "I told them that due to lack of work, that we were going to lay the piping department off" (Tr. 6034).

The timing of the layoff was, according to Respondent, purely "coincidental" and "lack of work" was the result of Respondent's decision to subcontract the above-ground piping system. Both statements are disingenuous. It is well settled, "the proximity in time between recent protected activity and the measures taken against the employee[s] lend support to the inference of an unfair labor practice." *Jim Causey Pontiac v. NLRB*, 620 F.2d 122 (1980). There, as here, it would be difficult to imagine any action taken against the employees that were more immediate and more apparently responsive than the layoff of the pipefitting crew.

Even more perplexing was the decision under the circumstances here, even assuming *arguendo* that the above ground piping would be subcontracted. Up until June 16 it had hired pipefitters. The crew had been working 6 or 7 days a week at up to 12 hours a day. Greer and Hare informed most of the employees during the interview that their jobs would last a year or more and not 2 or 3 weeks. Respondent's action was so swift that the crew was not permitted to finish the day's work. Yet at least 2 weeks of work was left on the underground piping system. Witness after witness testified that the work was unfinished. For example, Shawn O'Hara was in the field digging a ditch for an underground pipe. His work, according to his testimony was "not even close to being completed" (Tr. 284). This witness had been transferred to the crew 1 day before the layoff. Robert Cook "was just putting flange on a piece of pipe" with "an hour or two to go" (Tr. 392). Larry Rose and John Corwin were similarly in the middle of a complicated task with at least one more day to finish the particular work. Others had to leave behind half finished welds. John O'Hara, their foreman, testified that some members of the crew were working on the above ground piping, a "48 inch connection, from the cooler to the condenser, that was probably 70 or 80 percent complete" with "18 joints lined up to do" which would have taken 2 weeks to complete (Tr. 333-334). Not only that work, but also the underground work would have required approximately 2 weeks to complete. Their testimony is supported by David Banks, a representative of MAT Mechanical, which was hired by Zurn N.E.P.C.O. to complete the underground work and which was left incomplete by Zurn's piping crew. Banks testified that MAT started in mid-July and finished in September 1992. MAT completed unfinished welds, a

job which welders are unhappy about, because they could be accused of bad workmanship if the prior work was deficient. He also observed new employees being tested for welder's positions. Zurn also hired Northern Boiler, another firm to finish the underground piping. It is clear therefore that, contrary to Respondent's argument, on June 18 the pipefitting was far from completing the underground work and that there was no lack of work.

Moreover, Leon Greer and Gayle Hare had on separate occasions represented to O'Hara that the crew would also work on the above ground piping system. These representations find support by the presence of a fabrication shop which had been constructed on the Cadillac site and the fact that certain above ground work on the cooling tower had already started. The record also shows that orders had been placed for additional materials.

The testimony of Everett Woolsey supports the evidence that the layoff was motivated by antiunion animus. Woolsey testified about a conversation with Gayle Hare on the afternoon of the day of the layoff when he inquired about the Company's reason for its decision (Tr. 905), "I go, does it have anything to do with the Union, and he said, yes."<sup>11</sup>

I accordingly find that the Respondent's subcontracting decision was a pretext for the layoff on June 18, 1992.

The Respondent erroneously argues that its decision to subcontract the above ground pipe fabrication was a factor in the layoff. The record shows that the Respondent, by letters, dated May 21, 1992, solicited bids from various firms "to furnish and deliver piping material and valves for said project. . . ." (R. Exh. 98). In response, Zurn N.E.P.C.O. received several bids ranging from a low of \$126,100 by Team Industries, Inc. to one quoting \$177,108 by Frank Lill & Sons, Inc. (R. Exhs. 98, 99). The Respondent selected the lowest bid, dated June 4, 1992. By memorandum of June 5, 1992, Respondent's Construction Manager, Frank Manry, informed Butynski that he had advised Leon Greer to subcontract the Pipe Fabrication, because it had received the quote from Team Industries (R. Exh. 100).

It is important to note that the bids involve the fabrication of piping and not its installation on site. A job costing \$126,000 is certainly not one which would keep a crew of 13 pipefitters busy for a year or two, as Hare had estimated when he hired the crew. At one point Hare had projected a crew of 30 or more pipefitters and 10 pipewelders to complete the job. The Respondent states in its brief that the "above ground piping was a much larger job than the underground piping involving roughly 10 times as much linear footage of pipe . . . [and] a much more intricate fabrication job" (R. Br. 23). According to the Respondent Hare was "the highly experienced Piping General Foreman." Such an expert would have utterly misjudged the amount of work to be done by 13 pipefitters working overtime. Moreover, if the subcontracting of the pipe fabrication made the piping crew so superfluous, and if that decision was communicated by Manry to Greer on or before June 5, 1992, as stated in the memorandum of June 5, 1992, why did Hare hire additional pipefitters *after* that date and represent to them that

their tenure would last from 1 to 2 years, and why was it necessary for the Respondent to hire two other firms, Northern Boiler and MAT Mechanical to finish the work on the underground piping systems which the crew left behind. Hare clearly misrepresented the amount of piping work either to the job applicants or during his testimony.

Clearly the decision to subcontract the \$126,000 fabrication job could not justify the layoff. The record shows that after the layoff, the Respondent tested and hired pipewelders and ultimately rehired most of the laid off crew. To accept the Respondent's argument that the subcontracting decision justified the layoff would be to ignore (a) that the underground work was incomplete, (b) that two outside firms were subcontracted to finish that work, (c) that Hare who is "highly experienced" hired four new pipefitters on June 11, 1992, 6 days after Greer had been informed of the subcontracting decision, (d) that the crew worked 12 hours a day 6 or 7 days a week up to June 18, 1992, and (e) that the same Hare estimated a job, costing only \$126,100 for a subcontractor to require a crew of 14 pipefitters or more for at least a year or longer.

In sum, I find that the Respondent violated Section 8(a)(3) and (1) for its discriminatory layoff of the pipefitters because of their union support. I also find that the Respondent unlawfully subcontracted the piping work, except for the fabrication work to Team Industries. The record shows that the decision to subcontract the pipe fabrication preceded the union activity of the pipefitters and was accordingly lawful. Nevertheless, the *Wright Line* test was not met even to a limited extent, because the layoff was unnecessary considering the need to hire two firms to finish the work, the subsequent hiring of pipewelders and the rehiring of part of the crew, and it was certainly inconsistent with the representations made by management about the size of the crew and the duration of the work.

The Respondent made offers of employment to most members of the piping crew in September 1992, but none were reinstated to their former positions. For example, Robert Cook was rehired as a structural welder, Allan Radle as a boilermaker helper, Larry Rose as a structural welder, Shawn O'Hara as a boilermaker helper, all at less pay than they had received as pipefitters. The Respondent offered to rehire Everett Woolsey as a boilermaker at a lower rate of pay, but Woolsey declined to return under the circumstances. But John O'Hara, John Corwin, and Daniel Kaiserlian did not receive any offers of reemployment. Respondent's failure to reinstate them violated the Act. The Respondent's argument that O'Hara's higher pay and Corwin's and Kaiserlian's work performance justified Respondent's failure to recall them is without merit. First, they were unlawfully laid off and second, Hare's testimony as a whole, including that about the employee's work record, is not credible.

#### F. The Hiring Practice

Following the concentrated effort by the Northern Michigan Building and Construction Trades Council to organize the Cadillac jobsite, the Respondent became increasingly cautious about its hiring practice. Initially it hired several electricians and the pipefitters in spite of their union background. But following the letters from the Union announcing its intentions to

<sup>11</sup> Based on his demeanor I have not credited Hare's denial of the conversation.

organize the employees and the rally on June 18, 1992, the Respondent used its skill and experience to exclude employees who might join the Union's organizational drive. As a "merit shop" employer which submitted a construction contract based on nonunion wages, Zurn had a financial incentive and an institutional goal to preserve its status.

Witness after witness with a union background testified how they attempted to get a job with Zurn N.E.P.C.O., and in spite of their skills and expertise they were not considered or rejected. The Respondent had created an elaborate hiring system designed to appear fair by requiring applicants to be processed by the State's employment agency (MESC), pursuant to a "custom referral agreement." Yet a procedure was set up with the cooperation of the state agency known as a "priority hiring system," which by its terms discriminated against anyone not referred by Zurn's personnel. Moreover, Zurn had made promises to hire the vast majority or 90 percent of its work force from the local area, yet in practice it discriminated against Michigan applicants. More than 1700 people registered with the MESC in hopes of finding employment and only few of them were lucky to be hired and several of them were laid off within a short time as has already been discussed. The MESC ultimately discontinued its agency relationship and canceled the custom referral agreement, realizing that it was being used by the employer to give credence to a discriminatory hiring system which by the Employer's own admission gave priority to "name calls," which by an examination of the hired work force was comprised by a vast majority of people from outside the State of Michigan and which as shown below, unlawfully discriminated against applicants with union backgrounds. Why would an employer represent to the public that 90 percent of the employees would be Michigan residents and end up with a work force of almost 75 percent from out-of-state, why use a state agency which, instead of making its referrals to the employer in accordance with its usual procedure, receives referrals from the employer under a special hiring system. The answer is that Zurn N.E.P.C.O. came into the area as a merit shop employer, built the cogeneration plant with a work force totaling 276 individuals and, in spite of extraordinary efforts by the several craft unions and its umbrella organization, the Northern Michigan Building & Construction Trades Council to find employment for their members, the Respondent walked away as a merit shop employer having hired only an insignificant number of union members.

According to the Respondent's own statistics, it hired a total of 276 individuals, including managerial and secretarial employees. Out of that number only 50 or less than 20 percent had a union affiliation and at least one third of that number was hired prior to the Unions' organizational efforts in June 1992 (R. Exh. 151).

#### 1. Antiunion animus

Respondent's antiunion animus in the hiring process was revealed by the testimony of Tony Perez, a member of Iron Workers Local No. 340, who applied for a job at the Cadillac site as an iron worker. His application was forwarded by the MESC to Sullivan. During the interview Sullivan asked if he would cross the union picket line. Perez answered that he

would because he had a family to support. Sullivan assured him of a job pending a drug test. At the doctor's office, he noticed "four or five guys there from Texas that had Texas plates" who ended up at the jobsite. Perez passed the urine test but was not hired. When he repeatedly asked why, Sullivan finally answered, "due to Union affiliation, they just couldn't use [him]" (Tr. 649-650).

The Respondent hired Stan Brigner and Mark Berens who had no prior union affiliation. During the interview, Sullivan told them "that there would be people out there wearing . . . Union buttons and UA stickers on their hard hat and . . . they shouldn't get involved with it or it could mean our jobs" (Tr. 935).

Gerald Richard, a union millwright, was interviewed for a job by Sullivan. A field superintendent joined the conversation as recalled by Richard as follows (Tr. 1905):

Well, the superintendent had my application and he was turning it over and looking at it. And he said, it looks to me like most of these employer[s] here are union employers. And I said, yeah, they are.

And he said, then I presume you're union. Or then he said, are you union? And I said, yes . . . cause he jumped up and damn near run out of the building. . . [.]

He left. He told Mr. Sullivan, I'm done. I've heard enough, or something to that effect. And out the door he went.

Richards called Sullivan several times about a job but each time he would have an excuse until finally Sullivan avoided speaking to him completely.

During the job interview with Gordon Bonjernoer, Sullivan and the carpenter foreman questioned him about his prior jobs with unionized companies. Bonjernoer attempted to distance himself from his union jobs' background and said that he had been hired by subcontractors that were nonunion. He was offered a job and when he inquired about the picket lines, Sullivan said, "Well, don't worry about them fucking union dogs out there" and "that they were causing trouble out there and that they weren't going to get in there" (Tr. 3129).

The Respondent effectuated its antiunion animus in avoiding union applicants in several ways. First, management's expertise in identifying applicants with union backgrounds; second, the use of a priority hiring policy (policy 303); third, its "name call" agreement with the MESC; fourth, its recruitment policy of skilled craftsmen from out of the State of Michigan, primarily southern states and its general antiunion conduct, such as a no-solicitation policy, video surveillance of union demonstrators, threats, and interrogations.

Leon Greer, resident manager and first in command in Cadillac, did not testify in this case, but Personnel Manager Tom Brigham, testified at great length. His testimony clearly shows that management was able to classify applicants into union or nonunion employees by looking at their applications which showed an applicant's past employment record. Brigham had the expertise to know whether a particular employer was a union or a nonunion company or both. The record contains a list of construction firms which are union employers and a list of firms which are nonunion employers (GC Exhs. 224, 232).

Brigham's expertise also enabled him to know which of those firms were primarily based in Michigan. In addition, many of the applicants had indicated their union affiliation by writing "voluntary union organizer" on their applications. Finally, the MESC, as Respondent's agent in the hiring process, interrogated numerous employees about their union affiliations, information which is unputable to the Employer, notably here where none of those applicants so interrogated were hired after the June demonstration.

## 2. Priority hiring policy

The Respondent's employment and recruitment policy is contained in a document entitled field policies and procedures (policy 303). It expressly purports to comply with all applicable Federal and State law and is designed "to select the most qualified applicant for the job opening" giving consideration to work experience, ability, reliability, honesty, integrity, and multicraft experience (CP Exh. 25, R. Exh. 56). It provides as follows:

Consideration of qualified applicants will be prioritized as follows:

1. Current Company employees who are eligible for continued employment with the Company, and have obtained an *approved* release by the Resident Manager.
2. Former Company employees eligible for rehire.
3. Individuals who have appropriate prior work experience recommended by a current Company supervisor or manager.
4. Individuals who have appropriate work experience recommended by current employees.
5. Individuals who have applicable work experience in the construction of cogeneration or power plants.
6. Individuals who have applicable work experience on industrial construction projects.
7. Individuals qualifying for JTPA or T.
8. All other qualified applicants.

Within each of the above categories, consideration of qualified individuals within the immediate local area will be given first.

The record also contains a memorandum, dated February 24, 1992, from W.I. Neal, entitled hiring procedures guidelines. It is a 3-page document which in 14 paragraphs addresses "frequent questions raised on hiring" (R. Exh. 56). This document, however, did not appear to simplify the hiring procedure, but to actually complicate the process by imposing additional requirements, such as various time limits on job applications and providing detailed instructions on how to deal with unsolicited job applications and visits from representatives of labor organizations. For example, it provides that if, "a large group of applicants show up at the jobsite the local police should be contacted." It also states that applications with the reference "voluntary union organizer" written on the application, should be covered by a permanent sticker. While management is admonished that these provisions are mere guidelines to be used with common sense, it also states that any modifications must be approved by the president of the Company. The record also shows that Larry Sullivan who was not yet a Zurn N.E.P.C.O.

employee, was listed on the memorandum as a recipient of a copy. The memorandum seemed to have been drafted with amazing foresight of some of the occurrences almost as if it had been prepared with the benefit of hindsight.

Of real significance was policy 303, the Respondent's priority hiring procedure. It obviously permitted the Respondent to hire individuals who had a proven work record with this Employer. To that extent, a priority hiring system is reasonable. It is another matter if such a hiring scheme goes beyond that and is used for the purpose of excluding union applicants from consideration for employment. In *D.S.E. Concrete Forms, Inc.*, 303 NLRB 890 (1991), *enfd.* 21 F.3d 1109 (5th Cir. 1994), the Board found a priority hiring policy unlawful on the particular facts of the case, where "the practical effect of Respondent's first three job criteria was to preclude employment of union members." There, as here, the Company was a nonunion employer. It relied on past employees or employees who could be transferred and on referrals by existing employees before going to a "sign-in roster." Here, the Respondent's priority system was more complicated, but it also preferred current and former employees, followed by referrals from supervisors, and then by referrals from current employees before reaching individuals with certain work experiences and job skills. The practical effect was the same. Respondent's expert witness, Dr. Asher, testified as follows when asked whether Zurn N.E.P.C.O.'s priority hiring system would result in a union or nonunion work force (Tr. 7578):

I would anticipate it to be definitely non-union. And the reason for that is, as I said earlier, that we know in this particular case that approximately 40 percent of all those who satisfy the criteria for priority hires are prior or current employees of Zurn. And we know that Zurn is an open shop, a merit shop. You would expect that to happen. . . .

And, similarly, when you look at those who were referred—similarly, those referred by supervisors and foremen, you would anticipate that, most likely, they'll be coming from the ranks of the non-union.

Typically Respondent's nonunion supervisors had a "following," friends or acquaintances in the same trade who often worked together and traveled from job to job. As stated in *Ultrasystems Western Constructors*, 310 NLRB 545, 554 (1993):

Although the practice of hiring from "followings" is not unlawful in itself, it is evidence of an affirmative preference for individuals known to be both competent and to be free of any union connection.

The Respondent's own statistics support the scenario. According to the same expert, Dr. Asher, the total number of individuals hired in Cadillac pursuant to the priority hiring system were 212, and of those only 26 had a union background (R. Exh. 150). He testified (Tr. 7589): "That's the priority. Out of the 212 priority, there were 26 priority union." It is important to keep in mind that this number includes those union employees, i.e., the pipefitters, who had been hired prior to the commencement of any union activity in late May and June 1992, so

that the discriminatory impact of the Respondent's hiring system after the onset of the union activity is substantially more severe.<sup>12</sup> More specifically, the Respondent refers in its brief to 23 union supporters hired pursuant to its priority policy because they were former Zurn employees or employee referrals and to 22 union supporters hired (without reliance on the policy 303) who were referred by the MESC. However, almost one third of the former group and almost one half of the second group of those employees were hired prior to the union campaign.

The Respondent argues, based upon the testimony of its expert witnesses, Dr. Borchering and Dr. Asher, that the priority system did not discriminate against union members. They point out that such a system is widely used by nonunion employers and designed to attract applicants with the necessary skills, experience, and reliability. They also testified—in the words of the Respondent—that the “end result of Zurn N.E.P.C.O.'s hiring process at Cadillac thus approximated the industrial construction national average of 20 percent union workers” (R. Br. 40).

The record, however, does not support the Respondent's arguments. First, the Respondent's priority system is under scrutiny not in isolation but in the context of its antiunion animus; second, as pointed out below, policy 303 did not necessarily attract the most qualified people, and third, the relevant market is the Cadillac, Michigan area, not the national area as a whole. Dr. Borchering conceded in his testimony that, “there would be more union work in the Michigan area” than in the midwest or in the South, because “the amount of union work goes up in the northeast” (Tr. 6333–6334).

The record also shows that the Company did not strictly adhere to its hiring policy. Brigham testified that he hired at least seven employees<sup>13</sup> without going through the MESC and from sources other than policy 303. Moreover, the Respondent falsely claimed to have adhered to the referral policy with at least three employees when in fact they were not referred by anyone. Stan Brigner testified that, contrary to the Company's notation on his application, he was not referred by Walter Neal (Tr. 948). Donald Diekman's application showed that he was referred by Tom Brigham, yet Diekman testified that he did not write Brigham's reference on his application and that he was not recommended by anyone from Zurn (Tr. 1062). Similarly employee Richard Patrick's application reflected a referral by Frank Manry when in fact he was not referred to the job by

<sup>12</sup> For example, among the 15 union supporters that the Respondent claimed to have hired under the priority system as prior Zurn employees were (R. Br. 51–52): Robert Cook, Daniel Kaiserlian, Michael O'Hara, Kerry Pierson, Allan Radle, and Larry Rose. But they were all hired *prior* to the union activity in June 1992. Among the eight union employees who were direct employee referrals at least one, Charles Kaiserlian, was hired prior to the union activity. Among the 22 union employees whom the Respondent claimed to have hired outside the priority procedure, the following were hired *prior* to the union campaign: Walter Belinski, Robert Burns, Robert Cook, Christine Gallandt, Vincent Galligan, Kim Ludwig, Gary Macy, Larry Rose, and Everett Woolsey (CP Exh. 16).

<sup>13</sup> In December 1992, Brigham hired Nathan Campbell, Shawn Childress, Jay Culpepper, Donald Diekman, William Greene, Jimmy Penix, and Jeff Pugh.

anyone (Tr. 7420). The parties stipulated that several other job applications had been altered to indicate a referral when in fact no referrals were made<sup>14</sup> (Tr. 7710–7719). Witness Millard Howell disagreed in his testimony with Sullivan's testimony that Zurn made him an offer of employment based upon “a referral by a current employee” (Tr. 5209). Moreover, based on my own examination of three applications (Richard Fortin, William Greene, and Nathan Campbell), I find that they also were altered (CP Exhs. 29(a–c)).

Clearly, the Respondent did not strictly adhere to policy 303 at the Cadillac jobsite, but made numerous exceptions to its policy when it suited its purpose. Howell's experience suggests the answer as to why the Respondent made an attempt to conceal exceptions to the policy. He had called Sullivan in September 1992 about jobs in Cadillac. During his conversation with Sullivan, Howell mentioned only nonunion employers in connection with his past experience. Speaking with a southern accent and providing Sullivan with a Mississippi telephone number, Howell was assured of a job in Cadillac as a boilermaker. While being processed at the MESC, he spoke with Penny Bassi and had the following conversation (Tr. 848):

And I told her, you know, I said, well, you know this is the first time I ever been through a job service to get a construction job, you know, and she told me. [S]aid, well, she said, well, Zurn's just doing this because of the politics and she sort of raised her eyebrows and said, I mean, a lot of politics.

The record also does not support Respondent's theory that the priority system produced the most experienced or skilled work force. For example, Boilermaker Foreman David Walls admitted that based upon his recommendations, the Respondent hired Dan Drounzek as a boilermaker without any prior boilermaker experience and Joseph Kinny as a boilermaker helper without any prior experience. (Tr. 1527, 1530). He also testified that Vickie Hilliard was hired as a pipefitter helper because she was a girlfriend of a Zurn employee, and James Vaughn as a pipefitter helper based upon his experience as a housemover. William Douglas testified that he was an ironworker and put to work as a boilermaker without prior experience. Indeed, a cursory examination of the employees' classifications compared with their prior job experience shows that many were assigned to certain job categories for which they had little experience (CP Exh. 16). Kelly Bennett, a rigger, was hired as a boilermaker's helper, Leonard Bowen, a carpenter's helper, employed as a carpenter. Peter Caisse, an ironworker, employed as a boilermaker; Ken Carter, a welder, employed as a boilermaker. Mark Eisenga, a carpenter finisher, employed as a journeyman carpenter, Martin Fisher, a shipwright and farmer, employed as structural welder, David Forsgren, an operator employed as a carpenter, Bryce Friess, a laborer employed as a pipefitter helper, and Samuel Gibson, a welder employed as a boilermaker.

<sup>14</sup> The applications of Ken Carter, Shawn Cavender, Robert Edwards, Mike Pugh, Steve Haynie, Leslie Howell, LeVeta Morrison, Thomas Young, Marc Sutter, Germain Spring, James Walker, Shawn Childress.

Among the more than 1700 applicants who were not hired, Zurn could have found experienced and highly skilled individuals who would have provided the Respondent with the appropriate job classifications and would also have been able to work in related skills, known as “crosscrafting.” Dr. Borcherdig for example testified that many of the skilled trades come from a union background (Tr. 6359, 6383) “like a carpenter apprenticeship program, the individual would be considered to be fairly qualified . . . if you look at the skilled people, the unions have trained a big portion of the merit shop’s work force.” Sullivan testified that the unions’ halls provide qualified craftsmen.

Here, the record shows that the Respondent avoided hiring as much as possible any of highly qualified applicants from the general pool of applicants and instead relied on its priority hiring policy not necessarily to select the best qualified people, but to avoid union applicants.

This is also shown by Respondent’s arrangement with the MESC.

#### c. The custom referral policy

Although Neal and other supervisors at Zurn had verbally assured prospective job applicants that Zurn would accept their resumes or a completed application addressed to the corporate office in Portland, Maine, the record shows that such attempts were unsuccessful and that all applicants were directed to go through the MESC. As already stated above, the Union’s submissions of bulk mailings, whether resumes or applications or out-of-work lists were promptly returned without being considered by the Respondent. For example, in January 1992, the Unions collected more than 100 applications at Olsen’s Motel from their ranks and sent them to Zurn’s offices in Maine, and in March 1992, the Unions sent resumes and applications in bulk to Zurn and in January 1993, the Respondent received the out-of-work lists from the Boilermakers and Pipefitters. Many of the applicants followed the Respondent’s suggestion and applied by going to MESC.

The Charging Party argues that the Respondent’s failure to consider the bulk applications and resumes violated Section 8(a)(3) and (1) of the Act and has attached a list of these applicants’ names as appendix to its brief. In *Fluor Daniel, Inc.*, 311 NLRB 498, 499 (1993), the Board rejected a defense of a Respondent who had failed “to consider the 11 Boilermaker applications it received . . . because they were received in bulk.” Here, the Respondent established the agency relationship with the MESC and required all job applicants to go through the job service. Moreover here, the Respondent did not retain any of the applications. The factual circumstances are accordingly different from those in *Fluor Daniels*. I, accordingly, agree with the Respondent that its rejection of the bulk applications did not violate the Act. *Regional Ambulance, Inc.*, 298 NLRB 19 (1990).

However, Zurn’s “custom referral agreement” with the MESC was one of the methods enabling the Respondent to discriminate against union applicants. The record is clear that the MESC’s normal procedure requires applicants to fill out the necessary forms (MESC Form 2511). A MESC staff member interviews a candidate, assigns occupational codes to the regis-

tration and enters the information into a computer according to the applicant’s job classification and work history. When an employer places a job order, the MESC is able to refer applicants in a chronological order so that they can be considered on a “first in, first out” basis, except that veterans are placed at the top of the list. Candidates so selected are then requested to fill out an application furnished by the employer, interviewed, and considered for employment by the employer.

The Respondent only rarely used the regular procedure. Instead, Zurn and the MESC, as agent, agreed to implement the priority hiring system discussed above. Sullivan had met with Frank Kramer to work out the system. MESC personnel were provided with a written copy of Zurn’s priority policy and were told by Sullivan that the reason for this arrangement was related to Worker’s Compensation Insurance so that Zurn would not have to pay while Zurn employees transferred from one job to the next. According to the arrangement, the Respondent referred “name-call” applicants to the MESC where they were conveniently processed ahead of other applicants. They were not screened by MESC personnel; they merely registered, filled out Zurn applications and sent immediately to the jobsite.

Following the Union’s organizing activities in June, the Respondent made increasing use of the name-call system. Sullivan had represented to the MESC that “name calls” were employees in transfer from one Zurn job to another. The MESC soon became alarmed that the name calls were not merely transfer employees but new employees as well, i.e., any one who qualified under the priority hiring system.

Penny Bassi, the staff member who was primarily assigned to the Zurn applicants, testified that she became increasingly alarmed about the effects of the procedure. She finally expressed to her supervisor, Frank Kramer, her concern that union applicants were not getting hired. She was also puzzled about the real purpose of processing name calls through the MESC.

Prompted by complaints from the Unions, the MESC examined the practices and in two internal memoranda, dated February 3, and 19, 1993, Jose Bennett, the highest MESC official at Cadillac, expressed her suspicion about the Company’s intentions and its practice (GC Exhs. 187, 219):

#### Important Issue in Cadillac:

150 high-paying jobs announced last winter—in middle of high-unemployment period—associated with building co-generation plant.

Expectation that local workers would fill all these jobs. Didn’t happen. General contractor—ZURN/N.E.P.C.O.—brought in out-of-state workers—possibly their former employees—especially for highly skilled jobs. Some local hiring, but lots of disappointed jobseekers. (We have had over 1,000 applicants apply for jobs with this employer!)

While Bennett testified that she found no “facts or evidence that MESC, Cadillac, was manipulated by Zurn/N.E.P.C.O.” to avoid hiring union applicants, or that the MESC did anything wrong, she acknowledged such a possibility (Tr. 4641–4645). In the memoranda she summarized the process and her suspicions as follows:

#### We Did Goof—or Maybe We Were Set Up:

Employer agreed to list all job openings with us and to hire only through us. We agreed to refer job seekers on first-come, first referred basis. We did this.

BUT, we also agreed to pass on to employer directly—as a courtesy, which the employer said helped them out with their internal procedures related to worker’s compensation coverage—any of their current employees who were being shifted from another work site in a different state to the Cadillac site. The company provided us with the names of these people as they needed them. The company also contacted these individuals directly and sent them to our office. We made no effort to verify that these people were, in fact, those of “transferring” employees. These people came into our office, filled out a MESC registration, and were handed a ZURN/N.E.P.C.O. application which they took directly to the employer. (We have not found that the office took credit for these people as referrals or as placements.) *I believe the company used this to avoid hiring union members—but we cannot prove this!* (Emphasis added).

As a result, the MESC discontinued the “name call” procedure in December 1992, as she stated in the same document:

In early December 1992, we were able to change this agreement on another pretext. We no longer pass on people whose names they give us; we send the employer only those persons who have been on file with us longest.

Contrary to the Respondent’s argument that the Union’s “violent strike” was responsible for the MESC decision to stop the special service, the record shows that the Respondent had requested the MESC to process 70 “name-calls.” This provided the MESC with the justification to discontinue the customer referral procedure as recalled by Union Representative James Bragan (Tr. 187): “And at that time Jose Bennett stated that the Job Service saw the opportunity to stop relations with Zurn.” Bennett testified as follows (Tr. 3858–3859):

At the time the employer contacted us . . . the names and addresses of seventy persons who they wanted to contact directly. . . . Since I had completed that review which we just went over in September, and learned that we had so many people being processed through and since I had also learned that MESC had a public relations problem, yes, we were looking for a way to change our hiring agreement with this employer.

The Respondent thereafter used the MESC only for referrals in accordance with the fifth or last category on its priority policy.

Whether the MESC was an intentional or an unwitting accomplice in Respondent’s effort to avoid union applicants is initially unclear. While the job service may have processed most of the name calls without realizing that they frequently were new employees and certainly not former Zurn employees, the record is unmistakably clear that MESC officials interrogated applicants about their union background and told some of them that they would not be hired because of their union background. Such conduct violated MESC’s own policy. Yet Penny Bassi admitted making such inquiries and asked appli-

cants to produce their union cards; Al Matthew admonished Bassi about her conduct. Yet during his testimony he admitted that he made notations on numerous applicants’ registrations showing their union backgrounds. Another MESC official John Sliss made similar notations. An applicant’s work experience can be ascertained and recorded without a recourse to their union affiliation. MESC’s justification for its conduct was accordingly discredited.

The Respondent argues that it was not privy to that information, because Zurn relied neither on MESC Forms 2511 nor the computer printout of referrals but solely upon Zurn applications. (R. Br. 11.) This observation clearly shows that the MESC’s function in this process was pointless and supports the arguments by the General Counsel and the Charging Party that the custom referral agreement was a sham. Name call applicants were “processed” without any substantive purpose because the agency did not take credit for placing them into jobs. I find, accordingly, that the MESC as Respondent’s agent was initially an active participant in the discriminatory efforts to discourage union applicants by interrogating them and telling some of them they would not be hired. The MESC was familiar with such issues, because one of its employees in Cadillac, Bill Tobias, had already been disciplined in a prior case involving similar misconduct. To what extent the MESC actually aided in manipulating the hiring system, is not clear in this record. According to Bennett, the MESC staff would be able to manipulate the system by intentionally misclassifying applicants according to the occupational codes so that a job order for a certain craft for example, would show that only the favored employees had registered in that category. The record shows, for example, that numerous boilermakers had registered for jobs, but most of them were improperly coded and therefore unavailable for referrals pursuant to an employer’s job order. An applicant named Bill Drake was improperly classified by MESC’s John Sliss. And James Bragan was improperly classified by the MESC. Paddock admitted to having processed relatives and friends through her office. Several of them were hired (Tr. 4251). But the record does not show that the MESC actually manipulated its procedure so as to screen out union applicants; it certainly aided Zurn to provide a neutral appearance to an otherwise discriminatory hiring practice.

#### 4. Employees from outside Michigan

The record shows conclusively that the vast majority of employees who were hired came from States other than Michigan, despite the availability of an abundance of skilled craftsmen in the local market. The record also shows that this was not an accidental phenomenon but the result of the Respondent’s intentional effort to bypass local applicants for one purpose, to hire individuals who had no history of union employment. An employer’s effort to recruit its work force from outside the area is an indication of its discriminatory motive. *Casey Electric*, 313 NLRB 774 (1994); *KRI Constructors*, 290 NLRB 802 (1988); *Shortway Suburban Lines*, 286 NLRB 323 (1987). The record contains a chart which, based upon employment records, shows that approximately 25 percent of the Respondent’s employees came from the State of Michigan, especially journeymen (CP Exhs. 17, 18). And 75 percent of the employees came

from other states with the largest group about 50 percent, from the South of the United States (CP Exh. 18). Even a cursory examination of documents entitled, ZURN NEPCO HIRING BY JOB ORDER AND BY TRADE, which show Zurn's job orders, and qualified applicants referred by the MESC and the individual hired, reveals the great disparity of rejected candidates from the State of Michigan in relation to those from other states (GC Exh. 222, R. Exh. 124 A). For example, a job order dated "10-1-92" calling for pipefitters shows that the few applicants from Texas and California were hired and none out of several dozens of applicants from the State of Michigan. Several witnesses observed that there was a preponderance of cars with out-of-state license plates in Zurn's parking lot.

The record also shows that the Respondent went so far as to pay travel expenses for several candidates from out-of-state. For example, John Miller from Arkansas was recruited by Respondent's Supervisor Joe Van Meter and was reimbursed for his mileage and travel expenses, so were two employees from Alabama. According to Brigham, the Company paid travel expenses of up to \$375 to 11 or 12 employees in order to induce them to work in Cadillac. Yet hundreds of employees from the local area, many of them Vietnam veterans were waiting to be called for a job.

The Respondent's expert witness Dr. Borcharding testified that the southern states have a larger concentration of "merit shops." One of Respondent's supervisors testified that there is less union activity in the South than in Michigan. The Respondent therefore facilitated the hiring process for applicants from southern states. For example, Donald Diekman called the job-site and told Brigham that he had just moved from Florida and was looking for a job. Brigham promised him a job as a pipefitter as soon as he filled out his application and passed the necessary drug tests. He was not required to register at the MESC and began work in December 1992. Millard Howell called Sullivan from Texas and asked that any messages could be left with his mother in Mississippi. On September 24, 1992, only a week after Howell's initial contact with Zurn, Sullivan left a message that Howell had a job as a boilermaker. Howell traveled to Cadillac but decided against accepting the job because he noticed a great deal of anger in the local area about Zurn's hiring practice, and he did not want to deal with authorities about his expired driver's license. He testified that most nonunion contractors concentrate their recruiting in the South, because the majority of experienced workers in the North have a union background.

In December 1992, in another attempt to bypass local workers, management in Cadillac called other Zurn jobsites in search for skilled workers. A crew of more than a dozen pipefitters was located in Massena, New York, and began work in Cadillac in January 1993. Brigham testified that he contacted other companies: "I certainly contacted them and told them that I was looking for recruits . . . to staff the Cadillac job." When asked whether any of those companies included union companies, he answered, "No" (Tr. 7144).

Brigham testified that the reason for this recruiting from out-of-state was due to: "The cold weather, the strike, and the shortness of the job" (Tr. 6946). While other testimony supports Brigham's statement that some employees left in Decem-

ber 1992 because of the cold weather, it is also true that the Respondent refused to hire skilled craftsmen like James Bragen, Jeffrey Westphal, Lori Custer, and John Card at about the same time and discharged an ironworker because of his union support in December.

The Respondent has tried to blame much of its conduct on the "violent strike" in December 1992. In this regard, the record shows that on December 5, 1992 several employees, David Harris, Mark Sutter, Roger See, Stanley Brigner, Samuel Kinney, and B. J. Douglas went out on strike to protest the Respondent's unfair labor practice, primarily the layoff of the piping crew. The union leaders had distributed printed instructions to the picketers cautioning against any violence (GC Exh. 168). By letter dated December 8, 1992, the Union made an unconditional offer to return to work on behalf of the striking employees (GC Exh. 178). Other individuals joined in the strike, many of them frustrated jobseekers. The Respondent videotaped the event and called the police. Yet not a single union member was arrested or cited with misconduct, nor has the Respondent submitted a videotape to support the testimony of Brigham that the demonstrators were violent. There is testimony that some cars or trucks were dented or that mirrors were torn off, yet no one was injured. The record also disputes Brigham's observation that employees left their jobs because of this event. John Miller, one of the Zurn employees, denied having been intimidated by the strike and testified as follows whether some employees left because of it (Tr. 7621-7622): "If they did, I don't know of any of them that did . . . it does not bother most people that I know of to just drive through and come in and go to work." Respondent's characterization of the strike is therefore vastly exaggerated and its effect on the work force unsupported by credible evidence, particularly considering that it was of short duration.

The record, however, shows clearly that the purpose of Respondent's efforts to recruit and hire job applicants from anywhere but the local area was to avoid individuals with a union background.

Examples of qualified applicants with union backgrounds who were rejected for employment are James Bragen. A representative of the Boilermakers union, he was experienced as a pipefitter, boilermaker, pipewelder, rigger, ironworker, and rodbuster. He applied for these jobs. The MESC showed a job opening at Zurn for a boilermaker helper. The MESC referred his application to Zurn. He was not contacted. Zurn advertised for jobs for which Bragen was qualified. Bragen received a letter from Zurn offering employment (GC Exh. 7). Bragen responded and agreed to the offer (GC Exh. 8). In spite of telephone calls and letters, the Respondent did not hire Bragen.

Lori Custer registered with the MESC in February 1992 as a boilermaker. On her employment application she listed union employers, and she was interrogated by an MESC staff member about her union background. She was contacted by Brigham in January 1993, stating that he needed her on the following day. She replied that she needed 2-days notice but would try to get permission from her present employer to quit immediately. She accordingly called Brigham on the same day and left a message confirming that she would accept the job and that she had obtained permission from her present employer. She called sev-

eral times on the following day. Brigham called her that night that he no longer needed her.

Harold Greenleaf, a member of the Boilermakers union for 16 years, registered at the MESC on March 19, 1992, wearing a union hat. He updated his registration in July. He was called by the MESC in August to fill out a Zurn application. He noted "voluntary union organizer" on his application. On December 9, 1992, Greenleaf received a call from Zurn to fill out another application. The guard at the guard desk instructed him not to put any extraneous information on the application. Greenleaf again wrote "voluntary union organizer" on his application. The Respondent repeatedly rejected his applications because of the union reference (GC Exhs. 31, 33). He completed an application indicating only that he was a graduate apprentice of the Boilermakers Local and received a letter from Brigham instructing him to reply by December 30, 1992. Greenleaf replied stating that he wanted to become a Zurn employee but that he had a temporary job until the end of January (GC Exh. 35). Zurn contacted him again by letter of January 4, 1993, in response to which Greenleaf submitted another application on January 20, 1993, and in which he stated that he was presently available for employment in 1993. Thereafter, Zurn never contacted him again.

Jeffrey Westphal registered with the MESC in July 1992. In December Zurn contacted him to fill out a Zurn application. He completed one with the notation "voluntary Union organizer." By letter of December 16, 1992, Zurn informed Westphal that it did not accept applications containing extraneous information (GC Exh. 15). Westphal completed another one with the same notation, only in a less prominent location on the application. Zurn rejected that application also (GC Exh. 18). When Zurn finally offered Westphal a job in December, he had found a temporary job. He expressed his interest to be employed and submitted an application in January 1993. By letter of March 18, 1993, he was notified that there were no more openings (GC Exh. 22).<sup>15</sup> Ronne Schoudt an experienced boilermaker, applied in December 1992 at a time when Brigham was desperate for workers. He had written "union organizer" on his application and was not hired.

The experience of Joe Van Dyke was typical of many experienced job applicants who had a union background. Joe Van Dyke, an experienced electrician, applied through the MESC in January 1992, and submitted a Zurn application in February 1992. During the interview with two representatives from management, Van Dyke was asked whether his prior employers were union companies. Van Dyke replied that most of his "experience has been union" (Tr. 3564). They then indicated that they would be in touch with him within a week. Van Dyke felt that he had the job until he was questioned about his union background. He called Zurn repeatedly but was never able to reach them.

The Respondent refused to consider applicants suspected of being paid union organizers, like Sean Redner and Jeff Kruse. Sean Redner an experienced electrician, had been employed by

Zurn at its Ada, Michigan project. There he had participated at a union strike. In spite of his unconditional offer to return to work, Zurn did not reinstate him, but informed him instead that he was laid off. Redner registered at the MESC on February 11, 1992, in hopes of finding a job with Zurn in Cadillac. He also called Walter Neal and told him about his prior employment with Zurn. Neal encouraged him to submit his resume. Neal called him on March 27, 1992, and said that things were undecided. Redner also spoke with Sullivan and Supervisor Paul Powers. One of them told Redner that his job application had been set aside with a pile of union electricians rather than running a risk of hiring one of them. Redner was not hired.

The Respondent argues that it was not obligated to consider Redner, because he had signed a salting agreement with the Union as an organizer and was therefore not a bona fide applicant, citing *Town & Country Electric v. NLRB*, 34 F.3d 625 (8th Cir. 1994).

Jeff Kruse is a union carpenter with 14 years' experience. He was a former Zurn employee at the Ada project. He had made an early effort to be hired in Cadillac. He had called Hewitt in January 1992, and with his permission sent a resume to Zurn. He also registered with the MESC. In June, Kruse participated in the union demonstration, where he observed that someone from Zurn was taking video tapes of the event. He filled out another Zurn application at the MESC in August 1992. As a former Zurn employee, he should have received priority consideration. But the only response he received from Zurn was a form letter, in September from Sullivan stating that prior messages had been left and to make immediate contact. Contrary to the letter, Kruse had never been contacted by Zurn before and in September Kruse had found other employment. Contrary to the Respondent's argument, Zurn's letter did not constitute an offer of a job.

Kruse and Redner, as prior Zurn employees, should have been considered for employment pursuant to Zurn's priority policy 303 particularly because they were regarded as good and competent workers. Zurn did not hire them because there was a lack of job, but because both were regarded as strong union supporters and organizers. This is yet another example of Respondent's selective use of policy and procedure to avoid union supporters.

In sum, I find that since the time in early June when the Unions attempted to organize the employees, Zurn discriminated against union applicants, i.e., union members and those with a history of working for unionized employers, by the skillful and selective use of the priority hiring policy in combination with the MESC's custom referral agreement and Zurn's priority policy for applicants from outside the State of Michigan. Even though hundreds of highly skilled craftsmen, such as pipefitters, boilermakers, carpenters, electricians, operators, and ironworkers and others had followed the complicated application procedure by registering with the MESC, filling out forms, waiting for interviews, filling out Zurn applications, they were not considered for employment because of their union background.

The General Counsel has established a prima facie case to support the inference that the protected conduct was a motivating factor in the employer's actions. *Fluor Daniel*, supra.

<sup>15</sup> It is well settled that an employer violates the Act for rejecting applicants for employment because they identified themselves as voluntary union organizers. *Fluor Daniel, Inc.*, 304 NLRB 970 (1991).

There, as here, the Respondent's motive is evident from the total circumstances. Even though the Respondent hired some union supporters does not absolve the Respondent. "The fact that Respondent did not discriminate against all applicants does not bar a finding of a violation." *KRI Constructors*, 290 NLRB 802, 812 (1988), citing *Nachman Corp. v. NLRB*, 337 F.2d 421, 424 (7th Cir. 1964); and *NLRB v. W. C. Nabors Co.*, 196 F.2d 272, 276 (5th Cir. 1952), cert. denied 344 U.S. 865 (1952). Under the Act the Respondent should have considered a request for employment in a lawful, nondiscriminatory manner, irrespective of the availability of a job at the time of employment; that issue is relevant for purposes of the backpay obligation. *Alexander Restaurant & Lounge*, 228 NLRB 165, 179 (1977), enfd. 586 F.2d 1300 (1978). The Respondent has failed to show that it would have taken the same action and not hired the individuals even in the absence of any union considerations. *Wright Line*, 251 NLRB 1083 (1980). Indeed the record shows the Respondent's motive for discriminating against union applicants, it shows the Company's antiunion animus not only as directed against specific union applicants, but also by other violations of the Act. The record shows the Company's methods which effectively precluded the hiring of union applicants so that the work force remained predominantly a nonunion work force. Attached as Appendix A is a list of union applicants who testified in this case. They were experienced and skilled, but they were not hired for discriminatory reasons, as discussed above in selected cases. A discussion for each case would be redundant and cumulative. Also attached as Appendix B is a longer list of job applicants who registered through the MESC for jobs with Zurn in Cadillac. These applicants had a union background, they followed the Respondent's directions to be considered for employment by completing the necessary paperwork at the MESC. Many of them filled out Zurn applications and questionnaires solicited by the Union. Their applications are part of the record (CP Exh. 19, R. Exh. 12). As urged by the Charging Party in this case these 427 individuals should also be considered as applicants who were not considered by the Respondent for discriminatory reasons. The names were attached as Appendix D to the Charging Parties' brief. As described in *Alexander's Restaurant & Lounge*, 228 NLRB at 179, the final determination of job availability and possible backpay liability will be properly left to compliance.

### G. Other Violations

#### 1. The discharge of Roger See

William Douglas and Roger See are experienced iron workers from Iowa who were hired as boilermakers on October 12, 1992. They attended a meeting in Sullivan's office on the same day and were instructed not to solicit on the job and to place only company stickers on their hard hats. They also signed a document which stated in substance that they would agree not to place any stickers other than Company stickers on their hats (GC Exh. 41). During the meeting, Sullivan warned them that the Company's experienced union problems.

On October 20, 1992, See and Douglas attended a union meeting. They began to wear union insignia to work such as union buttons and union stickers on their hats. Several days later, General Foreman Jim Chittum approached See, tapped on

his union button and said, "what's this all about?" See replied, "it's about a warm place to eat my lunch and be treated like a human being." Chittum said that he could eat his lunch in the toilets because they "had methane heat" (Tr. 1616). After this incident Chittum frequently observed See at his work, followed him around and, on one occasion, commented whether he planned to do any work that day. Even though his supervisor, Alex (Pappy) Morrison regularly complimented See about his work, See felt intimidated by Chittum ever since the original episode involving his union activity.

On December 2, 1992, See was initially assigned to work on same structural columns on the ground. At about 11 a.m. Ken Skidmore, a fellow employee, informed See that they had been ordered to "bolt up."

See told Skidmore that the weather conditions were too severe for them to perform that work safely. The weather was cold, snowy, and the steel beams were covered with ice and snow. Skidmore agreed and both men decided that they would refuse to do the work because it would require them to walk on a 4 inch wide and 25 feet long steel beam suspended high above the ground.

Supervisor Morrison then approached See, Skidmore, and David Rowell and ordered them to bolt up. See said that he did not have his tools because they had been stolen and also said that the work was too dangerous. Morrison repeated his order adding that See would be fired if he refused. See disobeyed the order and Morrison reported See to Sullivan. Morrison and Supervisor Toller agreed that See should be terminated. Skidmore and Rowell complied with Morrison's order to bolt up and were not discharged.

The General Counsel and the Charging Party allege that the Respondent discharged See for discriminatory reasons, his union activity and his protected, concerted activity in jointly resisting to perform unsafe working conditions. The record supports the argument, because See was a prominent union supporter who was accosted by Supervisor Chittum about his union insignia. See also acted out of concern for his safety. While the Respondent suggested that the men could have used a torch like a "weed burner" or "rose bud" to burn off the ice and snow to make the job safer, the record shows that the weather conditions were so cold and icy as to render the use of those devices only partially effective. The argument that the Respondent's discharge of See was union related or prompted by See's safety concerns<sup>16</sup> is entirely plausible. However, I find that the Respondent would have discharged See even in the absence of those considerations. *Wright Line*, supra.

The testimony of Morrison and Skidmore was consistent and credible that See refused to bolt up and that Skidmore and Powell who received the same order complied with Morrison's request to do that work in spite of the adverse weather conditions. I accordingly find that even though the discharge of See appeared union related, he would have been discharged for insubordination. The allegation of a Section 8(a)(1)(3) and (1) should therefore be dismissed.

<sup>16</sup> See *Meyers Industries*, 281 NLRB 8826 (1986), affd. 835 F.2d 1481 (D.C. Cir. 1987), cert. den. 487 U.S. 1205 (1988).

## 2. Stickers on hard hats

The record shows that the Respondent promulgated a policy applicable to all employees concerning hard hat stickers (R. Exh. 79). According to the memorandum, dated April 27, 1992, the employees were informed as follows:

Please be advised that only Zurn/NEPCO authorized and issued Hard Hat stickers will be allowed on all employees hard hats.

Employees were required to sign this statement at the time they were hired. The Respondent argues that the policy was not enforced and ultimately rescinded. Even though some employees disregarded the prohibition and were not penalized by the employer, it is clear that others did not take a chance. The chilling effect of signing a statement to that effect certainly interfered with the employees' Section 7 rights, particularly here where the employees were also prohibited from wearing union buttons or other insignia on their clothing. *NLRB v. Windemuller Electric*, 34 F.3d 384, 395 (1994). Employees were prohibited from wearing any union stickers or buttons. The Respondent repeatedly reprimanded employees because they wore union buttons. Kaiserlian was warned by supervisor McDowell that he was walking on thin ice for wearing union buttons. Sullivan similarly warned employee Strzelecki. Supervisor Walls told employee Alan Radle that wearing a union button would cause him trouble and forced a laborer to remove the union button. Supervisor Chittum threatened Roger See for wearing a button. The Respondent has not shown any special circumstances for its restrictions on the wearing union insignia. I accordingly find that the policy interfered with the Section 7 rights of the employees in violation of Section 8(a)(1) of the Act.

## 3. The no-solicitation policy

In a memorandum entitled field policies and procedures Personnel regarding solicitation and distribution, the Respondent's policy provides as follows (GC Exh. 226):

### B. Employees

Employees may not distribute literature or solicit on Company premises for any purpose during working time, which includes the working time of both the employee doing the distributing or soliciting and the employee to whom such activity is directed. Employees may not utilize Company mailboxes for distribution of such material. Violation of this policy will result in appropriate disciplinary action.

### RESPONSIBILITIES

Employees are responsible for limiting their solicitation and distribution to non-work time.

This policy is presumptively valid. *Our Way, Inc.*, 268 NLRB 394 (1983).

According to the Charging Party, two employees, Robert Cook and Paul Strzelecki, testified that Sullivan verbally restricted any solicitation during any time while at work. Cook remembered Sullivan telling him, "there was no soliciting on the job" (Tr. 396). And Strzelecki testified that Sullivan, refer-

ring to the handbook and rules, said "there was no solicitation during any time frame of work" (Tr. 729). While these quoted instructions were broader than the printed solicitation policy, it is doubtful that the employees remembered the verbal instructions with sufficient precision to demonstrate that the Employer intended to go beyond its printed policy. The second instance shows that Sullivan referred to the written policy. I find accordingly that the Respondent's solicitation policy was not overly broad.

The next question is whether it was discriminatorily enforced. In this regard, the General Counsel argues that the Respondent made exceptions in its solicitation policy for United Way and an employees' checkpool. The Respondent is correct that the weekly check pool could have taken place during the lunch periods and not interfered with the employees' working time. However, the record shows that the solicitation conducted by the United Way had the official sanction of the Respondent and was clearly permitted as an exception to the written solicitation policy.

Donald Diekman was disciplined by the Respondent for violating the no-solicitation policy. The record shows that Diekman began to talk to two employees on the job about the Union and attempted to interest them in supporting the Union. The two employees complained to management about Diekman's conduct and submitted written complaints (R. Exhs. 131, 132). Diekman claimed in his testimony that he solicited the employees during the lunch hour. The written notes, however, clearly indicate that it occurred during their working time. Supervisor Walls gave him an oral warning and issued an employee reprimand record (R. Exh. 128). The reprimand was improper under Respondent's written solicitation policy, because of its discriminatory enforcement. The record shows that the Respondent has enforced the policy against union solicitation only. I accordingly find that the Respondent violated Section 8(a)(3) and (1) of the Act.

## 4. Other alleged discriminatees

Gary Macy, alleged to have been rejected for employment as a millwright in November 1992 because of his union support, worked as a carpenter at the Zurn project from May 1992 to November 12, 1992, when he was laid off. He was known by the Company as a prominent union supporter since June 1992. At the time of his layoff he asked Sullivan to transfer him to the millwright crew. Macy's supervisor interceded on his behalf with Bill King, the millwright foreman. Assuming, as the Respondent argues, that no jobs for millwrights existed at that time, it is clear, however, that Zurn was in need for such skills in December and hired new employees. The Respondent ignored its own priority hiring policy by hiring new employees and refusing to consider Macy in December 1992. I find that the Respondent's failure to do so was motivated by its anti-union animus in violation of Section 8(a)(1) and (3) of the Act, as already discussed in the context of its hiring policy.

Stanley Brigner and Mark Berens were interviewed by Sullivan in October and hired as pipewelders. One day after their interview, Sullivan warned them about the Union, saying that there would be people wearing union buttons and that they should not get involved with it, or it could mean the loss of

their jobs. He also said that the job was nonunion and that the Company would not tolerate union acts on the job. Both Brigner and Berens began to wear union buttons in December while they attended a Christmas party. Richard Toller, their supervisor, noticed it and said that the job would not go union. Both employees left the Company after their participation in the strike in December 1992.

Contrary to the General Counsel's argument, I find that both employees failed to return to their jobs and in effect abandoned their jobs. Brigner testified that he did not return to the job after the strike. Similarly, Philip Harmon who was hired as a boilermaker on October 28, 1992, he failed to appear at Respondent's offices with the Company's instructions. In agreement with the Respondent, I find that the Respondent did not discriminate against these employees.

#### 5. Threats and interrogation

As alleged in the complaint, the Respondent violated Section 8(a)(1) of the Act by threatening employees and interrogating them about the Union. As already stated, the MESC as Respondent's agent coercively interrogated numerous job applicants.

As already discussed, Sullivan interrogated Perez during a job interview in August 1992 about his willingness to cross a picket line. Hare interrogated O'Hara about his son's union button and a superintendent, named Bill, interrogated Gerald Richard in the presence of Sullivan about Richard's union background. Van Dyke was questioned by Supervisor John Petty during the job interview about his previous employers and asked to what extent they were union companies. These interrogations, particularly those during job interviews, were clearly coercive and therefore in violation of Section 8(a)(1) of the Act.

Sullivan uttered most of the alleged threats. Sullivan told Berens and Brigner shortly after they were hired that they should not get involved with a lot of people wearing union buttons or they would lose their jobs; Supervisor Toler told the same employees at a Christmas party that the job would not become unionized. Sullivan told employee Bonjernoor not to worry about the "fucking union dogs," and "that they were causing trouble out there and that they weren't going to get in there. . . ." (Tr. 3130.) In September 1992, Supervisor McDowell, pointing his finger at employee Rockford Jones' union button, said, "that's a no, no . . . you guys are walking on thin ice . . . if you value your job, you'd take the button off" (Tr. 486). In August 1992, Sullivan warned employee David Choate not to associate with union people and that he should be careful about others, because there were a lot of union people out there. These statements were clear threats of loss of jobs, designed to interfere with the Section 7 rights of job applicants and employees in violation of Section 8(a)(1) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent, Zurn/N.E.P.C.O., Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Northern Michigan Building and Construction Trades Council and its affiliated Unions (Boilermakers, Pipefitters, Ironworkers, Electricians, Carpenters, Millwrights, Sheet Metal

Workers, Operating Engineers) AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By coercively interrogating job applicants about their union background through its agents at the Michigan Employment Security Commission, Zurn violated Section 8(a)(1) of the Act.

4. By coercively interrogating job applicants and employees about their union sympathies and affiliations, the Respondent violated Section 8(a)(1) of the Act.

5. By threatening employees with the loss of jobs and other reprisals because of their union support, the Respondent violated Section 8(a)(1) of the Act.

6. By promulgating a rule prohibiting the wearing of union stickers and buttons on their hard hats and their clothing to show support for the Union, the Respondent violated Section 8(a)(1) of the Act.

7. By discriminatorily enforcing a no-solicitation rule which prohibited union solicitation but permitted other solicitations, the Respondent violated Section 8(a)(1) of the Act.

8. By disciplining an employee for his violation of the no-solicitation rule, the Respondent violated Section 8(a)(1) and (3) of the Act.

9. By laying off the pipefitters (John Corwin, Robert Cook, Vincent Galligan, Bruce Kaiserlian, Daniel Kaiserlian, Charles Kaiserlian, Michael O'Hara, Shawn O'Hara, Allen Radle, Larry Rose, Doyne Woolsey, Everett Woolsey, and John O'Hara) because of their union activity and by failing to reinstate them to their former jobs at the same pay, the Respondent violated Section 8(a)(1) and (3) of the Act.

10. By failing and refusing to consider for employment job applicants as boilermakers, pipefitters, ironworkers, carpenters, millwrights, electricians, sheet metal workers, and operating engineers, because they were union members or sympathizers or had worked for unionized companies, the Respondent discriminated against them in violation of Section 8(a)(1) and (3) of the Act.

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

#### REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action set forth below to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(1) and (3) of the Act by unlawfully laying off the pipefitters (Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, John O'Hara, Shawn O'Hara, Allen Radle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey); the Respondent must be ordered to offer them full and immediate reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of wages or other rights and benefits they may have suffered as the result of the discrimination against them in accordance with the formula prescribed in *F. W. Woolworth*, 90 NLRB 289 (1950), with interest as pro-

vided for in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I shall further order the Respondent to remove from its records any reference to Donald Dickman's unlawful discipline and notify him in writing that this has been done and that such information will not be used against him in any way.

Having found that the Respondent unlawfully discriminated against job applicants based on their suspected union sympathies and having found that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire applicants named in Appendix A and by refusing to consider for hire the applicants in Appendix B, the Respondent must be ordered to take appropriate action designed to effect the policies of the Act. The remedy in refusal-to-hire cases is the same as that in the traditional violations of Section 8(a)(1) and (3), namely a make-whole order for backpay and reinstatement, as stated above. *Fluor Daniel, Inc.*, 311 NLRB 498 (1993); *Dean General Contractors*, 285 NLRB 573 (1987). In view of Respondent's cessation of construction in Cadillac, copies of the notice identified as Appendix C must be sent to all those individuals against whom the Respondent discriminated, as found herein.

#### ORDER

The Respondent, Zurn/N.E.P.C.O., Cadillac, Michigan, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Coercively interrogating, through its agents at the Michigan Employment Security Commission, job applicants about their union background.

(b) Coercively interrogating employees and job applicants about their union sympathies and affiliations.

(c) Threatening employees with the loss of jobs or other reprisals because of their union support.

(d) Prohibiting, by rule or verbal order, employees from wearing union stickers and union buttons or other union insignia on their hard hats and their clothing.

(e) Promulgating a no-solicitation policy and discriminatorily enforcing it against union solicitation, including the discipline of employees.

(f) Discriminating against employees because of their union activity by laying them off and failing to recall them to their former jobs.

(g) Refusing to consider for employment job applicants for the positions as boilermakers, pipefitters, ironworkers, carpenters, millwrights, electricians, sheet metal workers and operating engineers, because they are members or sympathizers of the Union, or because they worked in establishments which had union contracts.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Offer the applicants for the positions as boilermakers, pipefitters, ironworkers, carpenters, millwrights, electricians, sheet metal workers and operating engineers (listed in Appendices A & B), employment in positions for which they applied, or if such positions no longer exist, to substantially equivalent positions, and make them whole for any loss of earnings they

may have suffered by reason of the discrimination against them as set forth in the remedy section.

(b) Offer the pipefitters Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, John O'Hara, Shawn O'Hara, Allen Radle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey employment and make them and Donald Diekman whole for any losses they may have suffered by reason of the discrimination against them in the manner prescribed in the remedy section of this decision.

(c) Preserve and, on 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 other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Remove from its files any reference to Donald Diekman's discipline and to the unlawful layoffs and notify the employees that this has been done and that the discipline and layoffs will not be used against them in any way.

(e) Post at its Cadillac, Michigan building site, and at its corporate headquarters in Washington State and in the State of Maine and in the Cadillac office of the Michigan Employment Security Administration copies of the attached notice marked "Appendix."<sup>17</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Mail a copy of the attached notice, marked as Appendix C, to the last known address of all individuals against whom the Company discriminated.

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

It is further ordered that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

<sup>17</sup> If 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."

## APPENDIX A

Angle, David  
 Aten, Kerwin  
 Bejeck, Thomas  
 Benjamin, Kenneth  
 Biggs, Richard  
 Bordages, Babylas  
 Bragan, James  
 Card, John  
 Childs, Gary  
 Cogswell, William  
 Corradin, Timothy  
 Custer, Lori Dawn  
 Danula, Harry  
 Doneth, Richard  
 Donovan, Eugene  
 Drake, Billie  
 Dudek, Michael  
 Finnerty, Robert  
 Gapen, Timothy  
 Greenleaf, Harold  
 Griswold, James  
 Griswold, Richard  
 Harju, David  
 Heiden, Kenneth  
 Hubbard, Zane  
 Jacobi, Dick  
 Klein, Douglas  
 Klump, Franklin  
 Kruse, Jeffery  
 Kuznicki, Robert  
 Lambert, Roy  
 LaVasseur, Paul  
 Lee, Mark  
 Macy, Gary  
 Mason, Thomas

Meldrum, Cletis  
 Molitor, David  
 Murray, William  
 Mye, Claire  
 Ostrander, Leo  
 Pacola, John  
 Perez, Tony  
 Plont, John  
 Radtke, Marvin  
 Redner, Sean  
 Richard, Gerald  
 Salisbury, Jay  
 Saxton, Stanley  
 Schmoisch, Ronald  
 Schoudt, Ronne  
 Shible, Basil  
 Shiffer, Ralph  
 Shoudt, Ronne  
 Shorkey, Henry  
 Strawn, Clinton  
 Sivits, Paul  
 Stanley, Arthur  
 Smith, Walter  
 St. John, Richard  
 Taylor, Richard  
 Taylor, Tom  
 Tison, Jack  
 Valentine, Jonathan  
 Van Dyke, Joe  
 Wallaker, Nelson  
 Weiss, Karl  
 Welding, Randy  
 Westphal, Jeffery  
 Woolworth, William  
 Wright, John

## APPENDIX B

1. Adair, Larry P.  
 2. Adamczak, Mark A.  
 3. Admets, James M.  
 4. Ames, Terry L.  
 5. Anderson, Paul D.  
 6. Andrews, James K.  
 7. Aplin, Russel H.  
 8. Armstrong, John D.  
 9. Armstrong, Robert J.  
 10. Arndt, Anthony W.  
 11. Ashby, David L.  
 12. Aten, Kerwin Dale  
 13. Ball, Ronald  
 14. Barnard, Dan  
 15. Barnhart, Craig C.  
 16. Barr, Donald L.  
 17. Bartholomew, Charles  
 18. Bartz, Richard H.  
 19. Bates, Dale M.  
 20. Battle, James P.  
 21. Baudoux, Robert M.  
 22. Bayne, Michael J.  
 23. Beal, Ivan S.  
 24. Beckwith, Michael D.

25. Bejcek, Philip D.  
 26. Bejcek, Thomas A.  
 27. Benjamin, Kenneth E.  
 28. Bennett, John P.  
 29. Bennett, Rick D.  
 30. Bennett, Rod E.  
 31. Benoit, John F.  
 32. Berg, James  
 33. Binkley, Kevin E.  
 34. Birgy, John R.  
 35. Bishop, George A.  
 36. Bishop, Maynerd A.  
 37. Bock, Brent T.  
 38. Bock, William J.  
 39. Boerema, Randy D.  
 40. Border, David E.  
 41. Bostedt, James K.  
 42. Bourland, James E.  
 43. Bower, Joseph C.  
 44. Boyle, James E.  
 45. Bragan, James A.  
 46. Brennan, Timothy A.  
 47. Bridget, Cleland  
 48. Briggs, Richard A.

49. Bryan, Giles D.  
 50. Brydon, Kenneth D.  
 51. Bublitz, Gary  
 52. Buckingham, James G.  
 53. Bufe, Robert W.  
 54. Burger, David B.  
 55. Burger, Fred  
 56. Burnell, Russell  
 57. Burt, Donald  
 58. Byce, David H.  
 59. Campbell, Christopher J.  
 60. Caplinger, Leslie A.  
 61. Card, John P.  
 62. Card, Michael  
 63. Card, Robert W.  
 64. Carlson, Janet E.  
 65. Carney, Thomas Lee  
 66. Caron, Timothy J.  
 67. Cascarelli, Andrew R.  
 68. Childs, Gary  
 69. Christophersen, Walter D.  
 70. Clough, Ronald  
 71. Cogswell, William E.  
 72. Cook, James D.  
 73. Coopshaw, Robert J.  
 74. Corradin, Timothy W.  
 75. Cosgrove, Patrick J.  
 76. Cox, Ray L.  
 77. Curtis, John  
 78. Cusack, Mike C.  
 79. Custer, Lori  
 80. Dahl, Robert R.  
 81. Dahlgren, Laurence C.  
 82. Dahlvig, H. Ray  
 83. Danula, Harry  
 84. Davenport, David M.  
 85. Davenport, James A.  
 86. Davis, Chester L.  
 87. Davis, Steven A.  
 88. Dehring, David J.  
 89. Denman, Jacob P.  
 90. Denn, James R.  
 91. Des Voignes, Roy A.  
 92. Devos, David  
 93. Dickens, Kary Lee, Jr.  
 94. Diebendetto, Mark  
 95. Ditty, Douglas J.  
 96. Dodge, William  
 97. Donovan, Eugene  
 98. Douglas, James L.  
 99. Drake, Billie D.  
 100. Dreyer, Leonard R.  
 101. Duchon, Lawrence J.  
 102. Dudek, Michael J.  
 103. Eberle, Kenneth W.  
 104. Edmondson Jr., Dale  
 105. Edmondson Sr., Dale E.  
 106. Edstrom, David K.  
 107. Erickson, Doyle  
 108. Fiedler, James  
 109. Field, W. John  
 110. Finney, Rich C.  
 111. Finout, Linda L.  
 112. Ford, William G.

113. Frank, Charles L.  
 114. Freier, John E.  
 115. Frontiera, Walter M.  
 116. Frose, David L.  
 117. Gage, Richard L.  
 118. Gapen, Timothy  
 119. Garcia, Robert  
 120. Garrison, Ralph  
 121. Gauld II, Gale E.  
 122. Gauld, Jerry  
 123. Gave, Edward W.  
 124. Getting, Gerald D.  
 125. Gibbons, Thomas R.  
 126. Gilbert, Scott J.  
 127. Gillman, William J.  
 128. Gillow, Dennis H.  
 129. Gleason, Todd M.  
 130. Gleason, Winston G.  
 131. Glynn, Michael P.  
 132. Godbold, Larry  
 133. Gollach, Raymond D.  
 134. Gonyon Sr., Gary J.  
 135. Gottleber, Dan R.  
 136. Green, Scott G.  
 137. Greenleaf, Harold  
 138. Griffin, Gerald D.  
 139. Griswold, Richard  
 140. Groth, Bradley G.  
 141. Grzesiak, Patrick H.  
 142. Guenthardt, Gerald  
 143. Guertin, David  
 144. Guy, Michael D.  
 145. Hackett, Patrick J.  
 146. Hagerty, Richard  
 147. Hall, Ricky A.  
 148. Hamilton, Bradley E.  
 149. Hamilton, Brett  
 150. Hamilton, Harry K.  
 151. Hamilton, Steven R.  
 152. Hamilton, Terry L.  
 153. Hanel, Donald  
 154. Hansen, David R.  
 155. Hardman, John L.  
 156. Hardy, Charles J.  
 157. Harju, David F.  
 158. Harmon, Douglas C.  
 159. Havens, Raymond  
 160. Hawk, Robert A.  
 161. Haynes, Alan A.  
 162. Hazen, Tim A.  
 163. Heiden, Kenneth L.  
 164. Heistand, Russell W.  
 165. Helminiak, Dale E.  
 166. Herek, Keith A.  
 167. Herkelrath, Dennis L.  
 168. Herwick, Keith R.  
 169. Hintz, Gregory A.  
 170. Hissong, Forrest C.  
 171. Holmes, Donald L.  
 172. Holmes, Ross D.  
 173. Hord, Dooly E.  
 174. Hubbard, John  
 175. Hubbard, Zane D.  
 176. Hubbell, Robert S.

177. Huff-Gonzales, Juantia L.  
 178. Iannuccilli, Nick  
 179. Ingle, Darren R.  
 180. Itzen, Daniel F.  
 181. Ivey, George  
 182. Jackson, Fay L.  
 183. Jackson, Robert W.  
 184. Jipping, Arie  
 185. Johnson, David M.  
 186. Johnseon, Gerald  
 187. Jones, Heath A.  
 188. Jones, Luther A.  
 189. Kanouse, Forrest L.  
 190. Kapplinger, Jarvis  
 191. Kelley, Albert W.  
 192. Kelly, Gerald L.  
 193. Kendall, Ronald F.  
 194. Kincaid, Herman C.  
 195. King, Gerald H.  
 196. Kitchen, Wallace  
 197. Klein, Douglas Wesley  
 198. Klele, Mike  
 199. Kline, Donald  
 200. Knapp, Steve  
 201. Koeuering, Gary L.  
 202. Kosciielecki, Daniel W.  
 203. Kosciielecki, Kevin M.  
 204. Kosciielecki, Robert S.  
 205. Kosnik, Paul E.  
 206. Kraenzlein, Gerald  
 207. Krajciewicz, Paul A.  
 208. Kravako, Timothy C.  
 209. Krieger, David L.  
 210. Kriesche, Dennis  
 211. Kroll, Ray F.  
 212. Kuriger, Terrence W.  
 213. Kuznicki, Robert  
 214. LaForest, Gary T.  
 215. LaForest, Paul R.  
 216. Lambert, Roy A.  
 217. Larson, Howard O.  
 218. Larson, Larry L.  
 219. Leatherman, Michael D.  
 220. Lee, Mark  
 221. Lee, Tommy  
 222. Leenhouts, James D.  
 223. Leitner, Jeff S.  
 224. Letherer, John R.  
 225. LaVasseur, Paul J.  
 226. Lewis, Dale A.  
 227. Long, Gaines  
 228. Louzon, Lawrence R.  
 229. Lovell, Kevin  
 230. Lyle, Christopher  
 231. Lynn, Rodney M.  
 232. Macintyre, Craig D.  
 233. Macy, Gary L.  
 234. Macy, Gilbert W.  
 235. Mansfield, James R.  
 236. Marckini, Joseph R.  
 237. Marshall, Ed  
 238. Marshall, Lee N.  
 239. Marshall, Patrick  
 240. Mater, Del H.  
 241. Mattis, Marshall F.  
 242. McAlpine, Jack  
 243. McCarry, Patrick W.  
 244. McDonald, John A.  
 245. McEntaffer, Kevin J.  
 246. McGee, Timothy J.  
 247. McKenna, Patrick J.  
 248. McLary, Terry A.  
 249. McMillen, Ronald W.  
 250. McNeas, Jr., Homer J.  
 251. McPherson, Diana L.  
 252. McQuiston, Jeffrey D.  
 253. Mead, Paul D.  
 254. Melius, Rodney  
 255. Merry, Max O.  
 256. Meter, Francis J.  
 257. Milks, Lee  
 258. Miller, Charles W.  
 259. Miller, Don L.  
 260. Miller, Mark W.  
 261. Molitor, David A.  
 262. Montie, Floyd L.  
 263. Moore, Michael J.  
 264. Moreau, Daniel J.  
 265. Morris, Marvin S.  
 266. Mosher, Ronald E.  
 267. Mosher, Timothy J.  
 268. Mosher, William C.  
 269. Murchie, Michael J.  
 270. Murphy, Greg  
 271. Myers, Danny L.  
 272. Nelson, Russ D.  
 273. Nemethy Sr., Steve R.  
 274. Nestle, James E.  
 275. Nolan, David B.  
 276. Norton, Larry  
 277. Nye, James  
 278. O'Hare, Michael J.  
 279. Ostrander, Leo F.  
 280. Pacola, John E.  
 281. Paisley, William H.  
 282. Payne, George  
 283. Peckstein, Karl W.  
 284. Peer, Samuel T.  
 285. Peil, Jess A.  
 286. Peil, Tim R.  
 287. Pepera, Randall J.  
 288. Pepera, Richard S.  
 289. Perez, Tony  
 290. Peterson, Alan S.  
 291. Peterson, Scott A.  
 292. Pierce, Kenneth W.  
 293. Platt, William D.  
 294. Plont, John R.  
 295. Potter, Burton R.  
 296. Powers, Gregory  
 297. Purchase, Roge A.  
 298. Rabach, William  
 299. Radden, Rex C.  
 300. Radtk, Marion D.  
 301. Raetz, Rick R.  
 302. Randal, Michael C.  
 303. Redner, Sean R.  
 304. Reed, Richard C.  
 305. Reeves, Roger E.  
 306. Renigar, Donald H.  
 307. Reynolds, Gregory S.  
 308. Ricards, William  
 309. Richard, Gerald  
 310. Richardson, William J.  
 311. Richmond, Roderick  
 312. Riedel, Terry W.  
 313. Rienas, Robert D.  
 314. Rivette, Matthew  
 315. Roberson, Ronald D.  
 316. Roberts, Edward  
 317. Roberts, Kenneth  
 318. Robinson, Gary  
 319. Rosbeck, Gary L.  
 320. Rosenberg, Randall  
 321. Rosenberry, David L.  
 322. Rossell, Terry D.  
 323. Rule, James L.  
 324. Rushford, Andrew S.  
 325. Salisbury, Jay  
 326. Salois, James  
 327. Sandelius, Stanley J.  
 328. Sasse, William G.  
 329. Sawyer, Thomas P.  
 330. Saxton, Stanley D.  
 331. Scanlon, Gerald K.  
 332. Schaffer, Jeffrey  
 333. Schaub, Matt R.  
 334. Schaub, Robert  
 335. Schoudt, Ronne L.  
 336. Schutt, Michael J.  
 337. Scott, David A.  
 338. Sellers, Timothy R.  
 339. Sharp, Robert A.  
 340. Sharp, Terry L.  
 341. Sherven, Norman J.  
 342. Shively, Howard D.  
 343. Shivlie, Basil Dean  
 344. Shoemaker, Joseph S.  
 345. Shorkey, Henry  
 346. Simmons, Charles J.  
 347. Simmons, Harold  
 348. Simons, Nevin  
 349. Siuda, Philip  
 350. Sivits, Paul  
 351. Slaghula, James A.  
 352. Smith, Dale R.  
 353. Smith, Dale T.  
 354. Smith, Richard H.  
 355. Smith, Walter E.  
 356. Somerville, Bryan  
 357. Sorenson, Robert L.  
 358. Sorenson, Rodney R.  
 359. Spofford, GERALYN  
 360. Stanick, Duane  
 361. Stark, James E.  
 362. Starks, Steven L.  
 363. Stawicki, Robert L.  
 364. Stender, Albert J.  
 365. Stickney, Dennis  
 366. Stiles, Douglas  
 367. Stracka, Tim N.  
 368. Strawn, Clinton  
 369. Stull, Brett D.  
 370. Super, John J.  
 371. Sutliff, Kirk S.  
 372. Swartz, Cary L.  
 373. Taylor, Randy R.  
 374. Taylor, Richard C.  
 375. Taylor, Thomas  
 376. Teachout, Keith E.  
 377. Thies, Charles G.  
 378. Timchac, James  
 379. Toussaint, James A.  
 380. Trier, Cary M.  
 381. Trudeau, Douglas J.  
 382. Trumble, Roy  
 383. Uber, Leo  
 384. Vajda, Gary  
 385. Valentine, Jonathan  
 386. Van Dyke, Joseph L.  
 387. Vandenbos, Peter J.  
 388. Vandusen Sr., George D.  
 389. Vandwelinde, Paul C.  
 390. Vandyke, Michael P.  
 391. VanKoevering, Michael D.  
 392. VanSlambrouer, Clayton J.  
 393. Vasold, Robert E.  
 394. Vaughn, Billy W.  
 395. Verlin, Joseph  
 396. Vine, Terry J.  
 397. Wakefield, Robert  
 398. Walsh, John M.  
 399. Wasilchenko, Danny J.  
 400. Watson, James W.  
 401. Watters, Daniel  
 402. Weaver, Randy F.  
 403. Welch, Larry R.  
 404. Wendling, Randall C.  
 405. Werten, Gary R.  
 406. Westphal, Jeffrey D.  
 407. Wieland, Joel G.  
 408. Wierzbicki, James E.  
 409. Wigent, Gary N.  
 410. Wilbanks, Billy R.  
 411. Wildfong, Wilbur D.  
 412. Williamson, George  
 413. Wilsdon, William M.  
 414. Wilson, Donald C.  
 415. Wissner, Dale R.  
 416. Witte, Charles A.  
 417. Woolworth, William C.  
 418. Wright, John W.  
 419. Wright, Kendall O.  
 420. Wuolukka, Earl B.  
 421. Wuolukka, Rickey  
 422. Yeager, Roy  
 423. Yorch, Harry F.  
 424. Yost, James G.  
 425. Ziemba, Walter  
 426. Ziemer, Thomas H.  
 427. Zmich, Robert C.

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively interrogate, through agents at the Michigan Employment Security Commission, job applicants about their union background.

WE WILL NOT coercively interrogate employees and job applicants about their union sympathies and affiliations.

WE WILL NOT threaten our employees with the loss of jobs or other reprisals because of their union support.

WE WILL NOT prohibit, by rule or verbal order, employees from wearing union stickers and union buttons or other union insignia on their hard hats and their clothing.

WE WILL NOT promulgate a no-solicitation policy and discriminatorily enforce it against union solicitation, including the discipline of employees.

WE WILL NOT discriminate against employees because of their union activity by laying them off and failing to recall them to their former jobs.

WE WILL NOT refuse to consider for employment job applicants for the positions as boilermakers, pipefitters, ironworkers, carpenters, millwrights, electricians, sheet metal workers, and operating engineers, because they are members or sympathizers of the Union, or because they worked in establishments which had union contracts.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer the applicants for the positions as boilermakers, pipefitters, ironworkers, carpenters, millwrights, electricians, sheet metal workers, and operating engineers (listed in Appendices A & B), employment in positions for which they applied, or if such positions no longer exist, to substantially equivalent positions, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them.

WE WILL offer the pipefitters Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, John O'Hara, Shawn O'Hara, Allen Radle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey employment and make them and Donald Diekman whole for any losses they may have suffered by reason of the discrimination against them in the manner prescribed in the remedy section of this decision.

WE WILL remove from our files any reference to Donald Diekman's discipline and to the unlawful layoffs and notify the employees that this has been done and that the discipline and layoffs will not be used against them in any way.

ZURN/N.E.P.C.O.

*Joseph P. Canfield, Esq.* and *Cynthia Beauchamp, Esq.*, for the General Counsel.

*Michael C. Towers, Esq.* and *William F. Kaspers, Esq.* (*Fisher & Phillips*), of Atlanta, Georgia, for the Respondent.

*Kenneth A. Knox, Esq.* (*Fisher & Phillips*), of Fort Lauderdale, Florida, for the Respondent.

*Peter T. Kotula, Esq.*, of Detroit, Michigan, for the Attorney General.

*Michael J. Stapp, Esq.* and *Mary Elizabeth Metz, Esq.* (*Blake & Uhlig, P.A.*), of Kansas City, Kansas, for the Charging Party.

SUPPLEMENTAL DECISION

KARL H. BUSCHMANN, Administrative Law Judge. By Order of September 27, 1996, the National Labor Relations Board (the Board) remanded this proceeding to me for the limited purpose of (1) making more specific findings to clarify whether the Respondent's hiring policy (policy 303) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act), because it is inherently discriminatory as written or because it was discriminatorily applied at the Cadillac, Michigan jobsite; and (2) providing appropriate guidelines to remedy the unlawful discriminations against job applicants in Appendix A,<sup>1</sup> who were refused employment and those listed in Appendix B,<sup>2</sup> who were not considered for employment.

In my decision of October 27, 1995, I found that the Respondent resorted to several employment practices in order to avoid the hiring of applicants with a union background or sympathy. The most pervasive were the following: The Company relied on a preferential hiring policy known as policy 303, it entered into the custom referral agreement with the Michigan Employment Security Commission (MESC) providing for priority of Zurn's "name-calls" and it engaged in the preferential hiring of applicants from outside the State of Michigan. First and foremost was the Respondent's application of a priority hiring policy (policy 303) which by its terms gave preference to present and past employees and referrals by its own employees, including management. Policy 303 on its face provides for the preferential hiring of applicants who have a connection with Respondent's work force. And that work force is not unionized. The Board has found in similar circumstances that the practical effect of such a priority hiring system is "to preclude employment of union members." *D. S. E. Concrete Forms, Inc.*, 303 NLRB 890 fn. 2 (1991), *enfd.* 21 F.3d (5th Cir. 1994). The Board's conclusion in that case is supported by the record in the case before me. First, Respondent's expert witnesses

<sup>1</sup> The individuals identified by the Board as improperly included on App. A have been included on App. B, except Randy Welding, who was a witness at the hearing.

<sup>2</sup> The names which appeared on both appendices were stricken from App. B.

testified unequivocally that Zurn's priority hiring system would definitely result in a nonunion work force. Second, the Company regards itself as a merit shop employer, and its adherence to policy 303 has resulted in a nonunion work force as shown by the statistical evidence in the record.

Although generally, a priority hiring system relying on referrals to hire applicants with a proven work record and without the intention to discriminate against union members appears reasonable, here, the employer has demonstrated its antiunion animus with threats, coercive interrogations, and firings of union sympathizers so that the intention to discriminate is apparent. Even without the evidence in the record that the employer has drafted policy 303 with the intent to discriminate, the record is otherwise clear that management relied on policy 303 in order to avoid the hiring of union applicants. Management officials in Cadillac were experienced in identifying prospective candidates who had a union background by an examination of the applications and the skillful use of personal interviews. In many instances, this policy did not produce the most experienced and skilled employees. Numerous employees who were hired pursuant to the priority system did not possess the skills for the particular position and had little or no prior experience in the particular trade, as more fully discussed in my decision. The record accordingly shows that policy 303 failed in meeting its stated purpose, i.e., to select the most qualified applicant and its intent, i.e., to comply with all applicable Federal and State laws. I am compelled to find that Respondent's policy 303 itself is discriminatory, as shown by the record's statistical evidence, Respondent's expert testimony and the practical consequences of its application. I will accordingly recommend that the priority hiring policy be expunged or revised so as to preclude the unlawful discrimination.

The record also shows that the Respondent's hiring policy was discriminatorily applied. The evidence is clear that the Respondent did not rely on its priority hiring policy alone to assure a nonunion work force. For example, policy 303 provides that "consideration of qualified individuals within the immediate local area will be given first." Yet, as more fully set out in my decision, management recruited applicants from anywhere but the local area, particularly from the southern areas of the country in order to find employees without a union background. The statistical evidence in the record showing the composition of Respondent's work force clearly supports this finding. The Respondent's expert testimony about merit shops in southern states supports the conclusion that applicants from the south are less likely to favor unions. The Respondent took extraordinary steps in order to attract such applicants.

In several instances, the Respondent ignored its priority hiring policy in order to avoid applicants with a union background. In other instances, the Respondent purported to hire individuals through its referral policy when indeed they were not referred by anyone. Also contrary to policy 303's mandate to hire "the most qualified job applicant," the management of Zurn/N.E.P.C.O. hired applicants who appeared unqualified so long as they had no union background, as already mentioned above. I, accordingly, find that the Respondent applied its hiring policy in a discriminatory fashion for the purpose of excluding applicants because of their suspected union sympathies.

The 65 applicants identified on Appendix A were unlawfully denied employment as a result of the Respondent's discrimination. As more fully discussed in the underlying decision they were experienced and skilled in their respective trades and should have been hired for any of the 202 positions at the Cadillac jobsite, particularly, where as here, their experience exceeded that of many of the employees who were actually hired with little regard to their prior experience because they had no union background. The record reveals in detail the experience, training, and certificates that each of the 65 applicants had; the record also shows the lack of experience many of the candidates had who were placed into job categories with little regard to their qualifications. The underlying decision describes in detail the individual experiences of many of the applicants as a representative sampling of all 65 names listed on Appendix A who were rejected for jobs in the relevant trades. It is accordingly appropriate for me to recommend the traditional remedy that includes reinstatement and backpay, as well as Respondent's obligation to these applicants because the work at the Cadillac jobsite has been completed. *Ultra Systems Western Constructors, Inc. v. NLRB*, 18 F.3d 251 (4th Cir. 1994); *B E & K Construction Co.*, 321 NLRB 561 (1996).

In sum, the record shows conclusively that the Company and the applicants are covered by the Act, that these applicants all applied for employment with Zurn and were amply qualified for the jobs which the Company filled with nonunion applicants, and that these employees were rejected for employment as a result of the Respondent antiunion animus. Instead, the Company filled the positions with candidates who were less qualified, so long as they had no union connection. The Respondent has not carried the burden of showing that any of these applicants would not have been hired even in the absence of any union consideration.

Of significance to the issue of a discriminatory hiring practice was the Respondent's arrangement with the Michigan Employment Security Commission (MESC). The "custom referral agreement" provided the Respondent on the one hand with the aura of an unbiased procedure and on the other with the flexibility of implementing its priority hiring practice. While the Respondent generally required each job applicant to register with the MESC, it also had an agreement with the MESC to process "name-call" applicants on a preferential basis. The name calls were not screened by MESC personnel and were processed ahead of the other job applicants. This enabled the Respondent to hire applicants without a union background and still maintain the requirement that each applicant had to register through the MESC. While I see no problem with the general idea of requiring prospective employees to be processed by the MESC, so long as the appropriate procedures are followed, the consequences of the custom referral agreement was that it gave the impression to hundreds of job seekers that they had an opportunity to obtain a job with Zurn so long as they went through the procedure. By Respondent's own statistical evidence, the vast majority of employees were hired on a priority or name-call basis pursuant to the custom referral agreement. According to the same numbers, an applicant with a union background who registered under MESC's regular procedure had little or no chance to land a job at Zurn's project in Cadil-

lac. The Appendix B contains the names of job applicants with a union background who carefully followed the procedures set up by the Respondent and who, in spite of their experience and skills in the trade, were not considered for employment, because their applications revealed a union background. And for the same reason, they were not part of the group of name calls. The MESC, suspecting that it was being used to avoid union applicants, ultimately discontinued the custom referral procedure.

To be sure, the 382 union applicants listed on Appendix B who were not *considered* for employment, would not *all* have been placed on Respondent's payroll in Cadillac. But for the Respondent's discriminatory practices, many could have been hired and they should be made whole. All the individuals were lead to believe that their applications would be seriously considered. Those individuals on Appendix B who would not have been hired should be reimbursed for the expenses incurred in the MESC application process, which required their attendance for the interview.

Consistent with the Board's remand order, I have carefully considered the authorities cited and attempted to fashion an appropriate remedy which is congruent with the scope of Respondent's discrimination and which does not go beyond it. In *Ultrasystems Western Constructors, Inc. v. NLRB*, 18 F.2d at 259, the court stated:

Thus a refusal to consider begets a remedy that the employer must consider, and when the refusal to consider also results in an actual refusal to hire, the refusal begets the remedy that the employer must hire those applicants who otherwise would have been hired.

Like the Board's Order in *Ultrasystems Western Constructors*, 316 NLRB 1243 (1995), to remedy the Respondent's unlawful refusal to consider the 382 applicants for hire, the Respondent must be ordered to consider them for hire and to provide backpay to those whom it would have hired but for its unlawful conduct. If at the compliance stage it is determined that the Respondent would have hired any of these applicants on Appendix B the inquiry as to their backpay will include any amounts they would have received on jobs to which the Respondent would have assigned them and the Respondent should be ordered to hire these individuals and place them in positions substantially equivalent to those for which they applied in Cadillac, Michigan.

Finally, as to those applicants who at the compliance stage will be found not to have been hired because there were no job openings, they should be compensated for their actual expense incurred in registering at the MESC. In view of Respondent's arrangement with the MESC, which generated false hopes in so many union applicants find work, they should also be made whole to the extent that they incurred such expenses.

The order in the underlying proceeding should accordingly be modified as follows:<sup>3</sup>

1. Substitute the following for paragraph 1(g).

(g) Refusing to hire or to consider for employment job applicants for the positions as boilermakers, pipefitters, ironwork-

ers, carpenters, millwrights, electricians, sheet metal workers, and operating engineers, because they are members or sympathizers of the Union, or because they worked in establishments which had union contracts, and maintaining or discriminatorily applying a hiring policy which discriminates against suspected union applicants or sympathizers.

2. Substitute paragraph 2(a) and, instead, add the following paragraphs 2(a)-(d).

(a) Within 14 days from the date of this Order offer the applicants for the positions as boilermakers, pipefitters, ironworkers, carpenters, millwrights, electricians, sheet metal workers, and operating engineers (listed in Appendix A), employment in positions for which they applied, or if such positions no longer exist, to substantially equivalent positions, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them as set forth herein and in the remedy section of the underlying decision.

(b) Make whole those employee-applicants listed in Appendix B for any losses they may have suffered by reason of the Respondent's discriminatory refusal to consider them for hire in the manner described above in this Supplemental Decision and Order.

(c) Within 14 days offer those employee-applicants who would have been employed but for the Respondent's unlawful refusal to consider them for hire, employment in the positions for which they applied or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled if they had not been discriminated against by the Respondent.

(d) Further, make those applicants who would not have been hired, whole for their expenses incurred in registering at the MESC.

3. Add the following as paragraph 2(e) and renumber all subsequent paragraphs in the underlying decision.

"Rescind or revise its preferential hiring policy (policy 303) so as to preclude any discrimination against applicants because of their union background or sympathies."

#### ORDER

The Respondent, Zurn/N.E.P.C.O., Redmond, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating, through its agents at the Michigan Employment Security Commission, job applicants about their union background.

(b) Coercively interrogating employees and job applicants about their union sympathies and affiliations.

(c) Threatening employees with the loss of jobs or other reprisals because of their union support.

(d) Prohibiting by rule or verbal order employees from wearing union stickers and union buttons or other union insignia on their hardhats and their clothing.

(e) Promulgating a no-solicitation policy and discriminatorily enforcing it against union solicitation, including the discipline of employees.

<sup>3</sup> See also *Indian Hills Care Center*, 321 NLRB 144 (1996).

(f) Discriminating against employees because of their union activity by laying them off and failing to recall them to their former jobs.

(g) Refusing to hire or to consider for employment job applicants for the positions are boilermakers, pipefitters, ironworkers, carpenters, millwrights, electricians, sheet metal workers, and operating engineers, because they are members or sympathizers of the Union, or because they worked in establishments which had union contracts, and maintaining or discriminatorily applying a hiring policy which discriminates against suspected union applicants or sympathizers.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days from the date of this Order offer the applicants for the positions as boilermakers, pipefitters, ironworkers, carpenters, millwrights, electricians, sheet metal workers, and operating engineers (listed in Appendix A), employment in positions for which they applied, or if such positions no longer exist, to substantially equivalent positions, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them as set forth herein and in the remedy section of the underlying decision.

(b) Make whole those employee-applicants listed in Appendix B for any losses they may have suffered by reason of the Respondent's discriminatory refusal to consider them for hire in the manner described above in this Supplemental Decision and Order.

(c) Within 14 days offer those employee-applicants who would have been employed but for the Respondent's unlawful refusal to consider them for hire, employment in the positions for which they applied or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled if they had not been discriminated against by the Respondent.

(d) Further, make those applicants who would not have been hired, whole for their expenses incurred in registering at the MESC.

(e) Rescind or revise its preferential hiring policy (policy 303) so as to preclude any discrimination against applicants because of their union background or sympathies.

(f) Within 14 days from date of this Order, offer the pipefitters Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, Shawn O'Hara, Allen Radle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey employment.

(g) Make Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, Shawn O'Hara, Allen Radle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, Doyne Woolsey, and Donald Diekman whole for any losses they may have suffered by reason of the discrimination against them in the manner prescribed in the remedy section of this decision.

(h) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all pay-

roll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days from date of this Order, remove from its files any reference to Donald Diekman's discipline and to the unlawful layoffs and within 3 days thereafter notify him in writing that this has been done and that the discipline and layoffs will not be used against him in any way.

(j) Within 14 days after service by the Region, post at its Cadillac, Michigan building site and at its corporate headquarters in Washington State and in the State of Maine and in the Cadillac office of the Michigan Employment Security Administration copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 2, 1992.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

#### APPENDIX A

Angle, David	Greenleaf, Harold
Aten, Kerwin	Griswold, James
Bejeck, Thoma	Griswold, Richard
Benjamin, Kenneth	Harju, David
Biggs, Richard	Heiden, Kenneth
Bordages, Babylas	Hubbard, Zane
Bragan, James	Jacobi, Dick
Card, John	Klein, Douglas
Childs, Gary	Klump, Franklin
Cogswell, William	Kruse, Jeffery
Corradin, Timothy	Kuznicki, Robert
Custer, Lori Dawn	Lambert, Roy
Danula, Harry	LaVasseur, Paul
Doneth, Richard	Lee, Mark
Donovan, Eugene	Mason, Thomas
Drake, Billie	Meldrum, Cletis
Dudek, Michael	Molitor, David
Finnerty, Robert	Murray, William
Gapen, Timothy	Mye, Claire

<sup>4</sup> If 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."

Ostrander, Leo  
Pacola, John  
Perez, Tony  
Plont, John  
Radtke, Marvin  
Redner, Sean  
Richard, Gerald  
Salsbury, Jay  
Saxton, Stanley  
Schmoisich, Ronald  
Schmoisich, Ronald  
Schoudt, Ronne  
Shiblie, Basil  
Shiffner, Ralph

Shorkey, Henry  
Sivits, Paul  
Smith, Walter  
Taylor, Richard  
Taylor, Tom  
Valentine, Jonathan  
Van Dyke, Joe  
Wallaker, Nelson  
Weiss, Karl  
Welding, Randy  
Westphal, Jeffrey  
Woolworth, William  
Wright, John

Finney, Rich C.  
Finout, Linda L.  
Ford, William G.  
Frank, Charles L.  
Freier, John E.  
Frontiera, Walter M.  
Frose, David L.  
Gage, Richard L.  
Garcia, Robert  
Garrison, Ralph  
Gauld II, Gale E.  
Gauld, Jerry  
Gave, Edward W.  
Getting, Gerald D.  
Gibbons, Thomas R.  
Gilbert, Scott J.

Ivey, George  
Jackson, Fay L.  
Jackson, Robert W.  
Jipping, Arie  
Johnson, David M.  
Johnseon, Gerald  
Jones, Heath A.  
Jones, Luther A.  
Kanouse, Forrest L.  
Kapplinger, Jarvis  
Kelley, Albert W.  
Kelly, Gerald L.  
Kendall, Ronald F.  
Kincaid, Herman C.  
Kitchen, Wallace

## APPENDIX B

Adair, Larry P.  
Adamczak, Mark A.  
Admets, James M.  
Ames, Terry L.  
Anderson, Paul D.  
Andrews, James K.  
Aplin, Russel H.  
Armstrong, John D.  
Armstrong, Robert J.  
Amdt, Anthony W.  
Ashby, David L.  
Ball, Ronald  
Barnard, Dan  
Barnhart, Craig C.  
Barr, Donald L.  
Bartholomew, Charles  
Bartz, Richard H.  
Bates, Dale M.  
Battle, James P.  
Baudoux, Robert M.  
Bayne, Michael J.  
Beal, Ivan S.  
Beckwith, Michael D.  
Bejcek, Phillip D.  
Bennett, John P.  
Bennett, Rick D.  
Bennett, Rod E.  
Benoit, John F.  
Berg, James  
Binkley, Kevin E.  
Birgy, John R.  
Bishop, George A.  
Bishop, Maynerd A.  
Bock, Brent T.  
Bock, William J.  
Boerema, Randy D.  
Border, David E.  
Bostedt, James K.J.  
Bourland, James E.  
Bower, Joseph C.  
Boyle, James E.  
Brennan, Timothy A.  
Bridget, Cleland  
Briggs, Richard A.  
Bryan, Giles D.  
Brydon, Kenneth D.  
Bublitz, Gary  
Buckingham, James G.

Bufe, Robert W.  
Burger, David B.  
Burger, Fred  
Burnell, Russell  
Burt, Donald  
Byce, David H.  
Campbell, Christopher J.  
Caplinger, Leslie A.  
Card, Michael  
Card, Robert W.  
Carlson, Janet E.  
Camey, Thomas Lee  
Caron, Timothy J.  
Cascarelli, Andrew R.  
Christophersen, Walter D.  
Clough, Ronald  
Cook, James D.  
Coopshaw, Robert J.  
Cosgrove, Patrick J.  
Cox, Ray L.  
Curtis, John  
Cusack, Mike C.  
Dahl, Robert R.  
Dahlgren, Laurence C.  
Dahlvig, H. Ray  
Davenport, David M.  
Davenport, James A.  
Davis, Chester L.  
Davis, Steven A.  
Dehring, David J.  
Denman, Jacob P.  
Denn, James R.  
Des Voignes, Roy A.  
Devos, David  
Dickens Jr., Kary Lee  
Diebendetto, Mark  
Ditty, Douglas J.  
Dodge, William  
Douglas, James L.  
Dreyer, Leonard R.  
Duchon, Lawrence J.  
Eberle, Kenneth W.  
Edmondson Jr., Dale  
Edmondson Sr., Dale E.  
Edstrom, David K.  
Erickson, Doyle  
Fiedler, James  
Field, John W.

Gillman, William J.  
Gillow, Dennis H.  
Gleason, Todd M.  
Gleason, Winston G.  
Glynn, Michael P.  
Godbold, Larry  
Gollach, Raymond D.  
Gonyon Sr., Gary J.  
Gottleber, Dan R.  
Green, Scott G.  
Griffin, Gerald D.  
Groth, Bradley G.  
Grzesiak, Patrick H.  
Guenthardt, Gerald  
Guertin, David  
Guy, Michael D.  
Hackett, Patrick J.  
Hagerty, Richard  
Hall, Ricky A.  
Hamilton, Bradley E.  
Hamilton, Brett  
Hamilton, Harry K.  
Hamilton, Steven R.  
Hamilton, Terry L.  
Hanel, Donald  
Hansen, David R.  
Hardman, John L.  
Hardy, Charles J.  
Harmon, Douglas C.  
Havens, Raymond  
Hawk, Robert A.  
Haynes, Alan A.  
Hazen, Tim A.  
Heistand, Russell W.  
Helminiak, Dale E.  
Herek, Keith A.  
Herkelrath, Dennis L.  
Herwick, Keith R.  
Hintz, Gregory A.  
Hissong, Forrest C.  
Holmes, Donald L.  
Holmes, Ross D.  
Hord, Dooly E.  
Hubbard, John  
Hubbell, Robert S.  
Huff-Gonzales, Juanita L.  
Iannuccilli, Nick  
Ingle, Darren R.  
Itzen, Daniel F.

Kline, Donald  
Knapp, Steve  
Koeuering, Gary L.  
Koscielecki, Daniel W.  
Koscielecki, Kevin M.  
Koscielecki, Robert S.  
Kosnik, Paul E.  
Kraenzlein, Gerald  
Krajkiecwz, Paul A.  
Kravako, Timothy C.  
Krieger, David L.  
Kriesche, Dennis  
Kroll, Ray F.  
Kuriger, Terrence W.  
LaForest, Gary T.  
LaForest, Paul R.  
Larson, Howard O.  
Larson, Larry L.  
Leatherman, Michael D.  
Lee, Tommy  
Leenhouts, James D.  
Leitner, Jeff S.  
Letherer, John R.  
Lewis, Dale A.  
Long, Gaines  
Louzon, Lawrence R.  
Lovell, Kevin  
Lyle, Christopher  
Lynn, Rodney M.  
Macintyre, Craig D.  
Macy, Gilbert W.  
Mansfield, James R.  
Marckini, Joseph R.  
Marshall, Ed  
Marshall, Lee N.  
Marshall, Patrick  
Mater, Del H.  
Mattis, Marshall F.  
McAlpine, Jack  
McCarry, Patrick W.  
McDonald, John A.  
McEntaffer, Kevin J.  
McGee, Timothy J.  
McKenna, Patrick J.  
McLary, Terry A.  
McMillen, Ronald W.  
McNees Jr., Homer J.  
McPherson, Diana L.  
McQuiston, Jeffrey D.

Mead, Paul D.	Salois, James	Wasilchenko, Danny J.	Wilsdon, William M.
Melius, Rodney	Sandelius, Stanley J.	Watson, James W.	Wilson, Donald C.
Merry, Max O.	Sasse, William G.	Watters, Daniel	Wissner, Dale R.
Meter, Francis J.	Sawyer, Thomas P.	Weaver, Randy F.	Witte, Charles A.
Milks, Lee	Scanlon, Gerald K.	Wilbanks, Billy R.	Wright, Kendall O.
Miller, Charles W.	Schaffer, Jeffrey	Welch, Larry R.	Wuolukka, Earl B.
Miller, Don L.	Schaub, Matt R.	Wendling, Randall C.	Wuolukka, Rickey
Miller, Mark W.	Schaub, Robert	Western, Gary R.	Yeager, Roy
Montie, Floyd L.	Schutt, Micheal J.	Wieland, Joel G.	Yorch, Harry F.
Moore, Michael J.	Scott, David A.	Wierzbicki, James E.	Yost, James G.
Moreau, Daniel J.	Sellers, Timothy R.	Wigent, Gary N.	Ziemba, Walter
Morris, Marvin S.	Sharp, Robert A.	Wildfong, Wilbur D.	Ziemer, Thomas H.
Mosher, Ronald E.	Sharp, Terru L.	Williamson, George	Zmich, Robert C.
Mosher, Timothy J.	Sherven, Norman J.		
Mosher, William C.	Shively, Howard D.		
Murchie, Michael J.	Shivlie, Basil Dean		
Murphy, Greg	Shoemaker, Joseph S.		
Myers, Danny L.	Simmons, Charles J.		
Nelson, Russ D.	Simmons, Harold		
Nemethy Sr., Steve R.	Simons, Nevin		
Nestle, James E.	Siuda, Philip		
Nolan, David B.	Slaghula, James A.		
Norton, Larry	Smith, Dale R.		
Nye, James	Smith, Dale T.		
O'Hare, Michael J.	Smith, Richard H.		
Paisley, William H.	Somerville, Bryan		
Payne, George	Sorenson, Robert L.		
Peckstein, Karl W.	Sorenson, Rodney R.		
Peer, Samuel T.	Spofford, GERALYN		
Peil, Jess A.	Stanick, Duane		
Peil, Tim A.	Stark, James E.		
Pepera, Randall J.	Starks, Steven L.		
Pepera, Richard S.	Stawicki, Robert L.		
Peterson, Alan S.	Stender, Albert J.		
Peterson, Scott A.	Stickney, Dennis		
Pierce, Kenneth W.	Stiles, Douglas		
Platt, William D.	Stracka, Tim N.		
Potter, Burton R.	Strawn, Clinton		
Powers, Gregory	Stull, Brett D.		
Purchase, Roge A.	Super, John J.		
Rabach, William	Sutlif, Kirk S.		
Radden, Rex C.	Swartz, Cary L.		
Radt, Marion D.	Taylor, Randy R.		
Raetz, Rick R.	Teachout, Keith E.		
Randall, Michael C.	Thies, Charles G.		
Reed, Richard C.	Timchac, James		
Reeves, Roger E.	Tisrou, Jack		
Renigar, Donald H.	Toussaint, James A.		
Reynolds, Gregory S.	Trier, Cary M.		
Ricards, William	Trudeau, Douglas J.		
Richardson, William J.	Trumble, Roy		
Richmond, Roderick	Uber, Leo		
Riedel, Terry W.	Vajda, Gary		
Rienas, Robert D.	Vandenbos, Peter J.		
Rivette, Mathew	Vandusein Sr., George D.		
Roberson, Ronald D.	Vandwelinde, Paul C.		
Roberts, Edward	Vandyke, Michael P.		
Roberts, Kenneth	VanKoeving, Michael D.		
Robinson, Gary	VanSlambrouer, Clayton J.		
Rosbeck, Gary L.	Vasold, Robert F.		
Rosenberg, Randall	Vaughn, Billy W.		
Rosenberry, David L.	Verlin, Joseph		
Rossell, Terry D.	Vine, Terry J.		
Rule, James L.	Wakefield, Robert		
Rushford, Andrew S.	Walsh, John M.		

## APPENDIX C

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively interrogate, through agents at the Michigan Employment Security Commission, job applicants about their union background.

WE WILL NOT coercively interrogate employees and job applicants about their union sympathies and affiliations.

WE WILL NOT threaten our employees with the loss of jobs or other reprisals because of their union support.

WE WILL NOT prohibit by rule or verbal order employees from wearing union stickers and union buttons or other union insignia on their hardhats and their clothing.

WE WILL NOT promulgate a no-solicitation policy and discriminatorily enforce it against union solicitation, including the discipline of employees.

WE WILL NOT discriminate against employees because of their union activity by laying them off and failing to recall them to their former jobs.

WE WILL NOT refuse to hire or consider for employment job applicants for the positions as boilermakers, pipefitters, ironworkers, carpenters, millwrights, electricians, sheet metal workers, and operating engineers, because they are members or sympathizers of the Union, or because they worked in establishments that had union contracts and maintain or discriminatorily apply a hiring policy which discriminates against suspected union applicants or sympathizers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days from the date of this Order, offer the applicants for the positions as boilermakers, pipefitters, ironworkers, carpenters, millwrights, electricians, sheet metal workers, and operating engineers (listed in appendix A), employment in positions for which they applied, or if such positions no longer exist, to substantially equivalent positions, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them as set forth herein and in the remedy section of the underlying decision. And WE WILL make whole those employee-applicants listed in appendix B for any losses they may have suffered by reason of the discriminatory refusal to consider them for hire in the manner described above in this Supplemental Decision and Order. And WE WILL offer those employee-applicants who would have been employed but for the unlawful reason to consider them for hire, employment in the positions for which they applied or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled if they had not been discriminated against by the Respondent. And further, WE WILL make those applicants who would not be hired, whole for their time expenses incurred in registering at the MESC.

WE WILL rescind or revise its preferential hiring policy (policy 303) so as to preclude any discrimination against applicants because of their union background or sympathies.

WE WILL offer the pipefitters Larry Rose, Robert Cook, John Corwin, Vince Galligan, Michael O'Hara, John O'Hara, Shawn O'Hara, Allen Radle, Everett Woolsey, Dan Kaiserlian, Charles Kaiserlian, Bruce Kaiserlian, and Doyne Woolsey employment and make them and Donald Diekman whole for any losses they may have suffered by reason of the discrimination against them in the manner prescribed in the remedy section of this decision.

WE WILL remove from our files any reference to Donald Diekman's discipline and to the unlawful layoffs and notify the employees that this has been done and that the discipline and layoffs will not be used against them in any way.

ZURN/N.E.P.C.O.

*Joseph P. Canfield and Cynthia Beauchamp, Esqs.*, for the General Counsel.

*Michael C. Towers and William F. Kaspers, Esqs. (Fisher & Phillips)*, of Atlanta, Georgia, for the Respondent.

*Kenneth A. Knox, Esq. (Fisher & Phillips)*, of Fort Lauderdale, Florida, for the Respondent.

*Peter T. Kotula, Esq.*, of Detroit, Michigan, for the Attorney General.

*Michael J. Stapp and Mary Elizabeth Metz, Esqs. (Blake & Uhlig, P.A.)*, of Kansas City, Kansas, for the Charging Party.

#### SECOND SUPPLEMENTAL DECISION

KARL H. BUSCHMANN, Administrative Law Judge. By Order of June 9, 2000, the Board remanded this case for further consideration in light of *FES*, 331 NLRB 9 (2000), with orders to prepare a supplemental decision as appropriate. As stated by

the Board, I issued a decision in this proceeding on October 27, 1995. On September 27, 1996, the Board remanded the case to me for certain clarification of the Respondent's hiring policy and for appropriate guidance to remedy the unlawful discrimination. On February 24, 1997, I issued a supplemental decision and on May 11, 2000, the Board issued its *FES* decision dealing with refusal-to-hire and refusal-to-consider violations.

On August 18, 2000, I issued an order directing the parties to show cause why my decisions are not in accord with *FES*, supra, or to show what changes, if any, are necessary. The three parties filed responses. In the General Counsel's opinion, the "evidence presented in the trial in this matter . . . satisfies each of the tests announced in *FES* and *Fluor Daniels*," that the decision and supplemented decision addressed many of the issues raised in *FES*, but that a specific finding is required "as to whether the applicants listed on Addendum B to the Order were qualified to perform the work and to match both the applicants listed on Appendi[ces] A and B to the job openings filled by Respondent during the relevant period."

The Charging Party's response states, inter alia:

. . . the Administrative Law Judge correctly found that those discriminatees named in Appendix A to his decision are refusal to hire discriminatees. However, Charging Party believes the Administrative Law Judge should not leave open the issue of whether the remainder of the discriminatees contained in Supplemental Charging Party Exhibit 19 are refusal to hire discriminatees, to be determined in compliance.

In this regard, the Charging Party refers to 523 applicants, including those applications which were submitted in bulk (CP Exh. 19). The Charging Party observed that my decisions properly established that "there were 202 positions available at the Cadillac jobsite," as supported by the number of employees hired (CP Exh. 16). According to the Charging Party, the Supplemental Decision also showed that the union applicants contained in appendix A were experienced and qualified for the positions available and that the applicants in appendix B had experience and skills necessary for the jobs at the Cadillac jobsite, but the Charging Party urges a finding that all of the discriminatees identified by the Charging Party have the required training and experience relevant to the openings in question. Finally, the Charging Party argues that all applicants should have been classified as refusal-to-hire discriminatees.

The Respondent's in his response took the position that the decisions failed to comport with *FES* because the General Counsel had failed to prove the qualifications of each alleged discriminatee for any specific opening and failed to show that each discriminatee possessed the necessary qualifications.

I have considered this case in the light of *FES*, as directed by the Board, and I am satisfied that the General Counsel has met the criteria for a discriminatory refusal-to-hire case in conformity with *FES*,

(1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were

themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants.

The Board stated that where the case involves numerous applicants “the General Counsel need only show that one applicant was discriminated against to establish a refusal to hire violation warranting a cease and desist order.” As articulated in my decision and the Supplemental Decision, the record amply supports such a finding regarding not only one but several applicants specifically identified and as a representative sampling of the applicants listed in Appendix A. A finding of violation is accordingly clear without any further elaboration. However, assuming that the General Counsel sought an affirmative backpay and reinstatement order, the Board requires in *FES* that

the General Counsel must show at the hearing on the merits the number of openings that were available, that the applicants had the training or experience relevant to the openings, and that antiunion animus contributed to the respondent’s decision not to hire the applicants for the openings. Once the General Counsel makes this showing, the burden shifts to the respondent to show that it would not have hired the applicants even in the absence of their union activity or affiliation.

I have, therefore, gone further and reviewed the entire record. In my reconsideration of this case in the light of *FES*, I have attached as Appendix C a list of the 202 applicants who were hired, showing the dates of their hire, their job titles, as well as their skills. The purpose of this list is to show specifically that the Respondent was hiring or had concrete plans to hire at the time of the alleged unlawful conduct, and that 202 openings were available in the trades for which that applicants had submitted their applications and resumes. This category of jobs included, boilermakers, pipefitters, millwrights, boiler-maker and pipefitter helpers, carpenters, electricians, welders, ironworkers, and helpers.

The Respondent’s own documentation shows a work force, including supervisors, of approximately 270 employees making up the trades, i.e., boilermakers, pipefitters, millwrights, operators, welders, ironworkers, electricians, and laborers (R. Exhs. 57, 58). These documents also show that the Respondent identified individuals among its work force who had a union background by, for example identifying the employee’s previous employer as a union company. Nevertheless, the record, including the Respondent’s own records, show that its hiring practices, in particular the priority hiring policy produced a nonunion work force which had few if any (certainly less than 50) employees with a union background, in spite of the Unions’ extraordinary efforts to find work for its membership at the Cadillac jobsite.

I have also extensively reviewed and summarized in Appendix A the applications<sup>1</sup> of those candidates previously identified

<sup>1</sup> Upon reconsideration of the issue, I have omitted several applicants from App. A: David Angle, Babylas Bordages, Richard Doneth, Cletis Meldrum, William Murray, Claire Mye, Ralph Shiffer, Nelson Wal-laker, and Karl Weiss. The record shows that the applications of these individuals were submitted in bulk by union organizers and that they were not processed by the MESC.

in Appendix A to my supplemental decision who were refused hire because of their union affiliations, showing the time of their applications, the jobs to which they aspired, and in particular, their “training or experience relevant to openings.” These applicants were fully considered by the Respondent or by the MESC on behalf of the Respondent. As shown by the summary, they were highly skilled and well qualified applicants, i.e., boilermakers, pipefitters, welders, boilermaker helpers, carpenters, ironworkers, sheet metal workers, millwrights, electricians, and helpers. The number of employees hired in each of the trades met or exceeded the number of applicants in those trades who were not hired.<sup>2</sup> The finding is readily apparent by a comparison of the individuals listed on appendices A and C. This is particularly so considering that some applicants had multicraft skills and were willing to be employed in any capacity, while others, even though skilled in a trade, would have accepted an unskilled job, such as a helper’s position. In sum, it can safely be stated that for every applicant listed on Appendix A, the Respondent had at least one opening. As documented by the Charging Party, the Respondent frequently hired candidates less qualified (as many as 70 who had little or no experience in their job categories) than those it could have employed from the list of highly qualified union applicants. The record is replete with information and documentation showing the applicants’ qualifications, including their testimony, job applications, resumes and MESC records. It is accordingly clear that a remedy of reinstatement and backpay are appropriate, as provided for in my decisions.<sup>3</sup>

Turning now to the more than 300 applicants listed on Appendix B, who, according to my previous determination, should be considered refusal-to-consider applications, the Board held as follows in *FES*:

To establish a discriminatory refusal to consider, pursuant to *Wright Line*, supra, the General Counsel bears the burden of showing the following at the hearing on the merits: (1) that the respondent excluded applicants from a hiring process; and (2) that antiunion animus contributed to the decision not to consider the applicants for employment. Once this is established, the burden will shift to the respondent to show that it would not have considered the applicants even in the absence of their union activity or affiliation.

If the respondent fails to meet its burden, then a violation of Section 8(a)(3) is established. The appropriate remedy for such a violation is a cease and desist order; an order to place the discriminatees in the position they would have been in, absent discrimination, for consideration for future openings and to consider them for the openings in accord with nondiscriminatory criteria; and an order to notify the discriminatees, the charging party, and the Regional Director of future openings in positions for

<sup>2</sup> The Respondent’s document shows show that 10 electricians were hired which would more than match the number of applicants on App. A (R. Exhs. 57, 58).

<sup>3</sup> Where the number of applicants exceeds the number of available jobs, the compliance proceeding would be the appropriate alternative. *Dean General Contractors*, 285 NLRB 573 (1987).

which the discriminatees applied or substantially equivalent positions.

Here, the Respondent appeared to include in its hiring process the individuals on Appendix B, by having the MESC process the applications. But it was apparent that it did not seriously consider them for employment, as stated previously. I have reviewed the record and the qualifications of all the applicants listed in Appendix B, showing the dates of their applications, their qualifications, including their last employer, as well as their trade. Clearly, the number of applicants listed on Appendix B exceeds the number of openings, as shown on Appendix C, particularly, where as here, the applicants on Appendix A would have filled a number of the approximate 202 openings. Having demonstrated that the applicants on Appendix B were exceedingly well qualified to perform the work, and the Respondent having failed to prove that it would not have hired these candidates even in the absence of union considerations, the Respondent violated Section 8(a)(3) of the Act.<sup>4</sup>

With such an extensive pool of skilled union craftsmen and laborers available in the local area as reflected in appendices A and B, only the most determined and concentrated effort by the Respondent to violate the Nation's labor laws, by excluding these applicants, can account statistically for its nonunion work force. The record, including a quick perusal of the Respondent's list of employees showing their "home state," reveal one of Respondent's tactics. According to the Charging Party's statistical summary, more than 75 percent of the employees came from out-of-state (GC Exh. 222; R. Exh. 124).

Finally, the following observations are in order as to the identity of the union applicants listed on the appendices. Neither the General Counsel nor the Respondent have taken issue with the identities of the individuals listed on Appendix A or B, by suggesting for example that certain candidates were improperly omitted or that others should have been added, except for the Respondent's comment that I "simply deleted from Appendix 'A' the individuals who did not testify and placed them on Appendix 'B,' and deleted from Appendix 'B' those individuals who appeared on both Appendices." This was done pursuant to the Board's concerns. The Charging Party, however, argues with some justification that "all 523 discriminatees whose names were set forth in Supplemental Charging Party's Exhibit 19 should be found refusal-to-hire discriminatees . . . and that all of the discriminatees contained [there] have training or experience relevant to the openings in question." This may be true, but I have excluded bulk applications and find that the individuals listed on appendices A and B had the qualifications and skills relevant the job openings.<sup>5</sup> In my opinion, however, the applicants in Appendix A testified about their attempts to gain employment at the Cadillac project and revealed their efforts in

<sup>4</sup> The Respondent's conduct in this regard was certainly consistent with its nearly contemporaneous actions in laying off highly skilled employees already on its payroll solely because of union considerations. The Respondent has certainly shown its reluctance and hostility to adding even more union adherents.

<sup>5</sup> This list does not include bulk applications, a process, which the Respondent had not accepted in general. The Respondent's rejection of bulk applications without disparate treatment is not violative of the Act.

being considered by the Respondent by visits to the jobsite, by telephone calls to the Company, by personally submitting their applications to the Company or by being interviewed by the MESC personnel. Their testimony showed that the Respondent or the MESC on behalf of the Respondent, had scrutinized or considered their applications. In spite of their efforts and their high degree of expertise they were not hired, because of their union affiliations. The applicants listed on Appendix B were more remote in the application process. They registered with the MESC, as directed by the Respondent, in the hope of finding employment at the Cadillac project. It could be argued that these applicants should also be treated as refusal-to-hire discriminatees because they were not excluded from the hiring process. Indeed, by registering with the MESC, they took the steps required by the Respondent to be considered for jobs. However, the record also shows that the MESC application route was established as a formal hiring process, which the Employer often ignored or failed to honor to the point that the MESC ultimately discontinued its agreement known as the custom referral agreement. I, therefore, concluded that the Respondent failed and refused to even consider these applicants for employment.

The Respondent's main defense for its discriminatory conduct was its reliance on the Company's priority hiring system and its referral policy rather than a showing that the discriminatees were unqualified. Indeed, on this record, the Respondent would be hard pressed to make such an argument, given the highly skilled and well-trained union applicants and the testimony of Respondent's expert witnesses Dr. Borchering to the effect that union trained trades are generally considered well qualified. Under these circumstances, it is clear that the Respondent has failed to meet its *Wright Line*<sup>6</sup> burden of showing it would not have hired the discriminatees even in the absence of their union affiliations.

The remedy set forth in my supplemental decision complies with the Board's following observations in *FES*:

By requiring that refusal to consider discriminatees be offered jobs in such circumstances, the Board does nothing more than exercise its statutory authority to make employees whole by "restoring the economic status quo that would have obtained but for the company's wrongful [action]." *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 263 (1969). In this regard, restoring the status quo ante for the victims of discriminatory refusals to consider by requiring offers to them of subsequent openings which they would have filled had they been given lawful consideration for hire when they applied is analogous to requiring that victims of unlawful refusals to hire or unlawful discharges be offered the positions they would have occupied in the absence of the discrimination against them.

I accordingly reaffirm my findings of fact, conclusions of law, and the recommended Order, as set forth in my prior decisions. As proposed by the Charging Party, I agree that paragraph 2(c) of the Order should be amended to require that no-

<sup>6</sup> *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

tice of present and future openings and positions be given to the [Recommended Order omitted from publication.]  
discriminatees, the Charging Party and the Regional Director.

**APPENDIX A<sup>1</sup>**

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Aten, Kerwin D.	01-03-90	Heavy equip. operator (15 years' exp.)	Heavy equip.; front-end loader; dozer; elevated scraper	M&M Escavating
Bejcek, Thomas A.	01-27-92	Journeyman elect. (3 years' exp.)	Electric apprenticeship, master electrician	Newkirk Electric
Benjamin, Kenneth	08-10-92	Pipefitting/welding (27 years' exp.)	Fitter, welder & apprenticeship exp.	Carmac, Inc.
Biggs, Richard	01-27-92	Electrician (30 years' exp.)	Journeyman electrician	R.W. Leak Electric
Bragan, James	09-04-92	Boilermaker; rigger, helper, pipefitter, ironworker, rod buster (20 years' exp.)	Boiler, tube, pipe welding, rigging, tube volley, structural iron worker, mig, tig welder, welding inspector	Intl. Boilermakers Union
Card, John	07-15-92	Boilermaker (23 years' exp.)	Boilermaker, journeyman	Monarch Welding & Eng.
Childs, Gary	12-11-92	Welder/pipefitter (20 years' exp.)	State-licensed plumber & certified to weld; pipefitting, plumbing & welding on pipe	Wm. E. Walter Mechanical, Jonnie Green
Cogswell, William	03-09-92	Boilermaker (22 years' exp.)	Welding, layout, rigging, milling motors & stress relieving; boiler mechanic	Northern Boiler
Corradin, Timothy	02-04-92	Boilermaker, construction welder, pipefitter (16 years' exp.)	Certified welder, boilermaker; welding, rigging, tube rolling, torch cutter; foreman; steward; certified on high pressure boiler tube & pipe	Kalamazoo Boiler, Northern Boiler
Custer, Lori Dawn	02-06-92	Construction, boilermaker, pipefitter (4 years' exp.)	Boilermaker apprenticeship training, blueprint reading, welding & rigging	Northern Boiler
Danula, Harry	02-28-92	Boilermaker, boiler erection & welder; pipefitter (18 years' exp.)	Rigging, fitting, blueprint reading & layout; boilermaker apprentice, certified boiler tube welder; heli-arc, plasma arc cutting & automatic burning machines	Combustion Engineering Graver Tank Co.
Donovan, Eugene	04-23-92	Ironworker, pipewelder, rigger (28 years' exp.)	Welder, steel erection, ironworker	Fluor Daniels Corp.
Drake, Billie	01-27-92	Sheetmetal (24 years' exp.)	Sheetmetal	Twin Bay Sheet
Dudek, Michael	01-28-92	Electrician (14 years' exp.)	Electrician journeyman; electrical construction	Lakeland Electric
Finnerty, Robert	02-19-92	Pipefitter (41 years' exp.)	Plumber	Welded Construction, Northern Plumbing
Gapen, Timothy	02-28-92	Boilermaker, fitter (30 years' exp.)	Certified welder, welding, boilermaker tubes, repair	Monarch Welding & Boiler Co.
Greenleaf, Harold	03-19-92	Boilermaker (16 years' exp.)	Welder & fitter; boilermaker, heli-arc tubes, cutting, tube replacement, boilermaker maintenance	Northern Boiler
Griswold, James	01-28-92	Operating engineer (25 years' exp.)	Operating engineer	Great Lakes
Griswold, Richard	01-28-92	Operating engineer (26 years' exp.)	Master mechanic; operated all phases of cranes, equipment	Bailey Const.
Harju, David	01-28-92	Carpenter (35 years' exp.)	Carpenter, welder, cement finisher, pile driver; rough & finish	Bradco Constr. Co.
Heiden, Kenneth	02-25-92	Boilermaker (18 years' exp.)	Certified welder, arc gouge, plasma arc, milling machine, rolling motor, blueprint reading, rig & tug; stainless, boiler insp.	Northern Boiler
Hubbard, Zane	01-27-92	Operator (15 years' exp.)	Welder, mechanic, operator	Welded Const.
Jacobi, Dick	01-27-92	Carpenter (6 years' exp.)	Carpenter work	Granger Construction
Klein, Douglas	01-27-92	Pipefitter/welder (20 years' exp.)	Pipefitter welder	Map Mechanical
Klump, Franklin	03-26-92	Fitter, pipefitter (38 years' exp.)	Pipefitter; fitter layout	Industrial Mach
Kruse, Jeffery	04-16-92	Carpenter (14 years' exp.)	Journeyman, carpenter	Northern Michigan Carpenters, Zurn/N.E.P.C.O.

<sup>1</sup> This list is based upon the testimony of the applicants, their applications for employment, their resumes, and MESC records, as well as General Counsel's and Charging Party exhibits (GC Exh. 223; CP Exh. 19).

## APPENDIX A (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Kuznicki, Robert	02-25-92	Pipefitter, boilermaker (17 years' exp.)	Boilermaker; weld & burn, mechanic	Northern Boiler Mec. Con.
Lambert, Roy	01-27-92	Ironworker (20 years' exp.)	Reinforcing, structural, rigging, ornamental, welding; ironworker foreman; read blueprints	T.L. Steel Erection Inc.
LeVasseur, Paul		Electrician (11 years' exp.)	Master electrician	Staff Electric & Newkirk Electric
Lee, Mark	04-10-92	Pipefitter, welder, plumber	Foreman, superintendent, pipefitter, journeyman plumber; business agent, supervisor, pipefitter, welder	Local 85, Plumbers Pipe Fitters Union
Macy, Gary	11-29-90, 05-18-92	Millwright (6 years' exp.), Carpenter (20 years' exp.)	Repair steam turbines, millwright inspecting, welding, millwright	Zurn/N.E.P.C.O., Crittenden Construction
Mason, Thomas	01-01-93	Sheet metal worker (16 years' exp.)	Welding	Twin Bay Sheet Metal
Molitor, David	01-28-92	Ironworker/welder (6 years' exp.)	Reinforcing, structural, rigging, ornamental, welding, ironworker	Sorona Steel
Ostrander, Leo	07-15-92	Pipefitter (18 years' exp.)	Journeyman pipefitter; pipefitter, layout, prep., install pipe	Carmack Corp., Combustion Engineering
Pacola, John	01-01-92	Operator, heavy equip. operator (13 years' exp.)	Heavy equip., grader operator, crane operator, backhoe, dozer, operating eng.	Associated Pipe
Perez, Tony	02-06-92	Ironworker (24 years' exp.)	Ironworker, welding foreman, certified welder, operator	General Motors Seabrook Nuclear
Plont, John	03-07-89	Operating engineer (30 years' exp.)	Operating cranes, hook work, cable & hyd machines	Skyline Erectors
Radtke, Marvin	01-27-92	Sheetmetal/welder (30 years' exp.)	Journeyman, sheetmetal worker, welder, laying pipe, dock work & siding	Service Sheet Metal
Redner, Sean	02-11-92	Journeyman electrician, wireman (4.5 years exp.)	Elect. installation; install at Cogen plants	Zurn/N.E.P.C.O., Fluor Const. Int. Inc.
Richard, Gerald	10-17-92	Millwright (20 years' exp.)	Millwright, cert. welder, install machinery	J.S. Albrarich Cont. Co.
Salisbury, Jay	09-13-89	Plumber/pipefitter apprentice (3 years' exp.)	Plumbing apprenticeship; htg. installation	Four Winds
Saxton, Stanley	01-27-92	Sheet metal (22 years' exp.)	Gen. sheet metal; sheet metal all phases	Schebler Co.
Schomisch, Ronald	11-26-91	Operating engineer (26 years' exp.)	Operating engineer	Songer Corp., Duke & Duke
Schoudt, Ronne	02-07-92	Generator, Co-Gen plant construction welder; combination boilermaker (22 years' exp.)	Boilermaker, welding & apprentice teacher; arc welding, high rigging, layout, cutting/burning, fitup of metal; certified tube welder	Kalamazoo Boiler Co.
Shible, Basil	01-27-92	Pipefitter, plumber (3 years' exp.)	Pipefitter, plumber	ABI Mechanical, Northern Plumbing & Heating
Shorkley, Henry M.	02-24-92	Boilermaker, foreman, welder	Welding certificates, heli-aro & stick	Monarch Welding, Northern Boiler
Sivits, Paul	01-28-92	Pipefitter, plumbing (28 years' exp.)	Welding & master plumber; pipefitter	VE & C
Smith, Walter	01-27-92	Journeyman; electrician (40 years' exp.)	Journeyman electrician, construction	ABB Combustion Engineering
Taylor, Richard	05-04-92	Electrician (12 years' exp.)	Organizer; install conduit, pull wires, industrial, electrical construction	IBEW Local 498
Taylor, Tom	03-06-92	Iron-metal worker (15 years' exp.)	Apprenticeship; journeyman ironworker; reinforcing, structural, rigging, ornamental; certified welder, tie rods, erect iron, read prints, foreman experience	Sonora Steel Co.
Valentine, Jonathan	02-26-92	Boilermaker/constr.; boilermaker or ironworker, millwright, pipefitter, sheetmetal (30 years' exp.)	Certified tube welder, heli, stick, x-ray, high carbon, blueprints & boilermaker apprenticeship; MIG; mirror welding; window welds; tube rolling specialist	API, Nicholson & Hall
Van Dyke, Joe	01-27-92	Electrician (36 years' exp.)	High voltage splicers, welding, stress cores, journeyman electrician; general foreman; electrical work	Combustion Engineering, Newkirk Electric

## APPENDIX A (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Wendling, Randy Charles	12-11-92	Pipefitter, plumber (7 years' exp.)	Steamfitter, licensed plumber	Wm. Walker Mechanical Contractors
Westphal, Jeffrey	07-15-92	Build boiler, boilermaker (10 years' exp.)	Boilermaker	Northern Boiler
Woolworth, William	01-28-92	Ironworker (16 years' exp.)	Rods, structural welding, innershield, tig, mig & stick; ironworker	Sonara
Wright, John	07-15-92	Boilermaker (20 years' exp.)	Rigging, rolling motors, grinders, air tuters, plazma arc, air tools, chain falls; boiler repair	Combustion Engineering

APPENDIX B<sup>1</sup>

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Adair, Larry P.	02-03-92	Welder, boilermaker; ironworker	Ironworker/welder; conveyor work, overhead cranes, millwright work, skilled trades; boilermaker	Ironworkers #25, & Metro Industrial, Tri County Steel
Adamczak, Mark A.	03-03-92	Construction worker, laborer	Labor	ACS & Fluor North Shore Const.
Admets, James M.	05-06-92	Electrician	Electrical construction; foreman	Universal Systems
Ames, Terry L.	05-18-92	Electrician	Electrician const., installation of conduit, wiring, lighting	Essexville Elect. & Nuacor, Inc.
Anderson, Paul D.	07-29-92	Operator	Crane operator, dozer, hoe, backhoe, loader, scraper, diesel hammer, truckdriver; heavy equip. operator	Welded Const. Co. & Miller Development
Andrews, James K.	05-26-92	Ironworker, welder	Ironworker welder, structural steel, rerod, sheeting, rigging; certified welder	Boldt Const. & Skyline Erectors
Aplin, Russel H.	01-27-92	Millwright & constr.	Millwright const., foreman, layout & mach; millwright, carpentry const.	Criffender Const.
Armstrong, John D.	07-15-92	Pipefitter	Pipefitter/plumber	John E. Green
Armstrong Robert J.	04-20-92	Ironworker	Certified welder, comm. drivers license, hi-lo operator, mig welder; rigging foreman; heavy machinery movers; millwright	Bechtel Const.
Arndt, Anthony W.	02-19-92	Ironworker, welding	Welding, torch, iron fabricating; iron erecting buildings; welding, torch work, layout, blueprint reading	Broad Vogt & Conant
Ashby, David L.	10-13-92	Welding; pipefitter	Welder, pipefitter, tubewelder, pipewelder; all type of welding, plumbing, millwright work	H. Murphy Bros.
Ball, Ronald	02-06-92	Boilermaker	Boilermaker, welder & rigging; gen. foreman	Hunter Corp.
Barnard, Dan		Electrician	Journeyman electrician; all equip. relating to trade	MJ Electric
Barnhart, Craig C.	08-10-92	Sheetmetal	Mig & stick welding	Cooke Sheetmetal
Barr, Donald L.	04-21-92	Pipefitter	Pipefitter/welder; arc welding	The Stanley Carter Co.
Bartholomew, Charles	12-18-89	Maintenance mechanic help	Oiler	Henkel McCoy
Bartz, Richard H.	02-18-92	Millwright	Millwright	Atlantic Plant Maint.
Bates, Dale M.	10-12-89	Operating engineer	Dozer, backhoe, hydraulic crane, grader, scraper, roller	Milboeker & Sons
Battle, James P.	01-28-92	Ironworker	USAF 4 yrs. electronics; 1 yr. elect. school USAF; ironworker bridge iron, rods & structural	Robinson Cartage Co.
Baudoux, Robert M.	04-20-92	Structural steel wkr.	Welding; ironworker, ironworker foreman	McGuire Steel
Bayne, Michael J.	02-11-92	Electrical	Install conduit; pulling wire; handing fixtures, install ground ring	Gibson Electric
Beal, Ivan S.	02-06-92	Boiler erection	Boilermaker apprentice, aircraft armament repair; rigging rube bundles; prepping tubes for welding; boilermaker foreman; repairing boilermakers; install stainless shields	Northern Boiler Mech.
Beckwith, Michael D.	02-18-92	Structural steel wkr.	Certified welding, for trucks, gen. mechanics, blue print reading, rigging; mech. welding, foreman	McGuire Erectors

<sup>1</sup> This list is based, inter alia, upon General Counsel's exhibits (GC Exh. 223), Charging Party's exhibits (CP Exh. 19), and Respondent's exhibits (R. Exh. 59).

## APPENDIX B (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Bejcek, Phillip D.	05-06-92	Electrician	Journeyman electrician; industrial elect. install.	Swan Electric Co.
Bennett, John P.	05-13-92	Electrical, construction-heavy industrial	Welding, forklift, cherrypicker, ironworker, rebar, structural; superintendent	Fru-Con Const.
Bennett, Rick D.	05-22-92	Pipefitter	Plumber, pipefitter worked on gas, water, drainage lines; some welding; stick welding; master licensed plumber	John E. Green Mech. Contractor
Bennett, Rod E.	06-02-92	Plumber	Journeyman plumber; no welding just pipefitting & all phases of plumbing	J. Bennett & Sons Plumbing
Benoit, John F.	01-27-92	Carpenter, operator	Carpenter, heavy equip. operator; mechanical trouble shooter; rough & trim work; journeyman carpenter, backhoe, bulldozer	Carpenters Local 819
Berg, James	07-15-92	Boilermaker	Rigging; blueprint reading, welding, apprenticeship & certificate	Monarch Welding
Binkley, Kevin E.	02-19-92	Boilermaker	Boilermaker	Jacksonville Shipyards
Birgy, John R.	04-01-92	Welding/pipefitting	Plumber's license, welding & fitters apprenticeship; welder/pipefitting with construction	Mid State Plumbing Heating
Bishop, George A.	04-07-92	Carpenter	Carpenter; concrete forms; work doors & hardware; layout work	Grand River Construction
Bishop, Maynerd A.	09-11-92	Insulation worker, laborer	Heat & frost insulator; insulate boilers; pipes & related machinery & equip.; refrig., piping & equip.	Northern Boiler
Bock, Brent T.	01-28-92	Journeyman elect.	Comm. & industrial elect. jobs, running conduit, pulling wire, installing serv., motor controls & reading blueprints, journeyman electrician	Thiel Electrical
Bock, William J.	01-28-92	Journeyman elect.	Residential, comm. & industrial electrical work	Smith Electric & Refrig.
Boerema, Randy D.	01-28-92	Sheetmetal journey.	Roofer apprenticeship & sheetmetal apprenticeship; sheet metal; siding duct work heavy metal	Pelt Fab Inc.
Border, David E.	12-15-92	Pipefitter	Experience on instruments & power houses; pipefitter, fabricate & install various piping systems	Mapp Mechanical Const.
Bostedt, James K.	02-04-92	Pipefitter	Welder; install & maintain pipe systems	Eichilay Corp.
Bourland, James E.	05-06-92	Electrician	Electrician, industrial & commercial	M.J. Electric
Bower, Joseph C.	05-12-92	Electrician	Electrical construction	Shaw Electric
Boyle, James E.	06-08-92	Laborer	Construction labor	Bradco Const.
Brennan, Timothy A.	06-23-92	Metalworker	Ironworker	Hardway Const.
Bridget, Cleland	03-09-92	Boilermaker	All boilermaker equip.; certified welder; high pressures, rigging, general x-ray construction	Northern Boiler
Briggs, Richard A.	01-27-92	Electrician	Electrical apprenticeship, elect. licenses; install elect. systems comm. & residential installations	R.W. Leet Electric
Bryan, Giles D.	12-11-92	Fitter/welder/plumber	Pipefitter; welder stick; x-ray welder	WE Walters
Brydon, Kenneth D.	02-06-92	Boilermaker	Welding, burning & move heavy equip.; built, maintain power operating boilers, repair tanks, pressure vessels, smoke stacks	Northern Boiler
Bublitz, Gary	07-14-92	Boilermaker	Boilermaker, rigging, welding, grinding; laborer	Acts
Buckingham, James G.	05-18-92	Laborer, helper	Plumbers helper; carpenters helper; scaffold building, jackhammer, construction	Laborers Union
Bufe, Robert W.	02-21-92	Pipefitter/instrument fitter	Instrument & material control; pipefitter/instrument fitter, fabricate & install all pipes or instruments & there tubing	Rust Engrg. Co.
Burger, David B.	03-06-92	Boilermaker, rigger	Gen. boiler erection & repairs, mechanic, rigging & welding; boilermaker apprentice; boiler fabrication; blueprint reading	N.B. Processing Northern Boiler
Burger, Fred	03-31-92	Pipefitter	All phases of metal trades of powerhouse constr.; boilermaker gen. foreman & superintendent; certified TIG welder, master rigger	Northern Boiler & N.B. Processing
Burnell, Russell	08-10-92	Pipefitter	Pipefitter/welder	Carma Con
Burt, Donald	12-10-92	Boilermaker	Certified welder, pipefitter; weld boiler tubes, some rigging	ABB CE Service
Byce, David H.	01-28-92	Sheet metal/welder	License to install duct work; heating & cooling; weld & fabricate	Cimco Inc.
Campbell, Christopher J.	03-02-92	Construction boiler-maker	Rigger, mechanic, heavy construction	Faulkner Const. Co.

## APPENDIX B (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Caplinger, Leslie A.	07-15-92	Boilermaker	Boilermaker, welder, front-end loader	Glic Inc.
Card, Michael	07-15-92	Boilermaker	Tube & boiler repair, boiler stack erection, plate & tube welder, rigging, tube rolling	Monarch
Card, Robert W.	07-15-92	Boilermaker	Boiler erection; boilermaker, welding & mechanic	Monarch Welding & Eng.
Carlson, Janet E.	01-28-92	Welder/electrician	Cert. welder, pipe & plate, mig, tig, for mild steel	Hyre Electric
Carney, Thomas Lee	12-16-92	Journeyman/steamfitter/pipefitter	Licensed journeyman plumber & teamfitter; pipefitter; design, fabricate & install piping, gen. foreman	ABB Combustion Engineering
Caron, Timothy J.	01-28-92	Sheetmetal; welding all sheetmetal	Certified energy mgt. person, testing & balancing instructor, welder, sheet metal layout & installer	Pentecost Const.
Cascarelli, Andrew R.	05-14-92	Electrician	Apprentice electrician comm. & residential	Central Mich. Electric
Christophersen, Walter D.	05-07-92	Electrician	Pipe running, wire pulling, pane installing	Leet Electric
Clough, Ronald	02-10-92	Electrical	Industrial electrical work	W.T. Stege Co.
Cook, James D.	09-08-92	Welder; pipefitter welder	Welder; layout of nozzles & welding; pipefitting; pipewelding; bending, welding instrument welding, pipe hangers	American Vessel I
Coopshaw, Robert J.	01-27-92	Carpenter	Apprentice schooling, welding, fab., carpentry	Comstock Con.
Cosgrove, Patrick J.	09-04-92	Electrician	Elec. resp. for all phases of wiring ini. resid. & comm. & indust. bldgs., foreman & elect. contractor	MBM Electric
Cox, Ray L.	03-06-92	Carpenter	Shoring, decking, footings, leadman; dozer, pettybone, bobcat, backhoe	Fast Decks Inc.
Curtis, John	02-06-92	Pipefitter	All phases of boilermaker work	Northern Boiler
Cusack, Mike C.	02-11-92	Electrician	All asp. of elect. trade-commer./resid. elec. hyd., panel, read blueprints	Leet Elect.
Dahl, Robert R.	05-08-92	Electrician	Journeyman electrician; conduit, wiring, lighting, MCC's prints	R.W. Leet Elec.
Dahlgren, Laurence C.	05-26-92	Construction worker	Laborer, construction concrete, mason tender, jackhammers, power buggie, mixers	Bralco Co.
Dahlvig, H. Ray	03-30-92	Pipefitter	Plumbers & pipefitters apprenticeship training; journeyman pipefitter; welder, licensed plumber, certified welder	Flour Constructors Inc.
Davenport, David M.	04-28-92	Construction worker	Cutting torch, operator, dozier, loader, backhoe, dump truck, semi, air compressor	Local 25
Davenport, James A.	04-28-92	Welder	Ironworker, welder, detail iron	Ironworkers Local #25
Davis, Chester L.	03-23-92	Carpenter	Carpenter; concrete forming, finish work, all types of carpentry	Fast Decks Inc.
Davis, Steven A.	04-24-92	Construction worker	Painter, construction, steel worker, carpenter	Genasse Painting
Dehring, David J.	05-18-92	Pipefitter/welder	Welder, journeyman carpenter, track cutting torch's, hand-grinding; certified arc welder; fab.	Bobit Leasing
Denman, Jacob P.	02-20-92	Welder/laborer	Sheet metal worker & welder	R&R Metal Engine
Denn, James R.		Electrician	Install all elect. equip., wiring, controls, lighting, etc.	
Des Voignes, Roy A.	01-27-92	Electrician	Prog. controller, high voltage splicing, machine repair, IBEW JIW, elect. license; Elect. Foreman	South Haven Elect.
Devos, David	04-13-90	Operating engineer	Heavy equipment	Associated Pipeline Contractors, Inc.
Dickens Jr., Kary Lee	03-26-92	Pipefitter/welder	Thread, bevel, welding pipes	Faulkner Const.
Diebendetto, Mark	05-01-90	Equipment operator	Crane operator, tugger, 3-ton forklift	ACTS
Ditty, Douglas J.	12-04-89	Construction worker I		CMC Catalytic Corp.
Dodge, William	03-19-92	Boilermaker 1	Welder, boilermaker, steel erection, blueprint reading, piping turbines & heavy equipment	Northern Boiler Mech.
Douglas, James L.	05-07-92	Electrician	Elect. const.	John Miller Elect.
Dreyer, Leonard R.	01-29-92	Pipefitter	Pipefitter, some welding, hangers; all types of machinery	Sycamore Eng.
Duchon, Lawrence J.	04-09-92	Pipefitter	Plumber; foreman	ABI Mech Inc.
Eberle, Kenneth W.	03-09-92	Plumber, pipefitter	Master plumber, pipefitting, water treatment & boiler instructors license	ABJ Mach Const.

## APPENDIX B (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Edmondson Jr., Dale	04-09-92	Pipefitter	Welding, pipefitting, fabrication, plumbing	Manistee Welding & Piping
Edmondson Sr., Dale E.	04-21-92	Pipefitter apprentice	Steamfitter; steamfitter foreman	Mainstee Welding
Edstrom, David K.	04-06-92	Journeyman electrician	Class 3 electricians license, welder; journeyman electrician; foreman	Newkirk Electrical Asso. Inc.
Erickson, Doyle	02-04-92	Welding	Pipewelder; repair boilers, welding of pipe & plate; arc welding, rigging, fabricate duct work	Northern Boiler
Fiedler, James	02-13-92	Pipefitter/plumber	Work exp.—install stainless steel pipe & supports, hangers, instrument tubing	E.D. Lilly
Field, John W.		Pipefitter	Plumbing, heating & pipefitting; tube bender	U.A. Local 85
Finney, Rich C.	07-15-02	Pipewelder	Pipewelder	W. Soule
Finout, Linda L.	04-09-92	Pipefitter	Pipefitter, welder, x-ray welding, rigging, install new pipe on high line, passed bend welding test	Mainstee Welding
Ford, William G.	05-08-92	Welder, ironworker	Welder, mechanic, heavy equip. operator, truck-driver; journeyman structural iron worker	Hi-Tech Electric
Frank, Charles L.	04-09-92	Pipefitter	Pipefitter, instruments	Northshore Const.
Freier, John E.	01-27-92	Sheetmetal/welder	Fab. & install, ind. & comm. duct, certified in mig stick & heli arc welding; Bay City appr. school	Sheet Metal Local
Frontiera, Walter M.	12-30-91	Electrician	Electrician; run conduit	Taylor Electric
Frose, David L.		Welder/sheet metal	Sheet metal mech; duet, framing	Pentecost Const. Co.
Gage, Richard L.	01-29-92	Ironworker	Welder, burner, rigging, machinery	Bradco Co.
Garcia, Robert	12-11-92	Steamfitter/welder	Training in welding; pipefitter; welder; plumber	Boldt Const. Co.
Garrison, Ralph	07-15-92	Pipefitter/welder	License master plumber; welder; plumber; fitter, layout form, print install	UA Local 85 Plumbers/Fitters
Gauld II, Gale F.	01-06-92	Operator	Hyd. crane, loader, dozer, backhoe; welder, crane operator, fork truck	MA Mortenson
Gauld, Jerry	01-28-92	Operator/dozer	Dozer, scraper, loader	Lloyer Inc.
Gave, Edward W.	12-19-90	Electrician	Electrician	Swan Elec. Co. Inc.
Getting, Gerald D.	01-27-92	Ironworker; journeyman rod buster	Ironworkers apprenticeship; reinforcing, structural, rigging, ornamental welding	Robinson Cartage
Gibbons, Thomas R.	01-28-92	Electrical/journeyman Class 3	Run electrical pipe, assemble lighting, pull wire	
Gilbert, Scott J.	02-26-92	Steelworker	Ironworker	Acker Steel
Gillman, William J.	12-15-92	Pipewelder/fitter	Construction, pipefitting, welding & plumbing	Faulkner Construction
Gillow, Dennis H.	10-10-91	Crane operator	Work exp.—crane operator; equip. operator; tower crane operator; superintendent; foreman	Schiffer Mason Const.
Gleason, Todd M.	06-01-92	Pipefitter	Ironworker, welder, fabricator, layout iron, crane	Steel/Con/SCI
Gleason, Winston G.	06-01-92	Steelworker	Certified welder, heavy rigging, alignment, welding, burning, layout, fab., forklift, overhead crane	Pres-Tec. Inc.
Glynn, Michael P.	01-27-92	Equipment mechanic	Mechanic, dozers, graders, scraper, cranes	Holloway Const.
Godbold, Larry	04-28-92	Electrician	Electrician; all electrical construction equip.	United Engineers
Gollach, Raymond D.	02-06-92	Welder	Welder, boilermaker, gen. foreman	Northern Boiler
Gonyon Sr., Gary J.	02-06-92	Welder	Mechanic & welder; boilermaker	R. Taylor Bids
Gottleber, Dan R.	05-06-92	Electrician	Electrical construction	Thiel Electric
Green, Scott G.	05-01-92	Pipefitter	Ironworker, welder, mechanic	Local 25
Griffin, Gerald D.	02-12-92	Pipefitter	Boilermaker welder, gen. boiler repair	Northern Boiler
Groth, Bradley G.	05-13-92	Pipefitter	ARC & TIG welding, fab., repair, journ. welder	Brad Groth Self Employed
Grzesiak, Patrick H.	01-28-92	Sheet metal worker	Sheetmetal, install HVAC, duct work	Beth Bros.
Guenthardt, Gerald	04-20-92	Pipefitter	Pipefitter, welder; ARC-TIG	Manistee Welding Piping
Guertin, David	05-15-92	Electrician	Journeyman elect.; install elect. fittings, pull wire	Somes Electric
Guy, Michael D.	01-28-92	Electrician	All phases of electrical work, substation tech., Michigan State 4 J. license	L K Comstock
Hackett, Patrick J.	11-30-89	Carpenter	Finish carpenter; carpenter	Comstock Const.
Hagerty, Richard	01-04-93	Pipefitter	Plumber; pipefitter, blueprints, install piping, pipe welding	Carmac Const.
Hall, Ricky A.	05-21-92	Electrician	Journeyman elect.; install wire, conduit, equip.; repair springs	IBEW Local 107
Hamilton, Bradley E.	04-09-92	Ironworker, Welder	Ironworker; ironwork detail foreman; blueprint reading, structural, certified welder	Precision Surveillance Corp.

## APPENDIX B (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Hamilton, Harry K.	04-09-92	Ironworker	Ironworker	Precision Surveillance Corp.
Hamilton, Steven R.	03-10-92	Metal Worker	Cat, bobcat, forklift, front-end loader, tractor; ironworker, construction, carpenter, boilermaker	Broad Vogt & Conant
Hamilton, Terry L.	05-20-92	Steelworker	Structural steelworker	Sherman Co.
Hanel, Donald	04-07-92	Pipefitter	Pipefitter welder	UETC-A/Catalytic
Hansen, David R.	11-12-92	Electrician	Journeyman electrician; conduit	Davis Elect/Contractors
Hardman, John L.	01-27-92	Crane operator; operating heavy equip.	Crane operator; all cranes	OOCG
Hardy, Charles J.	08-10-92	Ironworker	Journeyman iron worker; iron worker, rod buster, rigger, heavy hauler	D.A. Corbin
Harmon, Douglas C.	01-27-92	Journeyman electrician, const. electrician	Electrician appr., cable splicer, service truck, elect., instrum., line work, ind. estimating; job foreman	Newkirk Electric
Havens, Raymond	07-15-92	Pipefitter/Welder/Plumber	Master plumber, journeyman pipefitter & welding, fab. & installation of piping & equip.	Eron & Gee Const.
Hawk, Robert A.	02-21-90	Electrician	Journeyman; electrician, run conduit, pull wire	Waggoner Electric
Haynes, Alan A.	02-27-92	Electrician	Journeyman electrician; run conduit, pull wire, install light fixture, read prints	J. Ranck Electric
Hazen, Tim A.	08-10-92	Pipefitter	Pipefitter/welder	Valley Mechanical
Heistand, Russell W.	08-27-90	Electrician	Electrician	M.J. Electric
Helminiak, Dale E.	03-03-92	Construction worker	Front loader, fork lift, bob cat, jack hammer, power tools	A-C & S
Herek, Keith A.	01-27-92	Welder/pipefitter	Welder/pipefitter; all phases of pipefitting; certified welder	P.S.I.
Herkelrath, Dennis L.	02-26-92	Welder, laborer	Iron work, welder, laborer	Austin Co.
Herwick, Keith R.	02-03-92	Boilermaker	Assembly boilers, tanks, vats according to blue prints; certified welder; experience rigger	Northern Boiler
Hintz, Gregory A.	08-10-92	Boilerwork	Welding, rigging, fitting, tube welding	Combustion Engineering
Hissong, Forrest C.	05-26-92	Welder	Rod buster; labor structural; welder, rigging	Bradeo Const. Inc.
Holmes, Donald L.	01-27-92	Carpenter	Carpenter skill, cement finishing, pile driver; fixtures; drywall; carpenter work; union carpenter; form work; some framing & drywall	Conlon Const.
Holmes, Ross D.	05-21-92	Electrician	Run ridged pipe, pull wire, wiring, electrical serv.	Stone-Webster Co.
Hord, Dooly E.	03-17-92	Construction pipefitter/welding	Pipefitting, welding, inst. welding; start-up testing, heating	Oscar J. Boldt Co.
Hubbard, John	07-15-92	Boilermaker	Work exp.-years of serv. & certified welder; certified welder & mechanic; tube welder; boilermaker	Combustion Eng.
Hubbell, Robert S.	05-06-92	Electrician	Electrical supervisor; electrician, install conduit, lighting, electrical terminating	AK Industrial Contractors, Inc.
Huff-Gonzales, Juanita L.	03-20-92	Electrician	Welding, electrical, acetylene, torch, 2 tone winch	Schindler Hought Elevator Co.
Iannuccilli, Nick	02-06-92	Boilermaker	Boilermaker, weld tubes, iron, roll rubes, hang iron, read prints, mig, tig, arc welding	Northern Boiler
Ingle, Darren R.	05-05-92	Journeyman electrician; electrician	Specializing in all aspects of electrical maint. & industrial aspects; journeyman electrician	M&J Electric
Itzen, Daniel F.	04-16-92	Carpenter	Carpenter	Townsend & Bottom
Ivey, George	08-24-92	Boilermaker welding; boilermaker	Boilermaker welder; x-ray weld; heli-arc; certified welder	Detroit Boiler
Jackson, Fay L.	01-28-92	Operating engineer	Bulldozer, motor grader, backhoe loader; journ.	Holloway Const. Co.
Jackson, Robert W.	10-17-90	Millwright	Millwright, carpenter, pour concrete	Rust Engineering
Jipping, Arie	01-27-92	Pipefitter	Pipefitter; journeyman	Rochester Product
Johnson, David M.	02-19-92	Welder	Ironworker; journeyman ironworker	Johnson Steel Fab Inc.
Johnson, Gerald	05-07-92	Electrician	Electrician construction & maintenance	Belgsco Electric
Jones, Heath A.	06-01-89	Construction worker	Wiring, beading, conduit, labor, clean-up; press operator, truckdriver	Remus Electric Co.
Jones, Luther A.	01-28-92	Journeyman Electrician	Rough & trim; layout drywall; cabinetry; ceiling, grid & tile; welder, equip. operator, journeyman	M-J Electric

## APPENDIX B (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Kanouse, Forrest L.	05-08-92	Electrician	Electrical license; wireman, run conduit, pull wire, terminate wires	NewKirk Elec.
Kapplinger, Jarvis	03-06-92	Pipefitter	Boilermaker, certified in pressure & x-ray welding & heavy rigging	Northern Boiler Processing, Inc.
Kelley, Albert W.	12-10-92	Pipefitter	Pipefitter, apprenticeship	Flour
Kelly, Gerald L.	02-10-92	Pipefitter	License journeyman plumber & pipefitting	Wares & Son
Kendall, Ronald F.	10-23-89	Journeyman combo/welder	Welding; arc, tig, mig, & gas	Manpower Four Wins
Kincaid, Herman C.	05-13-92	Pipefitter	Plumbing/heating; pipefitter	Milan Plumbing & Heating
King, Gerald H.	04-14-92	Electrical-constr.	Electrician; foreman	Alpha Elec.
Kitchen, Wallace	03-02-92	Carpenter	Footing & bldg. comm.; gen. for.; carpenter work	Construction Specialist Inc.
Klele, Mike	02-06-92	Electrician	Electrician construction	Shaw Electric
Kline, Donald	09-28-92	Pipefitter	Pipefitter	Scope
Knapp, Steve	02-13-92	Steelworker	Welding, rigging, all ironworker skills	Skyline Erectors
Koouering, Gary L.	05-04-92	Electrician	Electrical foreman; electrician	M.J. Electric
Koscielecki, Daniel W.	08-28-92	Steelworker	Welding	Skyline Erectors
Koscielecki, Kevin M.	03-17-89	Carpenter	Built pope bldgs. plumber/pipefitter apprentice	Merritt Poe Bldg.
Koscielecki, Robert S.	11-27-91	Welding	Welding, mechanic	CBI Services Inc.
Kosnik, Paul E.	01-28-92	Electrician/Welder	Electrical, welding, heavy equip.; layout, operate backhoe & dozer; certified MIG, TIG, ARC-cutting structural steel; electrical apprentice	M.C.V.
Kraenzlein, Gerald	07-15-92	Boilermaker	Journeyman boilermaker	Northern Boiler
Krajkiewicz, Paul A.	05-21-92	Journeyman elect.	IBEW apprenticeship, journeyman electrician	Newkirk Electric Assoc. Inc.
Kravako, Timothy C.	02-04-92	Pipefitter	Boilermaker, welder, mechanic	Northern Boiler
Krieger, David L.	01-28-92	Sheet metal	Sheet metal welder; fitting duct work; welding	ABB Maint. Inc.
Kriesche, Dennis	05-19-92	Pipefitter	Welding; install tubing, piping	M&M Mechanical
Kroll, Ray F.	02-03-92	Pipefitter	Plumber's license; pipefitter	Johny Grover
Kuriger, Terrence W.	02-13-92	Welder, metal worker	Welding stick, structural, braising work, rod-buster	Skyline Erectors Inc.
LaForest, Gary T.	02-06-92	Boilermaker	Boilermaker, welder, high rigger, layout & steel fabrication	Boilermaker 1
LaForest, Paul R.	02-03-92	Boilermaker	Plasma cutting, tube rolling, rigging, fit-up & layout; boiler repair	Pentecost Const.
Larson, Howard O.	07-29-92	Heavy equip. operator	Run payloader; boom truck, dozer, forklift, dump truck, low boy, CDL's driver's license, road boring, small heavy crane; 580 case backhoe	Bradco Const.
Larson, Larry L.	09-10-92	Boilermaker	Pipewelder, mech. rolled tubes, welder mech.	House of Flavors
Leatherman, Michael D.	03-11-92	Steelworker/welder	Welding, arc, MIG, TIG; steel erection	Pioneer Const. Inc.
Lee, Tommy	06-23-92	Boilermaker	Welding burning, rigging & supervisor exp.; boilermaker, foreman	Boilermakers 169
Leenhouts, James D.	05-07-92	Electrician	Electrician, install wire controls	Motor Shop Elec. Const.
Leitner, Jeff S.	01-27-92	Sheet metal	Sheet metal layout, field installation, welding; install sheet metal duct systems	Shebleco Co.
Letherer, John R.	12-11-92	Plumbing/pipefitting	Master plumber, class C heating license; pipe work, supervisor	United Plb. & Htg. System
Lewis, Dale A.	02-24-92	Boilermaker/welder	Certified welder, rigg & read blueprints; boilermaker apprenticeship; welding, rigging, tube rolling, blueprint reading	ABB Brown Boveri Maint.
Long, Gaines	07-15-92	Boilermaker	Certified welder, fix/weld/erect metal, sales, management, boilermaker helper	Monarch
Louzon, Lawrence R.	02-06-92	Boilermaker/welder	Boilermaker apprenticeship, welding, foreman; carbon & stainless steel; MIG & TIG; manual stick; burning & welding machines; high rigging; connecting & fitting steel	Atlas Boiler
Lovell, Kevin	01-29-92	Operator	Operation engineer	Crittenden Const.
Lyle, Christopher	02-03-92	Pipefitter	Welder; pipewelder	JE Johnson Inc.
Lynn, Rodney M.	05-07-92	Electrician	Foreman, electrician, run conduit, install lighting, fixtures	R.W. Leet Electric Inc.

## APPENDIX B (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Macintyre, Craig D.	01-28-92	Sheetmetal worker	Good in the air, ironworker apprenticeship	M.B.M.
Macy, Gilbert W.	06-02-92	Steelworker; ironworker	Journeyman ironworker, rerod installer, welder, structural steel	Crittenden Const.
Mansfield, James R.	06-04-92	Ironworker	Foreman, journeyman ironworker	D.A. Corbin Contracting
Marckini, Joseph R.	01-28-92	Sheetmetal; welder	GMAW, GTAW, SMAC, welding in all positions, drywall, journeyman in sheetmetal, apprentice welder; HVAC systems	Tweet/Garot
Marshall, Ed	03-02-92	Ironworker	Ironwork, lay duct for cat walk, welding	
Marshall, Lee N.	05-29-92	Ironworker	Ironworker, welding, welder cutting torch, reinforcing steel; forklift, reinforcing steel	Vander Raddel Const.
Marshall, Patrick	02-05-92	Welding, pipefitter	Construction, welding skills of mig, tig & stick; Welding, mechanical work on boilers, repair, installation according to blueprints	Atlas Boiler Co.
Mater, Del H.	05-07-92	Electrician	Journeyman electrician construction; supervisor	R.W. Leet
Mattis, Marshall F.	02-03-92	Carpenter	Carpenter, form for cement, rough & fin. carpenter	Bradco Const. Inc.
McAlpine, Jack	07-15-92	Construction worker; boilermaker	Welding, fit-up, grinding, boilermaker, pipe-welder, helicopter mechanic; mechanic	Monarch Welding & Engineering
McCarry, Patrick W.	05-21-92	Carpenter apprentice	Carpenter apprentice; tying rerod, welding	Grand Transfer Construction
McDonald, John A.	02-25-92	Boilermaker	Welder, rigging, burning & layout; boilermaker, stickwelding heli-arc	Northern Boiler Co.
McEntaffer, Kevin J.	05-05-92	Electrician	High voltage terminations & splices, elect. licenses, apprenticeship; journeyman electrician; foreman	Leet Electric
McGee, Timothy J.	01-28-92	Millwright	Jr. millwright, installation of heavy equip., conveyors, tubing, etc.	Songer Const. Co.
McKenna, Patrick J.	12-11-92	Welding/pipefitting	Journeyman pipefitter & welder	Sheek
McLary, Terry A.	02-11-92	Electrician	Electrician, welder	Herzel Beuler
McMillen, Ronald W.	05-11-92	Pipefitter	Pipefitter	King Nursing Centre
McNees Jr., Homer J.	03-09-92	Metalworker	Ironwork, tied rods, welding, read prints, cutting torch, rigging, rodbuster; rebar placement, structural steel	Schweitzer Co.
McPherson, Diana L.	03-02-92	Construction worker	Const., forms, roofing, framing, siding, layout, blueprints, drills, saws, welding-stick; shipping, receiving, purchaser	Ideas in Motion, Inc.
McQuiston, Jeffrey D.	12-14-92	Plumbing/steamfitter	Apprentice; pipefitter, install boiler system, rigging, welding	Map Mechanical
Mead, Paul D.	04-28-92	Electrician; journeyman inside wireman	Install equipment, cable, wire molding	R.W. Leet Electric Inc.
Melius, Rodney	02-05-91	Pipefitter	Pipefitter, welder	U.E. & C Catalytic
Merry, Max O.	01-28-92	Operator; heavy equip. operator	Dozer loader, grader, backhoe; foreman	Fitzsimmons Mfg.
Meter, Francis J.	07-21-92	Electrician	Cable splicer, foreman, welding, boiler repair, plumbing, heating, cooling	N.G. Gilbert Corp.
Milks, Lee	05-12-92	Electrician	Journeyman elect., gen. foreman, terminating electrical equip.	M&J Electric
Miller, Charles W.	10-30-92	Laborer	Construction laborer	Boradco Construction
Miller, Don L.	09-17-92	Carpenter	Carpenter & labor framing spec, roughneck for oil rig, equip op, dozer op, cutting torch, iron welder, arc welding	Northern Contractor
Miller, Mark W.	04-21-92	Electrician	Electrician, install conduit, control cabinets, electrical inspector	Pinetec
Montie, Floyd L.	07-15-92	Boilermaking	Years of service & certified welder; welding, burning, rigging, connecting iron	Boilermakers Local #169
Moore, Michael J.	04-22-92	Electrician apprentice	Apprentice electrician; construction, remodeling	Schuberg Elec. Services
Moreau, Daniel J.	05-04-92	Elect./welder; elect.; pipefitter welder	Band saw, drill press, ironworker & overhead crane, electrician license; all phases of elect. work	MJ Electric
Morris, Marvin S.	09-28-90	Electrician	Electrician	Morris Mfg.
Mosher, Ronald E.	04-02-92	Pipefitting/welding/plumbing	Plumbing, pipefitting, pipewelding	I.M.C.

## APPENDIX B (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Mosher, Timothy J.	05-28-92	Pipefitter	Pipefitter, carpentry, plumbing apprentice, laborer, builder	J.D. Plumbing & Heating
Mosher, William C.	01-28-92	Sheetmetal/welder	Welding skills, stainless & carbon stick, welding certificate; sheetmetal foreman	ABB MI
Murchie, Michael J.	01-27-92	Sheetmetal/welder	Sheetmetal, layout installer, fabrication, welder	Cooke Sheet Metal
Murphy, Greg	02-04-92	Pipefitter	Pipefitter, welder, layout	Carmac
Myers, Danny L.	12-11-92	Pipewelding	B.T.J., pipefitter & welder; welder	Tibbetts Plumbing & Heating Co.
Nelson, Russ D.	01-29-92	Electrician	Electrician, comm., residential & comm. wiring, building maintenance	Nelson Electric
Nemethy Sr., Steve R.	01-24-92	Carpenter	Carpenter; carpenter equipment	Carvier Const. Co.
Nestle, James E.	05-06-92	Electrician	Journeyman electrician, comm., ind., residential	Floor Const.
Nolan, David B.	11-08-91	Heavy Equip. Oper.	Heavy equipment operator	Hinkle & McCoy
Norton, Larry	05-18-92	Electrician	Electrician, journeyman, foreman	Alpine Electric
Nye, James	10-20-92	Pipewelder	Pipewelder, stick, heli-arc, tig, x-ray welder	Tibbetts Mech.
O'Hare, Michael J.	04-28-92	Pipefitter	Piping super., piping foreman, plumber, pipefitter	Frucon Const.
Paisley, William H.	05-12-92	Electrician	Electrical construction	Shaw Electric
Payne, George	07-15-92	Boilermaker helper	Welding & fitting; boilermaker welding & forming	ABB
Peckstein, Karl W.	02-06-92	Boilermaker; pipefitter	Welder, rigging, boilermaker	Northern Boilers
Peer, Samuel T.	02-06-90	Pipefitter	Plumber/pipefitter	Fluor Const.
Peil, Jess A.	02-06-92	Electrician	Journeyman electrician; all elect. tools & equip.	Laibe Electric Co.
Peil, Tim A.	02-06-92	Electrician	Electrician, comm. & residential; supervisor	IBEW
Pepera, Randall J.	01-29-92	Welding, rigging	Welding, rigging, cutting fab., iron wk, sheeting	Bladco Const.
Pepera, Richard S.	01-29-92	Ironworker, welding	Welding, burning, foreman, certified welder	Manistee Welding
Peterson, Alan S.	10-16-92	Pipefitter/welder	Piping layout, installation, weld with heli-arc or stick; pipefitter, plumbing, welding	Mainstee Welding
Peterson, Scott A.	02-11-92	Electrician	Elect. wk. & layout, pulled wire, ran pipe team, welding	AKIC
Pierce, Kenneth W.	02-03-92	Electrician	Class 3 elect. license, confined space entry & safety operations officer; hand tools, earth movers, all machinery; foreman electrician	G.W. Electric
Platt, William D.	01-28-92	Sheetmetal wkr.; welding/sheetm. wkr.	Certified welder; sheetmetal worker/welder	Mechrrall Inc.
Potter, Burton R.	01-28-92	Sheetmetal worker	Welder; sheetmetal mech.	Service Metal Co.
Powers, Gregory	11-31-90	Operator	Heavy equip. operator; oiler	Operating Engineers Local 324
Purchase, Roge A.	05-05-92	Electrician	Condo wiring, journeyman elect., foreman-school house wiring, op. own contracting bus.	D&S Electric
Rabach, William	02-06-92	Boilermaker, rigger	Certified welder & rigger; boilermaker, repair boilers, welding, rigging	Northern Boiler
Radden, Rex C.	01-28-92	Carpenter	Master carpenter; labor foreman; forklift	Bradco Co.
Radtk, Marion D.	01-27-92	Sheetmetal worker	Sheetmetal	Twin Bay Sheet Metal
Raetz, Rick R.	12-11-92	Pipefitter/welder	Pipefitter & welder	Valley Mechanical Contracting
Randal, Michael C.	05-18-92	Laborer, const. wkr.	Labor; labor foreman; operator	Fisher Const.
Reed, Richard C.	05-06-92	Electrician	Electrician	Ferndale Elect.
Reeves, Roger E.	01-29-92	Pipefitting helper	Concrete, carpentry, heavy equip. operator	Self-Employed Farmer
Renigard, Donald H.	01-28-92	Journeyman wireman; electrician	Master license, HT2 air conditioner, refrigerator, fiber optics, boiler operator license; elect. const.	Thiel Electric
Reynolds, Gregory S.	01-27-92	Sheetmetal welder	Welding skills in sheet metal; fabricating, welding	Tweet Garet
Ricards, William	07-15-92	Boilermaker	Journeyman boilermaker, rigger steel connector, welder mechanic, layout man, foreman & structural welder; certified welder	Boilermaker Local 169
Richardson, William J.	04-07-92	Laborer, operator	Mason tender, backhoe labor, forklift operator	Strauss Masonry
Richmond, Roderick	05-12-92	Electrician	Electrician; installer	Waggothor Electric
Riedel, Terry W.	03-23-92	Sheetmetal worker	Journeyman, install duct work, sheetmetal fabrication & installation	Climatech Inc.
Rienas, Robert D.	05-04-92	Carpenter	Trim carpentry, outdoor furn.; res. framing, trim; drywall; metal studs; cement forms; demolition; trim work & fixture assembly; carpenter	Rokes Const.

## APPENDIX B (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Rivette, Matthew	04-08-92	Pipefitter	Pipefitter; plumber; journeyman pipefitter, fab., installation of piping sys.; foreman; gen. foreman	John M. Jacobs Plumbing/Heating
Roberson, Ronald D.	02-05-92	Pipefitter	Welder, rigger	Northern Boiler
Roberts, Edward	03-26-92	Pipefitter	Pipefitter	John M. Jacobs
Roberts, Kenneth	06-08-92	Steelworker	Fence/gate installer, wdk shut down as concrete, iron worker steel erection apprentice	Couturier Iron Craft Inc.
Robinson, Gary	01-24-92	Pipefitter/welding	Welding, pipefitting, stainless steel pipe welder, certified pipefitter	Philip-Getschow
Rosbeck, Gary L.	02-18-92	Millwright	Millwright	Alandtic Plant Matain
Rosenberg, Randall	08-14-91	Electrician	JIW electrician, all types of electrical work	Newkirk Electric
Rosenberry, David L.	12-10-92	Pipefitting	Pipefitter, repair valves, replace piping	British Petroleum
Rossell, Terry D.	03-13-89	Heavy equip. oper.	Heavy equip. operator, highway const.	D.J. McQuestion Sons Inc.
Rule, James L.	04-29-92	Electrician	New const.	R.W. Leet
Rushford, Andrew S.	01-31-92	Electrician apprentice	Electrical apprentice; rigid conduit; forklift, hi-lo	Milbrandt Electric
Salois, James	09-09-92	Operator	Crane & picker exp.; heavy equip. operator, crane operator, dozer	B.C. Hendrick
Sandelius, Stanley J.	11-27-89	Electrician	Master electrician	W. T. Stege Co.
Sasse, William G.	01-28-92	Sheet metal	Sheetmetal work	ABB
Sawyer, Thomas P.	02-03-92	Operating engineer	Crane operator; operating engineer	Northern Boiler Inc.
Scanlon, Gerald K.	01-27-92	Sheetmetal/welder	Sheetmetal	Transco
Schaffer, Jeffrey	08-17-92	Pipewelder/fitter	Certifications in tube welding, rigging, etc.; boilermaker, layout, fabrication	A.R.B. Combustion Eng.
Schaub, Matt R.	04-13-92	Electrician apprentice	Electrician apprentice; elect. work--new constr.	Newkirk Electric
Schaub, Robert	03-05-92	Pipefitter	Pipefitter, plumber, layout, high pressure	Bishop
Schutt, Michael J.	05-05-92	Electrician	Installation of electrical equip.; elect. construction	M. J. Electric
Scott, David A.	05-05-92	Operator	Operating engineer	Bourdown Trucking
Sellers, Timothy R.	10-24-91	Laborer, helper	Application of painting materials	J.W. Krause
Sharp, Robert A.	01-24-92	Carp./res. or comm..	Carpenter apprenticeship; truckdriver	M.S. Carriers
Sharp, Terry L.	06-12-92	Pipefitter	Fitter, welder, piping	Carmac Const.
Sherven, Norman J.	12-11-92	Pipefitter	Plumber & pipefitter; crew foreman	Valley Mechanical Contracting
Shively, Howard D.	02-10-92	Pipefitter/welder	Industrial steamfitting; install. of heating & cooling, pipe welding	Honeywell, Inc.
Shivlie, Basil Dean	12-02-91	Plumber; apprentice plumber	Plumber	ABI
Shoemaker, Joseph S.	05-04-92	Electrician apprentice	Ditch witch, electrician; electrician apprentice	Fagan Zylsdra
Simmons, Charles J.	03-27-92	Cement mason, laborer	Cement finisher, trowel machine; set forms, labor, brick layer, forming & finishing	Self Employment
Simmons, Harold	05-06-92	Electrician	Journeyman electrician	Saginaw Resnick
Simons, Nevin	01-24-92	Carpentry	Rough, finish, comm. carpentry; all forms of carp.	Wood Market
Siuda, Philip	05-19-92	Electrician	Electrical construction	Smith Fluor & Refrigeration
Slaghula, James A.	05-07-92	Carpenter	Carpenter, concrete forming	R.E. Daily
Smith, Dale R.	03-09-92	Structural steel wkr.	Rods, welding, set iron, rodbuster, journeyman ironworker	Sky Line Erc.
Smith, Dale T.	10-17-90	Laborer	Labor construction	Oscar J. Bolo
Smith, Richard H.	02-03-92	Laborer, helper	Labor, concrete work, carpenters helper, finishers helper	Manistee Welding
Somerville, Bryan	12-11-92	Plumber, welder	Plumber, pipe welder & fitter	Map Mech
Sorenson, Robert L.	03-31-92	Structural steel wkr.	Ironworker; welding; rodbuster structural	Skyline Erectors
Sorenson, Rodney R.	03-09-92	Metal worker	Iron worker; steel erection, rerod, welding, steel fabrication, rigging	Skyline Erectors
Spofford, GERALYN	05-19-92	Electrician	Journeyman electrician, rewire, layout	ABCEE Combustion Engineering
Stanick, Duane	06-26-92	Welder, pipefitter	Welder; journeyman welding fitter, pipewelder, fitter, install duct work	JE Johnson
Stark, James E.	03-10-89	Equipment operator	Welding, operator of a roller & grader, equip. oper.	JE Johnson
Starks, Steven L.	12-18-92	Pipefitter or welder	Pipefitter, welder & small equipment	M.A.P.
Stawicki, Robert L.	09-18-92	Welder, structural steel	Journeyman sheetmetal	None
Stender, Albert J.	01-28-92	Electrician/welder	Electrician, certified welder, equipment operator, overhead crane operator; foreman	John Miller Elec.

## APPENDIX B (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Stickney, Dennis	12-10-92	Boilermaker	Boilermaker, mech & welder; burner, layout, tube repair, air arc, torch burning	Northern Soner
Stiles, Douglas	05-18-92	Electrician	Electrical construction	NewKick Elec.
Stracka, Tim N.	09-15-92	Metal/millwright-welder	Welding, arc-mig; carpenter, welder, tool maker, ironworker, millwright, sheetmetal, layout, assembler	Genes Welding
Strawn, Clinton	02-26-92	Boilermaker	Apprenticeship, journeyman boilermaker, certified welder, tig, carbon & stainless plate, layout & blueprint, grinding, burning & rigging	N.B. Processing
Stull, Brett D.	03-09-92	Electrical	Apprentice electrician; wiring	Deisler Electric
Super, John J.	12-15-92	Pipefitter-plumber-welder	Pipe welder, pipe fitter, master plumber & steam fitter	Pipefitter-Plumber
Sutlif, Kirk S.	07-15-92	Welder/fitter	Foreman, welder, pipefitter	Local 85 Plumbers & Pipe Fitters
Swartz, Cary L.	02-26-92	Electrical apprentice	Apprentice electrician	Village IGA
Taylor, Randy R.	03-09-92	Journeyman electrician; electrical	Machine control, fire alarm, ind. trouble shooting, class 3 electrician license; journeyman electrician	Jackpine Business
Teachout, Keith E.	02-04-92	Steamfitter-welder	Apprenticeship; journ. ironworker; reinforcing, structural, rigging, ornamental; certified welder, tie rods, erect iron, read prints, foreman exp.	Carmac Inc.
Thies, Charles G.	05-15-92	Journeyman wireman	Electrician; install conduit	R.W. Leet Electric, Inc.
Timchac, James	02-27-92	Boilermaker	Certified welder; boilermaker welder	Carmac Comtr Co.
Tison, Jack	04-14-92	Truckdriver	Heavy truckdriver	Packer Tree Farm
Toussaint, James A.	06-25-92	Sheetmetal worker	Sheet metal journeyman, decking, siding, lagging, blow pipe, duck work & apprenticeship	Twin Bay Sheet Metal
Trier, Cary M.	05-11-92	Electrician	Journeyman electrician	Spring City Electric
Trudeau, Douglas J.	06-12-92	Boilermaker helper; electrician	Electrical drafting; welding; journeyman electrician	Bob's Electric & Heating
Trumble, Roy	02-24-92	Electrician	Class III State of Michigan electrical license, electrician/const.	Essex Ville Electric Co.
Uber, Leo	05-12-92	Electrician	Journeyman wireman, foreman	M.J. Electric
Vajda, Gary	05-06-92	Journeyman elect.	Electrical apprenticeship, class 3 electrical license	David Electric
Vandenbos, Peter J.	12-07-89	Operator	Operator of heavy equipment; welder	Smalley, Const.
Vandeuseh Sr., George D.	06-29-92	Carpenter	Carpenter, formed concrete	Alviado Const.
Vandwelinde, Paul C.	06-29-92	Pipefitter	Pipefitting, welding, plumbing	Kiekklan Construction
Vandyke, Michael P.	06-01-92	Carpenter	Residential carpenter; lift operator, journeyman carpenter	Traversen Home Improvements
VanKoeving, Michael D.	05-04-92	Electrician	Journeyman electrician; JIW electrician	ABB Construction
VanSlambrouer, Clayton J.	05-28-92	Mechanic/welder/rigger; boilermaker helper	Boilermaker journeyman, welding, rigging, layout, burning; foreman, gen. foreman	Boilermaker Local 169
Vasold, Robert E.	01-28-92	Sheetmetal worker	HVAC, boiler lagging, gen. sheetmetal erection; sheet metal worker	Haden Schwieter
Vaughn, Billy W.	04-06-89	Operating engineer	Backhoe operator; bulldozer	The Bishop Inc.
Verlin, Joseph	03-09-92	Electrician	Electrical, welding; light equip. operator	Motor City Elec.
Vine, Terry J.	12-11-92	Pipefitting/plumbing	Pipefitting, plumbing	Brown Plbg. & Htg.
Wakefield, Robert	05-06-92	Electrician	Electrical, journeyman inside wire	Ferndale Electric Co.
Walsh, John M.	01-27-92	Carpenter	Concrete finisher; install store pictures, gen. carp.	J.C. Penn7
Wasilchenko, Danny J.	01-28-92	Journeyman elect.	Cert. arc welder, elect. licenses; journeyman elect.	M.J. Electric
Watson, James W.	01-28-92	Journeyman elect.	Welding, cable splicing, Class 3 elect. license, national joint apprenticeship program	Common Watt Electric
Watters, Daniel	05-21-92	Electrician	Supervisor; electrical installer	NewKirk Electrical Assoc.
Weaver, Randy F.	10-01-91	Plumber/pipefitter	Plumbing license; plumber	ABI Mach Contractor
Welch, Larry R.	06-08-92	Pipefitter	Plate welder, tube welder, boilermaker, foreman	ABB Construction Eng. Inc.

## APPENDIX B (continued)

NAME	DATE APPLIED	JOB	EXPERIENCE	LAST EMPL.
Wendling, Randall C.	12-11-92	Plumber/pipefitter	Journeyman plumber & pipefitter; Pipefitter; Plumber; Foreman, plumbers helper, pipefitter apprentice	William E. Walter
Western, Gary R.	03-24-92	Pipefitter, welder	Plumbing, welding, supervision, lead journeyman, mech. design, pipefitter	Carmac Mech. Contract
Wieland, Joel G.	04-15-92	Pipefitter	Pipefitter, plumber, steamfitter, licensed master plumber, licensed mechanical contractor	Wares & Son
Wierzicki, James E.	05-27-92	Electrician	Electrical apprentice, all phases of electrical const.	Davis Electric Inc.
Wigent, Gary N.	04-06-92	Operating engineer	Heavy equip. operator; laborer; supported carpenters, pipefitter, ironworkers	Townsend & Bottom
Wilbanks, Billy R.	05-12-92	Electrician, operator	Aviation electronics, bulldozer, skiploader, dump truck; const. elect., maint. elect., terminate wires	Morrow Meadows, Inc.
Wildfong, Wilbur D.	02-18-92	Millwright	Millwright	Atlantic Plant Maint.
Williamson, George	02-06-92	Boilermaker	Boilermaker welder, rigger, mig, tig & stick welding, pipefitter	CBI Service
Wilsdon, William M.	01-28-92	Sheetmetal	Sheetmetal; const., install exhaust; repair	Pentecost Const.
Wilson, Donald C.	09-14-92	Journeyman elect.	Journeyman license; journeyman electrician	J. Rank Elec. Inc.
Wissner, Dale R.	04-20-92	Pipefitter	Pipefitter, welder	Manistee Welding
Witte, Charles A.	12-09-92	Millwright apprentice	Steeplejack, industrial, const., maint., painter-resid. & commercial	Performance Painting
Wright, Kendall O.	08-30-90	Electrician apprentice	Electrical mech.; electrical apprentice	LA Martin Elec. Serv. & Cont.
Wuolukka, Earl B.	02-20-92	Sheetmetal	Install duct work, weld ductwork, fab., sheet-metal worker	Tweet Garot
Wuolukka, Rickey	01-27-92	Sheet metal	Sheetmetal apprenticeship	Tweet Garot
Yeager, Roy	02-03-92	Boilermaker	Welder & mech.; boilermaker, boiler repair, welder	No. Boiler
Yorch, Harry F.	07-21-89	Plumber	Plumbing	T.L. Cholette Inc.
Yost, James G.	05-04-92	Pipefitting/Plumbing	Pipefitter; journeyman plumber; welding	Jim Welding Service
Ziemba, Walter	02-11-92	Electrician	Foreman electrician, journeyman electrician	Schier Motors
Ziemer, Thomas H.	01-24-92	Laborer	Labor, operator-tractor, dozer	Teamsters Local 406
Zmich, Robert C.	09-04-92	Heavy equip. operator	Backhoe, track & rubber pickers, groves, P&H; heavy equip. operator, fork truck, overhead crane	Piping Service Inc.

## APPENDIX C

APPLICANTS HIRED<sup>1</sup>

NAME	DATE HIRED	JOB TITLE	APPLIED FOR	EXPERIENCE
Alderson, Charles	10-01-92	Millwright	Millwright	Millwright, pipefitter
Anderson, Kenneth	09-16-92	Boilermaker helper I	Boilermaker helper	Welding, big equip.; const., elect., heavy labor, maint.
Ayala, Juan	12-28-92	Pipefitter helper	(blank)	none
Banks, Joffere	01-13-93	Pipefitter	Pipefitter	Pipefitter, survey
Barron, Russell	09-23-92	Millwright	Millwright, millwright-maintenance	Millwright, crane repair, fabrication, welding
Beardsley, Daniel L.	10-05-92	Ironworker welder	Co-gen; structural welder	Welder; boilermaker welder; welder, structural welder
Beckworth, Joel	08-19-92	Boilermaker	Boilermaker	Iron, rigging, crane operator; fabricator
Beecham, Kenneth R.	10-29-92	Pipefitter	Pipefitter	Pipefitter & welder foreman; pipefitter gen. foreman
Belinski, Walter	05-11-92	Electrician	Electrician; Co-gen const.	Equip. operator, masters license; master electrician
Bennett, Kelly	11-09-92	Pipefitter helper	Rigger	Rigger
Berens, Mark	10-21-92	Boilermaker	Boilermaker	Pipefitter, welder
Blackburn, Ronald	12-18-92	Pipefitter	Pipefitter	Structural welder; pipefitter

<sup>1</sup> This list is based upon various exhibits, including General Counsel's exhibits (GC Exh. 222), Charging Party's Exhibits (CP Exh. 16), and Respondent's Exhibits (R. Exh. 60).

## APPENDIX C (continued)

NAME	DATE HIRED	JOB TITLE	APPLIED FOR	EXPERIENCE
Blasingame, Peter	09-16-92	Boilermaker	Boilermaker	Rigger, hanging pipe
Blasingame, William	09-16-92	Boilermaker	Boilermaker	Boilermaker, fitter, welder
Bodnar, Bena	09-12-92	Millwright helper	Co-gen. plant	Welding, heavy equipment
Bonjerndor, Gordon	11-05-92	Millwright	Millwright	Journeyman millwright; heavy equip. pumps conveyors; repair turbine & related equip., pumps
Boswell, Joseph	09-08-92	Boilermaker	Boilermaker	Boilermaker, ironworker
Bowen, Leonard	04-23-92	Carpenter	Laborer; const.-masonry wk.	Laborer; carpenter helper; concrete pourer
Bray, Burnard	09-10-92	Operating engineer	Crane operator	Rigging foreman; crane operator
Bray, Kevin	10-08-92	Pipefitter helper	PF apprentice	Pipefitter, cut bevel pipe
Bray, Wilburn	09-10-92	Pipefitter	Pipefitter, boilermaker	Pipefitter, drilling oil, gas wells
Brigner, Stan	10-21-92	Boilermaker	Boilermaker	Welding, boilermaker, pipe & tube welding
Brinkley, Jim L.	10-28-93	Pipefitter	Pipefitter	Pipefitter, install piping system per blueprints; pipefitter/millwright
Brown, Chester		Operating engineer	Crane operator	Crane operator
Bunting, Jim	07-13-92	Carpenter helper	Labor; railroad	Forklift, end loader, backhoe, cutting torches, ballast regulator & tamper
Burns, Robert	05-07-92	Electrician journ.	Electrician	Class 3 journeyman, apprentice ind. electrician
Caisse, Peter	10-16-92	Boilermaker	Boilermaker	Iron fab., welder; siding, ironworker, gen. fab., machine operator
Campbell, Nathan	12-18-92	Pipewelder	Pipewelder	Pipe
Cardinal, Tim	08-20-92	Ironworker welder	Welding-metal work	Welding; structural welding
Carter, Ken	10-28-92	Boilermaker	Welder/boilermaker welder	Welder; pipe welding
Cavender, Luther	09-24-92	Boilermaker	Boilermaker	Machinists, welder/boiler-maker
Cederberg, Len C.	12-28-92	Pipefitter	Pipefitter, welder, boiler-maker welder	Pipefitter, welder, boilermaker
Chandler, Michael	10-08-92	Millwright	Millwright	Hydraulic crane, forklift, welding, ironworker, pipefitter; millwright for., set pumps, crane oper.
Childress, Shawn	12-18-92	Pipewelder	Pipewelder	Pipewelder & fitter, boilermaker
Chittum, James	08-12-92	Ironworker	(blank)	Rigger, ironworker, boilermaker
Chiviek, William	08-19-92	Boilermaker helper I	Ironwork	Ironworker
Coleman, Matthew	09-10-93	Boilermaker	Boilermaker	Iron, boilermaker
Cook, Robert A.	06-12-92	Welder	Welder	Welder; pipewelder, heliarc, stick carb on stainless
Corwin, John	05-27-92	Pipefitter journeyman	Pipefitter	Pipefitting, rigging, welding; pipewelder, fab. metal & plastic
Crawford, Victor	11-09-92	Pipefitter helper I	(blank)	Rigger
Culpepper, Jay	12-17-92	Pipefitter	Pipefitter; boilermaker	Boilermaker, pipefitter
Davis, Charles	11-09-92	Pipefitter helper I	none	
Dean, Marvin	10-14-92	Boilermaker	Boilermaker; Co-gen.	Boiler operator, ironworker, millwright
DeBlieux, David	11-09-92	Pipefitter helper I	(blank)	Rigger
Decembly, Larry	09-25-92	Boilermaker	Journeyman; Co-gen	Iron; ironworker
Dickson, Shawn	01-13-93	Pipewelder	Pipewelder	Pipe
Diekman, Donald	12-07-92	Pipefitter		Ironwork, boilermaker, millwright, fitter
Domec, Luke	10-05-92	Millwright	Millwright	Millwright, electrician; electrician, gen. foreman
Douglas, William	10-12-92	Boilermaker	Boilermaker; ironworker	Ironworker, millwright, welding
Dronzek, Dan	09-11-92	Boilermaker	Piping foreman	Pipefitting; rigging, pipefitter, carpenter
Edwards, Michael	01-13-92	Pipefitter helper III	Welder/pipe II	Pipe II, structural welder
Edwards, Robert	01-22-93	Pipewelder	Pipewelder	Welding
Edwards, Sam	09-16-92	Millwright	Millwright; Co-gen const.	Millwright; foreman
Eisenga, Mark	05-27-92	Carpenter journ.	Cement work, carpenter, steel worker; Co-gen	Heavy equip., cement wk., welding, torches, carpenter finisher
Evans, Randall	08-17-92	Boilermaker	Ironworker	Welder, ironworker, refractory, boilermaker
Evens, Richard	01-13-92	Pipefitter	(blank)	Pipe, fabrication pipefitter
Farris, Robert D.	10-15-92	Pipewelder	Pipewelder	Pipe welding
Fischer, Gerhard	10-23-92	Pipefitter helper III	Pipewelder	Welding, cutting, blueprint

## APPENDIX C (continued)

NAME	DATE HIRED	JOB TITLE	APPLIED FOR	EXPERIENCE
Fischer Sr., Gerhard	10-14-92	Pipefitter	Boiler/piping gen. foreman	Gen. foreman; pipe & boiler, welding & blueprint
Fisher, Martin	10-20-92	Structural welder	Welder	Shipwright, farming, heavy equip.
Foley, David	01-13-93	Pipewelder	(blank)	Drafting
Forsgren, David	03-30-92	Carpenter	Laborer	Forklift, dump truck, 1 year bldg. trade certificate; over-the-road semidriver
Fortin, Rick	12-17-92	Pipewelder	Pipewelder	Pipewelder
Foshee, Michael A.	08-27-92	Boilermaker	Iron/boilermaker	Crane operator, boilermaker, ironworker
Fox, Michael A.	10-15-92	Pipewelder	Pipewelder	Welding
Friess, Bryce A.	11-09-92	Pipefitter helper III	Boilermaker helper; oper.	Labor; carpenter
Gallandt, Christine	05-12-92	Electrician journ.	Electrician	Electrician, conduit, pull wire, breaker panels; JLG scissorlift; hydraulic benders, hammerdrill, bandsaw
Galligan, Vincent M.	06-12-92	Welder	Sheetmetal/welder	Layout & fab. of metal, all phases of welding; pipefitting, welding, TIG, MIG, stick cutting; read blueprints
Gibson Jr., Samuel T.	10-16-92	Boilermaker	Boilermaker; ironworker	Welding, ironwork; construction
Giese, Chester R.	11-03-92	Millwright	Millwright	Millwright
Giese, Lloyd L.	11-05-92	Millwright	Precision millwright	Millwright, mechanic, farming & ranching
Greene, William	12-18-92	Ironworker (strutural welder)	Structural welder	Structural rigger/welder, foreman
Greer, Daryl L.	09-02-92	Operator-light	Operator/heavy equip.	Heavy equip. operator; pipefitting, structural iron
Grinnell, David	10-29-92	Pipefitter helper	Truckdriver	Construction
Hagendorfer, Charles	10-08-92	Pipefitter	Pipefitter	Pipefitter
Hall, Larry A.	09-21-92	Boilermaker	Boilermaker	Boilermaker, iron, welding; certified to work live nuclear plants
Hanks, Mike	09-20-92	Boilermaker	Boilermaker; tubewelder; pipewelder	Pipewelder, boilermaker/welder
Hardy, Bailey J.	11-09-92	Welder	Pipewelder, fitter, sup.; welding/fitter	Welder/fitter
Hare, Gayle			Piping gen. foreman	Pipefitter, welder
Harmon, Philip C.	09-28-92	Boilermaker	Boilermaker	Tubewelder; construction, blueprint reading
Harris, David R.	10-08-92	Pipefitter	Pipefitter	Pipefitter
Hauck, Jay R.	09-16-92	Boilermaker	Boilermaker	Iron & pipe rigger, crane operator
Heyd, Chad	05-26-92	Pipefitter helper	Welder; pipefitter/welder; Co-gen welding	Pip TBA welding
Heyd, Robert	06-21-92	Carpenter helper	(blank)	Welder III, die setting, machine equip., blueprints, quality control
Hilliard, Vicky	01-18-93	Pipefitter helper	Pipefitter helper	Pipe, electrical, instrument card; welder helper, carpenter helper, survey helper
Hinman, Henry F.	09-24-92	Boilermaker helper	Boilermaker helper	Boilermaker helper, fitter
Hooter, Charles	01-07-93	Pipewelder	Pipewelder	Welding
Howell, Leslie E.	10-28-92	Boilermaker helper I	Boilermaker helper; welder/helper	Welder; helping
Hrbek, Thomas G.	09-17-92	Carpenter	Carpenter	Furniture building, rough & finish carpentry, table saw, chop saw
Hughes, James	08-14-92	Ironworker	Structural-steel worker; I.W. rigger	Boilermaker welder; cutout & replace skin casing on boiler repair; rigger; fitter
Hunri, Paul R.	09-24-92	Boilermaker	Boilermaker	Boilermaker welder fitter, equip. operator
Johnson, Brenton	10-23-92	Pipefitter helper	Pipe helper	Welding
Johnston, Gene	10-20-92	Structural welder	Welding fab. pipe; welder	Carpenter, metal work, fab., welding, truckdriver, equip. operator
Jolly, Steve	05-27-92	Rodbuster-DST; pipefitter helper	Carpenter; Rodbuster	Carpenter
Jones, Anthony	10-13-92	Boilermaker	Boilermaker	Rigging
Jones, Rockaford C.	07-27-92	Helper	Construction	Loader operator
Kaiserlain, Bruce	05-27-92	Welder-pipe	Pipewelder	Welder
Kaiserlain, Charles	05-27-92	Pipefitter journeyman	Steam fitter	Brick & stone mason, well driller
Kaiserlian, Daniel S.	5-27-92; 10-12-92	Pipefitter; journeyman pipefitter	Co-gen const.; pipefitter	Pipefitter, welding, carpentry
Kaufman, James	11-09-92	Pipefitter helper		Rigger, fitter, carpenter

## APPENDIX C (continued)

NAME	DATE HIRED	JOB TITLE	APPLIED FOR	EXPERIENCE
Kenney, Samuel R.	10-08-92	Pipefitter	Pipefitter	Pipe
Kibodeaux, Earl	10-16-92	Boilermaker	Boilermaker	Ironworking & rigger
Kibodeaux, Richard	10-16-92	Boilermaker	Boilermaker; reinforcing metal worker	Construction, structural steel
King, William	09-03-92	Millwright	Millwright	Millwright, pipefitter
Kinney, Joseph	09-03-92	Boilermaker helper	1st class boilermaker helper	Pipefitting/boilermaker
Kling, Philip	09-16-92		Millwright	Welding, millwright
Knight, Homer Phillip	01-04-93	Pipefitter helper I	1st class pipefitter helper	Painting
Krauz, Adolph	08-12-92	Iron reinforcer	Co-gen. Construction	Rod tying, blueprints, sheeting, rigging, structural iron; ironworker, welding
Lackermayer, Helmut	04-28-92	Carpenter	Co-gen. construction	Certified automechanic; diesel mechanic
Langston, Manuel	09-10-92	Carpenter	(blank)	Carpenter
Langston, Robert	10-14-92	Pipefitter helper II	Pipefitter helper	Pipefitter helper; insulator helper
Lazore, John	09-24-92	Boilermaker	Boilermaker; ironwork	Ironworker
Lensky, Bernard	01-13-93	Pipefitter helper	Pipefitter helper I; Co-gen. construction	Painter, laborer, roofing
Letts, Melvin	9-12-92; 02-08-93	Millwright helper; MHI	Millwright	Machinists, carpenter, mason, welder, maint.
Ludwig, Kim C.	04-21-92	Carpenter	Carpenter; carpentry form work, metal stubs, drywall	Carpentry, framing, finish, cement slabs, form wk., hanging drywall, metal studs, rodbuster, tierod
Macy, Gary	05-26-92	Carpenter	Carpenter-millwright	Reinforced concrete, forms, blueprint, welding, tying rods, power tools, hand tools
Martines, Manuel A.	08-19-92	Boilermaker	Journeyman; ironwork	Ironwork
McCosh, Brian	10-08-92	Millwright	Construction mechanic	Boiler operator, maint., mech.; gen. construction, mechanical & construction
McGrew, Shawn	08-04-92	Ironworker-reinf.	Masonry; ironworker	Brick mason, carpenter, master mechanic; residential builder
Medrano, Javier	12-09-92	Ironworker		
Miller, Johnny	12-11-92	Boilermaker	Co-gen. construction	Rigging, boilermaker, pipe; crane operator
Moorefield, James	08-31-92	Boilermaker	Boiler mechanic	Boiler maintenance; journey boiler mechanic
Morgan, Everett	10-04-92	Boilermaker	Boilermaker	Boilermaker; welder
Morgan, Jesse	08-18-92	Boilermaker	Ironworker-structural	Code welder, ironworker, foreman, boilermaker
Morris, Kirby	10-16-92	Boilermaker	Boilermaker	Boilermaker; rigging, connector, fitter
Morrison, LeVeta	12-11-92	Pipefitter helper	Construction	Labor, rebar, kon; rodbuster, journ., labor foreman, ironworker journ.; structural worker journeyman
Murray, Todd	06-22-92	Carpenter helper	Carpenter helper; Co-gen	Laborer, carpentry, millwright
O'Hara, Michael J.	04-28-92	Pipefitter	Pipefitter/welder	Welder
O'Hara, Shawn	05-05-92	Electrical helper	Elect. helper; Co-gen. const.	Mig welder, pipefitter helper, fitter helper
Ortiz, Alex	12-28-92	Pipefitter/Scaffolds	(blank)	Insulation, scaff
Owen, Brian	09-24-92	Millwright helper	Millwright helper; const.	Operating farm equipment
Owen, Shannon	10-28-92	Pipefitter helper III	Pipefitter helper	Sales clerk, carpenters helper
Payton, Terry	09-16-92	Boilermaker	Boilermaker	Boilermaker, welder
Pearson, James M.	12-16-92	Pipefitter	Welder/picker operator	Picker operator, pipewelder
Penix, Jimmy L.	12-16-92	Pipefitter		Pipe
Perry, Kelly	06-18-92	Carpenter helper	Rodbuster; Co-gen	Carpenter, concrete rodbusting
Perry, Steven M.	09-24-92	Millwright	Millwright; construction	Millwright; boilermaker, ironworker
Pierson, Kerry L.	05-27-92	Carpenter	Journeyman carpenter; Co-gen construction	Com. blueprints, semitractor trailer; journeyman carpenter
Poole, James	12-28-92	Millwright	Pipefitter/millwright	Pipe
Poole, Kenneth H.	10-13-92	Pipefitter	Pipefitter	Pipe, rigging, backhoe, crane
Poole, Michael E.	12-05-92	Pipefitter	Pipefitter	Pipefitter
Poole, Roger L.	12-09-92	Millwright	Millwright	Drywall, mechanic, pipefitter, welding-arc, cutting, millwright
Porter, Gary V.	09-23-92	Millwright helper I	Millwright helper or millwright	Heavy equip., rigging, welding; lineman, cable splicing, millwright, crane, front-end loader, pole digging truck, fork truck

## APPENDIX C (continued)

NAME	DATE HIRED	JOB TITLE	APPLIED FOR	EXPERIENCE
Powell, Albert E.	10-14-92	Pipefitter helper II	Boilermaker helper	Supervisor, electricians helper, running wire, drilling, framing, connecting, splicing wire
Powell, James	09-08-92	Boilermaker	Boilermaker; steelworker/ pipefitter	All relating to steel/heavy equip.; welder, heavy equip. operator, pipefitter, fabricator
Premo, Daniel W.	06-22-92	Carpenter	Carpenter; Co-gen	Backhoe, dozer, front end loader operator; carpenter
Price, Jerry Edward	08-14-92	Ironworker Structural	Ironworker/ structural	Welder/operator hydro; rigger, welder, fitter, boilermaker
Pugh, Jeffrey M.	12-12-92	Boilermaker	(blank)	BM; PF, SW; TW; PW
Quibell, Gary T.	09-23-92	Millwright helper	Any construction	Helicopter mechanic; welder, layout, fab. iron; Ironworker construction
Radle, Allen	05-15-92	Boilermaker helper	Steam or pipefitter	Steam pipefitter; mig welder, pipefitter
Rhone, Claude T.	09-08-92	Boilermaker	Boilermaker	Welder
Roberts, Dalton	08-17-92	Boilermaker	Boilermaker, welder, pipefitter, ironworker	Welding, fitter, pipefitter, boilermaker
Roberts, Daniel	01-04-93	Pipefitter helper	Laborer	Painter, truckdriver
Robertson, Phillip	09-12-92	Carpenter	Carpenter	Construction; journeyman, concrete finisher
Roman, Efrén	09-24-92	Iron reinforcer	Rodbuster; Co-gen	Carpenter helper
Rosie, Larry	6-12-92; 09-25-92	Welder; structural welder	Welder	Certified welder, boiler & pressure vessel
Rowan, Scott L.	10-22-92	Pipefitter	Pipefitter/welder	Welding
Rowan, Tito		Iron reinforcer	Road buster	Welder
Rowell, David	09-02-92	Boilermaker	Boilermaker	Iron & rigger; ironworker, boilermaker, piperigger
Salem, John	01-13-92	Pipewelder	Pipewelder	Pipewelder
Scarbrough, Todd	09-17-92	Boilermaker helper	Welder	Foreman, welding, grinder, plumbing, installer
See, Roger	10-12-92	Boilermaker	(blank)	Crane operator, welder
Sessions, Ola B.	08-12-92	Iron structural	Ironworker	Ironworker, boilerman
Shepard, Patrick	02-01-93	Pipefitter helper II	Pipefitter helper II	Pipefitter helper
Simoneaux, Anthony	09-22-92	Boilermaker helper II	Welder helper/boilermaker helper	Vehicle operator, maintenance & repair
Skidmore, Kenneth	09-02-92	Boilermaker	Co-gen.	Rodbuster, iron foreman, boilermaker
Smith, Greg	01-22-93	Pipefitter	Pipefitter	Pipefitter, helper I
Smith, John	10-08-92	Millwright	Millwright	Millwright; iron rigger, carpenter
Smith, Leslie	08-17-92	Boilermaker	Ironworker	Pipewelder, structural iron; operator, forklift, lull, ironworker, welding
Smith, Samuel	10-08-92	Millwright	Millwright	Millwright; construction worker
Spivey, Robert	09-30-92	Boilermaker	Boilermaker	Iron/pipe/boilermaker, blue print reading; Pipefitter
Spring, Germain	02-03-93	Pipefitter	Welder fitter	All around construction hand
Springs, German	02-03-93	Pipefitter	(blank)	Boilermaker, pipefitter, welder, foreman
St. Amour, Gary	09-12-92	Carpenter	Co-gen construction/ carpenter; carpenter	Journeyman carpenter; foreman, layout; foreman
Stilwell, Larry	06-22-92	Carpenter helper	Carpenter; Co-gen	Payloader, backhoe, trackhoe, dozer, loader, forklift, carpenter
Strzelecki, Paul	10-14-92	Structural welder	Welding-Co-gen.	Welding, pressure vessels; fitter, fabricator
Stuart, Jerry	12-30-92	Pipefitter	Pipefitter	Pipefitter
Sutter, Marc	11-11-92	Boilermaker	Boilermaker/tube welder	Boilermaker, tubewelder, pipewelder
Tarver, Ronald	11-09-92	Pipefitter helper I	(blank)	Rigger, roofing
Taylor, Louis Greg	01-06-93	Pipewelder	Pipewelder	Pipe
Teasdale, Joe	08-31-92	Boilermaker	Boilermaker; power plant const.	Boilermaker, pipefitter, rigger
Turnbough, Donald	05-14-92	Operator	Operator; Co-gen.	Heavy equip. operator, pickers, crane, dozer, backhoe, forklift
Turnbough, Larry	04-30-92	Electrician	Electrician/Equip. operator	Equipment operator
Turner, Jim	10-12-92	Pipefitter	Pipefitter	Plumbers, fitters; pipe foreman, pipe gen. foreman
Tyson, Charles	10-30-92	Pipewelder	Pipewelder	Welding; carpenter, pipewelder, structural welding, ironworker, millwright
Unzucta, Andres	12-09-92	Ironworker	Road buster	Road buster

## APPENDIX C (continued)

NAME	DATE HIRED	JOB TITLE	APPLIED FOR	EXPERIENCE
VanMeter, Joe	08-14-92	Ironworker	Ironworker	Boiler & pipe; hanging iron & erection, boiler foreman, ironworker-structural
Vaugh, James	01-13-93	Pipefitter helper I	First class helper	Truckdriver, pipefitter helper
Walker, James	10-19-92	Boilermaker	Boilermaker; construction boilermaker	Boilermaker; welder, pipefitter
Walls, Jeff	09-03-92	Boilermaker helper	Boilermaker helper	Grinder
Walls, Jody	09-03-92	Boilermaker		Pipefitter, rigger
Waslowicz, Ken	09-16-92	Carpenter	Carpentry; carpentry & cement	Carpenter, cement; carpentry foreman, maint.
Wilcox, Donald	09-24-92	Ironworker	Ironworker	Heavy equip.; welder, ironworker; certified welder, foreman
Williams, Robert	08-19-92	Boilermaker	Boilermaker helper I	Welding, forklift operator; rig moving, repair drilling rigs, welder/pipeline, pile driver
Wiltshire, Mark	09-30-92	Millwright helper	(blank)	Maintenance helper, brazer
Wood, James	09-16-92	Boilermaker	Ironworker	Boilermaker/ironworker; equip. oper., fitter, welder
Woodard, James	08-31-92	Boilermaker	Co-gen.	Rigger, welder, operator; boilermaker; pipefitter
Woodhead, Daniel	05-27-92	Carpenter journ.	Carpenter; Co-gen.	Dozer, loader, backhoe, truck & trailer, bobcat, slip former; certified in electronics; carpenter, form setting, electrician helper, foreman
Woolsey, Doyne	06-12-92	Welder	Pipe, welding, instrumental; welder; pipefitter; boilermaker welder	Pipefitter, supervising on pipe & welding; instrument install.; stick, heli-arc welding; boilermaker
Woolsey, Everett	05-27-92	Pipefitter journ.	Pipefitter/welder; boilermaker; Co-gen. plant	Pipefitter, boilermaker, certified welder SMAW, GMAW, TIG, MIG; superintendent, gen. foreman, layout, installation of piping
Young, Thomas E.	01-13-93	Pipefitter helper I	Electrician/welder	Class 3 electrician license, lift truckdriver, PC programming, apprenticeship
Zamord, David	12-09-92	Ironworker	(blank)	Rod buster