

Amsterdam Wrecking & Salvage Co., Inc. and Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 3-CA-4408

April 5, 1972

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND KENNEDY

On October 13, 1971, Trial Examiner Josephine H. Klein issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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

The Board has considered the record¹ and the Trial Examiner's Decision in light of the exceptions and brief² and has decided to affirm the Trial Examiner's rulings, findings, and conclusions and to adopt her recommended Order.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner and hereby orders that Respondent, Amsterdam Wrecking & Salvage Co., Inc., Amsterdam, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's recommended Order.

MEMBER KENNEDY, dissenting in part:

I agree with the unfair labor practice findings made by my colleagues, including the finding that Respondent discriminatorily discharged three named employees on March 17, 1971, and was thereupon obligated to offer them reinstatement and backpay.

The record shows, and I agree with my colleagues' further finding, that Respondent did offer them reinstatement 2 days later, on March 19, and that the employees concertedly rejected the reinstatement offer, thereby becoming strikers.

It is at this point that my disagreement with my colleagues arises. There is no finding or evidence that, as strikers, the three employees ever made an unconditional application for reinstatement. My colleagues nevertheless find that Respondent's statement to the strikers a few days later, on March 22, that they could return to work only if the unfair labor practice charges filed in this case were withdrawn converted their status from strikers back to discriminatees. The Trial Examiner expressly found, however, that the employ-

ees again refused to return to work "unless and until Skee agreed to recognize the Union."

In these circumstances, the appropriate remedy seems to me to be to require Respondent to make the three employees whole only for the time between their discriminatory discharge and Respondent's valid reinstatement offer on March 19. Since they chose to reject this offer and become strikers, there is no basis, in my view, for ordering Respondent to again offer them reinstatement or to make them whole for striking.

¹ Respondent's motion to reopen the record is denied on the ground that the evidence proffered by Respondent is not newly discovered or evidence which was previously unavailable.

² Respondent has requested oral argument. This request is hereby denied because the record, the exceptions, and the brief adequately present the issues and positions of the parties.

³ Our dissenting colleague apparently accepts the Trial Examiner's findings that on March 22, 1971, Respondent engaged in an unlawful refusal to reinstate employees in violation of Section 8(a)(4) and (1) of the Act. Yet, our dissenting colleague would withhold the customary reinstatement and backpay remedy for this conduct because he is not convinced that the striking employees would have responded to a valid offer of reinstatement with an unqualified acceptance. We decline to engage in such speculation. Any doubts which may exist concerning the striking employees' attitudes towards reinstatement are a product of the Respondent's unlawful conduct and, in our opinion, such doubts should be resolved against the wrongdoer and not the victim. Accordingly, we believe that the Trial Examiner was correct in granting reinstatement and backpay for the period after March 22, 1971, and, therefore, we adopt her recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOSEPHINE H. KLEIN, Trial Examiner: This case was tried in Albany, New York, on July 15, 1971,¹ on a complaint issued against Amsterdam Wrecking & Salvage Co., Inc., Respondent, on April 22, pursuant to a charge filed against Respondent on March 22 by Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union). The complaint alleges that Respondent committed various acts of interference with its employees' rights under Section 7 of the Act;² discharged three employees on March 17 and has since refused to reinstate them, in violation of Section 8(a)(3); and since March 17 has unlawfully refused to recognize the Union as its employees' collective-bargaining agent, in contravention of Section 8(a)(5).

All parties were afforded full opportunity to be heard, to present oral and written evidence, and to examine and cross-examine witnesses. The parties waived oral argument and, since the hearing, briefs have been filed on behalf of the General Counsel and Respondent.

Upon the entire record,³ observation of the witnesses, and consideration of the briefs, the Trial Examiner makes the following:

¹ Unless otherwise stated, all dates herein are in 1971.

² National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec 151, *et seq.*)

³ The General Counsel's unopposed motion to correct transcript is hereby granted and the transcript is corrected accordingly.

FINDINGS OF FACT

I. PRELIMINARY FINDINGS

The complaint alleges, Respondent admits, and the Trial Examiner finds that:

A. Respondent, a New York corporation,⁴ with its office and place of business in Amsterdam, New York, is engaged in the business of providing and performing wrecking and metal salvaging and related services. During the past 12 months, Respondent, in the course and conduct of its business, furnished services valued in excess of \$50,000 to various enterprises, including the city of Amsterdam, the New York Urban Renewal Agency, and the New York State Department of Transportation, which enterprises annually purchase goods valued in excess of \$50,000 outside the State of New York and ship, or have shipped, such goods directly to their locations within New York State. Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

II THE UNFAIR LABOR PRACTICES

A. *The Facts*

Respondent has four employees: Marvin Martens, Ralph Martens (Marvin's son), David Furman, and Lee Chichester.⁵ On February 26, Marvin and Ralph Martens and David Furman executed cards authorizing the Union to represent them. They joined the Union and paid their initiation fees.

Under date of March 15 the Union wrote to Respondent requesting recognition and bargaining. In its demand letter, the Union offered a card check. On the morning of March 17, Skee first learned, from an independent source, of his employees' union activities. At that time he questioned Chichester, who said he had been asked to join the Union but would have nothing to do with it.

Shortly after noon on the same day Skee received the Union's demand letter.⁶ His immediate reaction was one of anger. Confronting the three men, he asked if and why they had joined the Union. He considered it "a dirty deal" for the employees to enlist the Union without first informing him. The three employees all quoted Skee as having said specifically that they were fired. Skee testified that he told them "that they should be considered through" because of what they had done. At another point, he testified that he had said to the three men: "You ought to be considered fired." The men left work at that time.

On the morning of Friday, March 19, the three employees met Skee at a restaurant. In answer to their inquiry, Skee said their paychecks would be ready around 5 p.m. When the employees went to the job together to pick up their checks, Skee called young Ralph Martens into a back room to talk to him. When the other two employees objected, insisting that Skee could talk to them only as a group, Skee

again became irate,⁷ protesting that he had a right to talk to any of his employees individually. The employees won, however, and left together after receiving their checks. During this meeting Skee told the three employees that their jobs were still available and would be until 7:30 the next morning.

The employees reported at the jobsite about 7:15 the next morning, but Skee was not there and no work was being performed, apparently because of considerable snow which had fallen during the preceding night. About 8:15 a.m. Skee arrived at the job and spoke with the employees. They asked if their jobs were still available, to which Skee replied to the affirmative. The employees, with the older Martens as their chief spokesman, said they would return to work if Skee would recognize the Union. Skee replied that he had turned the matter over to his attorney and thus could not say anything definitive. He would not reveal the name of his attorney, who he said was at that time out of town on a skiing trip. The employees said, in effect, that they would not return to work unless Skee recognized the Union.

On Monday, March 22, the present charge was filed. Later that day, the four men met and talked for several hours at the American Legion Hall. Skee said that the employees' jobs were still available and would be until 8 the next morning. The employees said they could not return to work "under the old conditions"; i.e., without recognition of the Union.

Marvin Martens informed Skee that the charge had been filed with the Board that day.⁸ According to the employees, Skee then said that their jobs were still available only if the charge was withdrawn and they attested in writing to their desire to drop the charge. Despite Skee's denial, the Trial Examiner credits the employees' testimony concerning this statement by Skee.

B. *Discussion and Conclusions*

1. Section 8(a)(1)

Skee testified that on March 17, after he heard that his employees had joined the Union but before he received the Union's recognition demand, he asked Lee Chichester, the fourth (and only nonunion) employee about the union activities. Chichester said that he had been asked to join but would have nothing to do with the Union. It is also undisputed that on March 17, after having received the Union's demand, Skee asked the three prounion employees which of them had gone to the Union. They replied that they all had, together. Such interrogation is clearly violative of Section 8(a)(1) of the Act, particularly when, as here, it is accompanied by vocal and undisguised expressions of disapproval and anger.

As previously found, on March 22 Skee conditioned reinstatement of the three employees upon withdrawal of the charge which had been lodged with the Board that day. As alleged in the complaint, this action, too, was clearly violative of Section 8(a)(1) of the Act.⁹

Marvin Martens testified, without contradiction, that about a month previously the employees had asked "for benefits" and Skee "said he was working on hospitalization." Employee Furman testified that he met Skee at a restaurant on the morning of March 19. According to Fur-

⁴ Although incorporated, the business is essentially a one-man operation conducted by Charles Skee, who, with his wife, owns all the stock.

⁵ Skee's son, a college student, works Saturdays, generally at sales and related nonoperating functions. There appears to be no dispute that he is not within the bargaining unit.

⁶ Since Skee maintains his office at his home, the letter was received there by his wife, who then delivered it to Skee at his current jobsite.

⁷ Skee testified that he "wouldn't want to repeat" the language he had used in his anger.

⁸ The Trial Examiner discredits Skee's testimony that the employees did not refer to the charge which the employees had filed (in the Union's name) shortly before the long meeting with Skee.

⁹ As found below, this conduct also violated Sec 8(a)(4).

man, Skee said that Furman's job was still available, but Furman said that he "wouldn't like to make a decision now because of Union representation." Skee said Furman "can go either way," and added: "It's up to you . . . you boys should not have done this because I was thinking of getting a hospitalization plan for you." Skee testified that at this meeting he offered Furman his job and Furman replied that he would have to think about it. According to Skee, no reference was made to hospitalization. Despite Skee's denial, the Trial Examiner credits Furman's testimony concerning the March 19 conversation.

Referring to the conversation, the complaint alleges that Respondent "promised its employees benefits if they refrained from" union activities. As quoted by Furman, Skee's statement appears to constitute a threat to withhold hospitalization in retaliation for the employees' unionization rather than a promise of benefits for refraining from union activities. But, in any event, the allegation of the complaint is sufficiently definite to have put Respondent on notice that the Skee-Furman conversation of March 19 was in issue and it was actually litigated. Whether viewed as a threat or a promise, it violated Section 8(a)(1) of the Act, and the Trial Examiner so finds.

2. Section 8(a)(5)

In its brief, Respondent contends, in effect, that young Ralph Martens' authorization card was invalid and therefore the Union did not have a majority. This contention is based on Respondent's statement that Ralph "testified that his card would be used to obtain an election." However, Ralph testified that his father had read the card to him and Ralph understood it before he signed it. He testified to his knowledge that, on the basis of the three employees' membership, the union representative was "going to send a letter, registered letter to Charlie Skee notifying him of 294." The evidence leaves no doubt that Ralph Martens voluntarily and knowingly joined the Union and signified his desire to be represented by it.¹⁰

There is no question that the Union made, and Respondent received, a proper demand for recognition and bargaining. Upon hearing of the union activities, Skee's immediate reaction was to interrogate all four employees and, as found below, to summarily discharge the three who said they had joined the Union. Respondent never replied to the Union's demand.

Respondent apparently contends that it did not violate Section 8(a)(5) because it never expressly refused to recognize and bargain with the Union and did not "preclude the holding of a fair election." Its brief says: "Skee never had a chance to preclude the holding of a fair election. They walked off the job and within five days were down in Albany discussing charges, when all Skee had done was beg them to come back to work."

It is true that within 2 days after the discharge Skee offered the three employees reinstatement. It is also true that he never expressly refused to recognize the Union. Rather, he said he had referred the matter to his attorney. If, having quickly remedied the discriminatory discharges, he had simply postponed answering the Union's demand for a reasonable time, while seeking advice of counsel, he might not have been in violation of Section 8(a)(5). But he followed no such course. Instead, he manifested a total rejection of the principle of collective action. On March 19, when

the employees called for their paychecks, Skee angrily asserted a "fight" to speak to his employees individually despite their announced determination to act in concert. Significantly, Skee chose to speak in private to young Ralph Martens, the employee most likely to yield to pressure.¹¹ And then, on March 22, he committed the further unfair labor practice of conditioning the employees' reinstatement upon withdrawal of the charge. Skee refused to identify the attorney to whom he had entrusted the matter. And neither Skee nor his counsel ever communicated with the Union in response to the recognition and bargaining demand.

As said by the Board in *K. Wm. Beach Mfg. Co., Inc.*, 192 NLRB No. 47, fn. 2, "Respondent's lightning and totally unlawful response to its employees' union activities will not quickly be forgotten by them, and . . . a bargaining order is justified and required under any or all of the tests of *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575 (1969)."¹²

3. Section 8(a)(3)

a. Discharges

Respondent denies that Skee discharged the employees here involved. However, all three employees testified that on March 17, after receiving the Union's recognition demand, Skee told them they were "fired." Skee himself testified that he said to the employees "You ought to be considered fired" and that they then left the job. The Trial Examiner credits the three employees' version of Skee's statement. In any event, in view of Skee's admitted anger at the time, even on his version of the precise words he used, the employees would reasonably understand that they were being discharged. This understanding was clearly reflected in their immediately leaving the job. And there is no evidence that Skee at that time sought to detain them, as he presumably would have had he not intended to discharge them on the spot.

Accordingly, on all the evidence, the Trial Examiner finds that Marvin Martens, Ralph Martens, and David Furman were discharged on March 17 because of their having joined the Union. The discharges were, therefore, violative of Section 8(a)(3) of the Act.

b. Refusal to reinstate

The complaint alleges that since the discharges on March 17, Respondent "has continued to fail and refuse to reinstate" the employees.

The undisputed evidence establishes that around 5 p.m. on Friday, March 19, Skee asked the employees to return to work and said that their jobs would be available until 7:30 the next morning. They reported at the job the next morning, but no work was being done because of the weather. However, at that time it was made clear that they could return to work. The employees refused the offers because Skee would not then recognize the Union. At that point the employees became strikers rather than discriminatees.

On Monday, March 22, after the present charge had been filed, Skee told the employees that they could return to work

¹¹ Ralph Martens, 21 years old, testified that he had a sixth-grade education. He is, at most, semiliterate.

¹² The instant case would undoubtedly call for an 8(a)(5) bargaining order under *Wilder Mfg. Co.*, 185 NLRB No. 76. However, *Linden Lumber Division, Summer & Co.*, 190 NLRB No. 116, apparently precludes such a result based solely on Respondent's demonstrated knowledge of the Union's majority status together with Respondent's unwillingness to have the issues resolved through Board processes. Accordingly, the present decision is based on the principles of *Gissel* as applied in the more recent *Beach Mfg. Co.* decision. See *Scoler's Incorporated*, 192 NLRB No. 49.

¹⁰ Respondent totally failed to establish its apparent contention that Ralph Martens acted under undue influence of his father and without comprehending the nature of his acts.

only if they withdrew the charge and executed a written statement confirming the withdrawal. The employees refused and again indicated their unwillingness to return to work unless and until Skee agreed to recognize the Union.

An offer of reinstatement conditioned upon withdrawal of an unfair labor practice charge amounts to a refusal to reinstate violative of Section 8(a)(4) and (1) of the Act.¹³ *Selwyn Shoe Manufacturing Corporation*, 172 NLRB No. 81; *Dubin-Haskell Lining Corp.*, 154 NLRB 641, 652-653, enfd. 386 F.2d 306 (C.A. 4), cert. denied 393 U.S. 824. The three employees thereupon resumed the status of discriminatees. Thus, on and after March 23, the employees were not working for two reasons: (1) Skee's refusal to recognize the Union; and (2) the employees' refusal to accede to Skee's unlawful condition that they withdraw the charge. If the first were the only reason for the employees not working, they would not be entitled to reinstatement and backpay until they made unconditional offers to return to work.¹⁴ If the second were the sole reason, they would be entitled to immediate reinstatement, with backpay from March 23 until Respondent made unconditional offers of reinstatement.

The present situation, where there are two apparent reasons for employees not working, is analogous to the situation often presented in determining whether a work stoppage is an economic or an unfair labor practice strike. The law is well established that where an employer's unfair labor practices are a factor in a strike, "[t]he burden [is] on the Company to show that the strike would have continued even if it had [not committed the unfair labor practice.]" *Philip Carey Mfg. Co. v. N.L.R.B.*, 331 F.2d 720, 729 (C.A. 6), cert. denied 379 U.S. 888. See *Teamsters Local No. 992 (Pennsylvania Glass Sand Corp.) v. N.L.R.B.*, 427 F.2d 582, 587 (C.A.D.C.):

... Even where no burden has passed to the company, there is room in this labor statute for requiring a wrongdoer to "bear the risk of uncertainty" concerning the extent of the consequences ascribable to his wrong
¹⁵

It cannot be said to a certainty the employees would not have returned before now if Skee had not imposed the unlawful condition of their having the charge withdrawn. On the contrary, it is more reasonable to assume that the employees would return to work after filing the charge, which alleged both the discriminatory discharges and the unlawful refusal to bargain. The proceeding they had instituted was an effective and less costly alternative to a strike as a means of vindicating their rights. Their engaging in extended discussions with Skee after filing the charge is at least consistent with a willingness to resolve the issues through Board processes. But Skee's conduct on March 22 made it impossible for the employees to preserve their legal rights if they returned to work. Thus, realistically viewed, the condition on reinstatement imposed by Skee on March 22 was tantamount to discharge for the employees' assertion of their rights under the Act.

Since March 22, when Skee imposed the unlawful condition upon the employees' reinstatement, there has been no communication between him and the Martens. Sometime in

May, Skee had a chance meeting with Furman. Skee told Furman that his job was still available and Furman said he could not accept it at that time. Apparently Skee did not expressly refer to the present complaint, which had been filed on April 22, and Furman did not expressly state that his declination was based on Skee's failure to recognize the Union.

In its brief, Respondent does not refer to the May conversation between Furman and Skee and no claim is made that Respondent made any unconditional offer of reinstatement after March 22. In any event, the evidence concerning the Skee-Furman meeting in May is insufficient to establish "an unequivocal offer of reinstatement" or "an unequivocal rejection of employment" serving to toll or end the backpay period. *Laminating Services, Inc.*, 167 NLRB 234, 236.

For the foregoing reasons, the Trial Examiner finds that since March 22 Respondent has failed and refused to reinstate the three employees here involved in contravention of Section 8(a)(4) and (1) of the Act.

CONCLUSIONS OF LAW

1. By interrogating its employees as to their union activities and those of other employees, and by threatening to withhold insurance benefits because the employees chose to be represented by the Union, Respondent engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

2. By discharging Marvin Martens, Ralph Martens, and David Furman on March 17, 1971, for membership in the Union, Respondent engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) and (1) and 2(6) and (7) of the Act.

3. By conditioning reinstatement of Marvin Martens, Ralph Martens, and David Furman upon withdrawal of the unfair labor practice charge filed against Respondent, Respondent engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(4) and (1) and 2(6) and (7) of the Act.

4. Prior to the commission of the unfair labor practices found above, which render a fair election impossible, the Union represented a majority of the employees in an appropriate unit, so that Respondent's refusal to bargain constituted an unfair labor practice affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

THE REMEDY

As set forth above, the Trial Examiner will recommend issuance of an affirmative bargaining order in accordance with the principles enunciated by the Supreme Court in *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575.

Since it has been found that Marvin Martens, Ralph Martens, and David Furman were denied reinstatement unless they complied with Respondent's unlawful condition that they cause the unfair labor practice charge to be withdrawn, the Trial Examiner will recommend that Respondent be required to offer them immediate and unconditional reinstatement with backpay. In accordance with the discussion set forth above (part II, B, 3, b), backpay shall include compensation for March 18 and 19 and for the period commencing on March 23 and continuing until Respondent offers the named employees full and unconditional reinstatement to their former jobs. Backpay is to be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289, and shall carry 6 percent per annum interest in accordance with *Isis Plumbing & Heating Co.*, 138 NLRB 716.

¹³ This conclusion is not precluded by the fact that the complaint alleged Skee's conduct as violative only of Sec. 8(a)(1). *Independent Metal Workers Union, Local No. 1 (Hughes Tool Co.)*, 147 NLRB 1573, 1576-77

¹⁴ See, e.g., *Atlanta Daily World*, 192 NLRB No. 30; *Ace Tank & Heater Co.*, 167 NLRB 663, 664. Cf. *Pepsi-Cola Kantor Bottling, Inc.*, TXD-47-68, in which Trial Examiner Reel applied this principle where, as here, the unlawful discharge antedated the beginning of the strike.

¹⁵ "And the fact that Union members are ready to stay out on strike while there are two reasons or grievances for striking does not mean they would have stayed out if there had been only one in being." *Ibid.*, fn. 9.

Because Respondent's unfair labor practices are such as to reflect a total rejection of the principle of collective bargaining and a disregard for the purposes and provisions of the Act, the Trial Examiner will recommend issuance of a broad cease-and-desist order.

The evidence establishes that Respondent does not maintain any office or place of business outside Skee's home and that the employees do not normally report to or visit Skee's home. Additionally, Respondent's business is somewhat peripatetic, with the specific wrecking or demolition jobs generally of short duration. Because of the nature of Respondent's operations, it is possible that the customary notice-posting requirement would not be fully effective. Accordingly, the Trial Examiner will recommend that Respondent also be required to send a copy of the prescribed notice to each employee and to the Union.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, the Trial Examiner hereby issues the following recommended:¹⁶

ORDER

Respondent, Amsterdam Wrecking & Salvage Co., Inc., its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Illegally interrogating employees as to their union activities and sympathies.

(b) Threatening to withhold benefits if the employees choose to be represented by a union.

(c) Discouraging membership in and activities on behalf of Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discriminating in regard to their hire and tenure of employment or any term or condition of employment.

(d) Refusing to bargain upon request with the above-named Union as the representative of its employees (excluding office clerical employees, guards, professional employees and supervisors as defined in the Act).

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

2. Take the following affirmative action, which is deemed necessary to effectuate the policies of the Act:

(a) Offer to reinstate Marvin Martens, Ralph Martens, and David Furman to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(b) Notify any of the above-named employees who are serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(c) In the manner described in the portion of the Trial Examiner's Decision entitled "The Remedy," make each of the above-named employees whole for any loss of earnings suffered by reason of the discrimination practiced against him for the periods March 18 and 19, 1971, and between March 23, 1971, and the date on which it shall have been offered complete and unconditional reinstatement in accordance herewith.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to

analyze the amount of backpay due under the terms hereof.

(e) Upon request, bargain collectively with Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the statutory representative of all Respondent's employees (excluding all office clerical employees, guards, professional employees and supervisors as defined in the Act).

(f) Post at its office and at each of its jobsites copies of the attached notice marked "Appendix."¹⁷ Copies of such notice, on forms to be provided by the Regional Director for Region 3, shall, after being duly signed by Respondent's representative, be posted immediately upon receipt thereof and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Mail to each of its employees, at his home address, and to the above-named Union a copy of the attached notice marked "Appendix."

(h) Notify the Regional Director for Region 3, in writing, within 20 days from the date of the receipt of this Decision, what steps Respondent has taken to comply herewith.¹⁸

¹⁶ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹⁷ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹⁸ In the event that this recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read, "Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

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

After a full trial, in which the parties had the opportunity to present their evidence, the National Labor Relations Board has found that we, Amsterdam Wrecking & Salvage Co., Inc., violated the National Labor Relations Act and has ordered us to post and send you this notice. We intend to abide by the following:

WE WILL NOT discourage membership in Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discriminating against any of our employees in regard to hire and tenure of employment or any term or condition of employment.

WE WILL NOT refuse to reemploy, or in any other way discriminate against, employees because of charges filed with the National Labor Relations Board by or on behalf of the employees.

WE WILL NOT question any employees concerning their union membership, sympathies, or activities, or those of other employees.

WE WILL NOT threaten to withhold any benefits be-

cause the employees choose to be represented by a union.

WE WILL NOT refuse to recognize and, upon request, bargain with the above-named Union as the representative of our employees.

WE WILL NOT in any other manner interfere with the rights of our employees under the law, or force them to give up any of their rights under the law.

WE WILL offer Marvin Martens, Ralph Martens, and David Furman immediate, full, and unconditional reinstatement to their former jobs (or, if those jobs no longer exist, to substantially equivalent jobs), without prejudice to their seniority or other rights or privileges previously enjoyed by them, and we will pay them backpay (with interest) for any loss of pay they may have suffered as a result of their discharge and our conditioning their reinstatement upon withdrawal of a charge filed with the National Labor Relations Board.

WE WILL notify Marvin Martens, Ralph Martens, and David Furman, if they are serving in the Armed Forces of the United States, of their right to employment, upon application, after discharge from the Armed Forces, in accordance with the Selective Service Act and the Universal Military Training and Service Act.

WE WILL bargain, upon request, with Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all our employees (excluding of-

ice clerical, professional employees, watchmen, guards and supervisors as defined in the National Labor Relations Act).

All our employees are free to become, remain, or refuse to become or remain members of Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other union (except to the extent that such freedom may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as amended).

AMSTERDAM WRECKING & SALVAGE
Co, INC
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Ninth Floor, 111 West Huron Street, Buffalo, New York 14202, Telephone 716-842-3100.