Babcock & Wilcox Company d/b/a B & W Construction Company *and* International Brotherhood of Operating Engineers, Local 400. Case 27-CA-5973

August 16, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On June 25, 1980, Administrative Law Judge Earldean V. S. Robbins issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief,[1] and counsel for the General Counsel filed an answering brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt her recommended Order.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Babcock & Wilcox Company d/b/a B & W Construction Company, Lakewood, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

CHAIRMAN VAN DE WATER, dissenting:

The majority's decision not to defer to the arbitration award herein is contrary to the principles of *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955), and, thus, contrary to sound deferral policy. See my dissent in *Professional Porter & Window Cleaning Co., Division of Propoco, Inc.*, 263 NLRB 136 (1982).

Respondent discharged Reuben Morgheim, and his grievance was taken to arbitration. In his award the arbitrator took note of the unfair labor practice charge filed in this proceeding and found:

> The very last thing the Arbitrator would want to do is to usurp the function of the Board. However, and for what it is worth, the Arbitrator finds no evidence of discharge because of the Grievant's Union activities. Put in its lowest common denominator, this is just a case where an employee and a foreman both lost their tempers and the foreman then acted precipitously and no subsequent investigation was ever held by senior supervision. For these reasons only, the reinstatement of the Grievant is being ordered. His own conduct denies him the right to back pay.

The arbitrator concluded that Morgheim was not entitled to backpay because of his overall conduct, "including his 'blow-up' over a simple matter of fueling his crane on a day when he was not at work." Thus, the arbitrator denied backpay for a permissible reason, misconduct, and not because of any protected activity.

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[1] Respondent's request for oral argument is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

In her Decision, the Administrative Law Judge inadvertently transposes Richard Metcalf's and Reuben Morgheim's names several times in her statement of facts, and states that the arbitrator found that Morgheim was not discharged for just cause "within the meaning of the Act," rather than within the meaning of the collective-bargaining agreement. We hereby note these errors, which have no effect on the result.

[3] We agree with the Administrative Law Judge's finding that it would be inappropriate to defer to the arbitrator's award herein. As the Administrative Law Judge found, the arbitrator specifically disavowed any intent to resolve the unfair labor practice issue, stating that "the very last thing the Arbitrator would want to do is to usurp the function of the Board." The arbitrator's subsequent offhand observation that he found no evidence of discharge, because of Morgheim's union activities—a finding which is contrary to the arbitrator's own statement of facts that there was a direct causal connection between the discharge and Morgheim's threat to file charges against Foreman Metcalf—is insufficient to indicate that the arbitrator was resolving the unfair labor practice issue, in the face of his plain statement that he had no intention of doing so.

Our dissenting colleague suggests that we are being overly technical in our reading of the arbitrator's award. In fact, it is our dissenting colleague who is overzealously seizing upon casual "for what [they are] worth" remarks, in an attempt to justify deferring to an award which clearly states on its face that it does not intend to resolve the unfair labor practice issue. Thus, we adopt the Administrative Law Judge's finding that deferral would be inappropriate in this case.

[4] We agree with the Administrative Law Judge that *Industrial First, Inc.*, 197 NLRB 714 (1972), and *Bovree and Crail Construction Company*, 224 NLRB 509 (1976), are distinguishable from this case. Both of those cases involved union officials who took part in unlawful intraunion actions against supervisors. Here, Morgheim is not a union official, but rather an employee seeking to enforce his contractual rights under a collective-bargaining agreement. The fact that Morgheim stated that he would implement his contractual rights through an intraunion charge rather than through the contractual grievance procedure should not remove him from the Act's protection. Such a result would require an employee to be able to determine—on the spot—the correct method to use in enforcing his contractual rights, with the penalty being possible discharge if he fails. The Employer's interest in protecting its supervisor, Metcalf, was adequately protected by the Employer's filing of a charge against the Union for unlawfully processing Morgheim's intraunion charge, and by the Board's subsequent finding of an 8(b)(1)(B) violation by the Union.

Member Fanning, who, for reasons set forth above, agrees that this case is distinguishable from *Bovree and Crail, supra*, further notes that he dissented in *Bovree and Crail* and that in any event he would not follow that Decision.

I would defer to this award because it is not inconsistent with the fundamental purposes or the specific provisions of the Act and therefore is not clearly repugnant to the purposes and policies of the Act. The majority adopts the Administrative Law Judge's Decision which declined to defer because the arbitrator "never seriously considered whether Morgheim was discharged because he engaged in protected concerted activity or made any attempt to apply Board doctrine to this issue." This reason for not deferring is clearly contrary to *Douglas Aircraft Company* v. *N.L.R.B.*, 609 F.2d 352, 355 (9th Cir. 1979), denying enforcement of the Board's decision not to defer, 234 NLRB 578 (1978), wherein the court stated, "Overzealous dissection of [arbitration] opinions by the NLRB, as well as by the courts, can defer the writing of full opinions, and it should not be assumed that an arbitrator has snubbed the Act any more than that he has exceeded his authority."

For the foregoing reasons, I would defer to the arbitration award and dismiss the complaint in its entirety.

DECISION

STATEMENT OF THE CASE

EARLDEAN V.S. ROBBINS, Administrative Law Judge: This case was heard before me in Denver, Colorado, on May 1, 1980. The charge was filed by International Brotherhood of Operating Engineers, Local 400, herein called the Union, and served on Babcock & Wilcox Company d/b/a B & W Construction Company, herein called Respondent, on September 27, 1978. The complaint, which issued on December 20, 1979, alleges that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act. The principal issue herein is whether Respondent discharged employee Reuben Morgheim for union activity protected under the Act.

Upon the entire record, including my observation of the demeanor of the witnesses, and upon a consideration of the post-hearing brief filed by the General Counsel, I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is, and at all times material herein has been, a Delaware corporation which maintains an office and place of business in Lakewood, Colorado, and which is engaged at its Laramie River Power Station near Wheatland, Wyoming, herein called the project, in the construction of a power generating plant. Respondent, in the course and conduct of its business operations, annually purchases and receives goods and materials valued in excess of $50,000 directly from points and places outside the State of Wyoming.

The complaint alleges, Respondent admits, and I find that Respondent is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Respondent has in excess of 5,000 construction employees nationwide, all of whom are covered by collective-bargaining agreements between Respondent and various unions. There are about 350 employees at the project. The International Brotherhood of Operating Engineers and Respondent are parties to a national collective-bargaining agreement which provides that work performed by Respondent in a particular geographical location will be covered by the local agreement in that locale. There are approximately 20 employees at the project who are covered by the Operating Engineers contract which contains an exclusive hiring provision. However, Wyoming is a right-to-work State and union membership is not required by the contract. Foremen are obtained through the union hiring hall and are usually union members. The contract also provides that a foreman shall confine himself to supervision except in emergencies and that a foreman shall not operate or repair any mechanical equipment on the construction project.

Reuben Morgheim was employed by Respondent as assistant oiler for a 165-ton crane from February 1977 to May 18, 1978. His duties included fueling and otherwise servicing this crane. On May 18, when Morgheim reported to work, the crane had been fueled in his absence. When he inquired, some fellow employees informed him that the crane had been fueled by Foreman Richard Metcalf. Morgheim then went to the mechanic shack to inquire further as to who had fueled his rig. Metcalf and two unit employees, mechanic Garland Moore and utility oiler Dan Makufke, were in the mechanics' shack.

According to Morgheim, he asked Metcalf who fueled his rig and Metcalf said he did. Then Metcalf hesitated for a few minutes and said the gas man fueled the rig. Morgheim told Metcalf he had no business on the rig. Metcalf said, "What are you going to do about it?" Morgheim said he would file charges against Metcalf.[1] Metcalf said, "Go ahead, don't get smart with me, I'll fire you." Morgheim said, "Go ahead." Metcalf said, "Let's go to the office and get your check. You are fired." Morgheim said, "No Buck, you go get it."[2] Metcalf left and after about 5 minutes returned with Morgheim's final paycheck.

Metcalf testified that a number of employees were not at the site the previous day due to rain. Fuel was deliv-

[1] It is undisputed that Morgheim was referring to intraunion charges and that Metcalf so understood.

[2] "Buck" is Metcalf's nickname.

ered as the shift was about to end. Morgheim was not there, so he unlocked and fueled the rig. The next morning, according to Metcalf, he was standing in the door of the mechanics' shack when Morgheim approached and, from about 40 feet away, shouted an inquiry as to who filled his rig. Metcalf replied that he unlocked and fueled the rig. Morgheim said, "You know god darn well better than that. That's my job. I'm going to prefer charges against you." Metcalf said, "Reuben, you're fired." On cross-examination however, Metcalf denied that he told Morgheim he had fueled the rig. According to Metcalf he unlocked the rig but the gas deliveryman actually fueled the rig.

Morgheim immediately went to the office, related what had occurred to Jerry Dean, assistance project manager, and recommended that Morgheim be discharged, stating that his effectiveness as a foreman would be impaired if employees could threaten "to prefer charges against [him] and stuff like that and harassing [him] and abusing [him] and some of [their] members.[3] However, when specifically asked if he told Dean that Morgheim had been abusing and harassing him, Metcalf testified, "I told him what happened that day." Metcalf further testified that Metcalf started swinging his fists and actually struck him on the shoulder before another employee stepped between them.[4] However, Metcalf admits that this occurred after he returned to the mechanic's shack with Morgheim's check.

Morgheim testified that his inquiry as to who fueled his rig was made in a normal tone of voice. He admits, however, that when Metcalf returned with his check they had a "face-to-face" shouting match, and that he told Metcalf he was "a no good SOB." He denies that he hit Metcalf or that he attempted to do so. According to him he was gesturing with his hands, something he frequently does when excited. Makufke corroborated this. He also testified that such shouting matches are common in the construction industry.

Makufke corroborates Morgheim that his initial inquiry was made in a normal tone of voice. He further testified that Metcalf is quick-tempered and that his response was made in a loud, agitated manner, which is not unusual for Metcalf. Makufke agrees that the later conversation was heated and that both Morgheim and Metcalf were yelling. Dean testified that Metcalf told him that Morgheim yelled, "Who filled his crane." When Metcalf explained what happened, Morgheim said, "Buck, you know you can't do that. I'm going to file charges against you." Metcalf told Dean that he and Morgheim were yelling "nose-to-nose." I credit Morgheim's and Makufke's account of what occurred. They impressed me as honest, reliable witnesses. On the other hand, I found Metcalf's testimony somewhat inconsistent and he impressed me as tending toward overstatements. Accordingly, I discredit Metcalf to the extent his testimony is inconsistent with that of Morgheim and Makufke.

Metcalf testified that he recommended Morgheim's discharge because Morgheim threatened to file intraunion charges against him and for harassing, undercutting, and threatening him in the presence of other employees. Dean admits that the principal reason for his decision to discharge Morgheim was Morgheim's threat to file intraunion charges against Metcalf, that Metcalf would be ineffective as foreman if he could be threatened with intraunion charges.

Several days later, Morgheim did file intraunion charges against Metcalf for discharging him because he questioned Metcalf servicing the crane rather than assigning the job to an oiler who was present at the time. The Union later processed the charges resulting in Metcalf's being fined $300. The Union's conduct was found violative of Section 8(b)(1)(B).[5] On the same day, Morgheim filed a grievance concerning his discharge which subsequently was submitted to arbitration before an impartial arbitrator. Both the Union and Respondent were represented by counsel, presented witnesses, and filed post-hearing briefs.

B. *The Motion To Defer to Arbitration*

It has long been Board policy to defer to arbitration awards as dispositive of an unfair labor practice allegation where the arbitration proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitrator is not "clearly repugnant to the purposes and policies of the Act." *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955). However, the Board will not honor an arbitration award under *Spielberg* unless the unfair labor practice issue before the Board was both presented to and considered by the arbitrator. Further, the Board will not defer to an arbitration award which bears no indication that the arbitrator ruled on the statutory issue of discrimination in determining the propriety of an employer's disciplinary actions. *Suburban Motor Freight, Inc.*, 247 NLRB 146 (1980); *Yourga Trucking, Inc.*, 197 NLRB 928 (1972); *Airco Industrial Gases—Pacific, a Division of Air Reduction Company, Incorporated*, 195 NLRB 676 (1972). See also *Clara Barton Terrace Convalescent Center, a Division of National Health Enterprises-Delfern, Inc.*, 225 NLRB 1028 (1976).

Respondent argues that *Spielberg* requires that the Board defer to the arbitrator's finding that no unfair labor practice has been committed. However, the record does not support this argument. Thus, the only discussion in the arbitrator's award as to an unfair labor practice reads:

> Finally, the Arbitrator notes that Section 8(a)(3) unfair labor practice charge has been filed with Region 27 of the National Labor Relations Board, growing out of the facts of this case and that its consideration has been deferred based upon *Dubo Manufacturing Corp.*, 142 NLRB 431. The very last thing the Abritrator would want to do is to usurp the function of the Board. However, and for what it

[3] Metcalf had no authority to hire and fire. He is admitted to be a supervisor.

[4] Although Metcalf testified that Morgheim used his fist, the gestures he made in description of what happened were openhanded.

[5] *International Union of Operating Engineers, Local No. 400 (Babcock & Wilcox, d/b/a B & W Construction Company*, JD-(SF)-83-79.

> is worth, the Arbitrator finds no evidence of discharge because of the Grievant's Union activities. Put in its lowest common denominator, this is just a case where an employee and a foreman both lost their tempers and the foreman then acted precipitously and no subsequent investigation was ever held by senior supervision. For those reasons only, the reinstatement of the Grievant is being ordered. His own conduct denies him the right to back pay.

The arbitrator then concluded that the grievant was not discharged for just cause within the meaning of the Act and ordered him reinstated but denied him backpay because of his "over-all conduct in this case, including his 'blow-up' over a simple matter of fueling his crane on a day when he was not at work, *and* 'his post-discharge conduct.'"[6]

The arbitrator's disavowal of any intent to usurp the function of the Board and his offhand conclusions, contrary to his statement of facts, that he finds no evidence of discharge because of the grievant's union activities show that he never seriously considered whether Morgheim was discharged because he engaged in protected concerted activities or made any attempt to apply Board doctrine to this issue. Accordingly, I find that it would be inappropriate to defer to the arbitrator's award herein and Respondent's motion to defer to the arbitrator's award and dismiss the complaint under the Board's *Spielberg* doctrine is denied. Cf. *Atlantic Steel Company*, 245 NLRB 814 (1979).

C. *Conclusions*

It is well settled that an employee's efforts to implement the collective-bargaining agreement applicable to him and fellow employees is an extension of the concerted activity giving rise to that agreement and, as such, is concerted activity protected by the Act. *Merlyn Bunney and Clarence Bunney, partners, d/b/a Bunney Bros. Construction Company*, 139 NLRB 1516 (1962). It is also well established that the Act protects the right of employees to engage in intraunion activities.

Respondent argued during the course of the hearing herein that, in view of the 8(b)(1)(B) violation which resulted from the Union's pursuit of Morgheim's intraunion charge, Morgheim's threat to file intraunion charges against Metcalf was not protected activity. The Board has addressed this question in *Industrial First, Inc.*, 197 NLRB 714 (1972), and in *Bovee and Crail Construction Company*, 224 NLRB 509 (1976). In *Industrial First*, the Board, without explication, adopted the Trial Examiner's conclusion that the discharge of a union president and acting business agent whose threat to file intraunion charges against a foreman provoked the foreman's voluntary resignation as foreman was not violative of the Act.

In *Bovee and Crail*, the Board also found unprotected the conduct of union executive board members in sending a foreman a letter summoning him to a meeting to discuss ways and means of having a more harmonious job for the mutual benefit of union members and the employer's job; and threatening him with discipline for failure to appear. The Board found that the foreman was threatened with discipline and summoned to the meeting because of the underlying differences between the union and the employer; that the foreman was believed to be high enough in management to change the employer's position with respect to a number of grievances regarding the distribution of overtime, and that the action of the union's executive board was designed to coerce the foreman into representing the union's viewpoint with respect to bargainable subjects. Thus, the threat of discipline was clearly calculated to interfere with the Employer's control over its own representatives.

In explication of its conclusions, the Board stated at 509 and 511:

> It is well settled that employees who engage in intraunion activity are protected from reprisal or discrimination by their employer. However, where such activity transcends purely internal union affairs and interferes with a supervisor-member's conduct in the course of representing the interests of his employer, the activity may be violative of Section 8(b)(1)(B) of the Act and therefore lose its protection.
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> The thrust of our dissenting colleague's analysis appears to be that the Union must be considered only as an entity, and that its agents are not individually culpable as employees so long as they are assisting the Union. That is simply not the law. Employees, acting on behalf of the Union, may under certain circumstances lose the protection of the Act when they engage in slowdown activities, disparage their employer's product, or participate in a strike or in picketing in violation of a no-strike clause. Our dissenting colleague would, without legal justification, insulate the perpetrators of the unlawful act from the act itself. We cannot accept that reasoning. As the poet has said, "How can we know the dancer from the dance?"

I find the circumstances in those cases distinguishable from those herein. There the employees were discharged for engaging in conduct violative of the Act. As agents of the union they were the perpetrators of the union's unlawful conduct. Here Morgheim is merely a union member. His threat was not unlawful. The violation of Section 8(b)(1)(B) occurred only when the Union acted in response to his charge. Morgheim's concern was the implementation of the collective-bargaining agreement. That he sought to do so though intraunion procedures rather than through the contractual grievance procedure should not remove him from the protection of the Act. Attempts to implement the collective-bargaining agreement are protected regardless of the merits of the employees' claims and regardless of any failure to refer to, or comply with, formal contractually specified grievance procedures. *Adams Delivery Service, Inc.*, 237 NLRB 1411 (1978). Accordingly, I find that Morgheim's conduct was protected concerted activity.

[6] The second conversation between Morgheim and Metcalf.

Respondent further argues that the complaint should be dismissed because "the record does not reflect one scintilla of antiunion animus." I do not agree. Even though there is no evidence of hostility toward union activity in general, admittedly the main reason Morgheim was discharged was because he threatened to file intraunion charges against Metcalf in the course of his attempts to implement the collective-bargaining agreement, both of which are protected activities. This is an invasion of protected employee rights.

Respondent argues that its conduct was warranted because Morgheim's conduct occurred in the presence of other employees and tended to undercut Metcalf's authority as foreman. I do not find this sufficient justification for Respondent's conduct. Morgheim's conduct was not the opprobrious type which would so warrant his removal from the protection of the Act. Heated, and sometimes obscene, exchanges are not uncommon among construction workers and, in an industry where a foreman might be a foreman today and a rank-and-file employee tomorrow, conversations between foreman and employee are apt to be conducted on the same level as that between employee and employee. His postdischarge conduct, of course, was provoked by his discharge.

In all of the circumstances, I find that Morgheim was discharged in violation of Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Reuben Morgheim because, in the course of his attempt to implement the collective-bargaining agreement, he expressed his intent to file intraunion charges against his foreman for violating said agreement, Respondent has violated Section 8(a)(1) and (3) of the Act.

4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

Having found that Respondent discharged Reuben Morgheim in violation of Section 8(a)(1) and (3) of the Act, it is recommended that Respondent offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges. It is further recommended that Respondent make Morgheim whole for any loss of pay he may have suffered as a result of the discrimination against him by payment to him of a sum of money equal to that which he would have earned as wages during the period from the date of his discharge to the date on which Respondent offers him reinstatement less his net earnings, if any, during the said period with interest. Backpay is to be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[7]

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

ORDER[8]

The Respondent, Babcock & Wilcox Company, d/b/a B & W Construction, Lakewood, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against its employees because of their union or other protected concerted activities.

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

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

(a) Offer Reuben Morgheim immediate and full reinstatement to his former or substantially equivalent job and make him whole for any loss of earnings he may have suffered by reason of Respondent's discrimination against him in the manner and to the extent set forth in the section here entitled "The Remedy."

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

(c) Post at its Laramie River Power Station Project near Wheatland, Wyoming, copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[7] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of 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.

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

(d) Notify the Regional Director for Region 27, 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 trial in which all parties were represented by their attorneys and afforded the opportunity to present evidence in support of their respective positions, it has been found that we have violated the National Labor Relations Act in certain respects and we have been ordered to post this notice and to carry out its terms.

The National Labor Relations Act gives you, as employees, certain rights, including the right:

To engage in self-organization
To form, join, or help a union
To bargain collectively through a representative of your own choosing
To act together for collective bargaining or other mutual aid or protection
To refrain from any or all of these things.

Accordingly, we give you these assurances:

WE WILL NOT discharge, or otherwise discriminate against, our employees because of their union or other protected concerted activities.

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

WE WILL offer Reuben Morgheim immediate and full reinstatement to his former or substantially equivalent job and WE WILL make him whole for any loss of earnings he may have suffered by reason of our discrimination against him plus interest.

BABCOCK & WILCOX COMPANY D/B/A B & W CONSTRUCTION COMPANY