Wisconsin Steel Industries, Inc. *and* United Steelworkers of America, AFL–CIO. Case 30–CA–11504

August 27, 1996

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND FOX

The Board issued a Decision and Order Remanding in this case on August 3, 1995,[1] in which it (a) affirmed the rulings, findings, and conclusions of Administrative Law Judge Stephen J. Gross, as modified by the Board, (b) remanded the issue of whether the Respondent would have shut down its transportation division (over-the-road trucking operations) for lawful reasons in or after June 1991, (c) withheld judgment on the judge's finding that the layoffs of truckdrivers Ronald Andresen and Thomas Cannon violated Section 8(a)(3) and (1) of the Act as a consequence of the shutdown of the transportation division, and (d) held in abeyance the Board's issuance of an Order remedying the unfair labor practices that it found in that decision, pending completion of the additional action encompassed by the remand.

On October 31, 1995, Judge Gross issued the attached supplemental decision on remand. The General Counsel filed limited exceptions and a supporting brief, and the Respondent filed exceptions and a supporting brief and a brief in answer to the General Counsel's limited exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board reaffirms the judge's rulings, findings, and conclusions in the first underlying decision, as modified in the Board's initial decision.[2] The Board has considered the supplemental decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings, and conclusions there, and to adopt the judge's recommended Order in the underlying proceeding as modified[3] and set forth in full in this Supplemental Decision and Order.

1. In his supplemental decision on remand, the judge reiterated his conclusion in his initial decision that the Respondent began to shut down its transportation division starting on June 28, 1991,[4] in response to what it believed were union activities by its transportation division truckdrivers, and that the shutdown, insofar as it was accelerated for that reason, therefore violated Section 8(a)(3) and (1) of the Act.[5] We affirm that conclusion.

2. The judge also concluded in his supplemental decision, however, that the record establishes that the Respondent would have shut down its transportation division for lawful economic reasons sometime subsequent to the June 28 start of its unlawfully accelerated shutdown. We affirm that conclusion also.

Accordingly, the judge has recommended in his supplemental decision that the Respondent should not be required to reestablish its transportation division as part of the remedy for its unlawfully accelerated shutdown, and he has also modified his recommended remedial Order in his initial decision, to delete the requirement that the Respondent offer reinstatement to any employees who were unlawfully terminated in conjunction with the unlawfully accelerated shutdown. We affirm these remedial modifications.[6]

3. In his supplemental decision, the judge also reiterated his conclusion in his initial decision that transportation division truckdriver Ronald Andresen was unlawfully laid off on June 28, in conjunction with the unlawfully accelerated shutdown starting that date.[7] We affirm that conclusion.

4. The judge further concluded in his supplemental decision, however, that the record is inadequate to determine on what date or series of dates subsequent to June 28 the Respondent would have shut down the transportation division for lawful reasons. Accordingly, he found in his supplemental decision that the record is therefore also inadequate to determine whether (and if so, who and on what date) any of the other transportation division employees (i.e., in addition to Andresen) are entitled to backpay in conjunction with the unlawfully accelerated phase of the shutdown starting June 28, prior to whatever subsequent date or series of dates the Respondent would have lawfully shut down the transportation division.

Given the finding that the Respondent unlawfully accelerated the shutdown by commencing it on June 28, we believe that the burden shifted to the Respondent to establish the date on which it would have shut down for lawful reasons. We agree with the judge that the Respondent has not established that date. Thus, on the basis of the current record, any layoffs attributable

[1] 318 NLRB 212.

[2] Id.

[3] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[4] All dates are 1991, unless otherwise stated.

[5] Sec. II of the judge's attached supplemental decision, and 318 NLRB at 230 of the judge's initial decision (''I thus conclude that, as of late June [1991], while [Respondent president] Ted Dolhun had for lawful reasons edged close to deciding to shut down the transportation division, the shutdown began as soon as it did in response to what Dolhun believed were the drivers' union activities.'').

[6] *Bridgeford Distributing Co.*, 229 NLRB 678 (1977); *Calcite Corp.*, 228 NLRB 1048 (1977). See the other cases cited in fn. 8 of the Board's Decision in 318 NLRB 212, supra.

[7] Sec. III of the judge's attached supplemental decision, and 318 NLRB at 231 of the judge's initial decision.

to the shutdown are unlawful. This would include the layoffs of Cannon on July 30 and August 6, 1991. However, in compliance proceedings, the Respondent will be given a further opportunity to establish a subsequent date on which it would have shut down for lawful reasons. Backpay remedies would end as of that date.[8]

CONCLUSIONS OF LAW

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

2. The Union, United Steelworkers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the exclusive collective-bargaining representative of the following unit of employees:

> All full-time and regular part-time production and maintenance employees, including truck drivers, employed by Wisconsin Steel Industries at its Milwaukee, Wisconsin facility, but excluding all office clerical employees, guards and supervisors as defined in the Act.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by bargaining in bad faith with the Union.

5. The Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally discontinuing its practice of providing coffee and doughnuts to employees on paydays, thus changing terms and conditions of employment of bargaining unit employees without providing the Union with advance notice and an opportunity to bargain about the matter, at a time when the Union was the collective-bargaining representative of the Respondent's employees.

6. The Respondent violated Section 8(a)(3) and (1) of the Act by accelerating its shutdown of its transportation division starting June 28, 1991, because of the union activities of its employees.

7. The Respondent violated Section 8(a)(3) and (1) of the Act by laying off employee Ronald Andresen on June 28, 1991, and by laying off employee Thomas Cannon on July 30 and August 6, 1991, because of the Respondent's unlawfully accelerated shutdown of the transportation division starting June 28, 1991.

8. The Respondent violated Section 8(a)(1) of the Act by engaging in surveillance of its employees' union activities when Supervisor Dale Lewandowski drove slowly past the Ice House Tavern and peered at cars in the parking lot.

9. The Respondent violated Section 8(a)(1) of the Act by the threatening and harassing statements made by President Ted Dolhun to employees Lay Clyde Beamon, Paul Herbst, and Kenneth Perrin because of their union activities.

10. The Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily laying off Herbst because of his union activities.

11. The Respondent violated Section 8(a)(5) and (1) of the Act by laying off Herbst, Michael Gray, and James Reinke without providing the Union with prior notice and an opportunity to bargain about these layoffs, at a time when the Union was the collective-bargaining representative of the Respondent's employees.

12. The Respondent violated Section 8(a)(1) of the Act by Ted Dolhun's threats to sell the Respondent's trucks and close its plant if the employees voted in favor of representation by the Union.

ORDER

The National Labor Relations Board orders that the Respondent, Wisconsin Steel Industries, Inc., Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Bargaining in bad faith with the United Steelworkers of America, AFL–CIO as the exclusive collective-bargaining representative of the employees in the following bargaining unit:

> All full-time and regular part-time production and maintenance employees, including truck drivers, employed by Wisconsin Steel Industries at its Milwaukee, Wisconsin facility, but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Unilaterally discontinuing its practice of providing coffee and doughnuts to employees on payday, without first providing the Union with notice and an opportunity to bargain about this matter.

(c) Threatening to shut down its operations in response to its employees' union activities and support for the Union.

(d) Accelerating the shutdown of any part of its operations in response to its employees' union activities and support for the Union.

(e) Laying off employees because of their union activities and support for the Union.

(f) Engaging in surveillance of its employees' union activities.

(g) Threatening and harassing employees because of their union activities and support for the Union.

[8] The parties fully litigated the issue of whether the layoffs of Cannon (on July 30 and August 6, 1991) were lawful. As indicated supra, the Respondent has not shown that the shutdown of the transportation division would have occurred on or before these dates. Contrary to our dissenting colleague, we would not give the Respondent yet another opportunity to make this showing. On the other hand, the parties have not litigated events after August 6. Thus, we would give the Respondent the opportunity to establish that the shutdown would have lawfully occurred on dates subsequent to August 6.

(h) Laying off employees without providing the Union with prior notice and an opportunity to bargain about these layoffs.

(i) Threatening to sell its trucks and close its plant if the employees vote in favor of union representation.

(j) 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) Bargain in good faith with the Union, as the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit set out in section 1(a) of this Order, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request by the Union, reinstitute the former practice of providing coffee and doughnuts to employees on paydays as such practice existed prior to August 1991.

(c) Within 14 days from the date of this Order, offer Michael Gray, Paul Herbst, and James Reinke full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of their unlawful layoffs, with backpay to be computed as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and with interest to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(d) Make Ronald Andresen and Thomas Cannon whole for any loss of earnings and other benefits suffered as a result of their unlawful layoffs, with backpay and interest to be computed in the manner set forth in section 2(c) of this Order.

(e) Make whole any other employees of the Respondent's transportation division (as identified, if at all, in the compliance phase of this proceeding) who were laid off as a result of the Respondent's unlawful acceleration of its shutdown of its transportation division starting June 28, 1991, prior to the date (also to be determined in the compliance phase as sometime subsequent to August 6, 1991) that the Respondent would have shut down its transportation division for lawful reasons, for any loss of earnings and other benefits suffered as a result of any such unlawful layoff, with any backpay and interest to be computed in the manner set forth in section 2(c) of this Order.

(f) On request by the Union, bargain with the Union about the decisions to lay off employees Gray, Herbst, and Reinke.

(g) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the affected employees in writing that this has been done and that the discharges will not be used against them in any way.

(h) Preserve and, within 14 days of a 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.

(i) Within 14 days after service by the Region, post at Milwaukee, Wisconsin, copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 the 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 6, 1991.

(j) 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.

MEMBER FOX, dissenting in part.

I agree with my colleagues' decision in all respects, except for their finding that the discharge of Thomas Cannon violated Section 8(a)(3). This finding is inconsistent with the judge's other findings that my colleagues adopt, and with procedures established by the Board in prior cases for determining appropriate remedies in accelerated shutdown cases.

The record reflects that in June 1991, when the Respondent embarked upon the course of conduct at issue here, the Respondent employed in its transportation division a dispatcher and seven or eight truckdrivers, including Ronald Andresen and Thomas Cannon. Andresen was laid off on June 28, and Cannon on July 30 and August 6. Over the next 7 months, the Respondent continued to implement its shutdown of the transportation division, with the result that by March

[8] 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.''

1992 the number of truckdrivers employed had been reduced to one.

In his supplemental decision, the judge reaffirmed his finding that had it not been for the drivers' union activity, the Respondent would not have commenced the shutdown of its trucking division as of June 28, and that therefore the layoff of Andresen violated Section 8(a)(3) and (1). The judge also found, however, that the Respondent would have shut down its transportation division for lawful reasons on some date *after* June 28. Because the issue of when the lawful shutdown would have occurred could not be determined from the record, the judge recommended that we leave to the compliance stage the determination of when the Respondent would have shut down the transportation division for lawful reasons, and which, if any, of the other transportation division employees (including Cannon) were laid off prior to when they would have been laid off for lawful reasons. This recommendation is consistent with the procedure followed by the Board in, e.g., *Bridgeford Distributing Co*., 229 NLRB 678, 679 (1977); and *Calcite Corp*., 228 NLRB 1048, 1049–1050 (1977).

My colleagues agree with the judge that the Respondent would have shut down its transportation division for lawful reasons on some date after June 28, 1991, and that the date or dates when the lawful shutdown would have occurred cannot be determined from the present record. Nevertheless, and contrary to the judge, they find that the layoffs of Thomas Cannon on July 30 and August 6, 1991, violated Section 8(a)(3) and state that the Respondent will be limited in compliance to establishing a ''subsequent date'' on which it would have shut down the transportation division for lawful reasons. In effect, my colleagues are making a finding that the lawful shutdown could not have commenced prior to August 7, 1991, a finding which is not warranted on the record before us and is only likely to confuse the question of how future cases involving accelerated shutdowns are to be litigated.

As the Board's decisions in *Bridgeport Distributing* and *Calcite Corp*., supra, reflect, it is not necessary to decide if Cannon's layoffs independently violated Section 8(a)(3) in order to ensure a fair and equitable make-whole remedy. If the Respondent carries the burden of establishing in the compliance proceedings that it would have laid off Cannon on July 30 and August 6 pursuant to the lawful shutdown of its transportation division, then Cannon is not entitled to backpay. If, however, it is determined in those proceedings that Cannon or any of the other transportation division employees were laid off prior to the date or series of dates when they would have been laid off for lawful reasons, then they will be entitled to backpay as part of the remedy of the effects of the unlawfully accelerated shutdown. This is the procedure I would adhere to in this case.

APPENDIX

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 bargain in bad faith with the United Steelworkers of America, AFL–CIO as the exclusive collective-bargaining representative of the employees in the following bargaining unit:

> All full-time and regular part-time production and maintenance employees, including truck drivers, employed by Wisconsin Steel Industries at its Milwaukee, Wisconsin facility, but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally discontinue our practice of providing coffee and doughnuts to employees on paydays without first providing the Union with notice and an opportunity to bargain about this matter.

WE WILL NOT threaten to shut down our operations in response to our employees' union activities and support for the Union.

WE WILL NOT accelerate the shutdown of any part of our operations in response to our employees' union activities and support for the Union.

WE WILL NOT lay off employees because of their union activities and support for the Union.

WE WILL NOT engage in surveillance of our employees' union activities.

WE WILL NOT threaten and harass employees because of their union activities and support for the Union.

WE WILL NOT lay off employees without providing the Union with prior notice and an opportunity to bargain about these layoffs.

WE WILL NOT threaten to sell our trucks and close our plant if our employees vote in favor of union representation.

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

WE WILL bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit set out above concerning terms and conditions of employment and, if an understanding is reached, WE WILL embody the understanding in a signed agreement.

WE WILL, on request by the Union, reinstitute the former practice of providing coffee and doughnuts to our employees on paydays as such practice existed prior to August 1991.

WE WILL offer Michael Gray, Paul Herbst, and James Reinke immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of their unlawful layoffs, with interest.

WE WILL make Ronald Andresen and Thomas Cannon whole for any loss of earnings and other benefits suffered as a result of their unlawful layoffs, with interest.

WE WILL make whole any other employees of our former transportation division who are identified in the compliance phase of this case as having been laid off as a result of our unlawful acceleration of our shutdown of our transportation division starting June 28, 1991, prior to the date sometime subsequent to August 6, 1991, that it is determined in the compliance phase that we would have shut down our transportation division for lawful reasons, for any loss of earnings and other benefits suffered as a result of any such unlawful layoff, with interest.

WE WILL, on request by the Union, bargain with the Union about the decisions to lay off Michael Gray, Paul Herbst, and James Reinke.

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

WISCONSIN STEEL INDUSTRIES, INC.

SUPPLEMENTAL DECISION

I.

STEPHEN J. GROSS, Administrative Law Judge. From the outset of this case, two of the main issues have been: (1) whether WSI shut down its transportation division for reasons that violated the National Labor Relations Act; and (2) if so, whether WSI should be required to reestablish the division as it existed prior to the shutdown.

As for that first issue, in the decision that I issued in this proceeding,[1] I concluded that WSI began to shut down the transportation division, starting June 28, 1991, in response to what WSI's owner and chief executive, Ted Dolhun, believed were the drivers' union activities and that, accordingly, the shutdown violated Section 8(a)(3) and (1) of the National Labor Relations Act.

As for the second issue, I proceeded on the assumption that WSI should be required to resume the transportation division's operations unless the record showed when WSI would have shut down the division absent Dolhun's unlawful motivation or unless requiring WSI to resume them would be unduly burdensome for the Company. Because of these assumptions and because I found that the record failed to show either that resuming the transportation division's operations would be unduly burdensome for the Company or ''when financial and operating considerations alone would have led the Company to end its trucking operations,''[2] I recommended that WSI be ordered to resume the transportation division's operations. That is to say, I did not specifically address the question of whether WSI would have shut down the transportation division for lawful reasons on some date subsequent to June 28, which date could not be determined on the basis of the record here.

That was error. In order to avoid an order requiring resumption of the operations at issue, respondents in WSI's position are not required to prove when they would have ceased the operations for lawful reasons, only that they would have done so. See *Bridgeford Distributing Co*., 229 NLRB 678, 679 (1977); cf. *Calcite Corp*., 228 NLRB 1048 (1977).

The Board, in its Decision in this proceeding, above, discusses that error and then directs me

> . . . to find, on the basis of the existing record and consistent with the foregoing discussion, whether the Respondent would have shut down its transportation division for lawful reasons in June 1991 or thereafter, and to determine the appropriate remedy, if any.[3]

II.

Having reviewed the record and considered the parties' responses to the Board's remand order,[4] I conclude that the record shows that for lawful reasons WSI would have terminated the operations of its transportation division sometime

[1] I will refer to that decision as ''my decision,'' in contrast to this supplemental decision.

[2] 318 NLRB at 242, below. All references in this supplemental decision to my decision are to 318 NLRB 212 (1995).

[3] Id. at 214. In fn. 9 of that part of the Board's decision:

> Member Truesdale—joins his colleagues in remanding to the judge the complaint allegation that the Respondent violated Sec. 8(a)(3) and (1) by shutting down its transportation division. In light of the remand, however, he finds it unnecessary to characterize the applicability of specific evidence adduced by the Respondent at the hearing to the allegations remanded.

[4] By order dated August 30, 1995, I advised the parties that I would consider briefs ''discussing the issues concerning the transportation division raised by the Board's decision.'' The General Counsel, WSI, and the Steelworkers submitted briefs in response to that order. The Steelworkers' brief asks that I recommend to the Board that the remedy here include reimbursement of negotiation and litigation costs. But I do not consider that to be within the scope of the Board's remand Order.

subsequent to June 28, 1991. Accordingly, while WSI's shutdown of its transportation division violated Section 8(a)(3) of the Act, WSI should not be required to reestablish its transportation division.

My decision discusses the financial and operating data of record relevant to the issue at hand (in secs. VII and VIII and in the remedy section). No purpose would be served in repeating that discussion except to note that, based on those data, I found that ''while Ted Dolhun had for lawful reasons edged close to deciding to shut down the transportation division, the shutdown began as soon as it did in response to what Dolhun believed were the drivers' union activities.''[5] I discuss here only two additional considerations.

The first concerns the relationship, in numbers of employees, between the size of the transportation division and the size of WSI as a whole. (My decision refers to the ''drastic reduction'' in employment at WSI and its relevance to the question of why WSI shut down the transportation division.[6] But it is not more specific than that.) In terms of numbers of employees, the transportation division was always a small tail on the WSI dog. Thus in early July (with Andresen newly laid off), WSI employed a dispatcher and six or seven truckdrivers,[7] of whom several handled pickup-and-delivery work.[8] At that time WSI employed about 40 nondriver employees.[9] By November 1, due to a reduction in its heat-treating business resulting from the then ongoing recession, WSI had cut its work force by about 50 percent, to 20 nondriver employees.[10] Given this reduction in employee complement, it is exceedingly unlikely that, even had no union ever appeared at WSI, at this juncture WSI would have employed more than a couple truckdrivers. (At that time WSI employed two truckdrivers.) By March 1992 the situation was even more extreme: WSI was down to 15 nondriver employees (and one truckdriver).[11]

The other additional consideration is Dolhun's personality. I can readily conceive of Dolhun, in a fit of pique, selling, or taking out of commission some, or even all, of the transportation division's trucks sooner than financial factors alone would have led him to. Indeed, I so found in my decision. But having heard Dolhun testify, and having heard a great deal about him from other witnesses throughout the hearing, I cannot conceive of Dolhun shutting down a part of WSI that he had intended to keep in operation merely because of union-related employee activities.

III.

The last issue to consider is what revisions should be made to the remedy as recommended in my decision.

The record here is inadequate to permit a determination of on what date the operations of the transportation division would have been ended for lawful reasons. In fact, the record is insufficient to determine whether, but for the presence of the Union, WSI would have shut down the entire transportation division at once, or whether the shutdown would have taken place over many months. The result of this deficiency in the record is that it cannot be determined which of the transportation division's employees—apart from Andresen—are entitled to backpay. (Andresen is an exception because WSI laid him off on June 28, prior to the time WSI would have shut down the transportation division for lawful reasons. My decision, in fact, dates the start of the unlawful shutdown from Andresen's layoff.) Similarly, the record does not permit a determination of the dates in respect to which backpay is due (for those employees of the transportation division who are entitled to backpay).

I accordingly recommend that there be left to the compliance stage, in addition to the usual backpay issues, the determination of:

On what date or series of dates WSI would have terminated the operations of its transportation division for lawful reasons.

What employees of that division, in addition to Andresen, if any, were laid off prior to the time they would have been laid off for lawful reasons.

When Andresen and such other employees would have been laid off for lawful reasons.[12]

As before, backpay shall be computed as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]

[5] Id. at 230.
[6] Id. at 242.
[7] See R. Exh. 22 and Tr. 1142.
[8] As defined in the Board's decision and in mine (318 NLRB at 212 and 226 fn. 19), WSI's transportation division includes only over-the-road carriage, not pickup-and-delivery service.
[9] See R. Exh. 44.
[10] R. Exh. 45.
[11] R. Exh. 46.
[12] See, in this connection, *Bridgeford Distributing*, supra, 229 NLRB at 679; *Calcite*, supra, 228 NLRB at 1050.