

Allied Systems, Ltd. and Inter Mobile, Inc., Joint Employers and Deborah L. Smith. Case 14-CA-19752

February 11, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On August 9, 1991, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Inter Mobile, Inc., Hazelwood, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ Respondent Inter Mobile has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² Respondent Inter Mobile excepts, inter alia, to the failure of the administrative law judge specifically to discuss evidence that officials of the Norfolk Southern Railroad refused to permit Allied Systems to bid for vehicle off-loading work on behalf of subsidiary Auto Convoy. Accepting arguendo such refusal as the fact, we note that Auto Convoy was unionized and Inter Mobile was not. Hence, while Norfolk Southern's position on this matter may explain why Allied submitted a bid on behalf of Inter Mobile, it does not explain Inter Mobile's decision not to consider for hire the laid-off unionized employees of Auto Convoy.

³ There are no exceptions to the judge's recommendation that the complaint against Respondent Allied Systems be dismissed.

Michael T. Jamison, Esq., for the General Counsel.
Alexander E. Wilson III, Esq. (Alston & Bird), of Atlanta, Georgia, for the Respondents.
Barbara Harvey, Esq., of Detroit, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. This case was tried in St. Louis, Missouri, on October 15-16, 1990.

The original charge was filed October 7, 1988,¹ against Inter Mobile, Inc., a subsidiary of Allied Systems. The amended charge and the complaint were filed August 17, 1990, against Allied Systems, Ltd. and Inter Mobile, Inc., Joint Employers.²

Before August 6, 1988, Ford Motor Company's union employees off-loaded its new cars and trucks from other plants from rail cars at its assembly plant in Hazelwood. Union yard employees of Auto Convoy Co. (one of Allied Systems' operating companies) shuttled the vehicles about three-quarters of a mile to Auto Convoy's baying area for parking until delivered on its transport trucks. To compete with nonunion competitors when Ford decided to have the rail off-loading performed away from its premises, Allied Systems placed the low bid in the name of a nonunion subsidiary, Inter Mobile.

This case arose when Inter Mobile hired 15 inexperienced employees to begin performing the off-loading, shuttling, and baying work on August 6 and refused to consider for employment the 9 employees that Auto Convoy laid off the day before. The General Counsel contends that Inter Mobile refused "for fear that [it] would become organized and have to operate as a union company."

The primary issues are whether Respondent Inter Mobile discriminatorily refused to consider hiring the nine laid-off employees because of their union membership, violating Section 8(a)(3) and (1) of the National Labor Relations Act, and whether the charge against Respondent Allied Systems was timely.

On the entire record,³ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondents, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Inter Mobile, a corporation, annually performs automobile off-loading services valued over \$50,000 in Hazelwood, Missouri, for Norfolk and Southern Corporation. Norfolk Southern annually derives over \$50,000 from the interstate rail transportation of goods from Missouri to other States. Inter Mobile admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Automobile Transport Chauffeurs, Demonstrators and Helpers Teamsters Local 604, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

¹ All dates are in 1988 unless otherwise indicated.

² The caption is corrected to reflect the correct names of the Respondents.

³ The Respondent's unopposed motion to correct the transcript, dated November 16, 1990, is granted and received in evidence as R. Exh. 4.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Discrimination Against Union Employees

1. Change in operations

For years, Auto Convoy Co. has provided truck transportation of Ford Motor Company's new cars and trucks in the St. Louis area. The cars and trucks assembled in other Ford plants were off-loaded from Norfolk Southern's rail cars at Ford's minivan assembly plant in Hazelwood. Ford's union employees off-loaded the new vehicles into the plant's releasing lot, where they were placed alongside the new minivans. (Tr. 19, 28–29, 66–67, 150.)

Auto Convoy's 17 yard (or pull-crew) employees shuttled both the minivans and the other cars and trucks from the releasing lot to Auto Convoy's baying area located about three-quarters of a mile from the Ford plant (Tr. 53, 151; R. Exhs. 1 and 2). These yard employees (van drivers and other pull-crew members) were represented by Teamsters Local 604, which also represents Auto Convoy's transport drivers (Tr. 20–21; G.C. Exh. 2).

A van driver would drive pull-crew members to the Ford plant, where they would get in the vehicles and drive them to the Auto Convoy facility. Before returning for the next trip, the pull crew would park the vehicles in the baying area, write the serial number on the back window, put the keys in envelopes, and complete the paper work for the office clerks to prepare the loads for the transport drivers to deliver. Yard employees would also inspect the vehicles. (Tr. 26–28, 151–153.)

About March or April, Ford notified Auto Convoy that the off-loading of inbound cars and trucks must be relocated outside the plant area. Auto Convoy, which had purchased the property next door "to expand this lot onto" its baying area, proposed that the off-loading be performed on this adjoining property. (Tr. 67–68, 154–155; G.C. Exh. 7, p. 1.)

Auto Convoy also proposed to Ford that all the off-loading and shuttle work be "done by one company—with the same supervision—that the people to do both jobs would answer to one person," even though "It would cost more money" for the work to be assigned to Auto Convoy's union employees than having the work done nonunion. Ford refused and decided that the off-loading of the inbound vehicles would be assigned to Norfolk Southern for it to subcontract. Auto Convoy employees would continue to shuttle the minivans from the releasing lot. (Tr. 68, 155–156, 159; G.C. Exh. 7, p. 7.)

As finally negotiated, Auto Convoy sold its adjoining property to Norfolk Southern, which began building an auto ramp and "about 300 extra parking spaces" on the property for off-loading Ford's inbound vehicles. Norfolk Southern took bids for off-loading the rail cars and shuttling and baying the vehicles in the area adjoining the Auto Convoy facility. (Tr. 155; G.C. Exh. 7, p. 1.)

2. Filing of lowest bid

Previously, as Inter Mobile acknowledged in its brief (at 15), Auto Convoy had lost to underbidders all its rail off-loading contracts at other locations, except one at its Dallas facility (Tr. 196, 208). This time, to compete with nonunion competitors, Allied Systems (Auto Convoy's management company) placed a bid in the name of Inter Mobile, a non-

union company. Inter Mobile is Allied Systems' wholly owned subsidiary, which had previously been a dormant corporation. It has the same officers as Allied Systems and two of the same directors. (Tr. 6–7, 11, 159; G.C. Exh. 7, p. 7.)

Inter Mobile's bid, based on wages of \$8 an hour and lower benefits (as compared to Auto Convoy's yard employee rate of \$15.09 and Teamsters benefits), proved to be the lowest of about 15 bids that Norfolk Southern received. Norfolk Southern granted the contract to Inter Mobile. (Tr. 23, 42–43, 70; G.C. Exhs. 6 and 7, p. 1.)

Meanwhile, Ford decided that the off-loading must be relocated by Saturday, August 6, instead of mid-November when the new auto ramp near the Auto Convoy facility was expected to be completed. Norfolk Southern decided that in the meantime the off-loading would be done about 2 miles away at its Berkeley, Missouri facility. Because of the increase in travel time, more employees were required to perform the shuttling until the new ramp could be used (Tr. 156, 163–164, 175).

3. Hiring decision

Inter Mobile decided not to hire any of the union employees that Auto Convoy would be laying off.

Acting on behalf of Inter Mobile, Allied Systems Vice President Tom Baker asked Auto Convoy Terminal Manager James Gartin to place a newspaper ad for employees. The ad, which appeared in the paper on Saturday, July 30, was for "rail unloading and shuttling, full time and part time, possible permanent positions." It gave the name Inter Mobile and Auto Convoy's address and telephone number. (Tr. 39, 167–168.)

On Monday morning, August 1, Allied Systems Personnel Manager John Harris began receiving applications and interviewing applicants in Terminal Manager Gartin's office. When pull-crew member Bernard Johnson asked Gartin for an application, Gartin refused to give Johnson one and said "he couldn't help me" (Tr. 128). Johnson was one of the three pull-crew members (along with his brother Maurice and George Levels) who had years of experience with rail-car work, loading and off-loading new automobiles (Tr. 109–111, 121–123).

The next day, August 2, Charging Party Deborah Smith asked Gartin what was going on. After twice denying that he knew anything about it, Gartin finally stated that "all I know is I was instructed by the home office to assist Inter Mobile in taking applications and hiring applicants, and other than that I don't know anything." (Tr. 44.) Gartin refused to give an application to any of the pull crew until he gave Sharon Kozemczak one after she threatened to go to the NLRB. It is undisputed, as Kozemczak credibly testified, that on August 5, the day she was laid off (Tr. 228–229):

A. I asked [Gartin] if I could have an application for employment with Inter Mobile and he said, well, I can't give you an application. And I said why? And he said, well, I just can't give you an application, *they're not accepting any applications from Auto Convoy employees*. . . . And I said, well, I think that you should give me an application because I was going to take it to the NLRB if he didn't. And he said, well, just a minute. And he got an application and gave it to me. [Emphasis added.]

She filed the application, but was not hired even though she gave assurances that she could perform the job (Tr. 10, 233). The experienced George Levels also applied, but likewise was not hired (Tr. 10, 111–115).

Meanwhile one of the applicants informed the pull crew that Inter Mobile was offering to pay \$8 an hour (instead of \$15.09), \$1.30 a unit (based on the \$8 rate), 5 paid holidays (instead of 10), and the Auto Convoy office employees' insurance plan and a pension plan to be announced later, instead of the Teamsters Central States plans (Tr. 41–43, 102; G.C. Exh. 6).

At 3:30 p.m. on Thursday, August 4, Vice President Baker held a meeting with the pull crew. In the meeting, which Gartin's confidential secretary recorded in question and answer form with few omissions (G.C. Exh. 7), Baker revealed Inter Mobile's decision not to hire any of the union employees being laid off. The detailed minutes of the meeting read (p. 6):

TOM BAKER: I know it doesn't help to say this with everyone laid off, but how could you bid this job at an extremely low rate and have people make a high rate of income and the extra benefits? It wouldn't make sense to spend two or three times the money than what the company is making.

GEORGE LEVELS: *Why didn't you give us the option to bid on the jobs for this new company at the lower rate?*

TOM BAKER: I won't try to explain it—it's the decision that we made—to hire all new people. [Emphasis added.]

Thus, Baker gave no explanation for Inter Mobile's decision not to permit the laid-off union employees to bid for the lower rated jobs.

I note that at the trial, when Baker was asked on cross-examination if any of the employees asked at the meeting "if they could work for Inter Mobile," he evaded the question and answered (Tr. 187–188): "I advised that all of the parties to be employed by Inter Mobile would be new day-one employees." I also note that Levels erroneously recalled that it was he, not Baker, who asked the question about working for the new company. I discredit Levels' recollection that Baker asked him if he would work for less money and that he answered "it's better than unemployment," because he had a family and needed work (Tr. 118–119).

Explaining the options the laid-off employees had, Baker stated (p. 2): "They are not great options by any means, but you will be laid off—not terminated!" He mentioned the transfer of their seniority to other locations or qualifying to drive a truck.

Baker ignored and made no effort to dispute Charging Party Deborah Smith's accusation that Inter Mobile was refusing to hire them because "They don't want us to organize and become union." The minutes show that the following transpired at the meeting (G.C. Exh. 7, pp. 4–5):

DANNY MCCLAUGHLIN: How come INTER MOBILE has an office in the back of AUTO CONVOY?

TOM BAKER: It is a clumsy situation, but I have authorized this company to help set up the office for INTER MOBILE.

ELMER ASH: Is this just a way of getting the lower-salaried people to take the work of the higher-salaried people?

MARY ANN KEARNEY: Especially when three (3) of our men are experienced unloaders.

DEBBIE SMITH: *They don't want us to organize and become union.*

TOM BAKER: Currently what it is costing us here on a per-unit basis is more than the entire bid for INTER MOBILE. You would be losing money on every car unloaded if we were to turn around and put a higher paid force on this operation. It would be folly! [Emphasis added.]

The following day Auto Convoy laid off 9 of its 17 yard employees. They were Duane Eicken, Lloyd Hayden, Bernard Johnson, Maurice Johnson, Mary Kearney, Sharon Kozemczak, George Levels, Robert Newman, and Deborah Smith. (Tr. 10, 53.)

The next morning, August 6, Inter Mobile began "operating out of [the Auto Convoy] office in the back corner" with 15 new employees, none of whom had any experience doing the work. With on-the-job training, they started off-loading Ford's inbound cars and trucks from the rail cars at Norfolk Southern's facility in Berkeley, shuttling the new vehicles to the new baying area near the Auto Convoy facility, and baying the vehicles for delivery in Auto Convoy trucks (Tr. 174, 189–190, 204, 217; G.C. Exh. 7, pp. 4 and 11; R. Exh. 3).

Inter Mobile has never hired any of the laid-off union employees (Tr. 10).

4. Contentions of the parties

The General Counsel contends in his brief (at 19–20) that Inter Mobile "did not under any circumstances intend to hire the union-represented employees of Auto Convoy for fear that Inter Mobile would become organized and have to operate as a union company."

Inter Mobile contends in its brief (at 17, 23) that the General Counsel has failed to establish a prima facie case of discriminatory motivation for Inter Mobile's failure to hire the laid-off Auto Convoy employees.

Inter Mobile argues (at 22–23) that "Auto Convoy's approximately 900 employees at its 12 terminals were entirely unionized" (Tr. 145) and that "It is preposterous to assert that Allied Systems [Inter Mobile's management company] would pursue a course of anti-union animus with respect to the small employee group at Inter Mobile when surrounded by the UAW [at Ford], the Teamsters Union [at Auto Convoy] and the various rail unions [at Norfolk Southern]." This argument ignores the fact that Inter Mobile is a nonunion employer, as obviously contemplated when Allied Systems submitted the low bid in Inter Mobile's name to compete with nonunion competitors.

I agree with the General Counsel that the reasons Inter Mobile offered for not hiring the alleged discriminatees are specious.

When asked "why did you not solicit applications for employment at Inter Mobile from Auto Convoy," Allied Systems Manager Baker answered there were several reasons.

First, "My dissatisfaction of [the pull crew's] productivity or lack thereof for some time" (Tr. 170) and "As I explained earlier the performance of that crew had been very

unsatisfactory for a number of years” (Tr. 181). I find this purported dissatisfaction to be an afterthought. Baker admitted on cross-examination (Tr. 205) that his “dissatisfaction went toward the cost per unit,” which obviously was based on union wages and benefits, almost twice the wages and benefits the Inter Mobile employees would receive under the low bid that Inter Mobile had made (G.C. Exh. 6).

Baker did not expressed any dissatisfaction with the pull crew or their production at the August 4 meeting when he announced the decision “to hire all new people” (Tr. 186, 206–207; G.C. Exh. 7). There had been some talk about improving production. Around June or July, Assistant Terminal Manager Perry Coleman said that Baker was angry that the night pull crew was not pulling their fair share of the automobiles and they wanted more production. But when Coleman rode around on the van with them a couple of nights, they showed him the traffic at certain times and pointed out that they could not go faster within the speed limits. (Tr. 129, 132, 136–137.)

Baker admitted (Tr. 186–187) that he had never reprimanded any of the pull-crew members for poor work performance or directed anyone to do so. I discredit, as fabrications, his claims that the pull crew “had been unsatisfactory for a number of years” (Tr. 181) and that the entire pull crew had been unsatisfactory during the past 2 years (Tr. 168–169, 205–206).

Second, Vice President Baker claimed that Inter Mobile did not solicit applications from the laid-off Auto Convoy employees because “it was very, very evident that most if not all of those employees would be offered work at Hazelwood or other Auto Convoy locations at a rate of pay double that of what would be paid at Inter Mobile” (Tr. 170). This is obviously a shift in position from what he said at the August 4 meeting about the laid-off employees’ options. He then admitted, as quoted above, “They are not great options by any means” and mentioned only the transfer of their seniority to other locations or qualifying to drive a truck.

Later, when restating this second purported reason (Tr. 181), he added that if the laid-off employees “were to end up working for Inter Mobile,” making “half of what they could make at Auto Convoy,” they would leave Inter Mobile “as soon as an opportunity existed at Auto Convoy” and “we’d be right back where we started.” Thus, Inter Mobile is arguing that instead of offering available work to the laid-off employees, it was disregarding the employees’ concern about being unemployed, with no earnings. I find this to be another afterthought.

Third, Baker claimed (Tr. 170): “And I think thirdly the [very, very negative] reaction I received at the August 4th meeting . . . to my inquiry whether or not they wanted to work for Inter Mobile.” I find that this purported reason is another fabrication and an afterthought.

In the first place, the evidence shows that the decision had already been made before August 4 not to hire any of the union employees being laid off. In the second place, the minutes of the meeting belie his claim that he asked “is there anyone in this group who would be willing to work for eight dollars an hour unloading rail cars” and that “the response I got was very loud and very negative” (Tr. 179–180, 183). The minutes and other evidence show that he did not ask such a question. The employees had already heard about the \$8 wage rate from one of the applicants. (Tr. 101–102, 185–

186.) The minutes (G.C. Exh. 7, p. 6) show instead, as quoted above:

GEORGE LEVELS: *Why didn’t you give us the option to bid on the jobs for this new company at the lower rate?*

TOM BAKER: I won’t try to explain it—*it’s the decision that we made—to hire all new people.* [Emphasis added.]

On cross-examination, apparently to bolster these purported reasons for Inter Mobile’s refusal to consider hiring the nine laid-off union employees, Vice President Baker claimed (Tr. 190): “I would be concerned about whether or not anyone on that group could perform that work” because “this is a very physically demanding job.” He did not mention this purported concern in the August 4 meeting. Moreover, at one point on cross-examination (Tr. 189), Baker admitted that in his opinion, “At least some” of the Auto Convoy employees could perform the work. At another point (Tr. 207) he admitted being aware by at least August 4 that some members of the pull crew, “I think three,” had “done for some time this off-loading work before.”

The off-loading was more physically demanding than the shuttling work (Tr. 157–158, 190–192). I note as discussed above, however, that Sharon Kozemczak (one of the three laid-off female pull-crew members) insisted on applying and gave assurances that she could perform the job. The physical ability of the other union employees was never questioned. Furthermore, Baker admitted that when Auto Convoy was seeking the off-loading contract, it was his opinion that Auto Convoy employees “could perform the work” (Tr. 188).

In view of Inter Mobile’s refusal to even consider hiring the union employees, I find this purported concern is another afterthought.

5. Concluding findings

Having rejected all of Inter Mobile’s purported reasons for refusing to hire any of the nine laid-off union employees, I find that the General Counsel has made a prima facie showing to support an inference that the laid-off Auto Convoy employees’ union membership was a motivating factor in Inter Mobile’s refusal to consider hiring them. *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

In making this finding I rely particularly on three grounds.

First, Vice President Baker’s told the Auto Convoy employees in the August 4 meeting, “I won’t try to explain” why Inter Mobile decided “to hire all new employees” and not give the laid-off employees “the option to bid on the jobs for this new company at the lower rate.” As found, the purported reasons he gave at the trial were afterthoughts.

Second, Inter Mobile hired 15 totally inexperienced employees, who had to be trained on the job, yet refused to hire for the off-loading, shuttling, and baying work either Bernard Johnson (who was refused an application) or George Levels (who was refused employment after he filed an application). Both Johnson and Levels had over 12 years of rail-car experience, loading and off-loading new automobiles (Tr. 111, 122), as well as satisfactory years of experience in doing the same shuttling and baying work for the sister company, Auto Convoy.

Third, Inter Mobile had an obviously discriminatory reason for keeping union members off the payroll. It had previously been underbid by union competitors for off-loading work at other locations. I infer that to ensure its own nonunion status, it decided to deny employment to any union applicant—particularly the laid-off Auto Convoy employees whose membership was in Teamsters Local 604, which represented the transport drivers. As found, Vice President Baker ignored the accusation at the August 4 meeting that “They don’t want us to organize and become union.”

I find that the Company has failed to carry its burden to demonstrate that it would not have hired the laid-off union employees in the absence of the unlawful motivation. I therefore find that Inter Mobile, to discourage membership in Local 604, has since August 6 discriminatorily refused to consider hiring the nine Auto Convoy employees who were laid off August 5, violating Section 8(a)(3) and (1) of the Act.

B. *Untimely Charge*

As found, the original charge (G.C. Exh. 1A) was filed October 7, 1988, against Inter Mobile, “a subsidiary of Allied Systems.” The amended charge (G.C. Exh. 1C) was not filed until nearly 2 years later on August 17, 1990, against Allied Systems and Inter Mobile.

I agree with the Respondents that the amended charge, alleging Allied Systems to be a joint employer, “was not filed within the six month limitations period prescribed by Section 10(b) of the Act.” There is no allegation that Allied Systems is an alter ego of Inter Mobile or that the two Respondents are a single employer. *Rainbow Press of Fredonia*, 287 NLRB 477, 482 (1987).

I therefore find that the charge against Allied Systems was untimely filed and that the complaint against it as a joint employer must be dismissed.

CONCLUSIONS OF LAW

1. By discriminatorily refusing to consider hiring laid-off employees Duane Eicken, Lloyd Hayden, Bernard Johnson, Maurice Johnson, Mary Kearney, Sharon Kozemczak, George Levels, Robert Newman, and Deborah Smith on and since August 6, 1988, because of their membership in Teamsters Local 604, Inter Mobile, Inc., a subsidiary of Allied Systems, Ltd., has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. The charge against Allied Systems was untimely filed and the complaint against it as a joint employer must be dismissed.

REMEDY

Having found that the Respondent, Inter Mobile, Inc., a subsidiary of Allied Systems, Ltd., has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily refused to consider hiring nine laid-off union employees on and since August 6, 1988, it must offer them employment and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of its first refusal to date of

proper offer of employment, or (if sufficient jobs are not available after dismissal of employees previously hired) to date of placement on a preferential hiring list, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, Inter Mobile, Inc., Hazelwood, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to consider hiring any applicant because of membership in Teamsters Local 604 or any other union.

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

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

(a) Offer immediate employment to the following persons for off-loading rail cars and other yard work, dismissing if necessary other employees performing this work, and make them whole for any loss of earnings and other benefits suffered as a result of the failure to hire them on and since August 6, 1988, in the manner set forth in the remedy section of the decision:

Duane Eicken	Robert Newman
Maurice Johnson	Bernard Johnson
George Levels	Sharon Kozemczak
Lloyd Hayden	Deborah Smith
Mary Kearney	

If sufficient jobs are not available for them, place those remaining on a preferential hiring list and offer them employment, on a nondiscriminatory basis, before any other persons are hired.

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

(c) Post at its facility in Hazelwood, Missouri, copies of the attached notice marked “Appendix.”⁵ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken

⁴If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁵If 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.”

by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

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

IT IS FURTHER ORDERED that the complaint against Allied Systems, Ltd. as a joint employer is dismissed.

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.

WE WILL NOT refuse to consider hiring any applicant because of membership in Teamsters Local 604 or any other union.

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 offer immediate employment to the following persons for off-loading rail cars and other yard work, dismissing if necessary other employees hired to perform this work and, if sufficient jobs are not then available, placing those remaining on a preferential hiring list, and WE WILL make them whole for any loss of earnings and other benefits resulting from our failure on and since August 6, 1988, to hire them, less any net interim earnings, plus interest:

- | | |
|-----------------|------------------|
| Duane Eicken | Robert Newman |
| Maurice Johnson | Bernard Johnson |
| George Levels | Sharon Kozemczak |
| Lloyd Hayden | Deborah Smith |
| Mary Kearney | |

INTER MOBILE, INC., A SUBSIDIARY OF
ALLIED SYSTEMS, LTD.