

**Allegheny Aggregates, Inc. and International Union
of Operating Engineers, Local 37, AFL-CIO.**
Case 5-CA-22666

July 21, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On December 22, 1992, Administrative Law Judge Michael O. Miller issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a brief in reply.

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

The Respondent operates the Bedrock stone quarry in Flintstone, Maryland. Prior to December 1991, the Respondent managed operations at the quarry, but the production and maintenance workers were employed by CQ Services, Inc. At that time, CQ Services had recognized the Union as the employees' representative and the parties had negotiated a collective-bargaining agreement. In December 1991, the Respondent accepted applications from the employees and became their employer.

The Respondent has excepted, inter alia, to the judge's finding that it violated Section 8(a)(1) of the Act when its agent, Thomas Mattingly, made certain coercive statements at a meeting of unit employees on April 23, 1992. This meeting took place at the employees' request² and occurred 7 days after the Respondent received a request for recognition from the Union, unlawfully interrogated employees to determine whether they supported the Union, and implemented a mass layoff of all unit employees.

In this regard, the complaint alleges, the judge found, and the Respondent does not dispute that during the course of that meeting Mattingly angrily cursed and screamed at the employees, told them that the Respondent and the Union had the money to fight each other, but the employees would starve if they persisted in their organizational efforts, solicited the employees to revoke their authorization cards, advised them that any collective bargaining would be futile, and promised and granted a benefit to employee Michael

Wycoff. While the Respondent does not dispute these findings, and admits that it unlawfully promised and granted a benefit to Wycoff through Mattingly's action, it contends that Mattingly was not its agent when he made the other coercive statements set forth above. For the reasons that follow, we find no merit to this contention.

In determining whether a person is acting as the agent of another, the Board applies the common law principles of agency as set forth in the Restatement 2d of Agency. See *Dentech Corp.*, 294 NLRB 924 (1989); *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988).³ Thus, agency may be established, inter alia, under the doctrine of apparent authority, when the principal's manifestations to a third party supply a reasonable basis for the third party to believe that the principal has authorized the alleged agent to do the acts in question. Id. As the Board observed in *West Bay Maintenance*, "either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or the principal should realize that this conduct [the manifestation] is likely to create such belief." 291 NLRB at 83.

Applying these principles to this case, we agree with the judge that Mattingly was the Respondent's agent with respect to the coercive statements described above. In this regard, we rely particularly on the following facts: (1) initially, the Respondent's president, Ronald Matovcik, jointly agreed with Mattingly to meet with the employees, knowing that the employees had called Mattingly in order to set up the meeting and that the Respondent's layoff and labor dispute were the intended subjects of the meeting, and Matovcik subsequently decided not to attend on advice of counsel but knowing that Mattingly was going to proceed with the meeting concerning the Respondent's labor relations in any event, Matovcik expressly asked Mattingly to apologize to the employees on his behalf for his absence; (2) Matovcik also delegated Mattingly to tell employee Michael Wycoff to go to the quarry to pick up his paycheck and that a scheduled deduction to repay a loan owed by Wycoff would not be made;⁴ (3)

³ Contrary to the Respondent, the Board does not apply a different standard in the case of "outsiders," such as local citizens, public officials, or customers. While the nature and extent of the alleged agent's relationship to the alleged principal is, of course, relevant to the agency inquiry, the legal standard to be applied remains the same. To the extent that *Westward Ho Hotel*, 251 NLRB 1199, 1207 fn. 13 (1980), and *Byrds Mfg. Corp.*, 140 NLRB 147, 155 (1962), can be read to suggest that a different standard is applicable in the case of "outsiders," those cases are overruled.

⁴ In this regard, Mattingly told Wycoff that it was up to him (Mattingly) whether Wycoff would get the full amount of his pay, and that he had decided to give Wycoff the money because Wycoff had come to the meeting and apologized for criticizing Mattingly on a prior occasion. Significantly, the Respondent admits that it thereby unlawfully promised—and subsequently granted—a benefit to Wycoff. There is no evidence that the admitted unlawful promise

Continued

¹ To the extent that the Respondent's exceptions take issue with the judge's failure to find that the employees would have been laid off for lawful reasons by a date certain subsequent to April 16, 1992, we find that these exceptions raise issues which are best resolved at the compliance stage of these proceedings.

² Mattingly had been CQ Services' labor relations representative when the employees worked there. The employees sought the meeting in order to find out what role their union activities played in the layoff.

Matovcik had remained silent when employees previously expressed in his presence a belief that Mattingly was a part owner of the Bedrock quarry;⁵ and (4) although Matovcik was at least aware that Mattingly had “spoken of his view” with regard to the employees’ union efforts, he never disavowed Mattingly’s remarks or attempted to express his own views in contradistinction to those of Mattingly.

Under these circumstances, we agree with the judge that Mattingly was the Respondent’s agent with respect to all of the coercive remarks set forth above. We also agree with the judge, for the reasons stated by him, that Mattingly’s statement that he was expressing his own views does not negate his status as the Respondent’s agent, in light of all of the above and Mattingly’s other statements, and actions, which were inconsistent with that disclaimer.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Allegany Aggregates, Inc., Flintstone, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

was conveyed by anyone other than Mattingly, and the Respondent does not dispute that Wycoff was paid in accordance with Mattingly’s promise.

⁵Mattingly also continued to maintain an asphalt plant on the quarry premises.

Steven Sokolow, Esq., for the General Counsel.
Leonard Cohen, Esq. and *Reid Bowman, Esq.*, for the Respondent.
John Singleton, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge. This case was tried in Baltimore, Maryland, on October 23, 1992, based on an unfair labor practice charge filed on April 17, 1992, by International Union of Operating Engineers, Local 37, AFL–CIO (the Union) and a complaint issued by the Regional Director for Region 5 of the National Labor Relations Board (the Board) on June 1, 1992, as amended on July 1, 1992.¹ The complaint alleges that Allegany Aggregates, Inc. (Respondent) interfered with, restrained, and coerced employees in the exercise of their Section 7 rights, discriminatorily accelerated employee layoffs, and failed and refused to bargain with the Union as the exclusive representative of its employees in an appropriate unit, in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act).

At the hearing, Respondent withdrew its answer to the extent that certain allegations in the amended complaint had been denied, expressly stating that it would not contest those allegations. General Counsel also withdrew certain allega-

tions. The parties additionally entered into a stipulation concerning certain facts and the transcript of the hearing on this matter before the United States District Court for the District of Maryland, under Section 10(j) of the Act was received in evidence.

On the entire record, and after considering the briefs filed by General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. THE EMPLOYER’S BUSINESS AND THE UNION’S LABOR ORGANIZATION STATUS PRELIMINARY CONCLUSIONS OF LAW

The Respondent is a Maryland corporation, engaged in the operation of a stone quarry in Flintstone, Maryland, known as the Bedrock Quarry. In the course and conduct of its business operations, the Respondent annually sells and ships products, goods, and materials which are valued in excess of \$50,000 from the Bedrock Quarry facility directly to points located outside the State of Maryland. The complaint alleges, Respondent admits, and I find and conclude that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

A. *The Facts*

Pursuant to the stipulation of facts and the undenied, and therefore admitted,² allegations of the complaint, I find as follows:

CQ Services, Inc. was the employer of the production and maintenance employees at the Bedrock Quarry throughout 1991. During 1991 and 1992, Respondent managed that quarry. In December 1991, Respondent’s president, Ronald Matovcik, and J. Thomas Mattingly, CQ’s labor relations representative,³ met with the CQ employees and told them that Respondent would become their employer as of January 1, 1992. On or about that date, Respondent accepted applications from the former CQ employees and became their employer.

On April 8, Respondent’s seven unit employees, Larry P. Broadwater, Earl L. Emeric Jr., Charles Grabenstein, Lawrence A. Keller, Thomas E. Martin, Randy H. Wright, and Michael L. Wycoff, signed authorization cards designating the Union as their collective-bargaining agent. Also signing those cards were Gary Emerick and David R. Landis, who had worked at the Bedrock Quarry in 1991 on the CQ Services payroll. The cards had been solicited by Wycoff and Keller.

Respondent received a request that it bargain collectively with the Union as the exclusive representative of its the bargaining unit employees on April 16, 1992.⁴ Prior to receipt

²NLRB Rules and Regulations, Sec. 102.20.

³Additionally, Mattingly, through companies which he controlled, was one of Respondent’s most important customers. Mattingly continues to maintain an asphalt plant at the Bedrock Quarry, close to its source of raw materials.

⁴The unit, admitted to be appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act, consists

¹All dates hereinafter are 1992 unless otherwise specified.

of this request, Respondent had been unaware that any of its employees, or the former production and maintenance employees of CQ Services, Inc. had signed authorization cards.

On receipt of the bargaining request, Matovcik asked Respondent's vice president of marketing, J. Robert Smith (an admitted supervisor for, and agent of, Respondent within the meaning of Sec. 2(11) and (13) of the Act) to determine whether the Union's claim to represent its seven employees was true. Smith and another supervisor gathered all the employees together and asked them if they had all signed union cards. The employees confirmed that they had. The results of the interrogation were reported back to Matovcik.

On that same date, Respondent accelerated an already planned layoff of the seven named unit employees. Respondent admits that the accelerated layoffs were motivated by the employees' membership in, support of, and assistance to the Union and was intended to discourage them from engaging in such activities.

On April 22, Matovcik met with Mattingly in the latter's office in Cumberland, Maryland. In Matovcik's presence, Mattingly received a telephone call from Thomas Martin, one of the laid-off employees. Martin requested a meeting between those employees and Matovcik and Mattingly. Mattingly discussed the request with Matovcik and told Matovcik that the employees probably wanted to talk with them about the layoff and the part their union activities had in it. Matovcik agreed to meet with the employees for such a discussion and, in his presence, Mattingly told Martin that they would meet with the employees. A meeting was scheduled for the following day.

After he had agreed to the meeting, Matovcik was advised by his attorney that he should not attend the meeting. He informed Mattingly and asked that Mattingly convey his regrets to the employees for his absence. Matovcik also told Mattingly that when he saw laid-off employee Michael Wycoff at the meeting, he should tell Wycoff to go to the quarry to pick up a check. Matovcik wrote out the amount of that check on a piece of paper, which he gave to Mattingly. The check was to be for the full amount of Wycoff's earnings, without any immediate deduction for a loan earlier made by Matovcik to Wycoff. If the loan had been deducted as scheduled, Wycoff would have received virtually no money in this final check following the layoff.

All the unit employees attended the April 23 meeting. Contrary to their expectations, Matovcik did not attend. He stayed away on the advice of counsel and that reason for his absence was related to the employees by Mattingly. Mattingly, erroneously believed by the employees to hold a minority interest in Respondent, addressed the employees. As stated in the language of the complaint, uncontested by Respondent, he:

(a) Threatened employees with loss of employment by telling them, in an effort to dissuade them from supporting the Union, that "they would not eat."

of: All production and maintenance employees employed by Respondent at its Bedrock (Martin's Mountain), Flintstone, Maryland quarry, but excluding office clerical employees, guards and supervisors.

(b) Solicited employees to revoke the authorization cards they signed for the Union.

(c) Advised employees that any collective bargaining would be futile.

(d) Promised and granted a benefit to an employee in order to dissuade him from supporting the Union.⁵

Following this meeting, four of the laid-off employees, Earl Emeric, Thomas Martin, Randy Wright, and Michael Wycoff, along with Gary Emerick and David Landis, met with the attorney to whom Mattingly had referred them. Those six employees signed documents revoking their authorization cards and stating that they no longer wished to be represented by the Union.

On April 24, Mattingly and Matovcik discussed what had transpired at Mattingly's meeting with the employees. The record contains few details of this conversation. Mattingly told Matovcik that he had extended Matovcik's regrets for not attending, had discussed the labor problems at the Bedrock Quarry, and "had spoken of his point of view" with respect to them. Matovcik never disavowed any of Mattingly's statements.

Randy Wright and Thomas Martin were recalled about May 18. Earl Emeric and Lawrence Broadwater were recalled about May 26, at which time Gary Emerick was hired into the unit. The remaining three unit employees, Michael Wycoff, Lawrence Keller, and Charles Grabenstein have not been recalled.

From April 16 and until ordered to do so by Judge Garvis of the United States District Court for the District of Maryland, on October 5, Respondent failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit. The Union repeated its request to bargain on October 8 and a first bargaining session was held on October 15 with at least one additional meeting scheduled thereafter.

B. Analysis

1. Mattingly's agency status

In order to hold the Employer responsible for Mattingly's conduct, it is necessary that he be found to have been Re-

⁵The testimony indicates that Mattingly angrily cursed and screamed at the employees and told them that while both management and the Union had the money to fight each other, the employees would starve if they persisted in their organizational efforts. He directed them to an attorney for the preparation of revocations of their authorization cards and offered to advance them the attorney's retainer. He also told them that the employer was only required to bargain in good faith, could offer them \$4.75 per hour and, if they refused to accept that, could replace them. The promise and grant of benefit allegation derives from Matovcik's instructions to Mattingly with regard to Wycoff's paycheck. According to Wycoff, Mattingly told him that the decision as to whether or not he would get this money was left to Mattingly; Mattingly told Wycoff he could get the funds because Wycoff had come to the meeting and apologized for a remark critical of Mattingly which Wycoff had made at an earlier meeting. It also appears that Mattingly told the employees that he was not speaking for Respondent.

spondent's agent, under either the doctrine of apparent authority or ratification.⁶ As the Board has stated:⁷

Section 2(13) of the Act provides that:

In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to do the acts in question. . . . Thus, either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or the principal should realize that this conduct is likely to create such belief. Restatement 2d, *Agency* §27 (1958, Comment). Two conditions, therefore, must be satisfied before apparent authority is deemed created: (1) there must be some manifestation by the principal to a third party, and (2) the third party must believe that the extent of the authority granted to the agent encompasses the contemplated activity. *Id.* at § 8.

On the other hand, ratification is defined as "the affirmance by a person of a prior act that did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him." *Id.* at § 82. Section 83 defines "affirmance" as either (a) a manifestation of an election by one on whose account an unauthorized act has been done to treat the act as authorized, or (b) conduct by him justifiable only if there were such an election. Finally, Section 94 states that "[a]n affirmance of an unauthorized transaction can be inferred from a failure to repudiate it."

Here, as in *Dentech*, I find that application of the doctrine of apparent authority requires a finding of Respondent's responsibility for Mattingly's conduct. The following facts, known to Matovcik or brought about by him, would lead the employees to believe that Mattingly was speaking on his behalf: (1) Mattingly was a significant customer of the Respondent, maintaining an asphalt plant on the site of the

⁶I reject Respondent's contention that the Board applies a different and exclusive test to determine responsibility for the acts of outsiders, a test requiring that the alleged agent be under the direction and control of the employer or that the conduct be ratified by the employer. See *Westward Ho Hotel*, 251 NLRB 1199, 1207 fn. 13 (1980), and cases cited there. Such a requirement would be at odds with the plain language of Sec. 2(13), as quoted in the text here. Moreover, the Board and the courts continue to find responsibility where the employer has cloaked an outsider with apparent authority. See, for example, *Color Tech Corp.*, 286 NLRB 476, 486 (1987), and *Idaho Falls Consolidated Hospitals v. NLRB*, 731 F.2d 1384, 1387 (9th Cir. 1984) ("An employer may be held responsible for anyone acting as its agent if employees could reasonably believe that the agent was speaking for the employer.")

⁷*Dentech Corp.*, 294 NLRB 924, 925-926 (1989), quoting from *Service Employees Local 87 (West Bay)*, 291 NLRB 82, 83 (1988).

Bedrock Aura. Thus, Respondent was dependent upon Mattingly's business and good will. (2) The employees believed that Mattingly was a part owner of the Bedrock Quarry; that belief had been expressed in Matovcik's presence and was not disputed. (3) Mattingly had participated with Matovcik in the meeting when Matovcik went from being the manager of the quarry on CQ's behalf to employer of the Bedrock Quarry employees. (4) Most significantly, Matovcik jointly agreed with Mattingly to meet with the employees on April 23, knowing that the layoff and labor dispute were the intended subjects of that meeting. (5) When Matovcik was advised by counsel not to attend that meeting, he was put on notice of the risk of improper statements but did nothing to caution Mattingly to avoid threats and other prohibited conduct. Rather, he delegated Mattingly to apologize for his absence and to convey a message to one employee about his paycheck. Essentially, he let Mattingly go to speak in his stead. (6) Matovcik expressly authorized Mattingly to offer Wycoff an extension of his loan (this message gave rise to the undisputed promise and grant of benefit). (7) With some knowledge of what had transpired at that meeting, Matovcik took no steps to disavow anything Mattingly had said.⁸

Respondent relies, in part, on uncontradicted testimony to the effect that Mattingly told the employees that he was speaking on his own or expressing his own views. Where, however, such statements are accompanied by inconsistent statements or actions, they carry little weight in negating apparent authority. *Dentech*, supra at 927. Here, Mattingly inconsistently acted as a conduit for Matovcik's messages. Additionally, he told the employees that they did not need a union because "they had an open door policy, if we had a problem, we should come to them and talk to them," implying that he was allied with Matovcik in dealing with the employees and their problems. Further, his anger at the employees' desire for union representation was inconsistent with that of an outsider and conveyed the impression that he was personally affected by it.

2. A bargaining order remedy

The parties have agreed to a bargaining order remedy in this matter, whether or not Mattingly's conduct is attributed to Respondent. The complaint alleges, and Respondent by withdrawing its answer as stated on the record before me, has admitted that its unfair labor practices were:

so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices and of conducting a fair election by the use of traditional remedies is slight, and the employees' sentiments regarding representation, having been expressed through authorization cards, would, on balance, be protected

⁸*Dentech*, supra at 926; *Haynes Industries*, 232 NLRB 1092, 1099-1100 (1977). While Matovcik's failure to disavow Mattingly's statements, in light of what the record shows he knew of them, adds weight to the conclusion of apparent authority, I deem that the lack of evidence establishing his knowledge of the specifics of what took place precludes a finding of ratification. I further find that to reach the conclusion that Matovcik expressly authorized Mattingly's threats, as suggested by the General Counsel, would require an impermissible piling of inference upon inference. *Diagnostic Center Hospital Corp.*, 228 NLRB 1215, 1216 (1977).

better by issuance of a bargaining order than by traditional remedies alone.

I agree. They were of a type likely to undermine the Union's majority and preclude the conduct of a free election. Thus, I note that even absent Mattingly's conduct, every member of this small unit was interrogated and suffered an accelerated layoff. Moreover, the extent of Respondent's opposition to the exercise of their statutory rights was vividly demonstrated to them by the alacrity with which Respondent acted. The interrogation, which confirmed their union activity, and layoffs followed immediately upon receipt of the Union's demand for recognition. The appropriate remedy for such violations is a bargaining order. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 610-616 (1969). *Color Tech Corp.*, supra at 476-477.

Moreover, I have found Respondent responsible for Mattingly's conduct of April 23. That conduct, consisting of threats, solicitation of repudiations of their support for the Union, and the promise and grant of a benefit, was totally effective in destroying employee support for the Union. All of the foregoing, I find, precludes the possibility of a fair election even after the passage of time and the application of traditional remedies. The employees' expression of support for the Union, as demonstrated by the valid authorization cards each of them executed, will be better protected by a bargaining order than by a direction of an election. See *Color Tech Corp.*, supra at 477.

CONCLUSIONS OF LAW

1. By interrogating employees concerning their support for the Union, threatening employees with loss of employment in an effort to dissuade them from supporting the Union, soliciting employees to revoke authorization cards signed for the Union, advising employees that any collective bargaining would be futile, and by promising and granting a benefit to an employee in order to dissuade him from supporting the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By discriminatorily accelerating the layoff of employees because they joined, supported, or assisted the Union, the Respondent has violated Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

3. By failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the employees in a unit appropriate for the purposes of collective bargaining since on or about April 15, 1992, the Respondent has violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent 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 accelerated the layoff of employees, it must make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as com-

puted in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

As set forth above, Respondent must recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Allegany Aggregates, Inc., Flintstone, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their support for the Union, threatening employees with loss of employment in an effort to dissuade them from supporting the Union, soliciting employees to revoke authorization cards signed for the Union, advising employees that any collective bargaining would be futile, and promising and granting benefits to employees in order to dissuade them from supporting the Union.

(b) Discriminatorily accelerating the layoff of employees because they joined, supported, or assisted the Union.

(c) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the employees in a unit appropriate for the purposes of collective bargaining since on or about April 16, 1992.

(d) 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) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees employed by Respondent at its Bedrock (Martin's Mountain), Flintstone, Maryland quarry, but excluding office clerical employees, guards and supervisors.

(b) Make Larry P. Broadwater, Earl L. Emeric Jr., Charles Grabenstein, Lawrence A. Keller, Thomas E. Martin, Randy H. Wright, and Michael L. Wycoff whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

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

(d) Post at its facility in Flintstone, Maryland, copies of the attached notice marked "Appendix."¹⁰ Copies of the no-

⁹If 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.

¹⁰If 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

tice, on forms provided by the Regional Director for Region 5, 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 by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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 interrogate employees concerning their support for the Union, threaten employees with loss of employment in an effort to dissuade them from supporting the Union, solicit employees to revoke authorization cards signed for the Union, advise employees that any collective bargaining would be futile, or promise and grant benefits to employees in order to dissuade them from supporting the Union.

WE WILL NOT discriminatorily accelerate the layoff of employees because they joined, supported, or assisted the Union.

WE WILL NOT fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit appropriate for the purposes of collective bargaining.

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, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All production and maintenance employees employed by Respondent at its Bedrock (Martin's Mountain), Flintstone, Maryland quarry, but excluding office clerical employees, guards and supervisors.

WE WILL make Larry P. Broadwater, Earl L. Emeric Jr., Charles Grabenstein, Lawrence A. Keller, Thomas E. Martin, Randy H. Wright, and Michael L. Wycoff whole for any loss of earnings and other benefits resulting from the discrimination against them, less any net interim earnings, plus interest.

ALLEGANY AGGREGATES, INC.