

Trade West Construction, Inc. and Carpenters Contractors Cooperation Committee. Case 28-CA-17087

May 14, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

On December 7, 2001, Administrative Law Judge Albert A. Metz issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering 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 the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Trade West Construction, Inc., Mesquite, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the attached notice for that of the administrative law judge.

¹ The Respondent 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 Drywall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² Chairman Battista does not pass on the judge's finding that employee Daniel Santos was engaged in "concerted" protected activity when he discussed wages one-on-one with Quad C Representative Juan Gonzalez on the jobsite on September 25. Even if the conversation between Gonzalez (a nonemployee) and Santos was not itself concerted activity, the Respondent believed that it was concerted activity. The Respondent, through Duane Linge, also saw Gonzalez talking to other employees. Thus, the Respondent believed that the conversation between Gonzalez and Santos was part and parcel of conversations between Gonzalez and other employees. Accordingly, the Respondent's subsequent interrogation and threats to Santos were violations of Sec. 8(a)(1). See *Mike Yurosek & Son, Inc.*, 306 NLRB 1037 (1992); *Metropolitan Orthopedic Associates, P.C.*, 237 NLRB 427, 429 (1978).

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against Daniel Santos, Louis Brito, or any other employee, for engaging in concerted activity protected under the Act, including protected activity involving the Carpenters Contractors Cooperation Committee.

WE WILL NOT interrogate our employees about their protected concerted activities.

WE WILL NOT threaten our employees with the loss of their jobs or otherwise threaten, restrain, or coerce them because they engage in protected concerted activity.

WE WILL NOT create the impression that we are spying on our employees' protected concerted activities.

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

WE WILL offer Daniel Santos and Louis Brito 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.

WE WILL make Daniel Santos and Louis Brito whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, less any net interim earnings, plus interest.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Daniel Santos and Louis Brito, and WE WILL, within 3 days thereafter notify these employees in writing that this has been done and that their discharges will not be used against them in any way.

TRADE WEST CONSTRUCTION, INC.

Joel C. Schochet, Esq., for the General Counsel.

Robert L. Murphy, Esq., for the Respondent.

DECISION¹

ALBERT A. METZ, Administrative Law Judge. The issues presented are whether certain of the Respondent's actions involving its employees (particularly Daniel Santos and Louis Brito) violated Section 8(a)(1) of the National Labor Relations Act (the Act).²

I. JURISDICTION

The Respondent 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.

II. THE PARTIES TO THE PROCEEDING

The Respondent, a Nevada corporation, is a general construction contractor with a place of business in Mesquite, Nevada. The Respondent is a nonunion contractor. Respondent's supervisors and agents relevant to this case are owner, Todd Leavitt, office manager, Harold (Nick) Janneck, and crew chief, Duane Linge.

Daniel Santos and Louis Brito were Respondent's employees who worked on Linge's crew. They were, with single exceptions, not assigned any work after March 2, 2001. The Respondent's motivation for not assigning them work is the central issue in this case.

The Charging Party, Carpenters Contractors Cooperation Committee (referred to as Quad C), is an organization that is funded by construction contractors that employ union carpenters. The purpose of Quad C is to monitor nonunion contractors and insure that they pay prevailing wages. Juan Gonzalez is the Quad C representative who is involved in this case.

III. THE EMPLOYEES' CONCERTED ACTIVITIES

A. *Work of Santos and Brito*

Daniel Santos began working for Respondent on a continuous basis in July 2000. Louis Brito began working for Respondent shortly thereafter. Brito and Santos did various types of work for Respondent, including concrete finishing, carpentry, painting, roofing, and general laboring. They worked at several jobsites for the Respondent and it is stipulated that the employees commonly moved from job to job.

Santos and Brito were working at the Mesquite Senior and Community Center in mid-December 2000. Brito testified that

in December 2000, Todd Leavitt gave him a bonus and said, "You guys ain't going anywhere We have plenty of work lined up."

B. *January 25*

On January 25, Quad C Representative Juan Gonzalez visited the Senior Center construction site. Gonzalez knew that there was a prevailing wage job at the site and he went there to satisfy himself that the employees were being properly paid. Gonzalez testified that he encountered Respondent's owner, Leavitt. According to Gonzalez he introduced himself to Leavitt, gave him his business card, explained his purpose for being at the site, and requested permission to speak to the employees. Gonzalez testified that Leavitt said that Gonzalez could speak to the employees. Leavitt denied meeting Gonzalez on this date. Considering the relative demeanor of these witnesses and their respective recall of events, I credit Gonzalez' testimony as to what occurred on January 25.

Gonzalez left Leavitt and went through the jobsite where he encountered Respondent's employee Shane Hoopes. They talked briefly and he then saw Respondent's foreman, Linge. Gonzalez testified that he asked Linge if he knew that the job was a prevailing wage project. Gonzalez said that drywall work was carpenter work. Linge told him that the prevailing wage fluctuated between laborer and carpenter rates of pay. Gonzalez asked if the drywall work that Linge was doing was being paid on an hourly basis and Linge said it was.

Gonzalez next spoke with Santos who was installing drywall. Gonzalez testified that he noticed that Leavitt was nearby sitting in his truck and looking in their direction. Gonzalez asked Santos if he knew that the project was covered by prevailing wage considerations, and Santos said he did. Gonzalez asked Santos how much he was getting paid and Santos replied that he was getting paid piecework. Gonzalez told Santos that getting paid piecework was legal as long as it equaled or surpassed the prevailing wage. Gonzalez told Santos that he was from Quad C and gave Santos his business card. Santos and Gonzalez agreed that they would meet again at lunchtime. As Gonzalez left, he noticed that Leavitt was still in his truck and looking in his direction. Gonzalez went up to Leavitt and thanked him for allowing him to speak to Leavitt's employees. Gonzalez said that he would try to get back to the jobsite in the future and he left.

Shortly after Gonzalez left Linge walked over to Santos and asked if Gonzalez had spoken to him. Santos said he had and Linge asked what Gonzalez wanted. Santos said that Gonzalez had asked him if he was making a lot of money and that Santos had said no, he was working by piece. Santos testified that Linge appeared angered by what Santos had told Gonzalez.

Leavitt soon talked to Santos and asked what he had said to Gonzalez. Santos replied that he told Gonzalez that he was getting paid by the piece. Santos testified that Leavitt's eyes got wide and Leavitt said that he knew that Santos was lying. Leavitt told Santos that he should go home and look for another job. Leavitt then told Santos to get the other employees together so he could speak to them.

Leavitt testified that he did ask Santos what he had discussed with Gonzalez. Leavitt recalled that Santos cryptically replied

¹ This case was heard at Las Vegas, Nevada, on October 4-5, 2001. All dates in this decision refer to the year 2001 unless otherwise stated.

² 29 U.S.C. § 158(a)(1).

that he had told Gonzalez “that he (Santos) was helping us (the Respondent) out.” Leavitt testified that he did not understand what Santos meant by this statement and he asked him to explain. Leavitt said that Santos could not clarify what he had told Gonzalez. On cross-examination, Leavitt was asked if he said anything else to Santos and he replied that he could not remember. Leavitt was an uncertain witness who could not recall the details of his discussion with Santos. He could not remember if he threatened to discharge or lay off Santos, but he did not think he did. I have considered the comparative demeanor of Santos and Leavitt and found Santos’ testimony to be persuasive. Santos was certain of the details of the conversation and was forthcoming in his answers to questions. Leavitt demonstrated a very cloudy recollection of the dialogue and admittedly could only remember what he might have said. I credit Santos’ version of what was said in this conversation.

After questioning Santos, Leavitt met with the employees in the Respondent’s job trailer. Employees Santos, Louis Brito, Rulan (Sam) Lee, Claude (Eugene) Burnette, Ramon Sanchez, and Shane Hoopes were present along with Supervisor Linge. Leavitt admittedly asked the employees who had spoken to Gonzalez. Linge, Hoopes, and Santos indicated they had. Leavitt asked them what they had said to Gonzalez. Hoopes and Linge said that they told Gonzalez they were being paid hourly. Leavitt asked Santos if he knew who Gonzalez was. Santos said that he did not know who Gonzalez was because Gonzalez wore a hardhat and was dressed like a worker. Brito recalled that Leavitt said to Santos that if he found out that Santos was lying about not knowing who Gonzalez was, Santos would be looking for another job. Leavitt said that he had given the employees the choice of doing the drywall work so that they could stay busy. He told them he had not bid the drywall installation high enough for outside contractors to perform the work and it was benefiting both the Respondent and the employees to do the drywall work. Brito testified that Leavitt said that now there was a problem because Santos had “screwed up” and told Gonzalez that the employees were working on a piecework basis when he knew it was not legal to do so.

Leavitt testified that he was worried about the piecework pay possibly being illegal and he conceded he might have said that Santos screwed up by telling Gonzalez he was being paid piecework. Brito recalled that Leavitt said that he did not know why the employees were whining about doing the job on a piecework basis when he was doing them a favor by keeping them working until other jobs started. At the end of the meeting, Leavitt asked Santos what he would say if Gonzalez came back again. Before Santos could answer Brito spoke up and said that, “Daniel is going to tell the goddamned truth, right, Daniel?” Brito then walked out of the trailer.

Leavitt professed a murky recollection of what he said at the employee meeting. In contrast, I found Brito and Santos had good recall of what their employer told them. I credit their testimony as to what Leavitt stated during the meeting.

Brito talked with Linge after the meeting. He questioned what the “big deal” was about Santos talking to Gonzalez if he had nothing to hide. Linge replied that the employees should

know better than to talk because “it was illegal to do [drywall work] if it was under the prevailing wage.”

C. Analysis of January 25 Events

The Government alleges that the Respondent violated the Act when Leavitt interrogated Santos and threatened him before the employee meeting. It is also alleged that the Respondent committed further violations during the meeting.

1. Conversation with Santos

When an employer interrogates an employee about his protected activity the interrogation may violate the Act if done in a coercive atmosphere. *Greenfield Die & Mfg. Corp.*, 327 NLRB 237 (1998); *Delta Gas, Inc.*, 282 NLRB 1315 (1987).

When Santos talked with Gonzalez about his wages he was engaged in concerted activity protected by the Act. Leavitt, Respondent’s highest ranking official, admitted that he had questioned Santos individually about talking to Gonzalez. The credited testimony shows that Leavitt exhibited anger towards Santos for having disclosed he was being paid by piecework and Leavitt threatened him with discharge. The interrogation and threatening of Santos occurred in the context of the other events, described below, that violate the Act, namely other coercive activity on the part of the Respondent, including the unlawful discharges of Santos and Brito. In sum, I find that the interrogation and threat to Santos were coercive and violations of Section 8(a)(1) of the Act.

2. Employee meeting

The Government asserts that the Respondent violated the Act during the employee meeting because Leavitt implied that the employees were disloyal when they engaged in the protected activity of speaking to Gonzalez. Leavitt told the assembled employees that Santos had screwed up in speaking to Gonzalez and telling him the truth about his piecework pay. He also implied by his question to Santos about what he would tell Gonzalez the next time that they talked that he wanted Santos to lie about his pay. I find that Leavitt’s statements are sufficient to support the allegation of implying that the employees were being disloyal to the Respondent by engaging in the protected concerted activity of discussing their pay with Gonzalez. I find that the Respondent violated Section 8(a)(1) of the Act by Leavitt’s statements.

I also find that Leavitt’s statement to Santos that if he found out he was lying about knowing who Gonzalez was he would be looking for a new job is coercive and was motivated by Santos engaging in protected concerted activity. I conclude that Leavitt’s threat to discharge Santos is an additional violation of Section 8(a)(1) of the Act.

Finally, I find that Leavitt’s questioning of the employees in the meeting as to what they said to Gonzalez was another instance of unlawful interrogation. This second interrogation was part of the coercive conduct of the Respondent set forth in this decision. I find that Leavitt’s interrogation of the employees is a violation of Section 8(a)(1) of the Act.

D. February 20

Gonzalez returned to the Senior Center construction site on February 20. He spoke to Hoopes and gave him a business

card. Gonzalez then spoke to Brito about prevailing wages, and gave him a business card. Gonzalez next approached Linge and asked him if Leavitt was around because Gonzalez wanted to ask permission to speak to the employees again. Linge said that Leavitt was not on the site. Gonzalez then left. Linge went to Brito and said that Leavitt wanted to be notified immediately if Gonzalez returned. Linge asked Brito what he should do. Brito told Linge that if Leavitt had ordered him to report Gonzalez' presence on the job he should do so.

The Government alleges that Linge's statement to Brito about reporting Gonzalez' activity created the impression of surveillance of employees' concerted activities. Creating the impression of surveillance is a violation of Section 8(a)(1) of the Act. *El-Tech Research Corp.*, 300 NLRB 522, 529 (1990). I find that by telling an employee that the Respondent would be checking on Gonzalez, and implicitly his contact with its employees, the Respondent did unlawfully create the impression that it was surveilling the employees concerted protected activities. I find Respondent thereby violated Section 8(a)(1) of the Act.

E. February 24

On Saturday, February 24, Gonzalez and his partner Michael Martinez met with Santos and Brito at a park in Bunkerville, Nevada. Also present was Respondent's employee Jose Antonio Arce. Miguel and Jesus Diaz who were employed by Respondent's subcontractor, Kevin Leashman, were also present at this meeting. Shane Hoopes, another of Respondent's employees, did not attend but did drive by towards the conclusion of the meeting.

Subsequent to the meeting Supervisor Linge engaged Brito in conversation about the Diaz brothers. The Diaz brothers were working on the Senior Center jobsite at the time for the Respondent's subcontractor Kevin Leashman. Linge told Brito that Leavitt did not want the Diaz brothers on the job because they had met with Gonzalez. Linge said that Leavitt told subcontractor Kevin Leashman to get them off the jobsite.

The Government alleges that Linge's statement to Brito about the Diaz brothers was an implied threat to discharge its employees for engaging in protected concerted activity. I agree and find that Linge's statement was coercive and did violate Section 8(a)(1) of the Act. *Cannon Industries*, 291 NLRB 632, 637 (1988) (violation where supervisor told employee that other employee had been fired for protected activity).

F. Final Work of Santos and Brito

Brito worked 1 day at the Senior Center the following week. Santos and Brito also did some work for the Respondent on a private home (the Slate Fought house) in Bunkerville, Nevada. On Wednesday, February 28, Santos, Brito, Linge, Lee, and Burnette attended a scheduled concrete convention in Las Vegas at the Respondent's expense. Brito testified that Leavitt had previously said that it was in the Company's interest for its employees to learn new concrete techniques. On Thursday, March 1, Santos again worked on the Bunkerville house.

Supervisor Janneck testified that on approximately February 28 he had a telephone conversation with Shane Hoopes. Janneck recalled that Hoopes told him the names of the employees

who had attended the Quad C meeting of February 24 at the Bunkerville Park. Janneck testified that he specifically learned that Santos and Brito were in attendance. Janneck passed this information on to Leavitt. Janneck conceded that it was possible that Leavitt may have been "slightly upset" upon receiving the news.

G. March 2

Brito testified that on Friday, March 2, he received a telephone call from Foreman Linge. Brito recalled that Linge told him in an agitated voice that Leavitt had fired the whole crew because he found out "about the big meeting with Juan Gonzalez." Linge lamented that he also was included in the firing of the crew. Brito expressed surprise that Linge had been fired because he was not at the meeting. Linge replied that Leavitt thought he was there. Brito became upset and hung up. He then telephoned both Santos and Hoopes and reported what Linge had told him.

Linge testified that he never spoke to Brito and told him he was fired. Linge likewise denied ever telling Brito that he (Linge) had been terminated. I have carefully considered the testimony of Brito and Linge as to this disputed conversation. I found Brito to be a forthright witness who impressed me with his demeanor and the detail of his testimony. In contrast, I found Linge to be a reluctant witness who was not forthcoming with his responses and was not persuasive in giving his testimony. I credit Brito that the conversation did occur and his testimony as to what was said. I find that Linge did tell Brito that he and the crew had been fired because Leavitt learned of the Bunkerville Park meeting between Gonzalez and the employees.

After Linge's telephone call Brito and Santos did not work for Respondent again until Santos was recalled for 1 day of work shortly before the hearing in this matter. The other crewmembers did work regularly thereafter. The Respondent's employment records show that the hours worked by its employees diminished beginning in March until they began to increase again in June.

Santos called Linge about getting further work. Linge told him to contact Janneck. Santos did talk to Janneck but was not assigned any work. Janneck told Santos that work was slow and he should look for another job.

Linge telephoned Brito on April 11 and asked him to help out for 1 day on a concrete pour. Brito said he would accept the day's work but did not show up as promised. Linge did not call Brito to work after that. Santos was recalled to work a few days before the hearing in this case. Santos accepted the offer and was given 1 days work. Linge testified that he thought Santos worked for someone else and "didn't think to bother him" about working for the Respondent. Linge testified that both Santos and Brito were eligible to be recalled for work.

Linge testified that the Respondent would occasionally use subcontractor Leashman's crew when they needed temporary help. The record shows that Leavitt owned an Ace Hardware store and employees were assigned to work there when other jobs were slow. Linge testified that Leavitt gave him a "personal" roofing job to do when work slowed down in late February or March. Linge recruited crewmembers Rulan (Sam) Lee

and Claude “Eugene” Burnette, plus a personal friend, to do the work. The job lasted 5 or 6 days. The Respondent paid Linge for doing the work.

IV. ANALYSIS

The Government alleges that the Respondent’s refusal to assign work to Brito and Santos after March 3 amounted to their being discharged and that this was motivated by their concerted protected activities. It is a violation of Section 8(a)(1) of the Act to discharge an employee because he engaged in protected concerted activity. *Alldata Corp.*, 327 NLRB 127, 127 fn. 2 (1998). The General Counsel has the initial burden of establishing that protected activity was a motivating factor in Respondent’s action alleged to constitute discrimination in violation of Section 8(a)(1). *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The elements commonly required to support such a showing of discriminatory motivation are employer knowledge, timing, and employer animus. Once such unlawful motivation is shown, the burden of persuasion shifts to the Respondent to prove its affirmative defense that the alleged discriminatory conduct would have taken place even in the absence of the protected activity.

The Respondent had knowledge that Brito and Santos were engaged in concerted protected activity. Leavitt observed Santos talking to Gonzalez and then interrogated and threatened Santos with discharge for having so acted. During the employee meeting Brito expressed his support for Santos by saying that he should tell the truth the next time he spoke to Gonzalez. The Respondent had knowledge of the continuing concerted activities by Santos and Brito because Hoopes told Janneck that they had attended the Quad C meeting at Bunkerville Park. Janneck in turn relayed this information to Leavitt, whom he noted, may have been “upset” with the knowledge.

There is no doubt that Leavitt was greatly concerned about the employees’ concerted activity. He thought he was doing something unlawful in paying them piece rates and he was upset at the employees for disclosing this fact to Gonzalez. Leavitt threatened Santos with discharge for such activity. Supervisor Linge emphasized Leavitt’s displeasure with the employees’ concerted activities by reporting to Brito that the Diaz brothers were removed from the job at Leavitt’s behest because they also had met with Gonzalez. Linge also told Brito the crew was discharged for attending the meeting with Gonzalez. The record amply demonstrates the Respondent’s animus concerning the employees’ concerted activities of talking with Quad C about the company’s failure to pay its employees prevailing wage rates.

The timing of the Respondent’s refusal to assign work to Brito and Santos came shortly after they commenced their concerted activity and less than 1 week after the February 24 Bunkerville Park meeting. The record supports the conclusion that Respondent’s work may have diminished at about the same time. The record also shows that the Respondent used subcontractors to perform some work, that Linge was given a “private” roofing job in the same time period, and that the rest of the crew continued to work.

The Respondent presents several defenses as to why Santos and Brito ceased working for the Company. It is argued that Brito was offered work in April but did not show up. The record shows the offer was for 1 day’s work. Likewise Santos was offered 1 day of work a few days before the October 4 start of the hearing in this case. He worked the 1 day and was never contacted again by the Respondent. These token offers of employment do not overcome the fact that Brito was told the crew was fired for their protected concerted activities. The 1-day offers of employment to Santos and Brito are scant evidence of legitimate offers of work. Likewise the Respondent’s knowledge that Santos may have ultimately found other work does not support a defense that it did not have to offer him work in light of the unlawful discrimination directed against him.

I find that the Government has made a sufficient showing of the elements that demonstrate the Respondent did discriminatorily cease employing Brito and Santos because of their protected concerted activities. I further find that the Respondent has failed to establish that its actions were not unlawful or that it would have ceased to employ these men regardless of their protected activity. I conclude that the Respondent unlawfully ceased employing Louis Brito and Daniel Santos on March 3, 2001, and it thereby violated Section 8(a)(1) of the Act. *Aztec Concrete*, 277 NLRB 1244, 1251 (1985); *Wright Line*, supra.

CONCLUSIONS OF LAW

1. Trade West Construction, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent violated Section 8(a)(1) of the Act.
3. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended³

ORDER

The Respondent, Trade West Construction, Inc., Mesquite, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Discharging or otherwise discriminating against Daniel Santos, Louis Brito, or any other employee, because they engage in concerted activity protected under the Act.
 - (b) Interrogating employees about their protected concerted activities.
 - (c) Threatening employees with the loss of their jobs or otherwise threatening, restraining, or coercing them because they engage in protected concerted activity.
 - (d) Creating the impression that employees’ protected concerted activities are under surveillance by the employer.
 - (e) 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.

³ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommend 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.

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

(a) Within 14 days from the date of this Order, offer Daniel Santos and Louis Brito 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.

(b) Make Daniel Santos and Louis Brito whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, computed on a quarterly basis, 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).

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

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Mesquite, Nevada, copies of the attached notice

marked "Appendix."⁴ Copies of the notice written in both English and Spanish, on forms provided by the Regional Director for Region 28, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or ceased working, the Respondent shall duplicate and mail, at its own expense, a copy of the notice in both English and Spanish to all current employees and former employees employed by the Respondent at any time since January 25, 2001. *Excel Container, Inc.*, 325 NLRB 17 (1997).

(f) 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.

⁴ 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."