JD–109–03
Cary, Ohio

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

VAUGHN INDUSTRIES

and Case No. 8-CA-32627

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 8

and

VAUGHN INDUSTRIES

and Case No. 8-CA-32637

DONALD P. REINHART, An Individual

Jun S. Bang, Esq., for the General Counsel.
Alan G. Ross, Esq., of Cleveland, Ohio, for the Respondent.
Matthew Szollosi, Esq., of Toledo, Ohio, for
the Charging Party Union.
Joseph Allotta, Esq., of Toledo, Ohio, for
the Charging Party Individual.

DECISION

Statement of the Case

C. RICHARD MISERENDINO, Administrative Law Judge. This case was tried in Findlay, Ohio on October 7-10, 2003. On February 27, 2002, a consolidated complaint was issued alleging that Vaughn Industries (Respondent) violated Section 8(a)(3) of the Act on March 12, 2001, by reassigning alleged discriminatee Nick Staib to a less desirable position because he engaged in concerted protected activity and supported the International Brotherhood of Electrical Workers, Local 8 (Union). It further alleges that the Respondent violated Section 8(a)(1) of the Act on July 9, 2001, by coercively interrogating Individual Charging Party Donald Reinhart about his union and protected concerted activities and that it violated Section 8(a)(3) of the Act by reassigning Donald Reinhart on July 12, 2001, to a less desirable, lower paying job; by issuing Reinhart a written reprimand on July 17, 2001; and by forcing Reinhart to resign on August 1, 2001, all because he engaged in union and concerted protected activity.

At trial, Counsel for the General Counsel moved to amend the complaint to allege that the Respondent violated Section 8(a)(1) of the Act on June 22, 2001, by telling employees at a meeting that they should not talk to Union Organizer Bob Trausch. The motion was granted. In the course of the trial, the unrebutted testimony disclosed that at the same meeting the Respondent told the employees that they could be fired if they spoke with the Union. (Tr. 240.) In her post hearing brief, Counsel for the General Counsel moves to amend the complaint further by alleging that the latter statement also violates Section 8(a)(1) of the Act. Because the allegation is closely related factually and legally to the amended allegation that was added at trial, and because the issue has been fully and fairly litigated, this motion to amend is likewise granted. *Garage Management Corp.,* 334 NLRB 940 (1999).

Finally, paragraph 5 of the amended complaint alleges, and the Respondent's answer admits, that Project Foreman Jason Arend is a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within Section 2(13) of the Act. In other words, it is an admitted fact in this case. The General Counsel did not subpoena or call Jason Arend to testify at trial concerning his foreman duties and functions nor did it present any evidence concerning his supervisory duties and functions. At the end of her case in chief, however, Counsel for the General Counsel moved to strike the allegation as it pertained to Jason Arend. I reserved ruling on that motion. In her post hearing brief, Counsel for the General Counsel renewed that motion, which I now deny. The alleged supervisory status was admitted by the Respondent and there is no basis in the record to dispute that admitted fact. The motion therefore is denied.

On the entire record, including my observation of the demeanor of the witnesses, as well as my credibility determinations based on the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole, and after considering the briefs filed by the General Counsel, the Respondent, Counsel for the Charging Party Union, and Counsel for the Charging Party Individual Donald Reinhart, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a Ohio corporation, is engaged in the business of contract electrical, sheet metal, and high voltage work with an office and place of business in Cary, Ohio, where it annually purchases and receives goods valued in excess of $50,000 directly from points outside the State of Ohio.

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

II. Alleged Unfair Labor Practices

A. *The Company*

The Respondent is an electrical, mechanical and high voltage contractor in the construction industry. It also operates a hardware store at its Cary, Ohio facility. At the time of the alleged violations, the Respondent employed approximately 200 employees in five divisions. Sixty employees were assigned to the electrical division. Timothy Vaughn is the Respondent's president, Matthew Plottss is the administrative vice-president, and Timothy Cartwright is manager of the electrical division. Four project managers in the electrical division report to Cartwright: Peter Barnes, Monte Seifert, Doug Wentling and Eric Majors.

The Respondent has a Voluntary Employees' Beneficiary Association (VEBA) which provides various Company employee benefit plans (e.g., group health, life insurance, long-term disability, short-term disability, holiday and vacation), as well as a 401(k) profit sharing plan, all of which are administered by the Respondent, as plan administrator.

B. *Nick Staib*

1. Facts

In July 1997, Nicholas Staib began working for the Respondent as an electrician apprentice in the Company's apprenticeship training program.[1] He became a journeyman electrician in the fall of 2000.

From the summer 2000 to the beginning of March 2001, Staib worked on a project at the Blanchard Valley Hospital (Blanchard Valley) in Bluffton, Ohio, primarily installing a fire alarm system under the supervision of Project Manager Monte Seifert. Occasionally, he performed other electrical work on the project.

In January 2001, Staib met several times with Union Organizer Bob Trausch to discuss the benefits of joining the Union. In the course of those discussions, Staib became interested in the details of the Company's VEBA plan. He was encouraged by Trausch to consult a labor attorney, Matthew A. Szollosi, Esquire, about obtaining information concerning the VEBA plans. Around the same time, Staib told co-workers, Jonah Moehling, Timothy Weller, and Donald Reinhart that he had been meeting with a union organizer and that he was contemplating contacting a lawyer to write for information about the Respondent's benefits plans. (Tr. 143-144.) According to the unrebutted evidence, the three apprentices expressed an interest in obtaining information about their benefit plans. Weller testified that he wanted to know where his money was going and what part of his paycheck was paying for benefits. (Tr. 411.) In meeting a with Union Organizer Trausch, Weller gave Staib written permission to obtain this information for him. (Tr. 412.) Moehling and Reinhart gave Staib verbal permission to request information for them. (G.C. Exh. 38.)

In a letter, dated February 7, 2001, to the plan administrator of the Respondent's VEBA and 401(k) profit sharing plans, Staib requested several documents. In the penultimate paragraph, he notably stated:

> Please be advised that I am making this request not only for myself, but also for and on behalf of other Vaughn employees who are participants in one or more of the Vaughn Plans, and with their express authorization. Further, I have retained Matthew A. Szollosi, Esq., as my legal counsel in connection with this request. Accordingly, please forward the foregoing documents and reports to Mr. Szollosi whose address is 3516 Granite Circle, P.O. Box 352018, Toledo, Ohio 43635-2018, within thirty (30) days of receipt of this letter. If you have questions regarding this request, please direct them to Mr. Szollosi who may be reached by telephone at (419) 843-2001. In the event that you or members of management of Vaughn, or agents of Vaughn, determine that it is necessary or appropriate to meet in conjunction with responding to this request, I am willing to do so provided that there is an opportunity for my counsel to be present.

[1] The Respondent conducts a four-year training program, which involves classroom training at its Cary, Ohio facility, as well as on-the-job training by journeyman electricians. (Tr. 216.)

(G.C. Exh. 2.)[2]

Respondent's President, Tim Vaughn, received the letter on or about February 12. He immediately suspected that the Union was involved. (Tr. 43.) Vaughn conducted an internet search which revealed that Szollosi was a union attorney.

Tim Vaughn discussed the letter with Tim Cartwright, manager of the electrical division, as well as other managers. **(**Tr. 40-41.) He opposed giving the documents to Staib because he did not want the Union to have access to the benefit plans information. (Tr. 43.) A short time later, Vaughn visited the Blanchard Valley worksite, where he had a one-to-one conversation with Staib about the February 7 letter. Vaughn asked Staib why he did not come to him first and whether Union Organizer Trausch had persuaded him to write the letter. When Staib told Vaughn that he should contact Szollosi with his questions, Vaughn became upset and left.[3] (Tr. 108-110.)

On Friday, March 9, 2001, Cartwright reassigned Staib from the Blanchard Valley project[4] to the Respondent's Cary, Ohio facility. There was no reduction in pay, no loss of hours, and no schedule change. Staib worked alone for one week changing light bulbs, repairing exit signs, and installing wire for parking lights, all of which had been on a "to do" list for quite some time.[5]

On Thursday, March 15, Tim Vaughn approached Staib as he worked on miscellaneous tasks at the Cary facility. Vaughn again asked Staib if Union Organizer Bob Trausch was behind the letter. He also urged Staib to compare for himself the Company's benefits to the Union's benefits. Staib testified that Vaughn told him that he was a good employee and that he could not understand why he sent the February 7 letter. Staib refused to answer Vaughn's questions. Later that day, March 15, Cartwright told Staib to report to the Cary facility again on Monday, March 19.

On weekend of March 17-18, Staib removed his personal belongings from his locker. On Monday, March 19, he called in sick and on March 20, 2001, he resigned his employment with the Respondent.

2. Analysis and Findings

The amended complaint alleges that the Respondent violated Section 8(a)(3) of the Act by transferring Staib to the Cary facility because he engaged in Union and protected concerted activity.[6]

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[2] The names of the other employees were not disclosed in the letter because Staib was concerned about retaliation or reprisal. (Tr. 154, 190.)

[3] According to Vaughn, Trausch had been harassing the Respondent's employees for years. He therefore thought that this was another ploy by the Union to tell untruths about the Respondent. (Tr. 46.)

[4] In the meantime, work continued at the Blanchard Valley project, which was only half complete by early March 2001.

[5] Staib had previously worked at the Cary facility on four occasions as an apprentice, while in between jobs, when work was slow, and while he waited for a new assignment. He testified that he was never taken off an ongoing job to work at the facility.

[6] There is no allegation, nor argument, that the Respondent constructively discharged Nick

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In *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board established an analytical framework for deciding discrimination cases turning on employer motivation. The General Counsel must persuasively establish that the evidence supports an inference that union activity was a motivating factor in the employer's decision.[7] Specifically, the General Counsel must establish union and/or protected concerted activity, knowledge, animus or hostility, and adverse action, which tends to encourage or discourage union activity. *Farmer Bros. Co.,* 303 NLRB 638, 649 (1991). Inferences of animus and unlawful motive may be inferred from the total circumstances proved and in some circumstances may be inferred in the absence of direct evidence. *Fluor Daniel, Inc.,* 304 NLRB 970 (1991). Once accomplished, the burden shifts to the employer to persuasively establish by a preponderance of the evidence that the reasons for its decision were not pretextual or that it would have made the same decision, even in the absence of protected concerted activity. *T&J Trucking Co.,* 316 NLRB 771 (1995).

The credible evidence shows that Staib was a Union supporter. Prior to February 7, he had several meetings and discussions with Union Organizer Trausch about the benefits of joining the Union. The evidence shows that with the encouragement of Trausch, Staib retained a union attorney and sought the VEBA information in order to compare the benefits offered by the Respondent to the benefits attainable through the Union. The evidence also shows that in furtherance of this objective, three other employees expressly supported Staib's plan to obtain the VEBA information. Thus, Staib effectively initiated and induced an action on behalf of the "group" to obtain information about their terms and conditions of employment. *Prill (Meyers Industries) v. NLRB,* 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988) (any activity by a single employee may be protected if it seeks to initiate, induce or prepare for group action); See also, *Trayco of S.C.,* 297 NLRB 630, 633 (1990) (the Act also protects discussions between two or more employees concerning terms and conditions of employment).

The Respondent nevertheless asserts that Staib and the other employees did not engage in protected concerted activity because Staib did not discuss information with or distribute it to these employees after it was received by his attorney. The argument is unpersuasive because the unrebutted evidence shows that the Respondent did not provide the information until sometime in the summer of 2001, which was several months after Staib left the Company on March 19, 2001. (Tr. 206.) By that time, Timothy Weller had also left the Company (August 2001). (Tr. 387, 401, 413.) Thus, it is more likely, than not, that by time the information was provided, neither individual had much interest in the matter any longer, since they were no longer employees. In any event, the fact that they did not discuss the information with each other after it was received, does not show a lack of concerted activity in seeking to obtain the information in the first place. Thus, based on the evidence viewed as a whole, I find that Staib supported the Union and was engaged in protected concerted activity.

The evidence also shows that Respondent's President Tim Vaughn had knowledge of Staib's Union support and protected concerted activity via the February 7 letter. Vaughn testified that he immediately suspected the February 7 letter might be another attempt by Trausch to obtain information about the Respondent, which could be used to criticize the Company and persuade employees to join the Union. He also testified that he discussed the letter, as well as his opposition to the letter, with Electrical Division Manager Tim Cartwright, who purportedly made the decision to transfer Staib. Vaughn further testified that Cartwright knew Staib was in

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Staib.

[7] *Manno Electric, Inc.,* 321 NLRB 278, 280, fn. 12 (1996).

contact with the Union prior to his transfer and that Cartwright was aware of Trausch's prior attempts to make contact with the Respondent's employees. (Tr. 56, 40-41.)

That notwithstanding, Cartwright testified that he did not know prior to the date he decided to reassign Reinhart (i.e., March 9) that Vaughn had requested the VEBA information. His denial is dubious. The evidence shows that Vaughn and Cartwright talk daily and that their offices are next door to each other. They also attend a weekly manager's meeting together every Tuesday morning. Almost four weeks passed between the date Vaughn received the letter and the date of the transfer. Under these circumstances, it is more likely, than not, that Vaughn discussed the letter with Cartwright, a division manager, prior to March 9. In addition, the evidences discloses that the letter was of concern to Vaughn and that he would have shared his concern with his division manager sooner than later. In the same time period, Vaughn, the Company president, visited the Blanchard Valley jobsite for a one-to-one talk with Staib about why he wrote the letter. For these, and demeanor reasons, I do not credit Cartwright's testimony denying that he had prior knowledge of Staib support for the Union and protected concerted activity. I therefore find that the Respondent knew that Staib supported the Union and was engaged in protected concerted activity prior to the date he was transferred.

Ample evidence also exists of animus toward the Union and specifically toward Staib for sending the February 7 letter. Vaughn testified that he opposed giving the information to Staib because he was afraid the Union would obtain it. (Tr. 43.) He also openly expressed displeasure with Union Organizer Trausch's repeated attempts to tell the employees "mistruths" about the Company. Finally, Vaughn questioned Staib on two occasions about his true motives for sending the letter, while implying that it was a ploy by Trausch to obtain Company information. When Staib declined to answer Vaughn's questions, Vaughn became visibly upset with Staib's refusal to respond.

The timing of Staib's transfer is suspect. Vaughn received the letter on or about February 12 and Staib was reassigned on March 9. In the interim, Vaughn discussed the matter with his managers and personally questioned Staib about the letter. After Staib refused to talk to Vaughn, Staib was transferred. Three days later, Vaughn questioned him again about his motives and Trausch's involvement. Staib again refused to talk to Vaughn. Later that day, Cartwright told Staib to report back to the Cary facility the following week.

Moreover, at the time of transfer, the Blanchard Valley job was only half complete. There was still fire alarm system installation work to be done. Staib, who had a special license and training for fire alarm system installation work, had worked on the Blanchard Valley's fire alarm system for more than a year. He suddenly was taken off the ongoing job to change light fixtures and repair exit signs. I find that the timing of the transfer raises significant doubts about the Respondent's true motivation for transferring Staib.

The Respondent argues that it had legitimate reasons for transferring Staib. It asserts that the repairs made by Staib at the Cary facility were long overdue and needed to be done. It asserts that the Respondent was losing money because customers thought that its hardware store was closed because all the lights were not working. It also asserts that Staib, like many others, had worked at the Cary facility before, so it was not unusual for him to be sent there again to work. Finally, the Respondent argues that there is no support for the General Counsel's assertions that the Cary job was "less desirable" because there was no change of hours, loss of hours, or pay loss. The working conditions and work environment were not unpleasant. The nature of the work was not difficult or onerous.

The Respondent does not explain, however, how Staib came to be selected to go to the Cary facility. With 60 electricians, many of whom were apprentices, the Respondent does not explain why a journeyman electrician, like Staib, with special training in fire alarm system installation, was selected to change light fixtures and exit signs. It also failed to explain why at that particular point in time Staib was taken off an ongoing job that required his special skills to work at the Cary facility. Electrical Division Manager Cartwright could not recall with specificity any project that an employee was taken off of in order to work at the Cary facility. (Tr. 780.) The Respondent did not offer any examples of such occurrences and it did not explain why Staib was the exception.

Based on the evidence viewed as a whole, I find that the Respondent has not persuasively shown that it transferred Staib for nondiscriminatory reasons. To the contrary, I find that based on the credible evidence the Respondent's reasons for transferring Staib are pretextual. Accordingly, I find that the Respondent violated Section 8(a)(3) of the Act by transferring Staib from the Blanchard Valley job to the Cary facility.

C. *Donald Reinhart*

1. Supervisory Status

a. *The arguments*

The Respondent argues that Apprentice Electrician Donald Reinhart was a supervisor within the meaning of Section 2(11) of the Act. It therefore asserts that the Respondent did not violate the Act in any respect with regard to him because Section 2(3) of the Act excludes from the definition of "employee" an individual employed as a "supervisor." The General Counsel and Charging Parties argue that Reinhart did not possess any indicia of supervisory authority, or use independent judgment in the exercise of any supervisory authority, and therefore should not be excluded from the Act's coverage.

b. *Facts*

In 1997, Donald Reinhart began working for the Respondent as an electrical apprentice. (Tr. 213.) He participated in the Respondent's apprentice training program, completed the course work, but did not finish the program before leaving the Company on August 1, 2001. (Tr. 213, 351, 447-448.) As an apprentice electrician, Reinhart installed electrical conduit, wiring, and performed general electrical maintenance.

In late 1999, Reinhart was working on the Defiance Water Treatment Plant job. His foreman was Ryan Clouse. At the end of November 1999, Clouse took a medical leave of absence to have back surgery. Project Manager Pete Barnes offered Reinhart, who was a third year apprentice and only 21 years old, the foreman's job. Reinhart accepted and signed the Company's foreman position description. (G.C. Exh. 35.) Although the foreman's job description states that a foreman must have 5-7 years of experience as a journeyman electrician, the unrebutted evidence shows that it is common for an individual in the apprentice program to serve as foreman, even though there may be journeyman electricians working on a job. The unrebutted evidence further shows that an individual may be the foreman on one job, and not be the foreman on a subsequent job. (Tr. 467.)

(1) Defiance Water Treatment Plant job

Reinhart was the Defiance foreman from late November 1999 to early July 2000. During this time, three to five other employees worked on the Defiance job. One of them was Mike Miller, a journeyman electrician who was sent to the Defiance job around the same time that Reinhart became the foreman. Miller had previously worked as a foreman on other electrical jobs.

As a foreman, Reinhart spent 50 percent of his time working with tools and 50 percent of his time carrying out his foreman duties. (Tr. 472.) For example, as the Defiance foreman, Reinhart attended certain meetings. In mid-December, he accompanied Project Manager Barnes to a project progress meeting attended by the customer and other project contractors. (R. Exh. 19.) In April 2000, he attended a meeting for managers and foreman at which discipline of employees was discussed. (R. Exh. 21.) These manager/foreman meetings typically are held twice a year. Present foremen, as well as everyone who has been a foreman in the past, are required to attend, even if they are not functioning in a foreman's capacity at the time of the meeting.[8] (Tr. 522.) Finally, Reinhart held monthly tailgate meetings with the crew to go over safety issues. (R. Exh. 29, 31, 569.)

Reinhart also interfaced with the Zaryl Sanford, the Defiance full-time engineering inspector. (Tr. 652.) If a problem developed in carrying out a work order, Reinhart would seek Sanford's advice on an alternative method for accomplishing the task. Reinhart would take the proposal to Barnes, telling him that Sanford reviewed and recommend a change. Barnes would price the change, and send it to the engineers to approve a change order. (Tr. 656.) Although Barnes testified that he relied on Reinhart's judgment, there is no evidence that Reinhart developed the recommended change or approved it. Rather, the evidence reflects that Reinhart basically reported whatever Sanford told him.

Reinhart signed off on the crews daily timesheets. He testified that he would ask the employees what they did for the day, write it down, and sign the form. Reinhart testified that he did not verify that the employees had carried out the work they reported on their time cards. (Tr. 360.)

Reinhart also ordered materials for the crew based on what they told him was needed. (Tr. 306, 498-499; R. Exh. 18.) He testified that he never refused anyone's request for materials. (Tr. 359.) He purchased materials and rented equipment using the Company's credit card account. (Tr. 762, R. Exh. 32.)

The evidence shows that Reinhart assigned the crews to specific tasks on the Defiance job. (Tr. 471-473.) If he needed more manpower, however, he would contact Project Manager Pete Barnes, who would decide whether more men were necessary. (Tr. 659, 694.) Reinhart communicated with Barnes on a daily basis by phone during his early weeks as a foreman. (Tr. 269.) After that he spoke to Barnes about the job once or twice a week. (Tr. 646.) Barnes visited the jobsite once a month.[9] He and Reinhart would walk the job and Barnes would explain to him what needed to be done. (Tr. 292.)

[8] In addition, the evidence shows that other individuals, who are neither managers nor foreman, also attend these meetings. (Tr. 558.)

[9] Barnes conceded that because he did not visit the jobsite on a daily basis, he did not know who Reinhart spoke to or what he actually did on the job. (Tr. 696.)

There is no evidence that Reinhart transferred anyone on or off the Defiance job or requested that anyone be transferred. There is no evidence that he actually approved overtime or recommended the approval of overtime for anyone working on the Defiance job. (Tr. 271-272.)

There is no evidence that Reinhart hired, or fired, or disciplined anyone on the Defiance job. Nor is there any evidence that he effectively recommended the same in these areas. Reinhart testified that he may have evaluated one employee while he was the Defiance foreman. (Tr. 264.) According to Barnes, Reinhart recommended a pay raise for Todd Stall and Eric Deponett on the Defiance job. There is no evidence that the recommendations were followed or approved. (Tr. 700.)

(2) Bowling Green Streetscape job

In August 2000, Reinhart was transferred to the Bowling Green Streetscape job in Bowling Green, Ohio. He worked on that job until July 2001. His actual duties involved removing old streetlights and traffic lights, assembling and installing new ones, and running new electrical service to the buildings surrounding Bowling Green downtown area. (Tr. 220.) There were eight men working on the Bowling Green project. (R. Exh. 10.) Reinhart worked primarily with Tim Weller and Mark Faeth. (Tr. 313.) He reported to Foreman Jason Arend. (Tr. 581.)

According to the Respondent, there were two foremen on the Bowling Green job, and Reinhart was the other one. Project Manager Monte Seifert testified that there were two crews on the job, and Reinhart was the foreman of one.[10] His testimony is implausible. The evidence shows that all of the Bowling Green timesheets submitted by the Respondent were signed by Foreman Jason Arend. (R. Exh. 10.) The progress meetings for the Bowling Green job were attended by either Jason Arend, Project Manager Monte Seifert, or both, but not by Reinhart. (Tr. R. Exh. 11, 13, and 15.) It was Jason Arend who told Reinhart on July 12, 2001, to call the office because he was being reassigned. (Tr. 248.) Moreover, unlike with the Defiance job, there is no documentary evidence showing that Reinhart made material requests or used the Respondent's credit account to make purchases.[11] There is no documentary evidence showing that Reinhart actually performed any of the functions that he performed as foreman of the Defiance job.

Reinhart denies that he was a foreman on the Bowling Green job. His testimony is corroborated by Tim Weller, a former employee of Respondent. Weller testified that he and Reinhart worked together pulling wire, assembling light fixtures, running underground conduit, and setting light poles. (Tr. 390.) Weller stated that if Arend was not on the jobsite, Reinhart

[10] The Respondent asserts that Reinhart was a foreman because on July 19, 2001, he was present at a foreman's meeting during which Vaughn President Tim Vaughn and Company Attorney Alan Ross stated that anyone who was not a "foreman" should leave the meeting. (Tr. 667.) The failure of Reinhart to leave the meeting does not establish that he was serving as a foreman at the time or that he was a supervisor within the meaning of the Act. Rather, the comment placed Reinhart in the untenable position, as more fully explained below, of making a demonstrable choice that would reveal something about his Union sentiments. *Accord, Circuit City Stores,* 324 NLRB 147 (1997).

[11] In addition, there is no evidence that Reinhart hired, fired, or disciplined any of the other employees or recommended the same, effectively or otherwise. There is no evidence that Reinhart transferred any one to or from the job, approved overtime, granted time-off, scheduled work hours or evaluated anyone.

would run the job. There was only one week, however, that Reinhart was foreman, and that was when Arend was on vacation. (Tr. 405.) Weller further testified that Reinhart received verbal and written instructions from Arend and Seifert. (Tr. 391.) Reinhart never evaluated Weller's work, but he did show him how to do some work.

Foreman Jason Arend, an admitted supervisor under the Act, was not called by the Respondent to testify about his foreman duties and responsibilities on the Bowling Green job or to corroborate Seifert's testimony that Reinhart was also a foreman on the Bowling Green job. The Respondent did not explain that Arend was not available to testify or that he no longer was employed by the Respondent. Where a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. *International Automated Machines,* 285 NLRB 1122, 1123 (1987). I find that an adverse inference is warranted that Arend, if called as a witness by the Respondent, would not have corroborated Seifert's testimony and/or the Respondent's position that Reinhart also was a foreman on the Bowling Green job.

(3) Sandusky Coal Docks job

Beginning on July 17, 2001, Reinhart worked four days at the Sandusky Coal Docks job. The Respondent does not argue, nor does the evidence show, that Reinhart was the foreman on this job. Project Manager Peter Barnes testified that Fred Adraitch was the foreman at the Sandusky Coal Docks job, and that Adraitch covered as foreman for another project at the same time. (Tr. 676.)

(4) Findlay University job

Reinhart was on vacation from July 23 – 26, 2001. On July 30, 2001, he returned to work and was assigned to the Findlay University job. Reinhart reported to Foreman Doug Wentling, who told Reinhart and apprentice electrician Alex Plottss what to do, and then left the jobsite. (Tr.262.) There is no evidence that Wentling or anyone else told Reinhart that he was the foreman of the Findlay job. (Tr. 380.) Reinhart testified that he thought Wentling was the foreman. (Tr. 263.)

Reinhart worked two days on the Findlay job, and then resigned from the Company. There is no evidence that his actual duties involved any of the functions or duties carried out by a foreman. Indeed, there is no evidence showing any duties performed by Reinhart for the two days that he worked on the Findlay job.

c. *Analysis and Findings*

A supervisor as defined by Section 2(11) of the Act is:

> …any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is read in the disjunctive. The possession of any one of the authorities listed is sufficient to designate an individual vested with this authority as a supervisor, *Mississippi Power & Light Co.,* 328 NLRB 965, 969 (1999), *citing Ohio Power Co. v. NLRB,* 176 F.2d 385, 387 (6th Cir. 1949), *cert. denied* 338 U.S. 899 (1949), so long as the individual exercises independent judgment in conjunction with those authorities on behalf of management, rather that exercising them in a routine manner. *Clark Machine Corp.,* 308 NLRB 555 (1992).

The Board and the courts have cautioned, however, that supervisory status must not be construed too broadly, because a worker who is deemed to be a supervisor loses his organizational rights. *Williamson Piggly Wiggley v. NLRB,* 827 F.2d 1098 (6th Cir. 1987); *Chevron U.S.A.,* 309 NLRB 59 (1992). Thus, it is the individual's actual duties and responsibilities that determine his or her status as a supervisor and not a job title or theoretical authority to carry out one of the enumerated supervisory functions. The burden of proving supervisory status is on the party alleging that an individual is a supervisor. *Health Care Corp.,* 306 NLRB 63, fn. 1 (1992).

Reinhart does not deny that he was the foreman on the Defiance job from late November 1999 to July 2000. He signed the Company's foreman position description on November 13, 1999 and took over as foreman soon thereafter. Even though he kept in close contact with Project Manager Pete Barnes, Reinhart was the Respondent's sole point of contact on the job on a daily basis. (Tr. 660.) He scheduled the subcontractors to come on the job, he worked with the project inspector, and he attended project progress meetings. Reinhart held periodic tailgate safety meetings with the crew. Journeyman Electrician Mike Miller credibly testified that Reinhart assigned tasks to the crew and told them what to do. (Tr. 472-473.) Reinhart also signed off on the daily worksheets. The evidence supports a reasonable inference that Reinhart used independent judgment in guiding the crew and interfacing with the subcontractors, customer, and inspectors.

Reinhart testified that he may have evaluated another apprentice's performance one time on the Defiance job. He decided whether the apprentice lacked or exceed the required skill level. (Tr. 263-264.) This evidence supports a reasonable inference that he possessed the actual authority to evaluate employees and used his independent judgment in doing so.

In addition, Reinhart ordered materials and made purchases for small items needed on the job. He testified that he ordered what he was asked to order and never turned down any worker's request, but he did not testify that he did not have the authority to reject a request if he thought the materials were not justified. He made purchases using the Company's credit card.

There is no evidence that Reinhart disciplined, fired, or transferred any worker on the Defiance job. Nor is there any evidence that he approved overtime, time-off, or vacation time. Reinhart testified that he did not have the authority to do any of these functions. (Tr. 263, 266.) Miller, who worked as a foreman four or five times, prior to and after the Defiance job, testified that generally a foreman has the authority to discipline and grant time-off. (Tr. 491, 501, 566.) Project Manager Pete Barnes specifically testified that Reinhart had the authority to grant time-off (for short periods), and to recommend pay raises, promotions, and discharge. (698-699.) He stated that Reinhart recommended a pay increase for Todd Stall and Eric Deponett on the Defiance job, but he did not testify that the recommendation was followed. There was no documentary evidence submitted to support either Miller's or Barnes' testimony. Indeed, the Respondent did not submit any documentary evidence showing that Reinhart, Miller, or any other foreman actually carried out any of these functions or effectively recommended the same. Thus, I am skeptical about whether Reinhart or any other foreman of the Respondent has the actual authority to perform these supervisory functions or effectively recommend the same.

Notwithstanding my skepticism, and based on the duties and functions that he actually performed on the Defiance job, I find that on the Defiance job, Donald Reinhart, as foreman, was a supervisor within the meaning of the Act.

The unrebutted evidence shows, however, that the Respondent's employees are foreman on an ad hoc basis. The Respondent's witness, Foreman Mike Miller, testified that an individual may be a foreman on one job, but may not be a foreman on a subsequent job. (Tr. 467.) Mike Miller and Ryan Clouse are cases on point. Miller testified that he served as foreman on four or five jobs. (Tr. 490.) He was not a foreman on the Defiance job, which he left in March to become a foreman of another job. Ryan Clouse was the foreman of the Defiance job, took a medical leave of absence, and was replaced by Reinhart. The evidence shows Clouse returned to work on the Defiance job in April 2000, while Reinhart was foreman. Specifically, R. Exh. 17 (Defiance timesheets) shows that Clouse worked on the Defiance job for the weeks of 4/16/00, 4/23/00, and 4/30/00.

With respect to the Bowling Green job, Reinhart credibly testified that his actual duties involved removing old streetlights and traffic lights, assembling and installing new ones, and running new electrical service to the buildings. (Tr. 220.) In other words, electrician work. There is no evidence that he performed any foreman duties on the Bowling Green job. Project Manager Seifert stated that Reinhart was responsible for his crew, but he did not explain what that involved. (Tr. 582.) There is no evidence that Reinhart performed any of the foreman duties that he performed on the Defiance job. Rather, the Respondent's own evidence shows that those foreman duties were performed by Jason Arend, who the Seifert acknowledged was the foreman to whom Reinhart reported. The evidence shows that Arend signed off on the time sheets, including Reinhart's timesheet and went to the Bowling Green progress meetings. Although the Respondent asserts, and the evidence shows, that Reinhart also attended some manager/foreman meetings while he was working on the Bowling Green job, I attach no significance to that occurrence because Foreman Mike Miller testified that anyone who was ever a foreman at any time was required to go these meetings, regardless of whether they were working in a foreman capacity at the time. (Tr. 522.) He also pointed out that individuals other than managers and foreman attend those meetings. (Tr. 558.)

The unrebutted testimony of former Employee Timothy Weller also shows that Reinhart was not a foreman. Weller worked side-by-side with Reinhart on the Bowling Green job for a period of time. He stated that Reinhart did not discipline him or evaluate his work. (Tr. 391.) Periodically if Arend was away from the job, Reinhart would cover for him. However, the only time he recalls Reinhart acting as foreman was when Arend was away on vacation for one week. (Tr. 405.)

The Respondent did not call Jason Arend to testify at trial, nor did it assert that he was no longer employed by the Company or explain that he was unavailable to be a witness and why. As noted above, I draw an adverse inference that his testimony would not have corroborated Seifert's testimony or supported the Respondent's position.

Based on all the evidence viewed as a whole, I find that the Respondent has failed to satisfy its burden of proving that Donald Reinhart was a foreman on the Bowling Green job. I further find that it has failed to show that Reinhart was a supervisor within the meaning of the Act on the Bowling Green job.

The Respondent does not argue, nor does the evidence show, that Reinhart was a foreman on the Sandusky Coal job. Rather, the evidence shows that Reinhart worked with

several temporary employees digging a ditch at Sandusky. He also pulled conduit in the ditch. Project Manager Pete Barnes testified that the Respondent was so short-handed at the time that Foreman Fred Adraitch was running back and forth between the Sandusky Coal job and another job.[12] (Tr. 676.)

Regarding the Findlay University job, there is no evidence showing that Reinhart actually performed any foreman duties on that job. Indeed, the evidence does not disclose any of the actual tasks performed by Reinhart during the two days he spent on that job. Other than the assertion by the Electrical Division Superintendent Tim Cartwright that Reinhart was the foreman, there is no evidence showing that Reinhart carried out any foreman duties.

To the contrary, Reinhart testified that he thought Foreman Doug Wentling was the foreman of the Findlay University job. (Tr. 263.) When Reinhart phoned Cartwright at home on Sunday, July 29, to find out where he should report to work, Cartwright told him to report to Wentling. (Tr. 262.) According to Reinhart's unrebutted testimony, Wentling showed him and apprentice Alex Potts what they needed to do and left. (Tr. 262.)

The Respondent did not call Wentling to corroborate Cartwright's assertion that Reinhart was the foreman or to explain whether Reinhart performed any foreman duties on the job. The Respondent did not state that Wentling was no longer employed by the Company or otherwise show that he was unable to testify. Where a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. *International Automated Machines,* 285 NLRB 1122, 1123 (1987). I find that an adverse inference is warranted that Wentling, if called as a witness by the Respondent, would not have corroborated Cartwright's testimony and/or the Respondent's position that Reinhart also was a foreman on the Findlay University job.

Based on the evidence viewed as a whole, I find that the Respondent has failed to show that Reinhart was a foreman on the Findlay University job and has failed to satisfy its burden of showing that on the Findlay University job Reinhart exercised any supervisory authority as defined by Section 2(11) of the Act.

Consequently, the Respondent has failed to show that Reinhart was a foreman or supervisor within the meaning of the Act at the time between August 2000 – August 2001.

2. Reinhart Requests VEBA Information

While working on the Bowling Green job, Don Reinhart occasionally met with Union Organizer Bob Trausch, who convinced him that he should be making more money than the Company was paying him. (Tr. 226.) Trausch also encouraged Reinhart to write to the Company asking exactly what VEBA benefits he was receiving in exchange for the deductions taken from his paycheck. Like Nicholas Staib, Reinhart conferred with Employees Tim Weller and Jonah Moehling, who endorsed the idea of sending a letter to the Company on behalf of all three of them. (Tr. 229.) Weller gave verbal consent and Moehling gave written consent. (G.C. Exh. 5.)

[12] Inexplicably, the Respondent did not make Reinhart the foreman of the Sandusky Coal crew, which would have allowed Adraitch to oversee only one job.

Reinhart retained Joseph J. Allotta, Esquire, to assist him in writing a letter to the VEBA plan administrator. In a letter, dated June 13, 2001, Reinhart asked various questions concerning the benefits he was receiving in exchange for the deductions taken from his pay. In the second paragraph of the letter, Reinhart announced that he had collaborated with the Union on this matter:

> Along with several other employees, I have met with representatives of IBEW Local 8 to discuss my wages and benefits. Based on information from other employees, it appears that every employee, prevailing wage or private, who opts for single coverage pays $19.50 per paycheck towards VEBA health insurance premiums….

In the penultimate paragraph, he advised that he was making the request for himself and others with their express authorization and that he requested a response to be sent to Attorney Allotta, who he had retained in connection with his request. (G.C. Exh. 3.)

Tim Vaughn received the letter a day or so later. He testified that he discussed the letter with the other managers, i.e., Tim Cartwright, Peter Barnes, and Monte Seifert. (Tr. 47-49.)

3. The June 22, 2001 meeting

a. *Facts*

On June 22, the Respondent held a managers/foreman meeting. Reinhart and other non-foremen attended, e.g., Joey Blair, Beth Crawford, Jenny Smalley, and Janet Haferd.[13] (Tr. 558; R. Exh. 25.) Among the many topics discussed was the "do's and don'ts when disciplining." According Reinhart's unrebutted testimony, either President Tim Vaughn or Vice President Matt Plottss told the group that if Union Organizer Bob Trausch ever came on a jobsite, no one was to talk to him.[14] Instead, they were to notify the foreman on the job, who would notify the office. (Tr. 241.) Reinhart also credibly testified that the group was told that "if we had any business or talking to the union, that there's a chance we could be fired." (Tr. 240.)

b. *Analysis and Findings*

The amended complaint alleges that the Respondent violated Section 8(a)(1) of the Act by telling employees that they should not talk to Union Organizer Bob Trausch and by threatening them with discharge if they did so.

The Respondent asserts that no violation occurred because the June 22 meeting was attended by foremen and managers only. It asserts that Company President Tim Vaughn testified that the June 22 meeting was conducted "only with management people" to discuss how the Company could remain union-free. (Tr. 58.) A careful reading of his testimony reveals that Vaughn did not specify that the "June 22 meeting" was a management only meeting. To the contrary, the evidence shows that the "union-free" meeting took place on July 19, at which time the Respondent's attorney made a special presentation. (Tr. 798, R. Exh. 26.) Thus, the

[13] The evidence shows that Blair discussed human resources topics and that Crawford went over stock orders. (See R. Exh. 25, page 4.) The evidence does not show, and the Respondent does not argue in its post hearing brief, that these other individuals were management officials.

[14] Foreman Mike Miller testified that at electrical department meeting, Tim Vaughn told the group not to speak to the union during Company hours. (Tr. 527.)

Respondent's assertion that the June 22 meeting as a management only meeting is not supported by the evidence.

In addition, the Respondent in its post hearing brief at page 56 mistakenly asserts that Nicholas Staib testified that the June 22 meeting was an entire division meeting where everyone was told to "send the organizer to the foreman." A careful reading of Staib's testimony reveals that Staib was referring to a different meeting that took place sometime in the summer of 2000 – one year before the June 22, 2001 meeting. (Tr. 98.) Thus, the Respondent's assertion has no factual basis.

Based on a careful reading of the evidence, as viewed as a whole, I find that the unrebutted remarks by Respondent's top management were made to a mixed group of employees and foreman and that they were coercive and tended to discourage employees from talking about the Union. Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act. See *Exceptional Professional, Inc.,* 336 NLRB 234, fn. 6 (2001).

4. The July 10, 2001 VEBA Withdrawal Letter

Reinhart sent a second letter to VEBA, dated July 10, 2001, advising Vaughn that he and other employees had met again with Union representatives concerning retirement and health and welfare benefits available to Union members. Reinhart stated that after reviewing the Union benefit plans and because the VEBA had not answered his questions concerning the Company plans, he was withdrawing from VEBA. In addition, Reinhart advised Vaughn that he had "joined IBEW Local 8 as a Union Organizer in order to assist and work with Vaughn employees to achieve better wages and working conditions."[15] (G.C. Exh. 4.)

5. Reinhart Is Assigned To The Sandusky Coal Docks

a. *Facts*

On Thursday, July 12, Monte Seifert, the project manager for the Bowling Green job, told apprentice Tim Weller that he and two or three other employees would be going back to the Bowling Green job to work beside Reinhart and Mark Faeth, so that Weller and the others could fill in for Reinhart and Faeth when they went on vacation. (Tr. 395-395.)

On the same day, July 12, Tim Vaughn received the July 10 letter from Reinhart advising that he was withdrawing from VEBA and that he was a Union Organizer. (Tr. 48, 74; R. Exh. 27.) At the end of the day, Foreman Jason Arend told Reinhart to call the office in morning about a new assignment. (Tr. 248.)

On Friday morning, July 13, Reinhart spoke to Electrical Division Manager Tim Cartwright, who told him to report to Foreman Fred Adraitch at the Sandusky Coal Docks on Monday, July 16. Unlike the Bowling Green job, the Sandusky job was not a prevailing wage job, which meant that Reinhart would be paid only $15.00 an hour, rather than $26.85 an hour that he was making on the Bowling Green job. (Tr. 258, 283.)

[15] Tim Vaughn conceded that he received the letter on or about July 12, and that he discussed it with his managers, i.e., Tim Cartwright, Pete Barnes, and Monte Seifert. However, he testified that he could not remember or recall the date he discussed the letter with them. (Tr. 48-49.) Notably, Vaughn did not testify that he discussed the letter with his managers after the decision was made to transfer Reinhart.

On Monday, July 16, Reinhart did not report to work at the Sandusky Coal Docks job because he was sick. He testified that he tried calling Pete Barnes to tell him that he was sick, but Barnes was not available. Reinhart did not leave a message. (Tr. 259.) Later that day, Janet Haferd, a Vaughn office employee, phoned Reinhart at home to find out why he had not reported to work. (G.C. Exh. 15.) Reinhart told her that he was sick and that he would report to work the following day.

The next day, July 17, Barnes gave Reinhart a written warning for not calling to report that he was sick and for not be coming to work. (G.C.Exh. 9.) According to Barnes, Reinhart told him that he drove to the job, did not know exactly where to go, tried to call the foreman and could not get through, so he went back home.[16](Tr. 679.)

Reinhart was the only electrician on the Sandusky Coal Docks job. He joined a crew of temporary employees, who were hired to dig a 2500-foot trench. (Tr. 250-252.) Reinhart testified that he spent 75 percent of his time digging and 25 percent of his time running conduit in the trench. (Tr. 255.) He described the work as very dirty with the wind blowing coal dust in his eyes and on his clothes. He explained that unlike all the other jobs that he had worked for the Respondent, he was not provided a Company truck or any Company tools. Rather, he had to use his personal vehicle and his own tools for the job.

b. *Analysis and Findings*

(1) The unlawful transfer

The General Counsel's evidence

The evidence shows that by July 12, the Respondent knew that (1) Reinhart was a Union Organizer, who intended to "assist and work with Vaughn employees to achieve better wages and working conditions"; (2) that he was withdrawing from the VEBA plans; and (3) that he, and other employees, wanted certain information about the VEBA plans in order to compare them with the Union benefit plans. In the latter connection, the testimony and documentary evidence shows that the other employees joined with Reinhart in seeking the VEBA information. The evidence also shows that Vaughn, Cartwright, and Barnes were displeased with Reinhart for sending the letters and for collaborating with Union Organizer Bob Trausch. Thus, contrary to the Respondent's assertions, the evidence viewed as a whole shows that Reinhart was engaged in protected concerted and union activity, known to the Respondent, and that such activity was opposed by the Respondent.

The credible evidence also shows that the decision to transfer Reinhart to the Sandusky job was made soon after Vaughn received the July 10 letter. The timing of the transfer therefore raises significant questions about the Respondent's true motivation.

Finally, the credible evidence shows that the Sandusky Coal job was onerous. The Sandusky work environment was dirty and dusty and the nature of the work was difficult and physically demanding. The unrebutted testimony shows that Reinhart spent most of the day (75 percent) hand-digging a trench and the rest of the day pulling conduit through the trench. He was the only Vaughn employee working at Sandusky, a remote jobsite staffed by temporary employees and therefore he was isolated from all other of the Vaughn employees. Unlike any

[16] Reinhart did not rebut this aspect of Barnes' testimony.

other job, Reinhart was not issued a Company truck or Company tools. Rather, he had to use his own personal vehicle and tools, and pay for his transportation expenses (i.e., gas). Finally, Reinhart's pay was reduced by more than $11.00 an hour.

Based on this evidence, I find that the General Counsel has satisfied her initial evidentiary burden under *Wright Line.*

The Respondent's defense

The Respondent asserts that the decision to transfer Reinhart from the Bowling Green job was made by Project Manager Monte Seifert at approximately 10:00 a.m. on July 12 and that the Respondent's President, Tim Vaughn, did not receive the July 10 until 4:00 p.m. on July 12. (Tr. 585, 74, 587; R. Exh. 27.) The Respondent argues therefore that timing is not an issue and there is no evidence of prior knowledge.

I disagree. The July 10 letter was not the only document advising the Respondent that Reinhart was involved with the Union. The June 13 letter told the Respondent that Reinhart had "met with representatives of IBEW Local 8 to discuss my wages and benefits" and that he and other employees sought the information requested in the letter. Thus, Tim Vaughn knew almost a month earlier that Reinhart and other employees were meeting with the Union.

In addition, the Respondent's evidence concerning who made the decision to transfer Reinhart and when that decision was made is contradictory. Project Manager Monte Seifert testified that he made the decision to transfer Reinhart at 10 am on Thursday, July 12. (Tr. 585-587.) Respondent's President Tim Vaughn testified that Electrical Division Manager Tim Cartwright made the decision to transfer Reinhart on Friday, July 13. (Tr. 54.) Project Manager Pete Barnes testified that he and Cartwright made a joint decision to transfer Reinhart on Friday, July 13. (Tr. 682-683.) Tim Cartwright testified that he made the decision to transfer Reinhart to the Sandusky Coal Docks job on either Thursday, July 12, or Friday, July 13, after talking with Pete Barnes. (Tr. 770.) Thus, the Respondent's conflicting evidence raises, rather than resolves, the question of who made the transfer decision and when it was made, thereby casting into doubt the Respondent's assertions that the decision was made by Seifert before, and not after, the July 10 letter was received.

In addition, Cartwright denied knowing that Reinhart requested the VEBA information before he transferred him from the Bowling Green job. (Tr. 771-772, 773.) His denial is implausible for several reasons. First, Tim Vaughn testified that upon receiving Reinhart's first letter, dated June 13, he discussed it with Tim Cartwright and Pete Barnes. (Tr. 47.) Although Cartwright conceded that he was aware of Reinhart's June 13 letter, he stated that he was unable to recall the date he was told about it. (Tr. 773.) The evidence shows, however, that Cartwright and Vaughn talk on a daily basis and attend a managers' meeting together every Tuesday morning.[17] (Tr. 773.) It is more likely, than not, that in the 30 days that passed between the time Vaughn received the June 13 letter and the date Reinhart was told he was being transferred from the Bowling Green job, that Vaughn told Cartwright about the June 13 letter. Thus, the evidence supports a reasonable inference that Cartwright knew about Reinhart's meetings with the Union and his request for VEBA information.

[17] Cartwright conceded that there were discussions about the Union during the Tuesday morning meetings. (Tr. 774.)

Next, Vaughn testified that after receiving the July 10 letter, he discussed it with his managers, including Tim Cartwright, but was unable to recall the date on which the discussion took place. (Tr. 48-49.) Cartwright conceded he knew that Reinhart had sent a second letter and that he was a Union Organizer, but like Vaughn, he too was unable to recall the date when he learned this information. (Tr. 775.) Having observed Cartwright testify, and having reviewed his testimony juxtaposed the evidence as whole, I find his inability to recall select dates was unpersuasive and contrived.

For these, and demeanor reasons, I do not credit Cartwright's testimony that he had no knowledge that Reinhart requested VEBA information or that he was a Union Organizer prior to the date that Reinhart was transferred from the Bowling Green job.

The Respondent's reasons for transferring Reinhart are dubious. Seifert testified that the Company was extremely busy at the time and that he was being badgered by Cartwright to lose people, if he could. He stated that he was concerned that if Cartwright "saw any slack time whatsoever, it's going to be my butt." (Tr. 588.) Seifert testified that because there was no traffic light installation work scheduled for the week of July 16, Reinhart was expendable. He therefore advised Cartwright that he could do without Reinhart and Mark Faeth on the Bowling Green job.

Former Employee Tim Weller credibly testified, however, that on Thursday, July 12, Seifert told him that he and two other employees would be returning to the Bowling Green job to work beside Reinhart and Faeth, so that they could fill in for Reinhart and Faeth when they went on vacation. (Tr. 394-395.) According to Weller's unrebutted testimony, when he arrived on the Bowling Green job on Monday, July 16, Reinhart and Faeth were gone. Weller testified he performed traffic signalization work with Tim Weatherholt, and also set lights, poles, assembled traffic lights and pedestrian lights. (Tr. 395, 410.) He stated that there was plenty of work to keep everyone busy. Seifert, Barnes, and Cartwright all testified after Weller. None of them rebutted his testimony.

Finally, the reasons articulated by the Respondent at trial for transferring Reinhart to the Sandusky Coal Docks job are inconsistent with the reason given by the Respondent in its pretrial position statement. (G.C. Exh. 30, page 5.) In the pretrial statement, the Respondent stated that it planned to send Reinhart to the Findlay University job to begin work on Monday, July 16. However, Reinhart did not show for work on July 16, so the Respondent contacted Findlay University to postpone the job for two weeks. On Tuesday, July 17, when Reinhart reported for work, the decision was made to assign him to the Sandusky Coal Docks job, where he worked until July 19. In contrast, Cartwright testified at trial that Reinhart was scheduled to work the Sandusky Coal job beginning Monday, July 16. (Tr. 769.) He testified that he made the decision to send Reinhart to Sandusky prior to July 16, probably Thursday or Friday of the previous week. (Tr. 769.) I find that the Respondent's shifting explanations for the transfer raises additional doubts about its true reasons for transferring Reinhart.

Based on all the evidence as a whole, I find that reasons given by the Respondent for transferring Reinhart from the Bowling Green job were pretextual and that the Respondent has failed to show persuasively that Reinhart was transferred for nondiscriminatory reasons. Accordingly, I find that the Respondent violated Section 8(a)(3) of the Act when it transferred Reinhart from the Bowling Green to the Sandusky Coal job.

(2) The July 17 written warning

The amended complaint alleges that the Respondent gave Reinhart a written warning on July 17 because of his Union and protected concerted activity. The General Counsel argues that

the Respondent did not strictly enforce it progressive disciplinary policy until after Reinhart submitted the request for VEBA information and announced that he was a Union Organizer. In this connection, Reinhart testified that on prior occasions when he missed work, it was no problem so long as he spoke to someone in the office during the day to explain why he was out of work. (Tr. 260.) He further testified that on a couple of occasions he missed work without calling the office, and either the office called him or he explained his absence the next day when he reported back to work.[18] Reinhart stated that he never received a written discipline for not calling in and not showing up. His unrebutted testimony on this point supports the General Counsel's argument that prior to July 16, the Respondent's enforcement of its policy was lax.

In addition, the General Counsel points out that another employee, Damien Beard, committed the same infraction, but received only a verbal warning, rather than a written warning. The Respondent argues, however, that the circumstances surrounding Damien Beard's discipline are different. Foreman Robert (Chuck) Kitzler testified that he gave a verbal warning to Employee Damien Beard because Beard actually reported to work late without calling in. When it was pointed out to Kitzler that the warning states "not calling in or showing up for work" (G.C. Exh. 19, emphasis added), Kitzler conceded that there is "nothing in the document that indicates that Mr. Beard showed up for work or was tardy." (Tr. 864.) He explained, however, that on the day of incident he unsuccessfully tried to phone Beard at home to ascertain his whereabouts. Kitzler stated that "[l]ater that morning, I found out that Damien did show up for work, that he overslept, so as far as I was concerned, I wrote it down that I was going to give him a verbal warning for not calling."[19] (Tr. 862.) A time card history report for May 12, 2000 (the date of incident) shows that Beard worked 6.75 hours on that day, which tends to corroborate Kitzler's testimony that Beard actually showed up for work late. (R. Exh. 33.) Thus, the Respondent has persuasively shown that the circumstances surrounding the Beard discipline were different the circumstances here. It also shows that in the Beard case, the Respondent followed its disciplinary policy. (R. Exh. 30.)

The thrust of the General Counsel's argument, however, is not that Reinhart was treated differently than other employees because of his Union and protected concerted activity. Rather, the thrust of the General Counsel's argument is that the Respondent failed to strictly enforce its policy until after Reinhart disclosed his Union affiliation and made his request for the VEBA information. That being the case, and in light of Reinhart's unrebutted and credible testimony that he has missed work on prior occasions without calling in and without being disciplined, I find that the General Counsel has satisfied her initial evidentiary burden under *Wright Line*. The burden now shifts to the Respondent to show that it has consistently enforced its disciplinary policy with respect to no call/no show infractions.

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[18] Consistent with this aspect of Reinhart's testimony is the evidence showing that on the afternoon of July 16, office employee Janet Haferd, called Reinhart at home at which time he told her that he was sick, but that he would be in the next day. (G.C. Exh. 15.) Haferd did not ask Reinhart why he did not call in. Rather, she passed the information along to Joey Blair in human resources, who passed it along to Matt Plottss, Tim Vaughn, and Tim Cartwright. (G.C. Exh. 19.)

[19] Notably, this aspect of Kitzler's testimony corroborates Reinhart's testimony that the Respondent typically calls the employee at home if the employee has not called in. (Tr. 260, 862.) That, coupled with the lack of evidence showing that Reinhart was disciplined prior to July 16 for missing work and not calling in, lends credence to Reinhart's testimony that he has missed work before without calling in and no disciplinary action was taken.

The Respondent's evidence shows the following. Reinhart missed work on July 16 and did not contact the office or his supervisor. Under Company policy, a written warning is the proper disciplinary action when an employee fails to call-in and does not show up for work. (Tr. 681, 862-863.) Reinhart was aware of the policy because he reviewed it with his crew in a tailgate meeting while he was the Defiance job foreman. (R. Exh. 29 and 30.) Consistent with the policy, Employee Damien Beard received a verbal warning for not calling in, when he was late.

The Respondent submitted no evidence, however, showing that it has consistently enforced its policy. Inexplicably the Respondent did not introduce any disciplinary warnings showing that it has uniformly issued a written warning where, as here, an employee does not call in and does not show up for work. With 200 employees of which 60 work in the electrical division, it is reasonable to expect that the Respondent possesses some documentation that would rebut the General Counsel's assertion that enforcement of the policy was inconsistent and lax prior to July 2001. Where a party has such evidence within its control and fails to introduce it, an adverse inference is warranted that the information is unfavorable to its position. *Miramar Sheraton Hotel,* 336 NLRB 1203, 1215 (2001). I find that such an adverse inference is warranted in this case.

Nor did the Respondent call anyone in its human resources department or front office (e.g., Blair or Haferd) to rebut Reinhart's assertions that he was never disciplined before for not calling in and not coming to work. Where a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. *International Automated Machines,* 285 NLRB 1122, 1123 (1987). I find that such an inference is warranted here.

Based on the evidence viewed as a whole, I find that the Respondent has failed to persuasively show that it has consistently enforced its disciplinary policy with respect to no call/no show infractions. I further find that the Respondent has failed to show that in the absence of Reinhart's protected concerted and Union activity, the Respondent would have given him a written warning. Accordingly, I find that the Respondent violated Section 8(a)(3) of the Act giving Reinhart a written warning on July 17, 2001.

(3) Barnes questions Reinhart

On July 19, 2001, which was his third day on the Sandusky Coal Docks job, Reinhart was confronted by Project Manager Pete Barnes in the break room.[20] According to Reinhart's unrebutted testimony, Barnes, who was the Sandusky project manager, and therefore Reinhart's supervisor, asked him if he had sent Vaughn a letter about VEBA. Barnes then admonished Reinhart for not going to talk to Tim Vaughn first and told him that he had defecated on the other employees by sending the letter. (Tr. 242-243.) Reinhart testified that Barnes also asked him if he had been talking to "Bob," referring to Union Organizer Bob Trausch, and asked Reinhart if he felt bad about himself for doing so. (G.C. Exh. 6.)[21]

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[20] Reinhart testified that the conversation took place on July 9. Barnes testified that it took place on July 19. (Tr. 668.) For demeanor reasons, I credit Barnes testimony that he questioned Reinhart on July 19 in the break room.

[21] At trial, I overruled the Respondent's objection to the admission of G.C. Exh. 6. (Tr. 247.) Respondent's counsel renewed the objection in his post hearing brief at page 49, fn. 23. The renewed objection is also overruled. The document is a present sense impression, the witness is the declarant, and the Respondent had an opportunity to cross-examine the witness

Continued

Barnes did not deny questioning Reinhart about Bob Trausch.[22] He stated that he approached Reinhart asking him if there was a problem, but Reinhart replied that he did not know what Barnes was talking about. (Tr. 669.) Barnes stated that he asked Reinhart if he was planning on quitting, and again Reinhart told him that he did not know what Barnes was talking about. Barnes testified that at that point he asked Reinhart if he had been "hanging around a certain asshole," and admitted that he was referring to Union Organizer Bob Trausch. (Tr. 670, 687-688.) He also admitted that neither he nor Tim Vaughn were pleased that Reinhart had written a letter requesting information from VEBA and another letter withdrawing as a VEBA participant. (Tr. 688; G.C. Exh. 4.)

The amended complaint alleges that Barnes unlawfully interrogated Reinhart about his Union activities. It is well established that interrogation of employees is not illegal per se. *Midwest Stock Exchange, Inc. v. NLRB,* 635 F.2d 1255, 1267 (7th Cir. 1980). An interrogation is unlawful when the questioning, viewed from the employee's perspective, reasonably tends to restrain, coerce or interfere with the employee's exercise of protected statutory rights under the Act. *Sunnyvale Medical Clinic,* 277 NLRB 1217 (1985). The factors to be considered in analyzing the interrogation are: (1) the background; (2) the nature of the information sought; (3) the identity of the questioner; and (4) the place and method of interrogation." *Rossmore House,* 269 NLRB 1176, 1178, fn. 20 (1984).

The evidence shows that on July 13, 2001, Union Organizer Reinhart was transferred to the Sandusky Coal Docks, a job which was significantly more labor intensive, but paid significantly less money. It also had significantly less desirable working conditions than the Bowling Green job. The evidence shows that Reinhart was neither a foreman nor a supervisor on the Sandusky job; that Pete Barnes, the Sandusky project manager, effectively was Reinhart's supervisor at the time; that Barnes, as well as Company President Vaughn, were not pleased with Reinhart for writing the June 13 and July 10 letters; and that two days earlier, on July 17, Pete Barnes gave Reinhart a written warning, which was the only disciplinary action received by Reinhart during employment with the Respondent. That, in effect, is the background leading up to the July 19 interrogation.

The evidence also shows that Barnes initiated the discussion with Reinhart in the employee break room. Contrary to the Respondent's assertions, there is no evidence that other foreman were in the break room when Barnes questioned Reinhart. Rather, the evidence shows that there were only employees in the break room. (Tr. 243, 668-669.) The evidence further shows that Barnes questioned Reinhart about his motives for writing the letters, and continued questioning him, even after Reinhart attempted to avoid the conversation by repeatedly telling Barnes he did not know what he was talking about. (Tr. 670.) In pursing the inquiry, Barnes implied that Reinhart was a disloyal employee and asked him if he had been "hanging around a certain asshole," referring to Union Organizer Bob Trausch. Barnes then admonished Reinhart by telling him that he should feel bad about himself for meeting with Trausch.[23]

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concerning the event described therein.

[22] Barnes testified that he too knew about Reinhart's VEBA letter prior to July 19. He recalled discussing the letter with Electrical Division Manager Cartwright, who asked him if there was something wrong with Reinhart. (Tr. 685.)

[23] Barnes unpersuasively testified that he tried to be non-confrontational and that he tried to let Reinhart know "at the end of every question" that he did not have to answer him. (Tr. 670.) The fact that Reinhart was unwilling to answer, however, did not dissuade Barnes from continuing to ask questions.

Thus, the evidence viewed as a whole shows that Barnes' conduct was coercive and tended to interfere with Reinhart's protected rights under the Act. Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act by interrogating Reinhart on July 19.

(4) Reinhart resigns

Reinhart worked four days at the Sandusky Coal job (July 17-19). According to his unrebutted testimony, the working conditions were harsh. Coal dust blew off the coal piles onto his clothes and into his eyes and hair. (Tr. 253-254.) The majority of his time was spent digging a trench, along with several temporary employees.[24] (Tr. 255.) He was the only Vaughn electrician on the job. Reinhart was not issued a Company truck because he was told that none was available. He therefore had to use his personal vehicle and his own tools. The hourly rate of pay that he received was $11.00 less than the prevailing wage rate that he earned on the Bowling Green job ($15.00 an hour versus $26.85 an hour). (Tr. 350, 283.)

Reinhart took vacation from July 23-26, 2001. On Sunday, July 29, he spoke with Electrical Division Manager Tim Cartwright, who told him to report the next day to Foreman Doug Wentling on the Findlay University job. Reinhart worked with apprentice Alex Plotts on the Findlay University job for two days, July 30 and August 1. His rate of pay was unchanged at $15.00 an hour.

On August 2, Reinhart submitted a resignation letter asserting that he was resigning because the Respondent had retaliated against him ever since he requested the VEBA information. The letter stated that the Company had made his working conditions unbearable once he withdrew from VEBA and disclosed that he was a Union Organizer. (Tr. 281; G.C. Exh. 10.) At trial, Reinhart explained that he submitted the resignation letter because:

> …they removed me from the job, took my Company truck, took --- took my Company tools, mainly. I had to pay for my truck, wear and tear, ruined my interior, paid for gas and travel both ways. I had to work by myself in a terrible job, where eye irritation, and ruined my clothes. It was one of the worst jobs I had ever worked on.
>
> Then, every time I'd go back to the office, every foreman or office manager would just stare at me, not talk to me. I'd known them for years and got along with them great. No one ever talked to me before, except for talking to Pete Barnes. And, I had talked with other apprentices, and they said how a few of the journeyman wanted to kick my ass because I did such a thing, so I felt there was no choice but to send the letter. I couldn't handle working there no more.

(Tr. 281-282.)

[24] Reinhart's testimony that he had to dig a 2500-foot trench is slightly exaggerated as the evidence shows that the trench digging began before he arrived and continued after he departed the job. (Tr. 795.) In other words, he was involved in digging part of the 2500-foot trench.

The amended complaint alleges that the Respondent caused Reinhart to resign in violation of Section 8(a)(3) of the Act by transferring him to a more arduous and less desirable job, reducing his pay, causing him to absorb transportation costs, disciplining him, and coercively interrogating him.

In *Crystal Princeton Refining Co.,* 222 NLRB 1068, 1069 (1976), the Board stated the following test for constructive discharge:

> First, the burden imposed upon the employee must cause, and be intended to cause, a change in working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's union activities.

With respect to the first element of the test, the credible evidence shows that the Sandusky Coal Docks job was onerous. The Sandusky work environment was dirty and dusty and the nature of the work was difficult and physically demanding. The unrebutted testimony shows that Reinhart spent most of the day (75 percent) hand-digging a trench and the rest of the pulled conduit through the trench. He was the only Vaughn employee working at Sandusky, a remote jobsite staffed by temporary employees and therefore he was isolated from all other of the Vaughn employees. Unlike any other job, Reinhart was not issued a Company truck or Company tools. Rather, he had to use his own personal vehicle and tools, and pay for his transportation expenses (i.e., gas). Finally, Reinhart's pay was reduced by $11.00 an hour.

In addition, the evidence shows that after learning the Reinhart was a Union Organizer, the Respondent abandoned its lax enforcement of disciplinary policy by issuing Reinhart a written warning for a no call/no show infraction. Two days later, Pete Barnes, the same supervisor who issued the written warning, stopped Reinhart in the break room, questioned him, even after Reinhart attempted to avoid conversation, and criticized him for sending the letters and for talking to Union Organizer Bob Trausch. In the course of the interrogation, Barnes asked Reinhart "what are you going to do are you going to leave us high and dry, are you going to quit, I don't understand where you're coming from, Bud." (Tr. 669.) That remark by Barnes, in the context within which it was made, and given the sequence of prior events, supports a reasonable inference that the Respondent anticipated that Reinhart would quit because it had made working conditions unbearable for him. *Aero Industries,* 314 NLRB 741, 742 (1994).

With respect to the second element, the timing of the transfer, followed immediately by the discipline and unlawful interrogation, show that the change in Reinhart's working conditions was prompted by the announcement that he was a Union organizer and by his involvement with the Union.

Based on the evidence viewed as a whole, I find that the Respondent's unlawful conduct caused Reinhart to quit. Accordingly, I find that the Respondent violated Section 8(a)(3) of the Act by constructively discharging Donald Reinhart.

Conclusions of Law

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

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

3. Donald Reinhart was not a supervisor within the meaning of Section 2(11) of the Act at any time between August 2000 – August 2001.

4. The Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) Telling its employees that they should not talk to union organizers on the jobsite and that if they did talk to union organizers on the jobsite, they could be discharged.

(b) Coercively interrogating an employee about his motives for engaging in union and protected concerted activity and about his meetings with a union organizer.

5. The Respondent violated Section 8(a)(3) of the Act by engaging in the following conduct:

(a) Transferring Nick Staib from the Blanchard Valley Hospital job to the Respondent's Cary, Ohio facility because he engaged in union and protected concerted activity.

(b) Transferring Donald Reinhart from the Bowling Green job to the Sandusky Coal Docks job because he engaged in union and protected concerted activity.

(c) Disciplining Donald Reinhart by strictly enforcing its disciplinary policy because he engaged in union and protected concerted activity.

(d) Constructively discharging Donald Reinhart because he engaged in union and protected union activity.

6. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of 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 unlawfully transferred Nick Staib, it must make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of transfer to the Respondent's Cary, Ohio facility (March 12, 2001) to the date of his employment resignation, 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).

The Respondent having unlawfully transferred Donald Reinhart, and unlawfully caused him to resign, it must offer them reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of transfer to the Sandusky Coal Docks job (July 16, 2001) to the date of proper offer of reinstatement to a prevailing wage job, 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 recommended[25]

ORDER

The Respondent, Vaughn Industries, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling an employees that they should not talk to union organizers on the jobsite and that if they did talk to union organizers on the jobsite, they could be discharged.

(b) Coercively interrogating an employee about his motives for engaging in union and protected concerted activity and about his meeting with a union organizer.

(c) Transferring Nick Staib from the Blanchard Valley Hospital job to the Respondent's Cary, Ohio facility because he engaged in union and protected concerted activity.

(d) Transferring Donald Reinhart from the Bowling Green job to the Sandusky Coal Docks job because he engaged in union and protected concerted activity.

(e) Disciplining Donald Reinhart by strictly enforcing its disciplinary policy because he engaged in union and protected concerted activity.

(f) Constructively discharging Donald Reinhart because he engaged in union and protected concerted activity.

(g) 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) Within 14 days from the date of this Order, offer Donald Reinhart, full reinstatement to his former position on a prevailing wage job or, if such position does not exist, to a substantially equivalent position with substantially equivalent pay, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Nick Staib and Donald Reinhart, 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) Within 14 days from the date of this Order, remove from its files any reference to the unlawful written warning given to Donald Reinhart on July 17, 2001, and within 3 days thereafter notify the Donald Reinhart in writing that this has been done and that the written warning will not be used against him in any way.

[25] If 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.

(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 any electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Moorestown, New Jersey, copies of the attached notice marked "Appendix."[26] Copies of the notice, on forms provided by the Regional Director for Region 8, 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 closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 12, 2001.

(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.

Dated Washington, DC October 7, 2003

_____
C. Richard Miserendino
Administrative Law Judge

[26] If this Order is enforced by a Judgment of the 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."

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 tell our employees that they should not talk to union organizers on the jobsite and that if they do talk to union organizers on the jobsite, they could be discharged.

WE WILL NOT coercively interrogate our employees about their motives for engaging in union and protected concerted activity and about their meetings with union organizers.

WE WILL NOT transfer Nick Staib, Donald Reinhart, or any other employee because they engage in union and protected concerted activity.

WE WILL NOT discipline Donald Reinhart by strictly enforcing our disciplinary policy because he engaged in union and protected concerted activity.

WE WILL NOT constructively discharge Donald Reinhart because he engaged in union and protected concerted activity.

WE WILL NOT 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.

WE WILL, within 14 days from the date of the Board's Order, offer Donald Reinhart full reinstatement to his former position on a prevailing wage job or, if such position does not exist, to substantially equivalent position with substantially equivalent pay, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL, make Nick Staib, whole for any loss of earnings and other benefits suffered as a result of our unlawful discrimination against him on March 12, 2001, less any net interim earnings, plus interest.

WE WILL, make Donald Reinhart, whole for any loss of earnings and other benefits suffered as a result of our unlawful discrimination against him on July 16, 17, and August 1, 2001, 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 warning given to Donald Reinhart on July 17, 2001, and within 3 days thereafter, we will notify Donald Reinhart in writing that this has been done and that the written warning will not be used against him in any way.

VAUGHN INDUSTRIES

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1240 East 9th Street, Federal Building, Room 1695, Cleveland, OH 44199-2086

(216) 522-3716, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (216) 522-3723.