

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

POST TENSION OF NEVADA, INC.

and

Case 28-CA-21579

DISTRICT COUNCIL OF IRON WORKERS  
OF THE STATE OF CALIFORNIA AND VICINITY

Chris J. Doyle, Atty., Counsel for the General Counsel,  
Region 28, Phoenix, Arizona.

James T. Winkler, Littler Mendelson, PC, Counsel for Respondent,  
Las Vegas, Nevada.

Brady Bratcher, District Council of Iron Workers of the  
State of California and Vicinity, AFL-CIO,  
Representing Charging Party, Pinole, California.

DECISION

I. Statement of the Case

Lana H. Parke, Administrative Law Judge. This matter was tried in Phoenix, Arizona on February 12 through 14 and 27, 2008<sup>1</sup> upon Complaint and Notice of Hearing (the Complaint) issued November 30, 2007 by the Regional Director of Region 28 of the National Labor Relations Board (the Board) based upon charges filed by District Council of Iron Workers of the State of California and Vicinity (the Union) The Complaint alleges Post Tension of Nevada, Inc. (the Respondent) violated Sections 8(a)(1) and (3) of the National Labor Relations Act (the Act).<sup>2</sup> Respondent essentially denied all allegations of unlawful conduct.

II. Issues

1. Did the Respondent engage in the following violations of Section 8(a)(1) of the Act: engage in surveillance of employees engaged in union and other concerted activities; orally promulgate and maintain overly broad and discriminatory rules that prohibit employees from talking to Union representatives, that prohibit employees from assembling at a facility where they engage in concerted activities, and that prohibit employees from cashing checks at a facility close to the Respondent's facility; threaten employees with discharge if they engage in a strike.

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<sup>1</sup> All dates herein are 2007 unless otherwise specified.

<sup>2</sup> At the hearing, Counsel for the General Counsel amended the complaint to correct jurisdictional allegations in paragraph 2(b). Respondent admitted the amended allegation.

2. Did the Respondent violate Section 8(a)(3) and (1) of the Act in the first week of September by imposing more onerous terms and conditions of employment by prohibiting its employees from cashing checks at a facility close to the Respondent's facility.

5 3. Did unfair labor practices committed by the Respondent cause or prolong the strike engaged in by certain employees of the Respondent on September 20?

10 4. Did the Respondent violate Section 8(a)(3) and (1) of the Act on September 20 by discharging employees David Amaya-Ruiz, Alfonzo Arce-Salazar, Agustin Cuevas-Ayala, Leobardo Delgado, Teodoro Flores-Sanchez, Damian Garcia, Jesus Martinez, Crecencio Montoya-Ramirez, Jesus Prudenciano-Orenday, Felix Quiros, Salvador Quiroz-Merino, Gregorio Quiroz-Sanchez, Leonides Ruiz-Quiroz, Eduardo Velasco-Hernandez, and Aureliano Zazueta-Rivera.

15 5. Has the Respondent, since September 26, violated Section 8(a)(3) and (1) of the Act by failing and refusing to reinstate the employees named in paragraph 4 above to their former or substantially equivalent positions of employment following their unconditional offers to return to those positions.

6. Did the Respondent violate Section 8(a)(3) and (1) of the Act by refusing to consider applicant Brady Bratcher for employment.

20 III. Jurisdiction

At all relevant times, the Respondent, a Nevada corporation, has been engaged in the business of installing stress cables used in the construction industry with an office and place of business in Phoenix, Arizona (the Respondent's Phoenix facility). During the 12-month period ending September 20, the Respondent purchased and received at its facility goods valued in excess of \$50,000, directly from points located outside the state of Arizona. I find Respondent has at all relevant times been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent admits, and I find, the Union has at all relevant times been a labor organization within the meaning of Section 2(5) of the Act.

30 IV. Findings of Fact

A. The Respondent's Business

35 The Respondent operates its construction-industry business out of facilities located in Denver, Colorado, Henderson, Nevada and Tucson and Phoenix, Arizona. This case concerns the Respondent's facility in Phoenix, Arizona (the Phoenix facility). John Hohman, based in Tucson, manages the Arizona facilities, visiting the Phoenix facility several times a week. During the period relevant to this matter, the following individuals held the following positions with the Respondent at the Phoenix facility and were supervisors and agents of the Respondent within the respective meanings of Section 2(11) and Section 2(13) of the Act:

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- |                              |   |                          |
|------------------------------|---|--------------------------|
| John Hohman (Mr. Hohman)     | - | Vice-President           |
| Matt Pickens (Mr. Pickens)   | - | Superintendent           |
| Javier Loya Bando (Mr. Loya) | - | Assistant Superintendent |
| Ken Saffin (Mr. Saffin)      | - | Manager                  |

In 2007, the following seven employees, stipulated supervisors within the meaning of Section 211 of the Act, served as the Respondent's field foreman:

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Roberto Arce-Salazar (Foreman Salazar)	Jesus Guerrero (Foreman Guerrero)
Ezequiel Ordonez (Foreman Ordonez)	Juan Quintero (Foreman Quintero)
Juan Delgado (Foreman Delgado)	Rosalio Gastelum (Foreman Gastelum)
Jaime Fernandez (Foreman Fernandez)	

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At all relevant times, the Respondent's construction projects in Phoenix were carried out by field crews, each consisting of a foreman and a varying number of laborers. For several years prior to September 20, the Respondent's workday practice in Phoenix was for the field crews to report to the Phoenix facility, receive their work assignments, and depart for their specified work sites. Each crew was transported by its respective foreman in the foreman's personal vehicle. Enroute to the work site, most crews typically stopped at a nearby Chevron gas station/mini market (Chevron station) where the crew foremen fueled their vehicles while crew members purchased food and socialized, spending from 20 to 30 minutes there.

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The Respondent paid its field employees an hourly rate plus a production bonus, normally issuing paychecks to the field employees each Friday morning.<sup>3</sup> Having established check-cashing privileges at the Chevron station, many crew members cashed paychecks there on payday mornings.

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#### B. Union Organizational Activity among the Respondent's Field Employees

In 2005 Brady Bratcher (Mr. Bratcher), organizer for the Union, unsuccessfully sought an 8(f) agreement with the Respondent. That same year, he coordinated a brief economic strike against the Respondent by its field employees, resulting in a meeting among company representatives and workers to resolve certain work issues.

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In early 2007 with the intention of organizing the Respondent's employees, Mr. Bratcher began visiting the Chevron station where he knew many employees gathered before dispersing in crews to individual work sites. A number of employees expressed to Mr. Bratcher dissatisfaction with the Respondent's failure to implement its 2005 post-strike promises, and Mr. Bratcher increased his meetings with them during mid-summer.<sup>4</sup> The Respondent knew Mr. Bratcher visited with employees at the Chevron station. On one occasion, as Mr. Bratcher met with employees there, he gave Mr. Loya, whom he knew from the 2005 strike, a business card, asking him to help the workers if he could.

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In early August, Mr. Bratcher approached Mr. Saffin at the Respondent's Phoenix facility with the hope of securing an 8(f) agreement with the company. Mr. Saffin declined to talk to him, saying that in 2005 when Mr. Bratcher didn't get what he wanted he, "went behind [the company's] back."

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<sup>3</sup> Employee paychecks, which were generated in Henderson, Nevada, sometimes did not arrive at the Phoenix facility until late afternoon Thursday or on Friday. When that happened, Mr. Pickens delivered them to employees on the jobsites. Deviation from Friday morning paycheck issuance appears to have been atypical and infrequent.

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<sup>4</sup> In addition to meeting with employees during workday mornings at the Chevron station, Mr. Bratcher met with them at an office building of the Building Trades Organizing Project (BTOP).

## C. The Respondent's August 24 Meeting with Field Foremen

On August 24, Mr. Pickens held a meeting with the Respondent's seven field foremen at which Mr. Loya and Juan Carlos-Acosta translated.<sup>5</sup> At the meeting, Mr. Pickens distributed and discussed written instructions entitled "Tips for Management" setting forth rules for management conduct during union organizing campaigns. The handout categorized prohibited conduct by the acronym TIPS: Threats, Intimidation, Promises, and Spying.

Foreman Salazar testified that Mr. Pickens told the foremen they were not talk to Mr. Bratcher or to take employees to talk to him.<sup>6</sup> Foreman Salazar quoted Mr. Pickens, as saying:

I don't want you guys to go to the Chevron at all there, and to bring the laborers. In fact, I just don't want you to go to that Chevron gas station at all. Instead of going and gassing up in the morning, I would want you to go and gas up in the afternoon, so that in the morning, you don't have to go to the gas station at all. Just go straight away and go to work.

Foreman Ordonez essentially corroborated Foreman Salazar's testimony and further recalled that Mr. Pickens said the Respondent would no longer distribute paychecks in the morning in order to discourage crews from going to the Chevron station because Mr. Bratcher was there.

Mr. Pickens denied telling the foremen that they were not to go to Chevron station or threatening to impede their check-cashing there, and he denied telling the foremen to tell their crews they could not talk to Mr. Bratcher or go to the Chevron station or cash their checks there. According to Mr. Pickens, he told the foremen not to have any contact with union representatives, as they were members of company management, and not to threaten, intimidate, promise, or spy on their laborers. By Mr. Pickens' account, when the foremen said it was difficult to avoid Mr. Bratcher, as he was regularly at the Chevron station, Mr. Pickens suggested they not go there.

Mr. Loya testified Mr. Pickens told the foremen at the August 24 meeting that while they were not to have any contact with union representatives, it did not matter if the laborers did.

Following the meeting, Foremen Salazar and Ordonez told their crews Mr. Pickens had forbade them to take the laborers to the Chevron station because he did not want them talking to Mr. Bratcher. The workers complained about Mr. Pickens' interdiction, as it interfered with

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<sup>5</sup> There is some question as to whether Mr. Loya fully translated what Mr. Pickens said. Foreman Salazar testified that Mr. Loya rendered lengthy utterances by Mr. Pickens into brief translations; Foreman Ordonez testified that Mr. Loya does not speak or read English very well. However, Mr. Loya is an admitted supervisor, and while his statements may not have precisely reflected those of Mr. Pickens, the Respondent is answerable for what Mr. Loya said. See *3E Co., Inc.*, 313 NLRB 12, FN 1 (1993). I find it unnecessary, even if it were possible, to distinguish between Mr. Pickens and Mr. Loya's statements. Moreover, foremen Salazar and Ordonez who are at least conversant in English have testified to what Mr. Pickens said.

<sup>6</sup> Initially, Mr. Salazar testified that Mr. Pickens said the foremen were not to "take people to talk to [Mr. Bratcher]." In response to questioning by Mr. Bratcher, Foreman Salazar clarified that Mr. Pickens had told the foremen not to "take any of our laborers to where they could meet up or talk with Brady [Bratcher] or any union representative."



saw no flash; (3) Damion Garcia testified he saw Mr. Pickens seated behind his steering wheel pointing a cell phone toward Mr. Bratcher, as Mr. Bratcher talked with Foreman Guerrero and surrounding laborers. Mr. Pickens denied ever taking a picture of any employees at the Chevron station and posited that he may have been seen text messaging while there. I credit  
 5 Mr. Pickens' denial. Testimony regarding Mr. Pickens' alleged photographing of employees was inconsistent, and there is no clear evidence Mr. Pickens' action on which the testimony was based was not cell phone use unrelated to employees' union activity.<sup>11</sup>

E. The September 20 Strike and September 26  
 10 Unconditional Offer to Return to Work

Upon reporting to work the morning of Thursday, September 20, Foreman Salazar told some of the laborers that Mr. Loya had announced they would not receive their paychecks until Friday afternoon because the Respondent did not want them to go to the Chevron to cash them  
 15 and see Mr. Bratcher. The employees asked for a meeting with Mr. Pickens. Mr. Pickens refused to meet with the laborers, but with Mr. Loya translating, Mr. Pickens met in his office with five of the field foremen, Salazar, Ordonez, Delgado, Guerrero, and Fernandez, for about an hour and a half. During the meeting, the foremen requested a written explanation of the company's pay system for field employees, which Mr. Pickens said he could not immediately  
 20 supply. They also asked the company to provide water and ice machines and reimburse them for their hand tools. Mr. Pickens said he would discuss their requests with the company owners. Agreeing to meet with them again after work, Mr. Pickens prevailed upon them to leave for their job sites in order to meet deadlines for scheduled construction inspections.

The five foremen left Mr. Pickens' office, but only Foreman Guerrero went to work with his crew. The remaining foremen met with their crews, and Foreman Salazar told the laborers that Mr. Pickens had said he would not turn over the checks until Friday afternoon so that the workers would not "hook up" with Mr. Bratcher at the Chevron station.<sup>12</sup> While the laborers were still talking with their foremen, Mr. Pickens came outside. Foremen Salazar, Ordonez,  
 30 Delgado, and Fernandez informed Mr. Pickens that they were not going to work. With Mr. Loya translating, Mr. Pickens spoke to the foremen and their crews outside his office.<sup>13</sup> The employees told Mr. Pickens they were unhappy about the lack of equipment, and the failure of the Respondent to furnish an ice machine and water.<sup>14</sup> Mr. Pickens said he was not so stupid as to buy an ice machine. Employees asked if they "were allowed to go to the Chevron in order to cash [their] checks." Mr. Pickens told them he would not give out their paychecks until Friday  
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<sup>11</sup> I recognize that I have earlier declined to credit Mr. Pickens' testimony as to another issue. The Board has long held that failure to credit part of a witness' testimony does not preclude crediting other parts of his testimony. *Service Employees International Union Local 1877, Division 87(American Building Maintenance, et. Al.)*, 345 NLRB 161, FN 3 (2005).  
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<sup>12</sup> The substance of Foreman Salazar's report to the laborers is based on the testimony of employee Cuevas-Ayala whom I found to be a candid and reliable witness. Mr. Ayala's testimony was, in part, corroborated by Damion Garcia whom I also found credible; Mr. Garcia testified that Mr. Pickens was "bent on the fact that we should not go to the gasoline station."  
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<sup>13</sup> There is some disagreement as to whether the laborers were involved in this second discussion with Mr. Pickens or only the foremen. Mr. Pickens testified he had a second meeting only with the foremen. It is clear, however, that whether Mr. Pickens included them in the second discussion, the laborers were in a position to hear what he said, as translated by Mr. Loya and by Foreman Salazar, and offered comments through Foremen Salazar and Ordonez who translated for them.  
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<sup>14</sup> Although employee testimony regarding the second discussion with Mr. Pickens varied in some details, the employee witness accounts were essentially consistent, and I credit their testimony. The account set forth is an amalgam of their credible testimony.

afternoon because he did not want them going to the Chevron station.<sup>15</sup> The employees said they wanted to receive their paychecks in the morning, and if they did not, they would unload their tools. The laborers began unloading their tools from their foremen’s pickups, and Mr. Pickens told them that if they did, he would assume they were quitting or giving up their jobs, which the employees denied.<sup>16</sup> The workers completed their unloading and left the Respondent’s facility, going directly to the Chevron station.

The foremen and laborers who had refused to work regrouped at the Chevron station and telephoned Mr. Bratcher, who arrived an hour or so later. Foremen Salazar and Ordonez told Mr. Bratcher the company had refused their demands for equipment, water, and ice, had declined to explain how their pay was calculated, had forbidden them to go to the Chevron to cash their checks, had changed Friday morning paycheck distribution to the afternoon, and had told them they would be quitting if they refused to work. The employees told Mr. Bratcher they wanted to strike. Mr. Bratcher told them that as the Respondent had violated federal law by telling them they couldn’t speak to him or go to the Chevron station and other possible unfair labor practices, they could convert the strike to an unfair labor practice strike.<sup>17</sup> He helped the employees draw up a strike notice, which all signed, as follows:

WE HEREBY NOTIFY POST TENSION OF NEVADA THAT WE ARE ON UNFAIR LABOR PRACTICE STRIKE UNTIL FURTHER NOTICE

Agustin Cuevas Ayala	Crecensio Montoya Ramirez
Leobardo Delgado	Jesús Prudenciado
Alfonso Arca Salazar	Aureliano Zazueta
David Amaya Ruiz	Eduardo Velasco Hernandez
Gregorio Quinoz Sanchez	Juan Quiroz
Teodoro Flores S	Roberto Arce Salazar
Salvador Quiroz Medina	Jaime Fernández
Jesús Martine	Juan Delgado
Damion Garcia	Brady Bratcher
Gerónimo Quiroz	Ezequiel Ordonez

The group returned to the Respondent’s facility, and the workers presented the strike notice to Mr. Saffin.

<sup>15</sup> While Mr. Pickens denied ever having delayed paycheck distribution to prevent employees from meeting Mr. Bratcher at the Chevron station, he did not deny telling employees so. I credit employee witness accounts.

<sup>16</sup> Mr. Pickens admitted telling Foremen Salazar and Ordonez he assumed they were quitting, further testifying they replied, “Yes we quit.” I do not credit Mr. Pickens’ implied testimony that his statement was directed solely to the two foremen and that they were the only ones who responded. I credit employee Cuevas-Ayala’s testimony of what occurred at that time, and I find Mr. Pickens told the group generally that if they unloaded the tools, they had given up their jobs, to which employees insisted they were striking. I find the employees’ conduct was at all times consistent with strike activity rather than voluntary termination.

<sup>17</sup> This account of the employee discussion regarding their decision to strike is an amalgam of employee and Mr. Bratcher’s credible testimony. Employee Cuevas Ayala testified his motive for joining the strike was, in part, the Respondent’s prohibition on going to the Chevron station and seeing or talking to Mr. Bratcher, all of which complaints he discussed with fellow laborers prior to the strike. Aureliano Zazueta-Rivera testified the employees asked Mr. Brady for his help because Mr. Pickens had told them they had quit.

After presenting the strike notice to the Respondent, the striking employees gathered at the BTOP offices and made picket signs reading "POST TENSION OF NEVADA UNFAIR." The following day, on the morning of September 21, the striking employees appeared at the Respondent's facility at about 5 a.m. and picketed the company with the above-described picket signs for approximately three hours and each workday thereafter through the morning of September 26.

During the period September 21 to September 26, the Respondent hired eight field employees, each of whom signed a form acknowledging employment as a permanent replacement for a striking employee. The Respondent hired one of the eight as a foreman with two of the new hires assigned to his crew. The other five new hires were dispersed between two existing crews.<sup>18</sup>

During the morning of September 26, the strikers, having agreed to end the strike, suspended picketing at Respondent's facility and presented to Mr. Saffin and Mr. Hohman an unconditional offer to return to work with the following signatures:

We the striking workers of Post Tension of Nevada listed below hereby agree to end our Unfair Labor Practice strike unconditionally this 26<sup>th</sup> day of September, 2007 and to return to work immediately.

25	Arce-Salazar Roberto Arce-Salazar Alfonzo Cuevas-Ayala Agustin Delgado Juan Delgado Leobardo Fernandez Jaime Flores-Sanchez Teodoro	Prucenciano-Orenday Jesus Quiros Felix Quiroz-Merino Salvador Quiroz-Sanchez Gregorio Ruiz-Quiroz Leonides Velasco-Hernandez Eduardo Zazueta-Rivera Aureliano
30	Garcia Damian Martinez Jesus Ordonez Ezequiel	Montoya-Ramirez Crecencio Amaya-Ruiz David

Upon receiving the unconditional offer to return to work, Mr. Hohman told the workers they had been permanently replaced. On that or the next day, each employee signed a document entitled "Preferred Hire List" as follows:

40	Delgado Leobardo Ezequiel Ordonez G Damian Garcia Roberto Arce Salazar Jaime Fernandez Agustin Cuevas Ayala Teodoro Flores Sanchez	Crecencio Montoya Ramirez Gregorio Quiroz Sanchez Salvador Quiroz Merino Leonides Ruiz Quiroz Eduardo Velasco Hernandez Juan Delgado Felix Quiroz
45	Alfonso Arce Salazar	Jesus Prucenciano Orenday

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<sup>18</sup> The Respondent offered un rebutted evidence that the company had experienced a decrease in work in the latter half of 2007 and, at the time of the strike, was considering a lay off of field employees. The Respondent's declining work load precluded replacement of all striking employees. Attrition further reduced the numbers of field employees; within the first six weeks, three replacements terminated employment.



David Amaya Ruis  
Aureliano Zazueta Rivera

Jose O Sequera  
Jerónimo Quiroz

5 Following the Regional Office's decision to issue complaint in this matter, the Respondent on December 11, mailed or hand delivered offers of reinstatement to certain of the employees named in complaint paragraph 5(f), stating in part: "Pursuant to your offer to return to work, Post Tension of Nevada is prepared to put you back to work in your position immediately." Pursuant to the letters, the Respondent laid off all but one of the permanent replacements<sup>19</sup> and returned the following strikers to work on the dates indicated:

10  
 Salvador (Geronimo) Quiroz-Merino Date unknown  
 Eduardo Velasco-Hernández December 12  
 Jesus Martinez December 12  
 Teodoro Flores-Sanchez December 13  
 15 Crecencio Montoya-Ramirez December 17

As of the date of the hearing, the Respondent had not returned the following strikers to work:

20 David Amaya-Ruiz Jesus Prudenciano-Orenday  
 Alfonzo Arce-Salazar Felix Quiros  
 Agustin Cuevas-Ayala Gregorio Quiroz-Sanchez  
 Leobardo Delgado Aureliano Zazueta-Rivera  
 25 Damian Garcia

F. Brady Bratcher's Application for Employment with the Respondent

30 Although the Respondent hands out employment applications to individuals who request them at the Phoenix facility (office applicants) and accepts completed forms, the Respondent does not hire field employees from such applications.<sup>20</sup> The Respondent's hiring procedure is to select a foreman, often from its existing field workers, who then forms a crew, typically drawing from among his acquaintances and relatives. Upon selection for a field crew, each laborer completes an employment application and other employment forms. In 2007, no field employee was hired from the 19 applications submitted by office applicants. During that period,  
 35 Maria Perez (Ms. Perez) worked in the Phoenix facility's office as a clerical employee with authority to dispense employment applications.<sup>21</sup>

40 On September 7, Mr. Bratcher went to the Respondent's Phoenix office wearing an orange cap on which "Iron Workers Local 75" was enscribed. Mr. Bratcher asked Ms. Perez for an employment application, telling her he wanted to work and to organize. Ms. Perez made a telephone call to Mr. Pickens from an adjacent office, telling him that Mr. Bratcher wanted to talk to him or Mr. Saffin and/or to get an employment application. Mr. Pickens told Ms. Perez to tell

45 <sup>19</sup> During the hearing, the Respondent represented that it had retained replacement Contantino Quiroz who, as a rehire, had inadvertently not been flagged as a replacement.

<sup>20</sup> The Respondent accepts applications essentially as an accommodation to job seekers receiving unemployment benefits who need to document work searches.

50 <sup>21</sup> The Complaint alleges that Ms. Perez is a supervisor and agent of the Respondent within the meaning of the Act. No evidence was adduced that Ms. Perez possessed any of the indicia of Section 2(11) of the Act.

Mr. Bratcher to leave or the police would be called, which she did. Ms. Perez steadily refused to give Mr. Bratcher an application.<sup>22</sup> Had Mr. Bratcher been given an application, he would have completed it, and if offered employment, he would have accepted it.

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## DISCUSSION

### A. Positions of the Parties

10 The General Counsel contends that when the Respondent's field employees refused to work on September 20, they were engaged in an unfair labor practice strike protesting, in part, the Respondent's unfair labor practices and that the Respondent terminated them for striking. When, on September 26, the striking employees made an unconditional offer to return to work, the Respondent unlawfully treated them as economic strikers. The General Counsel further  
15 contends that the Respondent unlawfully engaged in surveillance, refused to consider union organizer, Mr. Bratcher, for employment, and imposed more onerous terms and conditions of employment by prohibiting its employees from cashing checks at a facility close to the Respondent's facility.

20 The Respondent argues that any management directions regarding union activity were lawfully directed solely at its field foremen who are statutory supervisors. The September 20 work stoppage was, in the Respondent's view, a purely economic strike. Although the Respondent's superintendent informed the strikers that by refusing to work, he assumed they were quitting, that statement, too, was directed only at field foremen, and he was justified in the assumption. When the Respondent realized the employees were striking, the company lawfully  
25 responded to the strike by hiring permanent replacements and placing the strikers' names on a preferential hiring list. Although a downturn in business limited job availability, the Respondent intended to reinstate strikers as openings occurred in keeping with Board rules regarding economic strikers. Upon issuance of the Complaint on November 30, the Respondent, without admitting guilt and for the purpose of limiting potential backpay, terminated the permanent  
30 replacements still employed and offered reinstatement to six strikers, four of whom accepted. As for refusing to consider Mr. Bratcher for employment, the Respondent contends that, given its hiring procedures, it would not have hired or considered Mr. Bratcher for hire even in the absence of his union affiliation.

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### B. Alleged Independent Violations of 8(a)(1)

#### 1. Surveillance

40 The Complaint alleges that on August 29 and 31, Mr. Pickens engaged in surveillance of employees' union activities at the Chevron station. In the early morning of August 29, a number of the Respondent's field employees along with Foreman Guererro were engaged in the protected activity of speaking with union representative, Mr. Bratcher, about employment concerns. As they talked, Mr. Pickens appeared and told Foreman Guerrero that he needed to get to work. I have credited Mr. Pickens' testimony that he regularly purchased food items at  
45 the Chevron station, and there is no evidence that his appearance in that public place at that time was for the purpose of observing the field employees' interaction with Mr. Bratcher. Mere supervisory observation of "open, public union activity on or near [an employer's] property does not constitute unlawful surveillance." *Town & Country Supermarkets*, 340 NLRB 1410 (2004);

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<sup>22</sup> Possessing actual authority from Mr. Pickens, Ms. Perez served as the Respondent's agent in her direction to Mr. Bratcher. *Wal-Mart Stores, Inc.*, 350 NLRB No. 71 2007

*Fred Wallace & Son*, 331 NLRB 914 (2000); see also *Consolidated Biscuit Co.*, 346 NLRB 1175, 1176 (2006). In these circumstances, Mr. Pickens' presence at the Chevron station cannot be deemed surveillance even if he observed union activity while there.

5 The same analysis applies to Mr. Pickens' August 31 visit to the Chevron station. I have found the evidence does not establish that Mr. Pickens went to the Chevron station on that date for the purpose of observing employees engaged in protected activity or that he photographed any of his employees while there. In the absence of such evidence, his mere observation of employees' open, public union activity does not constitute unlawful surveillance.

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## 2. Promulgation and Maintenance of Overly Broad and Discriminatory Rules

15 The Complaint alleges that during early September the Respondent orally promulgated and maintained overly broad and discriminatory rules by prohibiting employees from talking to any union representative and/or assembling or cashing their paychecks at a facility (the Chevron station) where they also engaged in protected, concerted activities.

20 I have credited testimony that Mr. Pickens told the field foremen not to take the laborers to the Chevron station where they were likely to meet Mr. Bratcher and that he told them the Respondent would no longer distribute paychecks on Friday mornings to further discourage employees' interaction with the Union. I have also accepted un rebutted testimony that the foremen communicated Mr. Pickens' prohibitions to the field employees.

25 The evidence establishes that the Respondent's foremen had a long-standing, company-accepted practice of transporting the company's field employees to the local Chevron station where they purchased food and beverages before proceeding to the work sites.<sup>23</sup> Company acceptance of the practice changed only after Mr. Bratcher began meeting employees there to garner support for the Union. The Respondent's consequent prohibition against the foremen taking field employees to the Chevron station was an overt attempt to prevent its employees from speaking with the union organizer.

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In pertinent application of Section 7 of the Act, the Respondent's field employees had the statutory right to meet with a union organizer in the course of their regular stops at the Chevron station.<sup>24</sup> Section 8(a)(1) of the Act provides: "It shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7."

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40 The Respondent argues that even assuming Mr. Pickens issued a directive not to go to the Chevron station that included or impacted laborers as well as supervisors, his intention was only to lawfully curtail supervisory involvement with the Union, and, in any event, supervisors

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<sup>23</sup> An employer may prohibit employees' union activity during "work time," that is, periods when employees are performing actual job duties excluding the employees' own time. See *Our Way, Inc.*, 268 NLRB 394, 394-395 (1983). The Respondent does not contend its employees were on work time during morning stops at the Chevron.

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<sup>24</sup> Section 7 of the Act (in pertinent part) provides:

Employees shall have the right to self-organization, to form, join, or assist any labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

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and laborers alike refused to comply.<sup>25</sup> The test under Section 8(a)(1) does not turn on the employer's motive or whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which it may be reasonably said tends to interfere with the free exercise of employee rights under the Act. *Curwood, Inc.*, 339 NLRB 1137, 1140 (2003); *Miller Electric Pump and Plumbing*, 334 NLRB 824 (2001); *American Freightways Co.*, 124 NLRB 146, 147 (1959). An employer violates Section 8(a)(1) when its supervisors and agents engage in conduct tending to impede or discourage union involvement. *F. W. Woolworth Co.*, 310 NLRB 1197 (1993); *Williamhouse of California, Inc.*, 317 NLRB 699 (1995).

The Respondent further argues that even assuming Mr. Pickens told the field foremen not to take the laborers to a location where they could meet up with union representatives, such an instruction was lawful. The Respondent asserts that to do otherwise would violate Section 8(a)(2) of the Act by contributing support to a labor organization. It is true the situation presented a dilemma for the Respondent. An unquestionable conflict existed between the Respondent's right and even obligation to curtail its supervisors' involvement with or encouragement of the Union and its employees' right to engage in protected union activities. The Respondent could not, however, lawfully resolve the conflict by trampling on employees' Section 7 rights.

The Respondent's longstanding practice was for its field foremen to take their crews of laborers to the Chevron station nearly every working morning. In the summer of 2007, both foremen and laborers began meeting a union representative there. Although the foremen's interaction with the union representative was unprotected, the laborers' interaction was protected. When the Respondent ordered the foremen to discontinue the morning Chevron-station stops, their compliance with the order would necessarily have interfered with and restrained the laborers in their protected activity of meeting with a union representative. While the Respondent's prohibition of foremen union activity was lawful, its chosen effectuation of the prohibition—banning the customary morning Chevron-station stops—was oversweeping and inescapably interfered with employee protected activity, regardless of the Respondent's motive.<sup>26</sup> The Respondent's conduct meets the Board's objective 8(a)(1) test of tending to interfere with its employees' free exercise of Section 7 rights.

The Respondent makes a tacit *de minimus* argument, contending that Mr. Pickens' alleged prohibition against employees congregating at the Chevron station "was not much of a directive" since it was generally disregarded. However, the ineffectiveness of Mr. Pickens' prohibition is irrelevant to the objective standard the Board applies to 8(a)(1) allegations. See *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 490 (1995). The foremen's communication of the prohibition had an objectively reasonable tendency to intimidate and thus interfered with, restrained, or coerced the field employees in the exercise of rights guaranteed in Section 7. It thereby violated Section 8(a)(1) of the Act.

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<sup>25</sup> The Respondent argues that employees "must have seen that the directive not to go to the Chevron was not much of a directive if everyone continued to go there."

<sup>26</sup> As there is no evidence the Respondent explored any less drastic method of controlling its foremen's union activity, it is unnecessary to consider whether the circumstances obviated a less coercive approach.

### 3. Mr. Pickens' September 20 Threat of Discharge

There is no evidence the field employees' cessation of work on September 20 was other than a work stoppage for "mutual aid or protection" protected by Section 7 of the Act. An employer violates Section 8(a)(1) of the Act by discharging employees who engage in a protected work stoppage or strike or threaten to do so. *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 14-17 (1962). By informing the field employees he would assume they were quitting if they unloaded their tools and did not go to work the morning of September 20, Mr. Pickens threatened them with termination for participating in a strike. Such threats violate Section 8(a)(1) of the Act. *Accurate Wire Harness*, 335 NLRB 1096 (2001).<sup>27</sup>

#### C. Alleged Violations of Section 8(a)(3) and (1) of the Act

##### 1. Alleged Imposition of More Onerous Terms and Conditions of Employment

The Complaint alleges the Respondent violated Section 8(a)(3) and (1) of the Act in the first week of September by "impos[ing] more onerous terms and conditions of employment by prohibiting its employees from cashing checks" at the Chevron station.

During the relevant period, it was routine for some field employees to cash their paychecks at the Chevron station during the crews' regular Friday-morning stops there. After Mr. Bratcher began meeting field employees during the morning stops, the Respondent threatened to delay distribution of Friday paychecks with the stated purpose of discouraging the meetings. In his post-hearing brief, Counsel for the General Counsel argues that the Respondent's rule prohibiting employees from cashing their paychecks at the Chevron station adversely affected its employees' working conditions by interfering with a "fast and easy way for employees to convert paychecks to dollars" in violation of Section 8(a)(3) of the Act. There is no question that delayed distribution of paychecks from Friday mornings to Friday afternoons inconvenienced some employees, and it is clear the Respondent advertised the delay as a maneuver calculated to stymie employees' union activities. However, the evidence does not establish an 8(a)(3) violation for several reasons.

First, the evidence does not show that the Respondent did, in fact, change its paycheck distribution practice. Credible evidence was adduced that Mr. Pickens and Mr. Loya told employees they would change the distribution practice to prevent employee interaction with Mr. Bratcher. There is also some evidence, albeit neither consistent nor unambiguous, that during the relevant period the Respondent occasionally failed to distribute paychecks on Friday mornings. But there is no definite evidence of an actual change. During the relevant period, the Respondent continued, at least some of the time, to distribute paychecks on Friday mornings, and there is no evidence that on those Friday mornings when the Respondent delayed the paychecks, the delay was not due to the same nondiscriminatory factors that had delayed distribution in the past. There is insufficient evidence, therefore, to support the allegation that the Respondent violated Section 8(a)(3) of the Act in changing its paycheck distribution policy.

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<sup>27</sup> The threat of discharge was made to the field foremen and the field laborers alike; the General Counsel does not contend that threats made to the field foremen, who are stipulated section 2(11) supervisors, violated the Act.

Second, even assuming the Respondent did change its paycheck distribution policy so as to curtail Friday morning distribution, there is no evidence the Respondent in any way prohibited employees from cashing their paychecks at the Chevron station. Employees were free to cash paychecks there at any time they chose after receipt of the paycheck. The complaint allegation as stated is unproven.

Third, the General Counsel has not shown that Friday morning paycheck cashing at the Chevron station was a term and condition of employment, discriminatory preclusion of which would violate 8(a)(3). The convenience of Friday-morning check cashing was not specific or even relevant to the field employees' employment relationship with the Respondent, and it did not impact their working conditions. The Respondent changed none of the employees' basic terms or working conditions, and the Board does not consider mere employee convenience to be an aspect of an employment relationship. See *Success Village Apartments, Inc*, 350 NLRB No. 72, slip op. 2 (2007).

Even though the Respondent may not have violated Section 8(a)(3) by altering its paycheck distribution timing, when Mr. Pickens and Mr. Loya ascribed an unlawful motive to delayed paychecks they violated Section 8(a)(1) of the Act. Informing employees that an employer's conduct is discriminatorily motivated coerces employees and independently violates the Act even if the conduct has not actually occurred or is not unlawful. *Success Village Apartments, Inc*, supra; *K-Mart Corporation*, 336 NLRB 455 (2001); *Owens Corning Fiberglass Co.*, 236 NLRB 479, 480 (1978). Accordingly, I find that by informing field employees their paychecks were delayed in order to interfere with their engaging in protected union activities, the Respondent violated Section 8(a)(1) of the Act.

## 2. Alleged Discharge of Striking Employees

As detailed above, on September 20, Mr. Pickens unlawfully threatened field employees with termination if they participated in a strike. Paragraph 5(f) of the Complaint alleges that the Respondent thereafter discharged the striking employees. There is, however, no evidence the Respondent took any action reflecting an intention to discharge the strikers. Rather, the evidence establishes that the Respondent consistently treated the employees as economic strikers until issuance of the Complaint, at which time the Respondent applied reinstatement rights due to unfair labor practice strikers.<sup>28</sup> I shall, therefore, dismiss this allegation of the Complaint.

## 3. The Unfair Labor Practice Strike

The General Counsel asserts that when the field employees ceased work on September 20 and went on strike, they were engaged in an unfair labor practice strike, while the Respondent contends it was an economic strike. It is true, as the Respondent argues, that a number of economic considerations (e.g. dissatisfaction with the Respondent's pay calculations, failure of the Respondent to furnish tools and water and ice) were motivating factors in the strike. It is also true that prior to commencement of the strike, the Respondent committed serious unfair labor practices by prohibiting and discouraging employees from congregating at a

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<sup>28</sup> In his brief Counsel for the General Counsel inconsistently asserts that the Respondent has not offered to return any striker to work and that at least ten (out of 15) striking employees have not been offered reinstatement, suggesting that some strikers have been offered reinstatement. Insofar as there is a dispute about whether the Respondent has effected reinstatement of any strikers, the remedial provisions of this decision provide for resolution of that question.

location where they met with a union representative and by threatening them with discharge if they went on strike. The question is whether the unfair labor practices contributed to causation of the strike.

5 In *Golden Stevedoring Co.*, 335 NLRB 410, 411 (2001) (citations omitted), the Board explained:

10 It is well established that a work stoppage is considered an unfair labor practice strike if it is motivated, at least in part, by the employer's unfair labor practices, even if economic reasons for the strike were more important than the unfair labor practice activity. It is not sufficient, however, merely to show that the unfair labor practices preceded the strike. Rather, there must be a causal connection between the two events.

15 In determining whether a causal connection between the strike and preceding unfair labor practices exists, the Board looks to the strikers' state of mind. See *C-Line Express*, 292 NLRB 638, 639 (1989) (lack of evidence strikers motivated to prolong strike by coercive employer statements on the picket line). When it is reasonable to infer from the record that an employer's unlawful conduct played a part in the decision of employees to strike, the strike is an unfair labor practice strike. *Child Development Council of Northeastern Pennsylvania*, 316 NLRB 1145, FN5 20 (1995), citing *NLRB v. Cast Optics Corp.* 458 F.2d 398, 407 (3d Cir. 1972), cert. denied 419 U.S. 850 (1972) (as long as an unfair labor practice has "anything to do with" causing the strike, it will be considered an unfair labor practice strike). The burden is on the employer to show that the strike would have occurred even if [it] had not committed unfair labor practices. *Larand Leisurelies, Inc. v. NLRB*, 523 F.2d 814, 820 (6th Cir. 1975).

25 Viewing the record as a whole, the evidence supports a finding that the Respondent's unfair labor practices contributed to the September 20 strike and/or thereafter prolonged it. Although the field foremen focused on economic issues in their meetings with Mr. Pickens on September 20, several field employees testified credibly of their concurrent displeasure at being 30 restricted from the Chevron station, at being told to whom they could talk, and at being told their paychecks would be delayed to prevent them from meeting with Mr. Bratcher, all of which constitute unfair labor practices. The field employees were also unhappy about Mr. Pickens' unlawful threat that their work stoppage was tantamount to quitting, which information they related to Mr. Bratcher when he met with them a short time after they ceased work.

35 Citing *C-Line Express*, supra, the Respondent contends that Mr. Bratcher conceded the strike was economic when he told employees it could be converted to an unfair labor practice strike. The Respondent further argues that if the Respondent committed any unfair labor practices, it did so prior to the employees' economically motivated walkout and that past unfair 40 labor practices cannot be utilized to alter the strike category. Even assuming the Respondent asserts a colorable defense, its argument gives undue weight to Mr. Bratcher's apparent perception that the strike needed to be "converted." When employees met with Mr. Bratcher very shortly after unloading their tools and leaving work, they detailed their grievances with the Respondent, including the Respondent's prohibition against going to the Chevron station, its 45 announced change in the paycheck distribution schedule, and Mr. Pickens' parting admonition that they would be quitting if they refused to work, all of which are unfair labor practices. These unfair labor practices were contemporaneous with the strike. Since employees bore the unlawful conduct in mind as they contemplated striking, the conduct, at least in part, catalyzed the strike. Mr. Bratcher's reference to strike conversion neither vitiates nor alters the 50 employees' motivation. Moreover, *C-Line Express* is distinguishable from the instant situation. In that case, the Board found no evidence that strikers were motivated to prolong their strike by coercive statements to several strikers or that strikers were even aware of an unlawful refusal to

furnish information. In short, no evidence showed the *C-Line Express* strike was motivated by anything other than inability to reach a bargaining agreement. That is not the case here. While employee witness recollections differed in detailing strike discussions, their credible testimony as a whole establishes that the employees considered and were provoked by specific unfair labor practices in deciding to strike, and the Respondent has not met its burden to show the strike would have occurred even if it had not committed unfair labor practices. Accordingly, I conclude the September 20 strike was an unfair labor practice strike from its inception.

#### 4. Failure to Reinstate Unfair Labor Practice Strikers

On September 26, the strikers presented an unconditional offer to return to work signed by each striker to the Respondent. Upon its receipt, Mr. Hohman told the workers they had all been permanently replaced and directed each to sign a preferential hiring list. No striker was returned to work until December when the Respondent recalled five strikers.

Unlike the obligation of an employer to an economic striker, upon an unconditional offer to return to work, an employer must immediately reinstate an unfair labor practice striker. *Sproule Construction Company*, 350 NLRB No. 65 FN 2 (2007); *Nortech Waste*, 336 NLRB 559, 565 (2001). By failing immediately to reinstate the unfair labor practice strikers who unconditionally offered to return to work on September 26, the Respondent violated Sections 8(a)(3) and (1) of the Act.

#### 5. Alleged Refusal to Consider Brady Bratcher for Employment

The General Counsel alleges the Respondent violated Section 8(a)(1) and (3) of the Act by refusing to consider Mr. Bratcher for hire on September 7. On September 7, Mr. Bratcher presented at the Respondent's facility as a legitimate office applicant.<sup>29</sup> Because Mr. Bratcher was a union organizer, the Respondent refused his request for an employment application and threatened to call the police if he persisted. While the Respondent's conduct violated Section 8(a)(1) of the Act,<sup>30</sup> the issue of whether the conduct also constituted a discriminatory refusal to consider Mr. Bratcher for employment in violation of Section 8(a)(3) of the Act depends on the analysis set forth in *FES*, 331 NLRB 9, 15 (2000), supplemented 333 NLRB 66 (2001), enf. 301 F.3d 83 (3d Cir. 2002).

Regarding discriminatory refusals to consider for hire, the Board stated in *FES*:

[T]he General Counsel bears the burden of showing the following... (1) that the respondent excluded applicants from a hiring process; and (2) that antiunion animus contributed to the decision not to consider the applicants for employment. Once this is established, the burden will shift to the respondent to show that it would not have considered the applicants even in the absence of their union activity or affiliation.<sup>31</sup>

<sup>29</sup> Mr. Bratcher's position as a full-time paid union official the Union did not prevent his being a bona fide applicant. *Sproule Construction Company*, 350 NLRB No. 65 (2007).

<sup>30</sup> Refusal to give a person an employment application that is customarily proffered to all other job seekers solely because of the person's union affiliation is coercive regardless of whether or not completing the application might lead to employment. See *Tradesmen International, Inc.*, 351 NLRB No. 27, FN 4 (2007).

<sup>31</sup> *Id* at 15.



The uncontroverted evidence herein is that the Respondent never hires field employees through the office application channel. Rather the Respondent's field foremen hire field workers, typically drawing from among acquaintances and relatives, and the foremen do not review office applications for employment leads. There is no contention the Respondent's field employment practices are other than neutral and legitimate. See *Ken Maddox Heating & Air Conditioning, Inc.*, 340 NLRB 43, 44 (2003) and cases cited at FN. 4 (preference in employing individuals referred by existing employees is a legitimate policy). Therefore, filing an employment application at the Respondent's facility is not part of the Respondent's employment process. Even though the Respondent discriminatorily precluded Mr. Bratcher from filing an employment application on September 7, the General Counsel has not met his burden of showing that the Respondent "excluded [Mr. Bratcher] from a hiring process"<sup>32</sup> and has not established a prima facie violation of the Act. Even assuming that the General Counsel has met his burden, the Respondent has met its shifted burden of "show[ing] that it would not have considered [Mr. Bratcher] even in the absence of [his] union activity or affiliation."<sup>33</sup> Accordingly, I shall dismiss the 8(a)(3) portion of this allegation of the Complaint.

### Conclusions of Law

1. Post Tension of Nevada, Inc. is and has been at all times material an employer engaged within the meaning of Section 2(2), (6), and (7) of the Act.
2. District Council of Iron Workers of the State of California and Vicinity (the Union) is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by
  - (a) In early September 2007, orally promulgating and maintaining overly broad and discriminatory work rules designed to prohibit employees from meeting with union representatives at a local gas station.
  - (b) Threatening employees with discharge if they engaged in a strike.
  - (c) Informing employees it would not issue paychecks on Friday mornings in order to interfere with employees' concerted, protected activity of meeting with a union representative.
  - (d) Refusing to give a person an employment application because of the person's union affiliation.
4. The strike engaged in by certain of the Respondent's field employees on September 20 was an unfair labor practice strike.
5. Respondent violated Section 8(a)(3) and (1) of the Act on September 26, 2007 by refusing to reinstate the following unfair labor practice striking employees upon their unconditional offers to return to their former or substantially equivalent positions of employment:

Agustin Cuevas Ayala  
 Leobardo Delgado  
 Alfonso Arca Salazar  
 David Amaya Ruiz

Crecensio Montoya Ramirez  
 Jesús Prudenciado-Orenday  
 Aureliano Zazueta-Rivera  
 Eduardo Velasco Hernandez

<sup>32</sup> Id at 15.

<sup>33</sup> Id at 15. See *Tradesmen International, Inc.*, 351 NLRB No. 27, slip op. 3 (2007) (rejection of applicants who violated policy against unscheduled walk-ins lawful).

Gregorio Quiroz Sanchez  
 Teodoro Flores Sanchez  
 Salvador Quiroz Merino  
 Jesús Martínez

Leonidas Ruiz-Quiroz  
 Damion Garcia  
 Felix Quiros

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6. The unfair labor practices set forth above affect commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

**Remedy**

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

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Respondent having, on September 26, unlawfully failed and refused to reinstate to employment the employees named below, it must offer them immediate and full reinstatement to their former positions insofar as it has not already done so, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:<sup>34</sup>

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Agustin Cuevas Ayala  
 Leobardo Delgado  
 Alfonso Arca Salazar  
 David Amaya Ruiz

Crecensio Montoya Ramirez  
 Jesús Prudenciado-Orenday  
 Aureliano Zazueta-Rivera  
 Eduardo Velasco Hernandez

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Gregorio Quiroz Sanchez  
 Teodoro Flores Sanchez  
 Salvador Quiroz Merino  
 Jesús Martínez

Leonidas Ruiz-Quiroz  
 Damion Garcia  
 Felix Quiros

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Respondent must also make the named employees whole for any loss of earnings and other benefits, computed on a quarterly basis from date of refusal to hire to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

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The Respondent must rescind its unlawful and discriminatory work rules prohibiting employees from gathering at a local gas station.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>35</sup>

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<sup>34</sup> The reinstatement ordered herein is subject to defeasance if, at the compliance stage, the General Counsel fails to carry his burden of going forward with evidence that a discriminatee would still be employed by the Respondent if the discriminatee had not been the victim of discrimination. *Tradesmen International, Inc.*, supra at FN 16, citing *Oil Capitol Sheet Metal*, 349 NLRB No. 118, slip op. at 7 (2007).

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<sup>35</sup> 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.

**ORDER**

Post Tension of Nevada, Inc. its officers, agents, successors, and assigns, shall

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1. Cease and desist from
  - (a) Refusing to reinstate unfair labor practice striking employees who made unconditional offers to return to their former or substantially equivalent positions of employment.
  - (b) Promulgating and maintaining overly broad and discriminatory work rules designed to prohibit employees from meeting with the Union or with other union representatives at local retail establishments.
  - (c) Threatening employees with discharge if they engage in a strike.
  - (d) Informing employees it will not issue paychecks on Friday mornings in order to interfere with employees' protected union activity of meeting with a union representative.
  - (e) Refusing to give any person an employment application because of the person's union affiliation.
  - (f) 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, insofar as it has not already done so, offer the employees named below, immediate and full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

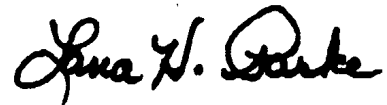
Agustin Cuevas Ayala	Crecensio Montoya Ramirez
Leobardo Delgado	Jesús Prudenciado-Orenday
Alfonso Arca Salazar	Aureliano Zazueta-Rivera
David Amaya Ruiz	Eduardo Velasco Hernandez
Gregorio Quiroz Sanchez	Leonidas Ruiz-Quiroz
Teodoro Flores Sanchez	Damion Garcia
Salvador Quiroz Merino	Felix Quiros
Jesús Martinez	

- (b) Make the employees described in paragraph 2(a) above whole for any loss of earnings and other benefits suffered as a result of the unlawful 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 refusal to reinstate the employees described in paragraph 2(a) above and within three days thereafter notify them in writing that this has been done and that the refusal to reinstate them will not be used against them in any way.
- (d) Rescind work rules that interfere with employees meeting with the Union or with any other union representative.

- 5 (e) 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 back pay due under the terms of this Order.
- 10 (f) Within 14 days after service by the Region, post at its office in Phoenix, Nevada, copies of the attached notice marked "Appendix."<sup>36</sup> Copies of the notice, on forms provided by the Regional Director for Region 28 after being signed by Respondent's authorized representative, shall be posted by 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 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, Respondent has gone out of business or closed the operations involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since September 1, 2007.
- 15 (g) 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 Respondent has taken to comply.
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25 IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, at Washington, D.C. April 18, 2008

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Lana H. Parke  
Administrative Law Judge

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50 <sup>36</sup> 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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a 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** do anything that interferes with these rights. More particularly, **WE WILL NOT** refuse to reinstate employees who engage in an unfair labor practice strike and who make unconditional offers to return to their former or substantially equivalent positions of employment.

**WE WILL NOT** make and announce work rules in order to prohibit employees from meeting With the District Council of Iron Workers of the State of California and Vicinity (the Union) or with any other union representative.

**WE WILL NOT** threaten employees with discharge if they engage in a strike.

**WE WILL NOT** tell employees we will not issue paychecks on Friday mornings in order to interfere with employees meeting with representatives of the Union or with any other union representative.

**WE WILL NOT** refuse to give any person an employment application because of the person's union affiliation.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights listed above.

**WE WILL** offer the employees named below, immediate and full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed:

Agustin Cuevas Ayala  
Leobardo Delgado  
Alfonso Arca Salazar  
David Amaya Ruiz  
Gregorio Quiroz Sanchez  
Teodoro Flores Sanchez  
Salvador Quiroz Merino  
Jesús Martinez

Crecensio Montoya Ramirez  
Jesús Prudenciado-Orenday  
Aureliano Zazueta-Rivera  
Eduardo Velasco Hernandez  
Leonidas Ruiz-Quiroz  
Damion Garcia  
Felix Quiros

**WE WILL** make the employees named above whole for any loss of earnings and other benefits suffered as a result of our unlawful discrimination against them.

**WE WILL** remove from our files any reference to the unlawful refusals to reinstate the employees named above and **WE WILL**, within 3 days thereafter, notify them in writing that this has been done and that the refusals to reinstate will not be used against them in any way.

**WE WILL** rescind work rules that interfere with employees meeting with the Union or with any other union representative and forthwith notify our employees that we have done so.

POST TENSION OF NEVADA, INC.

\_\_\_\_\_  
(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.nlr.gov](http://www.nlr.gov).

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099

(602) 640-2160, 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, (602) 640-2146.