

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

RWJ CORPORATION,

and

ROAD SPRINKLER FITTERS, LOCAL 669,
UA, AFL-CIO a/w UNITED ASSOCIATION
OF JOURNEYMAN AND APPRENTICES
OF THE PLUMBING AND PIPE FITTING
INDUSTRY OF THE U.S. AND CANADA, AFL-CIO.

Cases 8-CA-37361
8-CA-37509
8-CA-37678
8-CA-37693
8-CA-37866
8-CA-37867
8-CA-38125
8-CA-38176
8-RC-16909

Appearing for the General Counsel and the Regional Director:

Steven D. Wilson, Esq. and Noelle Powell, Esq. (Region 8, NLRB)
of Cleveland, Ohio

Appearing for the Respondent and the Employer:

Richard A. Durose, Esq.
of Palm Beach Gardens, Florida
Cynthia A. Schultz Sauter (Burdzinski & Partners, Inc.)
of Dayton, Ohio

Appearing for the Charging Party and the Petitioner:

Jason J. Valtos, Esq. (Osborne Law Offices)
of Washington D.C.

DECISION

Introduction

DAVID I. GOLDMAN, ADMINISTRATIVE LAW JUDGE. These cases arise out of an organizing drive and representation election conducted among employees of RWJ Corporation (RWJ, Employer, or Respondent), an automatic fire sprinkler installation and service company located in Sebring, Ohio. In response to an organizing drive by the Road Sprinkler Fitters, Local 669 (Local, Union, or Petitioner), and prior to a representation election conducted by the National Labor Relations Board (Board), RWJ engaged in numerous unfair labor practices, including unlawful interrogations, threats, false and coercive directives, and changes in procedures, rules, and benefits, all of which, as described below, are admitted by RWJ. Notwithstanding these unfair labor practices, on November 2, 2007, RWJ employees voted 9-8 (after resolution of challenges) in favor of union representation in a Board-conducted election. After the election, RWJ engaged in further unfair labor practices, also admitted, involving additional threats and coercive conduct, including the unlawfully motivated layoff of two bargaining unit employees.

In addition, in the wake of the representation election, RWJ admits to engaging in a significant number of unilateral changes in terms and conditions of employment, each of which is unlawful, admittedly so, if (but only if) RWJ had a bargaining obligation as a result of the Union's election victory. The existence of the bargaining obligation turns on the validity of the election, which brings us to the contested dispute between the parties.

RWJ has interposed an objection to conduct affecting the election. (The Union also had an objection to RWJ's conduct affecting the election, some of its allegations coextensive with unfair labor practices admitted by RWJ, but these were "severed as moot" by the Regional Director after he determined that the Union had won the election.) RWJ's objection is based on its claim that in the days before the election the Union promised employees jobs with other employers if they supported the Union. Further, RWJ contends that in a couple of cases the Union obtained other jobs for RWJ employees. RWJ contends that this is objectionable conduct that constitutes grounds for overturning the results of the election.

Statement of the Case

Pursuant to Section 9(c) of the National Labor Relations Act (Act), the Union filed a representation petition, docketed by Region 8 of the Board as Case 8-RC-16909, on August 16, 2007. On October 11, 2007, the Regional Director for Region 8 of the Board approved a Stipulated Election Agreement, in which the parties agreed to a Board-conducted representation election on November 2, 2007, for the following employees of RWJ:

All full-time and regular part-time lead men, fitters, helpers, service tech field employees and warehouse employees employed by the Employer at its 1945 South 12th Street, Sebring, Ohio facility.¹

The tally of ballots for the election showed the following results:

30	Approximate number of eligible voters	19
	Votes cast for the Petitioner	9
	Votes cast against the Petitioner.....	6
	Challenged ballots	4
	Valid votes counted plus challenged ballots	19

Thereafter, in accordance with Section 102.69 of the Boards Rules and Regulations, the Union and RWJ each filed objections to conduct affecting the results of the election. On February 6, 2008, the Regional Director for Region 8 issued an order regarding the objections. In his order, the Regional Director approved the Union's request that its Objections 1-29, and 31 be withdrawn. As to the Union's remaining objection, the Regional Director referenced his January 31, 2008 order, in which, on behalf of the Board's General Counsel, and acting on unfair labor practice charges filed by the Union, he had issued a consolidated complaint against RWJ, alleging violations of the National Labor Relations Act (Act).² In his February 6 order, the

¹Excluded from the bargaining unit under the stipulation were "all other employees, including all designers, salespersons, truck drivers, office clericals and all other professional employees, guards and supervisors as defined in the Act."

²The first unfair labor practice charge was filed by the Union on August 23, 2007, and was docketed as Case 8-CA-37361. This charge was amended on September 20, October 3, and November 8, 2007, and finally on January 24, 2008. A second charge, filed by the Union

Continued

Regional Director ruled that the gravamen of the Union’s extant election objection was “coextensive with and identical to a certain allegation set forth in the Consolidated Complaint,” and therefore ordered that the Union’s objections in Case 8–RC–16909 be set for hearing and consolidated with the pending unfair labor practice proceeding. Additional objectionable
 5 conduct uncovered during the course of the investigation of the unfair labor practices was also identified by the Regional Director as coextensive with and identical to allegations set forth in the consolidated complaint. As to the election objection filed by RWJ, the Regional Director considered it on the merits and recommended that it be overruled.

10 On February 20, 2008, the Regional Director issued a Report on Challenges, regarding the challenges to four ballots cast in the election in Case 8–RC–16909. In the report, the Regional Director sustained the challenge to one ballot, overruled two others, and determined that the challenge to the fourth should be resolved through a hearing. No exceptions to this report were filed with the Board and on March 12, 2008, the Board issued a Decision and Order
 15 adopting the Regional Director’s report. A Revised Tally of Ballots issued on March 21, 2008, showing the following:

Approximate number of eligible voters	19
Votes cast for the Petitioner	9
20 Votes cast against the Petitioner.....	8
Challenged Ballots.....	1
Valid votes counted plus challenged ballots	19

25 The one remaining challenged ballot was sufficient to affect the results of the election. Accordingly, a hearing was conducted on the remaining challenged ballot on April 28, 2008. On May 21, 2008, the hearing officer issued a report sustaining the challenge. The Employer filed exceptions with the Board.

30 On May 30, 2008, the Regional Director issued an amended consolidated complaint consolidating Case 8–CA–37693 with the extant cases.³

35 On August 20, 2008, the Board issued a Decision and Order Remanding. In its Order, the Board adopted the hearing officer’s findings and recommendations sustaining the challenge to the remaining challenged ballot, thus, leaving the tally of valid votes at 9 for the Union and 8 against. However, with the regard to the Regional Director’s February 6, 2008 recommendation that RWJ’s objection to the election be overruled, the Board remanded the matter for resolution after a hearing on the objection. Subsequently, a revised tally of ballots issued on September 12, 2008, showing that the Union had received a majority of the valid votes cast in the election.

40 On September 30, 2008, the Regional Director issued a third amended consolidated complaint consolidating Cases 8–CA–37678, 8–CA–37866, and 8–CA–37867,⁴ with the extant

45 November 15, 2007, was docketed as Case 8–CA–37509. This charge was amended on December 10, 2007, and again on January 24, 2008.

³The Union filed a new charge, docketed as Case 8–CA–37693, on March 26, 2008, and a copy was served by mail on the Respondent on March 17, 2008.

50 ⁴The Union filed a charge docketed as Case 8–CA–37678, on March 14, 2008, and amended the charge on May 29, 2008. The Union filed a charge docketed Case 8–CA–37693

Continued

cases. As part of this order, the he ordered that RWJ's objection in Case 8–RC–16909, which had been remanded for hearing by the Board, be consolidated for hearing with the unfair labor practice cases. Because the revised tally of ballots showed the Union had won a majority of the valid votes cast, the Regional Director ruled that the Union's objections to the election in Case 8–RC–16909 were moot, and he ordered that they be severed from the proceeding.

On February 26, 2009, the Regional Director issued a fourth amended consolidated complaint, consolidating Cases 8–CA–38125 and 8–CA–38176, with the extant cases.⁵

I conducted a hearing in this matter on March 17, 2009, in Cleveland, Ohio, and on May 26, 2009 in Lancaster, Ohio.⁶ The parties filed briefs on June 30, 2009. Based on the testimony at the hearing, my assessment of the credibility of the witnesses and their demeanor, the documentary evidence, and the entire record before me, as well as the briefs of the parties, I make the following findings, conclusions, and recommendations.

Unfair Labor Practices⁷

At the hearing, the Respondent moved to amend its answer to admit all allegations of the unfair labor practice complaint, including all factual and legal allegations. However, the Respondent continues to advance its election objection, and at the hearing adduced evidence in support of this objection.⁸

Based on the Respondent's motion to admit the allegations of the complaint, which I grant, the Respondent admits and I make the following findings of fact and conclusions of law.

on March 26, 2008. That charge was amended May 29, 2008. The Union filed charges docketed as Cases 8–CA–37866 and 8–CA–37867, on July 25, 2008. The charge in Case 8–CA–37866 was amended September 25, 2008.

⁵The Union filed a charge docketed as Case 8–CA–38125, on January 15, 2009. An amended charge was filed in the case on February 23, 2009. The Union filed a charge docketed as Case 8–CA–38176 on February 13, 2009.

⁶By order dated April 15, 2009, the hearing was reopened on May 26, 2009, to take the testimony of Floyd Eric Russell. The order is made part of this record as ALJ Exh. 1.

⁷Cases 8–CA–37361, 8–CA–37509, 8–CA–37678, 8–CA–37693, 8–CA–37866, 8–CA–37867, 8–CA–38125, and 8–CA–38176.

⁸Consistent with maintenance of its election objection, the "caveat" to the Respondent's motion to admit all the allegations of the unfair labor practice complaint is that its admission of the allegations of breach of the statutory duty to bargain are conditioned on the outcome of its objection to the results of the November 2, 2007 election. This caveat follows from the fact that, pursuant to the complaint, the Respondent's statutory duty to bargain arose only upon a valid union election victory on November 2, 2007. If the Respondent's election objection is sustained and the election results overturned, then no duty to bargain arose as a result of the election and the Respondent necessarily did not violate its duty to bargain as alleged in the complaint. On the other hand, if its election objection is overruled and the election results certified, the Respondent concedes that it violated the duty to bargain as alleged in the complaint. In either case, the Respondent admits the alleged facts surrounding the failure-to-bargain allegations.

I. Findings of Fact

1. The Respondent, an Ohio corporation, with an office and place of business in Sebring, Ohio, has been and is engaged in the installation and service of automatic fire sprinkler systems. Annually, the Respondent, in conducting its business operations, purchases and receives at its Sebring, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio.

2. At all times material for purposes of these cases, Bob Dixon is and has been the owner of the Respondent. Steve Baylor is and was the operations manager/owner. Roy Quinn is and has been the field superintendent/owner, and George Vernon is and has been a service manager/owner.

3. On or about May 11, 2007, Dixon, at the Respondent's facility, threatened employees with plant closure in retaliation for their union activities and interrogated employees about their union membership, sympathies, and activities.

4. In or around July 2007, Baylor, during employee meetings at the Respondent's facility: threatened employees with plant closure in retaliation for their union activities, coercively informed employees that it was futile to attempt to organize a union at the Respondent's facility, and threatened employees with loss of their attendance bonus in retaliation for their union activities.

5. In or around July 2007, the Respondent coercively removed the timeclock and instituted a new timekeeping procedure because employees engaged in union and/or protected concerted activities and in retaliation for those activities.

6. In or around July 2007, the exact date being unknown, the Respondent granted employees the benefit of paid load time in order to discourage union activities.

7. In or around July 2007, Dixon, at the Respondent's facility, coercively instructed an employee to refrain from engaging in further union activity.

8. In or around September 7, 2007, the Respondent announced and implemented the following rule:

Making or assisting another person in making a video or audio recording of any conversation between employees, supervisors or officers of the Company, without first obtaining the express written consent of all parties to the conversation, will be deemed a violation of RWJ Corporation's rules and standards of conduct. Employees who violate this rule will be subject to discipline up to and including termination.

The Respondent announced and implemented the above rule in response to and in order to discourage employees union and/or protected concerted activities.

9. In or around October 2007, Baylor, at a jobsite in Hudson, Ohio, engaged in coercive conduct including isolating an employee from the rest of the work crew in order to engage that employee in a coercive and negative conversation about the Union.

10. On or about October 24, 2007, the Respondent provided employees with a letter signed by Dixon, which coercively disseminated incomplete, inaccurate and coercive

information about the inevitability and/or effects of a strike.

5 11. On or about March 31, 2008, Dixon, at a jobsite in Canton, Ohio, stated to an employee that raises would be given because the Employer believed that only employees opposed to the Union remained in its employ, and coercively informed an employee that the Employer would continue to engage in unfair labor practices regardless of whether the Union filed charges with the Board.

10 12. On or about February 25, 2008, the Respondent disciplined and threatened the termination its employee Gary Collard. On or about February 25, 2008, the exact date being unknown, the Respondent changed the job assignment of its employee Gary Collard. On or about February 26, 2008, the exact date being unknown, the Respondent disciplined its employee Gary Collard. On or about March 14, 2008, the exact date being unknown, the Respondent laid off employee Gary Collard. The Respondent engaged in the foregoing conduct because Collard assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

20 13. On or about March 14, 2008, the Respondent laid off employee Jesse Stevenson. The Respondent did this because Stevenson assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

25 14. On or about April 1, 2008, the Respondent granted a pay increase to employees. The Respondent did this because the employees of the Respondent formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

30 15. The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

35 All full-time and regular part-time lead men, fitter, helpers, service tech field employees and warehouse employees employed by the Employer at its 1945 S. 12th Street, Sebring, Ohio facility and excluding all other employees including all designers, salespersons, truck drivers, office clericals, and all professional employees, guards and supervisors as defined in the Act.

40 16. On November 2, 2007, a representation election was conducted among the employees in the unit and, on September 12, 2008, the Region issued a "Revised Tally of Ballots" showing that the Union has received a majority of the votes cast.

45 17. Based on the final election results, but depending on the decision regarding objections filed by the Employer in Case 8-RC-16909, the Union will be certified as the exclusive collective-bargaining representative of the unit if the Employer's objections are overruled.

50 18. Since on or about December 3, 2007, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Union. It has made the following unilateral changes:

- a. since on or about December 3, 2007, the Respondent unilaterally changed the start time of the employees' workday;

- b. since on or about December 3, 2007, the Respondent unilaterally changed the van loading procedures;
- c. since on or about December 3, 2007, the Respondent unilaterally changed the warehouse hours;
- 5 d. since on or about December 3, 2007, the Respondent unilaterally implemented a new procedure for recording the materials and equipment in each van;
- e. since on or about December 3, 2007, the Respondent unilaterally changed the daily deadline for crews to call in material and supply orders into the warehouse;
- 10 f. since on or about December 3, 2007, the Respondent unilaterally changed lunch and breaktimes;
- g. since on or about December 24, 2007, the Respondent unilaterally ceased its past practice of giving each employee a paid half-day off on Christmas Eve;
- h. on or about January 1, 2008, the Respondent unilaterally changed the employees' health insurance company;
- 15 i. on or about January 31, 2008, the Respondent unilaterally terminated the 401(k) plan;
- j. on or about March 14, 2008, the Respondent unilaterally laid off employees;
- k. on or about March 25, 2008, the Respondent unilaterally changed travel compensation procedure for employees;
- 20 l. on or about April 1, 2008, the Respondent unilaterally granted raises;
- m. on or about November 1, 2008, the Respondent unilaterally discontinued the option of employees purchasing their personal cell phone service through the Respondent;
- 25 n. on or about December 1, 2008, the Respondent unilaterally changed the employees' health coverage from health insurance to a health savings plan.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

19. On or about February 10, 2009, the Respondent at its facility, bypassed the Union and dealt directly with its employees by issuing a memorandum in which the Respondent required all employees to sign and acknowledge changes to the terms and conditions of employment, and further subjected each employee to discipline. The memorandum involved:

- 40 (a) non-compensable time and/or time spent in unpaid status;
- (b) the performance of work at the facility while awaiting the departure of transportation or upon return at the conclusion of the day;
- 45 (c) changes in the manner of the selection of an employee of a crew to drive vehicles on behalf of the Respondent and the manner of payment for the employee driving the vehicle on a daily basis.

20. The Respondent issued this memorandum requiring all employees to sign and acknowledge the changes because the employees of the Respondent formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

21. The subjects set forth above in the memorandum relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above regarding the memorandum without prior notice to the Union and/or without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct and/or without first bargaining with the Union to a good-faith impasse.

II. Conclusions of Law

1. 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.

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

3. The Respondent admits, and I find, that Dixon, Baylor, Quinn, and Vernon each is and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

4. The Respondent admits, and I find, that by the conduct described above in paragraphs 3 through 14, 18, 19, 20, and 21, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.⁹

5. The Respondent admits, and I find, that by the conduct described in paragraphs 12, 13, 14, 19, and 20, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

6. The Respondent admits, and I find, that by the conduct described above in paragraphs 18, 19, and 21, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.¹⁰

7. The Respondent admits, and I find, that the unfair labor practices of the Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

III. Remedy

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

⁹As to the conclusion in this paragraph that the Respondent violated the Act, to the extent the conclusion is based on the findings in paragraph 18, 19, and 21, it is conditioned on the overruling of the Employer's objection to the election in Case 8-RC-16909, discussed below.

¹⁰As to the conclusion in this paragraph that the Respondent violated the Act, the conclusion is conditioned on the overruling of the employer's objection to the election in Case 8-RC-16909, discussed below.

The Respondent shall recognize and, upon request of the Union, bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit employees.

5 The Respondent shall rescind the unilateral changes and restore the status quo ante with regard to each unlawful change in terms and conditions described in paragraphs 18 and 19 of the findings of fact, above, including the change in start time of employees' workday, the change in van loading procedures, the change in warehouse hours, the change in the procedure for recording materials and equipment in each van, the change in the daily deadline for crews to call in material and supply orders into the warehouse, the change in lunch and breaktimes, the elimination of the past practice of giving each employee a paid half-day off on Christmas Eve, the change in employees' health insurance company, the termination of the 401(k) plan, the layoff of employees, the change in travel compensation procedure for employees, the granting of raises, the discontinuance of the option of employees purchasing their cell phone service through the Respondent, the change in employees' health coverage from health insurance to a health savings plan,¹¹ and the issuance of and the changes described in the memorandum issued on or about February 10, 2009. To the extent that any of these unlawful actions have improved the terms and conditions of employment of unit employees, this remedy, and the Order set forth below shall not be construed as requiring or authorizing the Respondent to rescind such improvements unless requested to do so by the Union.

 The Respondent shall make whole its unit employees and former unit employees for any loss in earnings or other benefits which they may have suffered as a result of the Respondent's implementation of unlawful unilateral changes in terms and conditions of employment, with such losses to be calculated in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971).¹² However, any losses involving disruptions of employment shall be calculated as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from the unilateral change in health coverage and/or change in employees' health insurance company. Interest on all sums shall be computed as prescribed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

 The Respondent shall rescind, and restore the status quo ante with regard to, the following unlawfully motivated actions, described in this Decision: the removal of timeclock, the institution of a new timekeeping procedure, the granting of the benefit of paid load time, the announcement and implementation of the rule requiring express written prior consent of all parties to a conversation before making or assisting another person in making a recording of any conversation between employees, supervisors, or officers of the Company, and subjecting employees who violate the rule to discipline, the granting of a pay increase to employees, and the issuance of the memorandum on or about February 10, 2009, setting forth and making changes to terms and conditions of employment, and subjecting employees to discipline regarding the matters set forth in the memorandum. To the extent that any of these unlawful actions have improved the terms and conditions of employment of unit employees, this remedy,

¹¹The Respondent may litigate in compliance whether it would be impossible or unduly or unfairly burdensome to restore the preexisting health insurance. *Pavilions at Forrestal & Princeton Healthcare*, 353 NLRB No. 60, slip op. at 4 fn. 7 (2008).

¹²If the Union chooses continuation of the unilaterally implemented health insurance policy, then make-whole relief for the unilateral change to the health insurance policy is inapplicable. *Pavilions at Forrestal*, supra (citing *Brooklyn Hospital Center*, 344 NLRB 404 (2005)).

and the Order set forth below shall not be construed as requiring or authorizing the Respondent to rescind such improvements unless requested to do so by the Union.

5 The Respondent shall make whole its unit employees and former unit employees for any loss in earnings or other benefits which they may have suffered as a result of the Respondent's unlawful conduct, as described in the foregoing paragraph, with such losses to be calculated in the manner prescribed in *Ogle Protection Service*, supra. However, any losses involving disruptions of employment shall be calculated as prescribed in *F. W. Woolworth Co.*, supra. Interest on all sums shall be computed as prescribed in accordance with *New Horizons for the Retarded*, supra.

15 The Respondent shall rescind the unlawful discipline and change of assignment of employee Gary Collard. The Respondent shall offer Collard and employee Jesse Stevenson reinstatement to the positions they occupied prior to their unlawful layoffs, or to equivalent positions, should their prior positions not exist, without prejudice to their seniority or any other rights or privileges previously enjoyed.

20 The Respondent shall make Collard and Stevenson whole for any loss of earnings and other benefits resulting from their unlawful layoffs computed on a quarterly basis from the date of their unlawfully motivated layoff to the date of a proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, supra., plus interest as computed in *New Horizons for the Retarded*, supra. The Respondent shall make Collard whole for any losses of earnings or benefits caused by the prelayoff change of assignment, computed in the manner set forth in *Ogle Protection Service*, supra.¹³

25 The Respondent shall remove from its files, including Collard and Stevenson's personnel files, any reference to their unlawful layoff (and in the case of Collard, also to his prelayoff discipline and change of assignment) and shall thereafter notify Collard and Stevenson in writing that this has been done and that the layoffs, discipline, and change of assignment will not be used against them in any way.

30 The Respondent shall post an appropriate informational notice, as described in the attached Appendix. This notice shall be posted in the Respondent's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 8 of the Board what action it will take with respect to this Decision. 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 May 11, 2007.

45 ¹³In his complaint, the General Counsel requests that compound interest be awarded on backpay owed to employees. The Board has repeatedly considered this proposition in recent months and repeatedly declared, less than a month ago, that "we are not prepared at this time to deviate from our current practice of assessing simple interest." *Standard Plumbing & Appliance Co.*, 354 NLRB No. 40, slip op. at 3 fn. 5 (2009); *John Succi General Contractors*, 354 NLRB No. 38, slip op. at 2 fn. 3 (2009). Given these, and many other such pronouncements, I am not inclined to depart from the Board's traditional interest formula at this juncture with regard to computation of backpay in this matter.

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

The Respondent shall, within 21 days after service by the Region, file with the Regional Director of Region 8 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 with the provisions of the Order set forth below.

The Employer's Objections to Conduct Affecting the Results of the Election ¹⁴

I. Background

As discussed, above, in addition to the unfair labor practice cases, the hearing involved consideration of RWJ's election objection. RWJ's objection, filed with the Regional Director after the election, states in relevant part:

Prior to the election, Petitioner, through its agents and representatives, promised employees jobs with Union contractors if they supported the Union. Furthermore, the Petitioner, through its agents and representatives, actually obtained a job with a Union contractor for an employee who served as the Union's election observer prior to the election. In addition, the Petitioner by and through its agents and representatives, obtained a position with a Union contractor for another employee who voted in the election and never returned to employment thereafter. The aforementioned actions unlawfully interfered with the election.

In his February 8, 2008 Report on Objections, the Regional Director recommended that RWJ's objection be overruled. In his report, the Regional Director rejected RWJ's contention that the Union's conduct warranted overturning the election under principles articulated by the Board in *Alyeska Pipeline Service Co.*, 261 NLRB 125 (1982). In the Regional Director's view:

The Petitioner does not possess the same control over employment as the union in *Alyeska*. In *Alyeska*, the union "control[ed] all access to construction jobs in Alaska for these employees and thus possess[ed] a power comparable to an Employer's power to close a plant." *Id.* at 127. The Petitioner in this case does not operate an exclusive hiring hall and, even if it did, such a hiring hall would not be located in an area in which it could control *all* of the local employment in a particular industry. Thus, it cannot be concluded that the Petitioner herein possessed a power comparable to an employer's power to close a plant.

I find that the factual context surrounding the notice in question to be distinguishable from that of the *Alyeska* case. I recommend, therefore, that the Employer's Objection be overruled. [Regional Director's bracketing and emphasis.]

¹⁴Case 8–RC–16909.

RWJ filed exceptions to the Regional Director's report with the Board. On August 20, 2008, the Board issued a decision stating, in relevant part:

5 The Board has also reviewed the record in light of the Employer's
 exceptions to the Regional Director's report recommending that the
 Employer's objection be overruled, as well as the parties' briefs, and finds
 that the Employer's exceptions raise issues which can best be resolved at
 a hearing to be held as expeditiously as feasible. The Board requests that
 10 the parties address the significance, if any of *King Electric, Inc. v. NLRB*,
 440 F.3d 471 (D.C. Cir. 2006).

II. The Union Conduct at Issue

A. The Union's leaflet

15 The campaign preceding the November 2, 2007 representation election included a
 significant amount of campaign propoganda directed to employees from RWJ and the Union.
 Within about a week or less of the November 2, 2007 election, the Union mailed a leaflet to
 20 bargaining unit employees' homes that stated the following. It is this leaflet that forms the
 cornerstone of RWJ's objection:

IMPORTANT NOTICE TO ALL RWJ EMPLOYEES

Local 669 suspects that RWJ is again violating the law.

Local 669 suspects that RWJ is again violating the law.

Our understanding is that Superintendents for RWJ are telling employees
 30 "That even if the employees win the election that the Company will stall the
 negotiation process for 5 years."

First of all, any Sprinkler Fitter or Helper that is working for RWJ can join the
 Union now.

If you don't want to keep working for the Company then the Union will get
 you a job with one of our Fair Contractors.

35 There are now and will be in the future, several good, long term jobs
 available in Ohio.

The next thing is that for the Company to even make this statement is illegal
 and when we have proof, we will be filing charges.

This type of action is very expensive for the Company.

40 Why won't they spend that money on wages for the people who make them
 their money.

The cost of stalling, if they get away with it, is also expensive.

45 Stalling for 5 years could cost the Company \$300,000 or more. One
 Contractor, that finally went out of business, said it cost him \$640,000 to stall
2-1/2 years.

There could also be more U.L.P.'s, which are costly.

Local 669 knows how to deal with Contractors who stall negotiations.

50 However, if they do stall, you don't have to stay at RWJ. You can have a better
 job with a fair 669 Contractor.

Local 669 represents people. We will help you find a good job with
 another Company, if you want to change Companies.

You have nothing to lose if you vote YES.

Voting NO keeps Employees working for RWJ with the same bad pay and benefits.

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VOTE YES for your future.

Dan Franklin
Local1669 Organizer

(Original emphasis)

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At the hearing testimony was presented regarding the Union's practices in assisting employees to obtain work with other employers. Union organizer Franklin testified that the Local does not control the hiring with the "fair contractors"—i.e., contractors who are signatories to a collective-bargaining agreement with the Union—but that he can and does provide interested employees with contact numbers to reach employers who may be hiring. He does that for union members and nonmembers who contact him. Franklin also testified that the phone numbers for contractors are listed on the website, so anyone, even nonmembers or "anybody in the public can get them." Employers sometimes call Franklin looking for referrals of workers, or asking who is unemployed, and Franklin then puts the employee in touch directly with the employer. The Union does not operate an exclusive hiring hall and cannot require any contractor to hire anyone. Union members can and do solicit their own work from contractors. Employees hired into trades at less than journeyman level are hired as an apprentice and an employer/union joint committee decides the level they are placed at, largely based on experience. Franklin gathers and submits the information to the committee for the employees.¹⁵

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Based on the experiences of the two employees who testified at the hearing, it appears that the Union's assistance in finding work for employees can be very effective. Both Floyd Russell and Billy Raabe, former employees of RWJ, testified to receiving such assistance and gaining employment in post-RWJ jobs.

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The leaflet is central to the Employer's objection, and warrants careful review. The leaflet challenged by the Employer is explicitly premised on, and begins with, the contention that the Employer has violated the law by telling employees that it intends to "stall the negotiation process for 5 years." The leaflet provides the Union's answer to this purported threat by the Employer to draw out the bargaining process: first, is that RWJ employees can join the Union

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¹⁵I generally found Franklin a credible witness. His demeanor seemed credible to me. His testimony was plausible and he presented it without contrived affect. Having said that, I recognize that Franklin was, and did not hide that he was, invested in the Union's view of the case. This caused him to "dig in" with the Respondent's counsel as they "dueled" over the meaning of the words on the leaflet. But this does not cause me to disbelieve his overall testimony.

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The Employer contends (E. Br. at 14) that the inference should be taken that contracts between the Union and signatory contractors do not support Franklin's testimony because the Union did not introduce any of the contracts into evidence (although indicating at one point that it would). I do not draw that conclusion. Franklin was competent to testify generally about hiring arrangements at signatory contractors. The contracts could easily have been subpoenaed by the Employer if it thought they were relevant. I am not going to discredit what I judge to be credible testimony based on the failure of counsel to offer a contract into evidence. I note that as the objecting party, if proving union control of the hiring process is important to its objection it is the Employer's burden to prove it.

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now and “[i]f you don’t want to keep working for the Company then the Union will get you a job with one of our Fair Contractors.” The leaflet adds that there are now and will in the future be several good long-term jobs available in Ohio. Second—“[t]he next thing”—the Union proposes as an answer to the prospect of delay negotiations, is that “when we have proof” the Union will file unfair labor practice “charges” and the Union points out that this could become very expensive for RWJ, and the longer they illegally stall the more expensive it will become. The leaflet concludes with the Union summing up that it “knows how to deal with Contractors who stall negotiations.” The Union’s leaflet then points out, again, that if there is stalling “you don’t have to stay at RWJ. You can have a better job with a fair 669 Contractor.” The Union explains that it “represents people.” “We will help you find a good job with another Company if you want to change Companies. You have nothing to lose if you vote yes.”

Fairly characterized, we have a piece of union campaign literature that attempts to respond to a concern or suspicion (admittedly lacking proof) that RWJ is dissuading employees from voting for the Union by suggesting that it will be years before any benefits of collective bargaining can be achieved. The Union’s answer is two fold: (1) even if there is stalling in negotiations, you can benefit from union membership and/or representation because we can “get you” or “help you” find other work with union signatory contractors; and (2) if RWJ stalls we will take legal action in response that can be costly for RWJ.

I note three further points about the leaflet. It states first that if you want another job “the Union *will* get you a job (emphasis added). Later, the leaflet states, “[w]e will *help you* find a good job” (emphasis added). Although a literal distinction can be drawn between the two offers, considered together, in sum, with less of a lawyers eye (the way most people read and write leaflets), they convey a situation consistent with what the record evidence shows: the Union cannot guarantee a job, it does not make the hiring decisions, the employers do, but the Union’s assistance is very effective in finding work for those it assists, and very likely to be successful, as demonstrated by the post-RWJ employment experiences of Raabe and Russell.

Second, I note that the leaflet is ambiguous as to whether one must be a union member or simply a represented employee in order to receive employment assistance from the Union. There is a reference to becoming a “Union member now,” after which the leaflet introduces the theme of the Union being able to find other work for employees. This suggests that union membership is required. On the other hand, that is not a theme of the leaflet as a whole and not mentioned in later references in the leaflet to finding other employment. Indeed, the leaflet states that “Local 669 represents people. We will help you find a good job with another Company, if you want to change Companies.” This, arguably, is a suggestion that the offer will be available to all, irrespective of membership, and the evidence developed at the hearing suggests that is the case. But really, the issue is not clearly dealt with in the leaflet. And the parsing is not necessary. As discussed, below, I conclude that it does not change the outcome whether the Union offered to find jobs for union members or for all represented employees.

Third, I reject the contention of the Union (U. Br. at 9, 12, 15), and discredit the claim, stated by Franklin, that the Union’s leaflet was in “direct response” to a letter written to employees by Dixon on October 24. The October 24 letter was alleged and admitted to be an unfair labor practice because it “disseminated incomplete, inaccurate and coercive information about the inevitability of a strike.” However, the Union’s leaflet makes no reference to that at all. Rather, it refers to the Union’s “understanding” that “Superintendents for RWJ are telling employees “[t]hat even if the employees win the election that the Company will stall the negotiation process for 5 years.” The October 24 letter makes no reference to a delay in negotiations.

Contrary to the Union's contentions, I do not believe that the Union's leaflet can be explained or analyzed as a response to a proven unfair labor practice committed by RWJ.¹⁶

B. Allegations of job assistance during the election campaign

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While the Union did assist Russell and Raabe in finding work after they left RWJ, the Employer's effort to show, additionally, that *during the election campaign* any employee was helped with new employment, or promised new employment in exchange for staying to vote in the election, was not successful.

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The employer's election observer, Adam Stevenson, testified that the Union's election observer, Russell, told him on a smoke break the day of the election that he was leaving RWJ to work at a nuclear power plant, and that "Dan Franklin got him a job there." Franklin testified, and repeatedly denied promising any employee a job during the union campaign (putting aside the representations in the leaflet). And, just as importantly, Russell testified and specifically denied that at any time prior to leaving RWJ, he talked with anyone from the Union about getting another job. Further, he testified that he did not know he was going to get work at the power plant until "probably about a week after" leaving RWJ, and did not begin working there until "probably two weeks" or "a few weeks" after leaving RWJ. He denied telling Stevenson that he had a job on the Ohio River at a power company. He denied telling Stevenson that it was his last day or telling Stevenson that Franklin got him a job. According to Russell, he contacted a union business agent—not Franklin—a couple of days after leaving RWJ and told him he was looking for work.

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This is not a particularly easy credibility determination.¹⁷ Stevenson attributed to Russell

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¹⁶That I do not believe that the Union's leaflet was a "direct response" to the Employer's October 24 leaflet does not undermine my otherwise positive assessment of Franklin's credibility. I just believe that in this case Franklin's investment in the Union's legal contentions influenced his account. Of course, the fact that I am willing to credit most, but not all of Franklin's testimony is not unusual. It is long-settled that "[i]t is no reason to refuse to accept everything a witness says, because you don't believe all of it, nothing is more common in all kinds of judicial decisions than to believe some and not all." *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 753 (2d Cir. 1950), revd. on other grounds, 340 U.S. 474 (1951); *Conley Trucking*, 349 NLRB 308, 316 fn. 18 (2007), enf'd. 520 F.3d 629 (6th Cir. 2008).

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¹⁷The Union says it is easy, taking the position that Stevenson's account of his conversation with Russell is "rank hearsay." My first instinct too, was that the truth of the statements attributed to Russell by Stevenson was hearsay. Clearly, Russell's status as a union election observer did not transform him into an agent of the Union (*Owens-Corning Fiberglas Corp.*, 179 NLRB 219, 223 (1969); *Tennessee Plastics Inc.*, 215 NLRB 315, 319 (1974), enf'd. 525 F.2d 670 (6th Cir. 1975)), and therefore his statements do not qualify as nonhearsay admissions of a party-opponent under Fed.R.Evid. 801(d)(2). However, Russell's statements to Stevenson may well qualify as exceptions to the hearsay rule under Fed.R.Evid. 803(3). See *Shelden v. Barre Belt Granite Employer Union Pension Fund*, 25 F.3d 74 (2d Cir. 1994) ("It is well settled that the existence of a plan to do a given act is relevant to show that thereafter the act was in fact done, see, e.g., 1A J. Wigmore, *Evidence* § 102, at 1666–1667 (Tillers rev. 1983); and under a long-established exception to the hearsay rule, the existence of the plan or intention may be proven by evidence of 'the person's own statements as to its existence,' 6 J. Wigmore, *Evidence* § 1725, at 129 (Chadbourn rev. 1976) (emphasis in original)"). In any event, I do not resolve this dispute based on issues relating to hearsay.

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the statement that the election day was his last at RWJ. It was. Stevenson attributed to Russell the statement that he was going to work for a nuclear power plant. He did. But Russell firmly denied having such a conversation with Stevenson and credibly testified that he did not get the nuclear power plant position, or tell anyone affiliated with the Union that he was looking for work until “a couple of days after I left RWJ.” And while Russell denied he talked to Stevenson about this, his testimony was consistent with that of then sales manager, Larry Stuckey: they both testified that on election day Russell told Stuckey that this was his last day. However, Stuckey did not testify that Russell said anything about the Union getting him another job or about going to work at a power plant. Russell testified that when he told Stuckey he was quitting that day, he did not know, at that time, where he would be working next.

At the end of the day, I am unwilling to credit Stevenson’s account of his conversation with Russell over the consistent and credibly-delivered testimony of Franklin and Russell that, as of election day, neither Franklin nor anyone else with the Union had lined up or spoken with Russell about new employment for him. Russell and Franklin corroborated one another in credible fashion, and it should be mentioned that in addition to the usual safeguards provided by the sequestration order in effect during this case, Russell was incarcerated in a State prison (for an offense unrelated to these cases) throughout the hearing. This would not make collaboration impossible, but his physical sequestration limited the opportunities for violation of the order. In any event, none was alleged. Stevenson’s account, on the other hand, was uncorroborated in any of the key details: e.g., evidence that Stevenson reported his account contemporaneously, or evidence from subpoenaed records that Russell obtained his job or had contact with union officials about a job at the nuclear power plant earlier than he claimed.¹⁸

That is not to say that the Employer did not know—it did—that Russell had left employment immediately after the election. This is not to say that after the election, the Union did not line up new employment for Russell and Raabe. It did. And, based on Russell and Raabe’s testimony, this assistance, and its success, suggests that the promise of job assistance contained in the leaflet distributed by Franklin was meaningful. But such postelection assistance, while it could be consistent with specific preelection arrangements with prounion individuals to provide them jobs if they stayed to vote in the election, is equally consistent—as testified to by Raabe and Russell—with employees approaching the Union after the election and seeking leads or other assistance in looking for new work. In any event, the evidence of

¹⁸The Employer contends on brief (E. Br. at 4) that corroboration for Stevenson’s account and evidence undermining Russell’s, can be found in the Employer’s objection to the election, signed and mailed to the Region November 8, six days after the election. In this objection, the Employer contended that “[the Union] actually obtained a job with a Union contractor for an employee who served as the Union’s election observer prior to the election.” The Employer asks, how could it know to make these objections if Russell’s testimony—that he did not get the new position for a couple of weeks after leaving RWJ—was true? But at the time RWJ filed its objections it knew that Russell (the election observer) had left RWJ. Russell told Stuckey this on the day of the election. At the time the Employer filed its objection, Russell had already begun seeking new work from the Union. Perhaps, the Employer knew this. It certainly knew of the leaflet, and might have assumed, based on Russell’s quitting, that the Union had found him new employment. But this is all that the objection shows. Notably, the Employer’s objection does not indicate knowledge that Russell had gotten work for a nuclear power plant, as Stevenson alleges he was told. It does not allege that Franklin obtained new work for Russell, as Stevenson claims Russell told him. Such specifics might have cast doubt on Russell’s account, or, at least, more pointedly buttressed Stevenson’s account. But, as written, the objection is not particularly compelling as a means of disputing Russell’s testimony.

NLRB 1369 (1984), the Board rejected claims that a union's leaflet promising free legal help to employees if the union won the election was objectionable. Distinguishing the situation from cases where the union promised financial forgiveness or raffles to employees, the Board found that the offer of free legal assistance was promised "as an existing incident of union membership." 277 NLRB at 1370. In *Dart* the union's leaflet explicitly described the "free legal help" as "a benefit to all members." The Board rejected the employer's challenges to the propriety of the election, holding that

[w]e do not believe that a union interferes with an election when it promises to extend an existing incident of union membership to new members. Unlike promising a newly created benefit to all employees as the union did in *Crestwood Manor*, [in which the union promised to hold a \$100 raffle for unit in event union won the election], promising to extend an existing benefit to new union members does not suggest to employees that their votes are being purchased. Just as an employer can call attention to benefits that its employees in the proposed union currently enjoy, so, too, can a union point out the benefits its members currently enjoy. [Footnote omitted]

277 NLRB at 1370.

A second related and relevant principle is found in Board precedent. Even as to existing benefits that are an incident of union membership or representation, while the Union may "advertise" such existing benefits to voters, the Union may not actually confer such benefits to the eligible voters prior to the election. As the D.C. Circuit has put it, "although a union is free to advertise the benefits for which its members are eligible, it may not give voters 'free samples' . . . before an election." *Freund Baking Co. v. NLRB*, 165 F.3d 928, 933 (D.C. Cir. 1999) (referencing, *Mailing Services, Inc.*, 293 NLRB 565 (1989) ("Although a Union may promise an existing benefit to new members if its receipt is not conditioned on the recipient's demonstration of preelection support, it is like an employer, barred in the critical period prior to the election from conferring on potential voters a financial benefit to which they would otherwise not be entitled") (citations omitted)).

In *Mailing Services, Inc.*, the Board directed a second election because the union provided employees with medical screening tests (for high blood pressure, cholesterol, diabetes, etc.), days before the election, in mobile medical vans stationed by the union across the street from the factory entrance. Approximately 80 of 270 employees took advantage of the offer and received medical screening tests from the union. The Board took issue with the "direct conferral of substantial benefits on its target audience during the critical period." In doing so, the Board made clear (293 NLRB at 565–566) that that it agreed "that the Union was entitled to publicize an existing incident of union membership or representation":

It could have provided employees with descriptive information about its health screening program; it could have placed the mobile medical units in the same locale and invited employees to inspect them. Indeed, it takes little imagination to conjure means of demonstrating the availability of periodic medical screening that do not entail the impermissible conferral of this benefit and the consequent tainting of employee choice.

We do not condemn a Union's efforts to make itself "more attractive as a candidate for election," *Primco Casting Corp.*, 174 NLRB 244, 245 (1969), but we do require that its methods of self-enhancement exclude the direct conferral of substantial benefits on its target audience during the critical period.

The key to unobjectionability then, is that the touted benefit is generally available as a feature of representation or membership *and* is not directly conferred on employees *prior* to the election.

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In this case the Union advertised in a leaflet its willingness to assist its membership in finding new jobs, in an informal, assertedly (and apparently, as seen after the fact) effective, but not necessarily guaranteed, manner. It is, essentially, an incident of union membership, although Franklin's testimony makes clear that the Union will do this for even nonmembers, and indeed, lists job leads on its publicly accessible web site—a fact that only further insulates the promise from objection. It seems unrealistic to contend that this informal benefit is not a predictable incident of membership in, or representation by, an organization that is negotiating with a multitude of employers. This alone means that the Union will know where jobs are and who is hiring. And it is not hard to imagine that union referrals, with at least some employers, and for at least some positions, are viewed positively by employers trying to fill positions with previously unknown applicants.

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Notably, there is no evidence that this benefit was only offered to potential members of the RWJ bargaining unit. The leaflet does not say that, and the unrebutted and credited testimony of Franklin does not suggest that. The Union's leaflet advertises an informal benefit of joining and/or being represented by the Union and under Board precedent there is no reason that the Board should attempt to prohibit a union from telling prospective members of an important benefit they will have if the union becomes their representative.

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At the other extreme, assuming that the offer is for members only, the record does not support the conclusion that the Union's ability to obtain other employment for members is exclusive or otherwise so dominant that nonmembers are, as practical matter, deprived of the right to work. Thus, there is no evidence that the Union "controls all access to . . . jobs," in a given area, as did the union in *Alyeska Pipeline Service Co.*, 261 NLRB 125, 127 (1982). That union, through its exclusive hiring hall arrangement, "control[ed] all access to construction jobs in Alaska for these employees and thus possess[e]d a power comparable to an Employer's power to close a plant." *Id.* Franklin's unrebutted and credited testimony is that the Local "do[es] not have an exclusive hiring hall. The [members] solicit their own work If an employee is laid off they could call another contractor to find a position. Contractors will call other contractors to see if guys are off." The Local does not have the ability to require a contractor to hire anyone. Given this—and it is undisputed on the record—the Local's promise to obtain, or to assist in obtaining, new jobs for interested members is not a promise to give members an unlawful advantage. The duty of fair representation, which is rooted in and limited to situations involving the union's exclusive exercise of statutorily sanctioned power, is not offended by the promise to aid members in seeking new work, any more than it would be by a promise that as members they, but not nonmembers, would be eligible for union sponsored job training and resume writing seminars. These are, like the job assistance, benefits that come with an employees' decision to join the organization that is the union. The critical point is that the Union's exclusive right to represent employees does not extend to hiring decisions of the employers—and the "benefit" is not being offered solely to members of the RWJ bargaining unit who support or join the Union. The benefit is an incident of union membership generally and nonmembers do not suffer a deprivation of the right to work because the Union does not control or dominate the hiring process. In any event, as Franklin's unrebutted testimony explained, the Union also helps nonmembers land positions.

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The other issue is whether the leaflet constituted a conferral of a benefit prior to the election. As discussed above, during elections, both unions and employers may publicize the

existing benefits of union or nonunion representation: but they may not confer those benefits prior to the election. This benefit was legitimate to tout, but illegitimate to confer prior to the election.

5 In this case, as discussed, *supra*, I have rejected the claim that *during* the election period Russell or Raabe were assisted with other jobs, or promised other jobs on the condition that they stay through the election. There is no evidence that anyone sought or received job assistance prior to the election. If it happened, it has not been proven (and if it needs to be proven it is the objecting party's obligation to prove it).

10 With regard to new job assistance, the Union's leaflet is clearly directed toward telling employees that, after an election and union victory, should the employer stall negotiations (and, implicitly, as a result your conditions do not improve), then we will assist you in finding new work with other signatory contractors. The leaflet's thrust and focus is on the Union's willingness to provide job search help *after* the election (and after a period of failed negotiations). While that is clearly the thrust of the leaflet, the leaflet is not so finely tuned in that regard. The leaflet informs employees that they "can join the Union *now*" and that "[t]here are *now* and will be in the future, several good, long term jobs available in Ohio." (Emphasis added.) Although (as RWJ stresses) the leaflet issued only days before the election, the leaflet does suggest that an employee who responded prior to the election and requested that the Union comply *now* with its promise of job assistance, would have no reason to be disappointed. There is no suggestion that he would have to wait. Clearly, had that happened, or had he been asked to stay through the election as a quid pro quo for job assistance, the preelection conferral of such a benefit would not likely survive Board scrutiny.

25 However, by all evidence, that did not happen. Based on the evidence, the Union's offer—geared in any event toward a situation of "stalled" bargaining after the election—was not taken up by employees until after the election. The offer was announced and likely available for a few days before the election, but no benefit was conferred or even pursued until after the election. Given this, it is not reasonable to say that the Union conferred a preelection benefit on employees. No preelection sense of obligation to the Union for benefits received was generated by the Union's leaflet. No preelection material change in status was conferred on any employee. It is, as if, in *Mailing Services*, *supra*, the union's announcement of medical screening had been met with employee visits to look at the medical screening vans, but no employees actually obtained the benefit of medical screening prior to the election. The Board in *Mailing Services*, was clear that the validity of the objection turned on the employees' actual receipt of a significant benefit preelection. The publicizing of the benefit was not objectionable. Here, the touting of the benefit appears to have served a legitimate and Board-approved purpose. It may have provided incentive to support the union, because employees saw the benefit as one that, like other indicia of union representation, would work to their advantage. At least two employees took advantage of this benefit after the election and relied on the Union to help them obtain better employment. If the anticipation that this could help them to better their situation caused them to vote for the Union, there is nothing objectionable in that.

45 The leaflet's main point was to assure employees that postelection, the Union had answers that would help employees if bargaining stalled. Experience confirms that delays in obtaining first contracts are an issue of concern for unions and for employees considering representation. The Union's effort to address this concern by touting its practice of job assistance is unobjectionable.²⁰

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²⁰ note that the petitioner's promise to find jobs for employees with other employers does

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B. Consideration of King Electric v. NLRB

5 In remanding the case for hearing, the Board expressly requested that the parties address the significance, if any, of *King Electric, Inc. v. NLRB*, 440 F.3d 471 (D.C. Cir. 2006). The parties have done so. I have considered their arguments, and I conclude that, given the factual record, *King Electric* is inapposite. Its application would not alter the result.

10 In *King Electric*, a union told employees during an election campaign that they were eligible for employment referrals to other union contractors through a joint apprenticeship program because at least 51 percent of King Electric employees had signed authorization cards. According to the union, passing this threshold “allowed” the union to put employees in the apprenticeship program (regardless of whether the union won the election or not). The hearing officer, and the Board, rejected the employer’s contention that this promise of benefit by the union was objectionable conduct and certified the union’s representation election victory. The employer refused to bargain and its “technical 8(a)(5)” violation was presented to the court, with the employer’s objection to the union’s promise of job referrals as an issue. The court refused to enforce the Board’s order for two reasons.

20 First, the court rejected the hearing officer’s finding, adopted by the Board, discrediting testimony that the union had offered job referrals at a wage premium to employees if they would stay through the vote. The court rejected this credibility finding because the hearing officer refused to consider, and regarded as irrelevant, the evidence that more than half of the employees quit the day after the election to work at union-signatory companies. Based on the hearing officer’s failure to consider this evidence, the court found that the finding discrediting the testimony about union offers of referrals was not based on substantial evidence. The court pointed out that, “[o]f course, had [the hearing officer] considered that evidence and still credited the union witness, we might well have deferred to her finding—but she did not.”

30 Second, the court refused to enforce because of its doubt that the evidence showed—and because the hearing officer failed to find that the evidence showed—that the union utilized the 51-percent rule “in the normal course” or automatically. Upon review of the union representative’s testimony regarding the use of the union’s use of the “51% rule,” the court

35 not present the problem with the union’s offer to waive initiation fees addressed in *NLRB v. Savair Mfg. Co.*, 414 U.S. 270 (1973). The Supreme Court found that the union in that case interfered with a fair and free election by limiting its offer to those employees who demonstrated support for the union before the election. The Court found the offer objectionable because it helped to “paint a false portrait of employee support” and could have provoked a false sense of moral obligation to vote for the union in the election. 414 U.S. at 277–278. Here, unlike in *Savair*, nothing about the Union’s leaflets suggested that an employee must demonstrate preelection support for the Union in order to take advantage of the promise. In arguing to the contrary, the Employer points out that the leaflet stated that employees were able to join the Union “now,” prior to the election. However, the benefit at issue was not restricted to employees who chose to join the Union “now,” or prior to the election. There is simply nothing in the leaflet that would lead a reasonable employee to believe that he or she must join the Union now, or do anything at all before the election, in order to take advantage of the Union’s help to find another job. With regard to the applicability of *Savair*, the situation is very similar to the promise of free legal help and access to the union’s strike fund promised to employees in *Dart Container of California*, 277 NLRB 1369 (1984). The Board rejected any suggestion that *Savair* controlled the outcome. *Id.* at 1369. This is the case here.

concluded that the testimony was equivocal as to “whether the union employed the ‘51% rule’ in the normal course, during organizing or otherwise, or whether it was merely something that was in the union’s discretion to offer in appropriate situations—perhaps when necessary in order to encourage pro-union votes.” The court recognized that

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[h]ad the hearing officer concluded on the basis of [the union representative’s] testimony, that the “51% rule” was invariably employed by the union, we might have been willing to defer to such a finding.

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But the hearing officer never made a finding that the union treated the “51 percent” rule as binding on it and thereby unconditionally available to employees. . . . If the union had promised the employees a benefit that was not automatic with union membership, it would be objectionable even if conditioned on neither the result of the vote nor an employee’s willingness to stay for the vote.

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The court’s rationale for refusing to enforce the Board’s order in *King Electric* is inapposite to the instant case, in light of the record developed here.

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The court’s first rationale for refusing to enforce rested on the hearing officer’s refusal to consider the circumstantial evidence that more than half of the employees quit and went to work at a union contractor the day after the election. Here, however, I accepted (over the union’s objection) all evidence offered regarding employees leaving RWJ for other employment after the election. Thus, I accepted, considered (and credited) the evidence that Russell and Raabe took new positions, with the help of the Union, within days or weeks of the election, and both quit RWJ at the end of election day. However, even considering this evidence, I do not find, for reasons discussed above, that employees were assisted with new jobs before the election, or individually promised jobs, at a premium or otherwise, conditioned on staying through the vote. The credited evidence does not support that conclusion. Indeed, Franklin, Raabe, and Russell expressly and credibly denied any kind of preelection promises outside of the distribution of the leaflets. And the leaflet not only does not state that you must stay through the election to receive job assistance but suggests the contrary, stating that “First of all, any Sprinkler Fitter Or Helper that is working for RWJ can join the Union now. If you don’t want to keep working for the Company then the Union will get you a job with one of our Fair Contractors.” (Emphasis removed). This suggests that an RWJ employee could join the Union and leave RWJ *before* the election and the “Union will help you get a job” with another contractor.²¹

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Thus, the evidentiary concern expressed by the court in *King Electric* was fully considered here. Even considering the postelection conduct of employees, it does not lead me to conclude that any employee was promised a job on the condition that he or she stay through the election and/or support the union in the election.

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The court’s second rationale for refusing to enforce the Board’s order is also inapposite here. The court noted the testimony of the union representative that the 51-percent rule “allowed” the union to place employees directly into the apprenticeship program, but found the evidence “equivocal” as to whether the union followed the rule “in the normal course, during organizing or otherwise” and placed interested employees in the apprenticeship program whenever the 51-percent threshold was met. The court pointed out that if the “benefit” was one

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²¹As discussed, there is no evidence this happened, and it may have been objectionable if it did. But the framing of the offer in this way is a factor that cuts against the conclusion that employees were asked to stay through the election as a condition of receiving the Union’s assistance.

the union selectively utilized—“perhaps when necessary in order to encourage pro-union votes”—“it would be objectionable even if conditioned on neither the result of the vote nor an employee’s willingness to stay for the vote.” By contrast, in this case, the testimony is sufficient, and I have found, that the Union’s willingness to help represented employees and/or members find jobs with other contractors is a standard practice of the Union. Franklin credibly testified that “as an organizer” he would provide interested employees with the contact number for a union contractor. He did this for union members and “the numbers are even on our website, so anybody in the public can get them.” Franklin also testified that he would provide the contractors’ numbers to individuals who are not members of the Union. I think a reasonable conclusion to be drawn is that this willingness to refer jobs was standard operating procedure for the local. Certainly, nothing in the leaflet, and nothing in Franklin’s testimony suggests otherwise. Significantly, the Employer offers nothing to contradict this conclusion, and it bears the burden of doing so if it wants the election set aside. As the Board explained in *Dart Container*, supra,

[u]nder settled law, however, it is the employer’s burden to supply specific evidence that prima facie would warrant setting the election aside. Absent such evidence, we have no reason to believe the benefit was anything other than what the Petitioner claimed it to be: an existing benefit that the Petitioner provided to all members.

277 NLRB at 1369 fn. 7 (internal citations omitted).

Given this, there is no grounds for concluding that the union’s job assistance was only selectively used, “perhaps when necessary to encourage pro-union votes.” Not a scintilla of evidence suggests that.

Finally, I point out that although the court, at some but not other points in its decision, stresses the need for an unobjectionable benefit to be one to which all members are “entitled,” I do not read *King Electric* to require that a benefit be one to which a member is *legally* entitled. In other words an informal, but consistent practice followed “in the normal course, during organizing or otherwise” (440 F.3d at 476) is a practice that the union may unobjectionably offer, even boast of, to prospective members in an organizing drive. There is no basis in law or logic to limit parties in an organizing campaign from “selling” themselves based on benefits and attributes that generally available as an incident of membership without regard to the legal or formal entitlement to the benefit. One may go further, and suggest that a prospective member is entitled to know that joining the union will enhance his employment opportunities at other employers. There is no cause for the Board to bar the employees’ receipt of such information on pain of invalidating the election.

Based on the above, the Employer’s objection to the election should be overruled. Application of *King Electric* to the facts here would not lead to a contrary result.

Recommendation of Certification

On the entire record, I issue the following recommendation in Case 8-RC-16909: the Employer’s objection in the above matter should be overruled. As the tally of ballots shows that the majority of valid votes counted have been cast for the Petitioner, it is recommended that the Board certify the Petitioner as the collective-bargaining representative of employees in the appropriate unit.

In the unfair labor practice cases, Cases 8–CA–37361, 8–CA–37509, 8–CA–37678, 8–

CA-37693, 8-CA-37866, 8-CA-37867, 8-CA-38125, and 8-CA-38176, based on the above-stated findings of fact and conclusions of law, and on the entire record, I issue the following recommended²²

ORDER

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The Respondent RWJ Corporation, Sebring, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

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a. Failing and refusing to recognize and bargain with the Union as the exclusive bargaining representative for the following bargaining unit of its employees:

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All full-time and regular part-time lead men, fitter, helpers, service tech field employees and warehouse employees employed by the Employer at its 1945 S. 12th Street, Sebring, Ohio facility and excluding all other employees including all designers, salespersons, truck drivers, office clericals, and all professional employees, guards and supervisors as defined in the Act.

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b. Failing and refusing to bargain with the Union as the exclusive representative of its employees in an appropriate bargaining unit by making unilateral changes in their terms and conditions of employment without providing the Union with notice and an opportunity to bargain, including, changing the start time of the employees' workday, changing the van loading procedures, changing the warehouse hours, implementing a new procedure for recording the materials and equipment in each van, changing the daily deadline for crews to call in material and supply orders into the warehouse, changing lunch and breaktimes, ceasing its past practice of giving each employee a paid half-day off on Christmas Eve, changing the employees' health insurance company, terminating the 401(k) plan, laying off employees, changing travel compensation procedure for employees, granting raises, discontinuing the option of employees purchasing their personal cell phone service through the Respondent, and changing the employees' health coverage from health insurance to a health savings plan.

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c. Threatening employees with plant closure in retaliation for their union activities.

d. Interrogating employees about their union membership, sympathies and activities.

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e. Informing employees that it is futile to organize a union.

f. Threatening employees with the loss of their attendance bonus in retaliation for union activities.

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²²If 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. Pursuant to Sec. 102.69(f), because the representation case has been consolidated with unfair labor practice cases for purposes of hearing, the provisions of Sec. 102.46 also govern with respect to the filing of exceptions or an answering brief to the decision and recommendation of certification in Case 8-RC-16909.

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- g. Removing timeclocks and instituting a new timekeeping procedure in retaliation for employees union and/or protected concerted activities.
- 5 h. Granting employees the benefit of paid load time in order to discourage union activities.
- i. Instructing employees to refrain from engaging in further union activity.
- 10 j. Announcing and implementing rules prohibiting the making or assisting of recordings of conversations, and threatening discipline for violation of such rules, in response to and in order to discourage union and/or protected activities.
- 15 k. Isolating employees from the rest of the work crew in order to engage the employee in a coercive and negative conversation about the Union.
- l. Disseminating incomplete, inaccurate, and coercive information about the inevitability and/or effects of a strike.
- 20 m. Telling employees that only employees opposed to the Union remain employed by the Respondent.
- n. Telling employees that the Respondent will continue to engage in unfair labor practices regardless of whether the Union files charges with the Board.
- 25 o. Disciplining, threatening to discipline, laying off, and/or changing the job assignment of any employee in retaliation for Union and concerted activities and to discourage employees from engaging in those activities.
- 30 p. Implementing pay raises to employees because employees formed, joined, or assisted the Union or engaged in concerted activities, and to discourage employees from engaging in such activities.
- 35 q. Failing and refusing to bargain with the Union as the collective-bargaining representative of its employees, and/or from retaliating against employees for forming, joining, assisting the Union or engaging in concerted activities, and to discourage employees from engaging in such activities, by directly dealing with employees and bypassing the Union by unilaterally issuing and requiring employees to sign memoranda acknowledging changes to the terms and conditions of employment and further subjecting employees to discipline.
- 40 2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - a. Recognize and, upon request, bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit employees described above.
 - 45 b. Rescind the changes and restore the status quo ante with regard to each unlawful unilateral change in terms and conditions described in numbered paragraphs 18 and 19 of the findings of fact in the Decision in this matter, including, since on or about December 3, 2007, changing the start time of employees' workday, changing van loading procedures, changing warehouse hours, changing the procedure for recording the materials and equipment in each van, changing the daily deadline for crews to call in material and supply orders into the warehouse, changing lunch and breaktimes;
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since on or about December 24, 2007, ceasing the past practice of giving each employee a paid half-day off on Christmas Eve; since on or about January 1, 2008, changing employees' health insurance company; since on or about January 31, 2008, terminating the 401(k) plan; since on or about March 14, 2008, laying off employees; since on or about March 25, 2008, changing travel compensation procedures for employees; since on or about April 1, 2008, granting raises; since on or about November 1, 2008, discontinuance of the option of employees of purchasing their personal cell phone service through the Respondent, and changing employees' health coverage from health insurance to a health savings plan; the issuance of a memorandum on or about February 10, 2009, and the changes described therein. To the extent that any of these unlawful unilateral changes have improved the terms and conditions of employment of unit employees, this Order shall not be construed as requiring or authorizing the Respondent to rescind such improvements unless requested to do so by the Union.

- c. Make whole its unit employees and former unit employees, with interest, in the manner set forth in the remedy section of this Decision, for any loss of earnings or other benefits, which they may have suffered as a result of the Respondent's implementation of unlawful unilateral changes in terms and conditions of employment, and reimbursing current or former unit employees for any expenses ensuing from the unilateral change in health coverage and/or change in employees' health insurance company.
- d. To the extent not already required by paragraph 2(b) of this Order, above, rescind and restore the status quo ante with regard to the following unlawfully motivated conduct described in the Decision: in or around July 2007, removing the timeclock, instituting a new timekeeping procedure; in or around July 2007, the exact date being unknown, granting the benefit of paid load time granted to employees; in or around September 7, 2007, announcing and implementing a rule regulating the making of video or audio recordings of conversation and threatening discipline up to and including termination for violation of the rule; on or about April 1, 2008, granting a pay increase to employees; on or about February 10, 2009, issuing a memorandum setting forth and making changes to terms and conditions of employment and subjecting employees to discipline regarding the matters set forth in the memorandum. To the extent that any of this unlawful conduct has improved the terms and conditions of employment of unit employees, this Order shall not be construed as requiring or authorizing the Respondent to rescind such improvements unless requested to do so by the Union. The Respondent shall make whole its unit employees and former unit employees, with interest, in the manner set forth in the remedy section of this Decision, for any loss in earnings or other benefits, which they may have suffered as a result of this unlawful conduct.
- e. Within 14 days from the date of this order, offer Gary Collard and Jesse Stevenson full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.
- f. Make employees Gary Collard and Jesse Stevenson whole with interest, in the manner set forth in the remedy portion of this Decision, for any loss of earnings or other benefits resulting from their layoff and, in Collard's case, also resulting from his prelayoff change of assignment.

- 5 g. Within 14 days from the date of this Order, rescind the discipline issued against Gary Collard on or about February 26, 2008, the exact date being unknown, and remove from its files, including Gary Collard and Jesse Stevenson’s personnel files, any reference to the unlawful layoffs, and in the case of Collard also any reference to the unlawful discipline and change of assignment, and within 3 days thereafter notify Collard and Stevenson in writing that this has been done and that the layoffs, discipline, and change of assignment will not be used against them in any way.
- 10 h. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, make available at a reasonable place designated by the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- 15 i. Within 14 days after service by the Region, post at its facility in Sebring, Ohio, copies of the attached notice marked “Appendix.”²³ 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 Respondent 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 facility 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 that facility at any time since May 20 25 30
- 30 j. Within 21 days after service by the Region, file with the Regional Director of Region 8 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply with the provisions of this Order.

35 Dated, Washington, D.C. July 31, 2009

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David I. Goldman
Administrative Law Judge

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 ²³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

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 fail and refuse to recognize and bargain with the Union as the exclusive bargaining representative for the bargaining unit of our employees composed of:

All full-time and regular part-time lead men, fitter, helpers, service tech field employees and warehouse employees employed by us at our 1945 S. 12th Street, Sebring, Ohio facility and excluding all other employees including all designers, salespersons, truck drivers, office clericals, and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT make unilateral changes in terms and conditions of your employment without providing the Union with notice and an opportunity to bargain, including: changing the start time of the employees' workday, changing the van loading procedures, changing the warehouse hours, implementing a new procedure for recording the materials and equipment in each van, changing the daily deadline for crews to call in material and supply orders into the warehouse, changing lunch and breaktimes, ceasing our past practice of giving each employee a paid half-day off on Christmas Eve, changing the employees' health insurance company, terminating the 401(k) plan, laying off employees; changing travel compensation procedure for employees, granting raises; discontinuing the option of employees purchasing their personal cell phone service through the Respondent, changing the employees' health coverage from health insurance to a health savings plan.

WE WILL NOT threaten you with plant closure in retaliation for your union activities.

WE WILL NOT interrogate you about your union membership, sympathies, and activities.

WE WILL NOT tell you that it is futile to organize a union.

WE WILL NOT threaten you with the loss of your attendance bonus in retaliation for union activities.

WE WILL NOT remove timeclocks and institute a new timekeeping procedure in retaliation for your union and/or protected concerted activities.

WE WILL NOT grant you paid load time in order to discourage you union activity.

WE WILL NOT instruct you to refrain from engaging in further union activity.

WE WILL NOT announce and implement rules prohibiting the making or assisting of recordings of conversations in response to and in order to discourage your union and/or protected activities.

WE WILL NOT isolate any of you from the rest of the work crew in order to engage you in coercive and negative conversation about the Union.

WE WILL NOT disseminate incomplete, inaccurate, and coercive information about the inevitability and/or effects of a strike.

WE WILL NOT tell you that only employees opposed to the Union remained employed by us.

WE WILL NOT tell you that we will continue to engage in unfair labor practices regardless of whether the Union files charges with the Board.

WE WILL NOT discipline, threaten to discipline, lay off, and/or change the job assignment of any employee in retaliation for union and concerted activities and to discourage you from engaging in those activities.

WE WILL NOT implement pay raises because you formed, joined, or assisted the Union or engaged in concerted activities, or to discourage you from engaging in such activities.

WE WILL NOT directly deal with you and bypass the Union by unilaterally issuing and requiring you to sign memoranda acknowledging changes to your terms and conditions of employment and subjecting you to discipline.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Federal law.

WE WILL recognize and, upon request, bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit employees described above.

WE WILL rescind the unlawful unilateral changes we made to your terms and conditions of employment including: changing the start time of the employees' workday, changing the van loading procedures, changing the warehouse hours, implementing a new procedure for recording the materials and equipment in each van, changing the daily deadline for crews to call in material and supply orders into the warehouse, changing lunch and breaktimes, ceasing our past practice of giving each employee a paid half-day off on Christmas Eve, changing the employees' health insurance company, terminating the 401(k) plan; laying off employees, changing travel compensation procedure for employees, granting raises; discontinuing the option of employees purchasing their personal cell phone service through us, changing the employees' health coverage from health insurance to a health savings plan, and the changes to terms and conditions of employment set forth in the February 10, 2009 memorandum issued to and which we required you to sign and acknowledge and which subjected you to discipline.

However, any unlawful unilateral changes we made that improved your terms and conditions will not be rescinded without the Union requesting that the improvements be rescinded.

WE WILL reimburse former and current unit employees for any expenses ensuing from the unlawful unilateral change in health coverage and/or change in employees' health insurance.

WE WILL rescind and restore the status quo ante with regard to the following unlawfully motivated conduct: the removal of the time clock, the institution of a new timekeeping procedure, the granting of the benefit of paid load time, the announcement and implementation of the rule requiring express written prior consent of all parties to a conversation before making or assisting another person in making a recording of any conversation between employees, supervisors, or officers of the Company, and subjecting employees who violate the rule to discipline, the granting of a pay increase to employees, and the issuance of the memorandum on or about February 10, 2009 setting forth and making changes to terms and conditions of employment and subjecting employees to discipline regarding the matters set forth in the memorandum. However, any of these unlawful actions that improved your terms and conditions of employment will not be rescinded without the Union requesting that the improvements be rescinded. WE WILL make employees and former employees whole for any loss in earnings or benefits, which they may have suffered as a result of these changes.

WE WILL, within 14 days from the date of this order, offer Gary Collard and Jesse Stevenson full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make employees Gary Collard and Jesse Stevenson whole with interest, in the manner set forth in the remedy portion of this Decision and Order for any loss of earnings or other benefits resulting from their layoff and, in Collard's case, also from his prelayoff change of assignment.

WE WILL, within 14 days from the date of this Order, rescind the discipline issued against Gary Collard on or about February 26, 2008, the exact date being unknown, and remove from our files, including Gary Collard and Jesse Stevenson's personnel files, any reference to the unlawful layoffs (and in the case of Collard also to the unlawful discipline and change of assignment), and WE WILL within 3 days thereafter notify Collard and Stevenson in

writing that this has been done and that the layoffs, discipline, and change of assignment will not be used against them in any way.

RWJ Corporation

(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.

1240 East 9th Street, Federal Building, Room 1695
Cleveland, Ohio 44199-2086
Hours: 8:15 a.m. to 4:45 p.m.
216-522-3716.

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.