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Acklin Stamping Company and Niles Menard

United Automobile Aerospace and Agricultural Implement Workers of America, UAW, Local 12 and Niles Menard. Cases 8–CA–36788 and 8–CB–10622

August 27, 2010

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND PEARCE

The central issue in this case, before us again after our remand to the judge, is whether the Respondent Union rebutted the presumption that its action in seeking the discharge of Charging Party Niles Menard was unlawful.¹ Contrary to the judge, we find that it did.

I. MATERIAL FACTS

Menard was hired by Acklin Stamping Company (Acklin) as an electrician in early February 2006.² He had been recruited by a friend, Cheryl Lyons, who worked in Acklin's human resources department and knew Menard from a previous employer. The position Menard was hired for required journeyman certification or "eight years of proven experience working as an electrician in a manufacturing environment, along with a minimum of two years related experience." When offering him the position, Lyons requested that Menard submit a written summary of his electrician experience. Menard submitted a letter from his previous employer,

¹ On May 4, 2007, Administrative Law Judge Bruce D. Rosenstein issued his initial decision in this case. On December 28, 2007, the Board remanded the case to the judge for additional findings. *Acklin Stamping*, 351 NLRB 1263 (2007).

On February 15, 2008, the judge issued the attached supplemental decision. The Union filed exceptions and a supporting brief, and the General Counsel and Acklin Stamping Company filed briefs in opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision, supplemental decision, and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Supplemental Decision and Order.

The Union has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² All dates hereafter are in 2006 unless stated otherwise.

dated February 15, giving his dates of employment (Mar. 10, 1970 through May 9, 2005) and stating that Menard had "performed electrician jobs" for that employer. The letter provided no additional work details; nor did it state the signatory's title or contact number. Menard began working for Acklin on February 20.

About the third week in February, Menard's letter was given to union official Linda Straub, as required under the terms of a 2003 grievance settlement concerning a new hire who purportedly did not possess the required qualifications. That settlement established the Union's right to "review all new hires for the skilled trade positions [in order] to check if the applicant has the qualifications for a journeyman card or has the credentials to apply for one."

The Union admitted Menard as a member in March. Based on past practice, and consistent with the job description for Menard's position, Straub reviewed Menard's letter and, in April, told Menard that he would have to provide more specific documentation of his qualifications. Straub added that, alternatively, Menard could provide the contact information for the signatory of the February 15th letter from his former employer. Menard admittedly agreed but failed to comply in either respect, even though Straub again reminded him of this requirement later during his probationary period.³

In early May, Straub showed Menard's letter to Acklin's new plant superintendent, Vince Curtis, and to Daniel Twiss, the Union's International representative. Both agreed with Straub that the letter was inadequate to verify Menard's electrician experience. Straub and Joel McVicker (who succeeded Straub as the Union's unit chairman) each testified, without contradiction, that during Menard's probationary period a number of employees complained to them, separately, that Menard was unqualified and that his performance was creating safety concerns. They also testified that Menard's supervisor, Bob LeBarr, agreed that Menard was not qualified when they informed him of the complaints they had received.

Several times in May or early June, Straub asked Curtis about the ending date of Menard's probationary period. Although Menard's probationary period was scheduled to end on June 20, under the parties' contract any overtime Menard worked would cause that period to end earlier. Each time Straub inquired, Curtis responded that he (Curtis) needed to check on the actual date.

³ Menard admitted at trial that "I kind of forgot; that was my slip-up." The judge, on remand, specifically discredited Menard's testimony that Straub's then-imminent successor as union chair, Joel McVicker, told Menard he did not need to provide additional documentation if Acklin did not request it.

On June 10, Straub and Curtis met to discuss Menard. During this meeting, Curtis acknowledged that he did not believe Menard was qualified to be an electrician, and added that he believed Menard lacked the skills necessary to work independently in the facility. Curtis suggested creating a skilled trade position for Menard. Straub rejected this idea because the collective-bargaining agreement required that skilled trade positions be posted, bid, and filled on a seniority basis. She suggested that management instead post an opening for a lower-skilled production job for which Menard could bid successfully. Curtis admittedly replied that this was “a good idea,” but took no further action in this respect. Straub also again asked Curtis when Menard’s probationary period would end, but Curtis did not follow up with her on this either.

Because of the amount of overtime he worked, Menard’s probation period ended on June 12. That day, Lyons called Curtis and informed him that Menard had “gotten his time in.”⁴ Despite his earlier conversations with Straub, Curtis informed Menard that he was a permanent employee. Two days later, Curtis advised Acklin’s corporate director of human resources, Mark Echler, that although Menard’s probation period had ended, he was unqualified. Echler testified that he asked Curtis if he had performed the customary written evaluations on Menard during the probation, and Curtis admitted that “no, we really didn’t.”⁵ Echler then said “Shame on you,” and told Curtis that Menard was now a permanent employee and that Curtis would have to “deal” with the problem by documenting Menard’s deficiencies in the future.

Later on June 14, when Straub asked Curtis what was being done about Menard, Curtis replied that Echler had overruled him and that Menard was a permanent employee. Straub immediately informed Twiss of this, and Twiss called Echler. During this conversation, Twiss reiterated the Union’s concerns about Menard’s lack of qualifications and requested that Menard be terminated. As a result of that conversation, Echler ordered Menard discharged.

II. PROCEDURAL BACKGROUND

In his initial decision, the judge found that the Union had violated Section 8(b)(2) and (1)(A) of the Act by requesting Menard’s discharge for reasons other than the failure to pay union dues.

⁴ Curtis testified that he was surprised to learn that Menard’s probation had ended so early.

⁵ Curtis, who became plant manager after Menard was hired, admitted at trial that “[a]t that point, I was learning a lot about the plant, it’s a very complex plant, a lot of things moving in and out, and I wasn’t . . . as aware of evaluations at that point as I am now.”

On review, we reversed and remanded. We observed that when a union causes the discharge of an employee, a rebuttable presumption that the union has acted unlawfully arises because that conduct “demonstrates its power to affect the employees’ livelihood in so dramatic a way as to encourage union membership among the employees.” *Acklin Stamping*, supra, 351 NLRB at 1263, quoting *Graphic Communications Local 1-M (Bang Printing)*, 337 NLRB 662, 673 (2002). We explained, however, that the judge had erred by considering only whether Menard’s discharge was based on a failure to pay dues, and not whether it was necessary to the Union’s performance of its representative function. *Id.* Because we agreed with the judge that the Union clearly prompted the discharge in this case, we remanded the case for further findings as to “whether the Union’s asserted concerns [about Menard’s qualifications and performance] were sufficient” to rebut the applicable presumption of unlawful action. *Id.*

In his supplemental decision, the judge again found that the Union and Acklin had acted unlawfully. In his view, the necessary inquiry was whether the Union had “introduce[d] conclusive evidence to provide or establish a legitimate or substantial concern that Menard created a safety concern” or “was not qualified to become a full-time electrician.” The Union had not provided such evidence, the judge found, and “[its] concerns about Menard’s qualifications, work performance, and safety record are built on innuendo, speculation, and hearsay evidence.”

III. ANALYSIS

To the extent that the judge required the Union to prove that Menard was in fact unqualified for the electrician’s slot for which he was hired, the judge applied the wrong standard. While the Union was required to rebut the applicable presumption of unlawful action, it was not required to prove to the Board that Menard’s skills were deficient.⁶ Rather, as Board precedent holds, the Union was only required to demonstrate that its actions were “done in good faith, based on rational considerations, and were linked in some way to its need effectively to represent its constituency as a whole.” *Operative Plasterers*

⁶ Our dissenting colleague asserts that neither he nor the judge would require the Union to prove that Menard was unqualified. But his insistence that the Union present “hard evidence to substantiate performance deficiencies,” including testimony from witnesses having “first-hand knowledge,” would impose precisely that requirement. Moreover, in insisting that the Union acted unlawfully based on his assertion that not “a single [such] witness” testified, our colleague gives no weight even to the testimony of Acklin’s own plant manager, Curtis, who admittedly agreed with Straub that Menard was unqualified and that finding a lower-skilled job for him would be “a good idea.”

Local 299 (Wyoming Contractors Assn.), 257 NLRB 1386, 1395 (1981). This showing was clearly made here.

A.

There is no evidence that the Union harbored animus against Menard because of any perceived lack of union support (Menard had been admitted into the Union), or that the Union's actions were motivated by any other unlawful considerations.⁷ Rather, the record evidence shows that the Union sought Menard's discharge based on its belief that he was unqualified to perform electrical work expected of a journeyman electrician and that he jeopardized the safety of coworkers.

Furthermore, the Union demonstrated that its belief was an honest one based on rational considerations. First, by Menard's and Acklin's own admissions, Menard never met the threshold application requirement of documenting that he was certified as a journeyman electrician or had "eight years of proven experience as an electrician in a manufacturing environment." Both the Union and management were aware of this deficiency during Menard's probation.

Second, during Menard's probationary period, both Straub and McVicker were approached by employees expressing concern about Menard's lack of qualifications and their related safety concerns, which the Union considered important enough to convey to management during his probationary period. In criticizing the Union for relying on "innuendo, speculation, and hearsay evidence," the judge implicitly credited Straub's and McVicker's testimony that they received that input. There is nothing to suggest that the opinions of Menard's coworkers regarding his work performance were suspect or unreliable. To the contrary, when Straub and McVicker reported those complaints to Menard's supervisor, LeBarr, he too acknowledged that he did not believe Menard was qualified to perform electrician work. Moreover, contrary to the judge and our dissenting colleague, Straub's and McVicker's testimony that they received complaints from unit employees about Menard was not hearsay for the purpose of resolving the issue in this case: whether the Union acted in good faith, based on rational considerations. See, e.g., *Vencor Hospital – Los Angeles*, 324 NLRB 234, 234 250–251 fn. 18 (1997).

Third, Plant Manager Curtis's confirmation to Straub (during Menard's probationary period), and his later admission to human resources director Echler, that Menard

⁷ See *Millwrights' Local 1102 (Planet Corp.)*, 144 NLRB 798, 800 (1963) (union may overcome presumption of unlawful action in seeking discharge of employee by showing that its action was referable to considerations "lawful in themselves, and wholly unrelated to the exercise of protected employee rights or to other matters with which the Act is concerned").

was unqualified support the Union's concerns, as does the opinion of Menard's supervisor.⁸ There could hardly be stronger evidence that the Union's objection to Menard's continued employment as an electrician was based on a rational concern about his qualifications than Acklin management's own contemporaneous admissions that Menard was not qualified.⁹ See, e.g., *Moving Picture Projectionists Local 150 (Mann Theatres)*, 268 NLRB 1292, 1295–1296 (1984) (union did not violate Sec. 8(b)(2) by refusing to refer employee to jobs, following employers' complaints about performance). By themselves, these admissions establish that the Union carried its burden here and that our dissenting colleague's assertion that the Union "increase[d] the threat of union power being arbitrarily exercised against unit employees" has no basis.

Finally, as mentioned above, nothing in the Union's various attempts to address Menard's deficiencies suggests that the Union acted on a pretext.¹⁰ The Union, in fact, appears to have done exactly what was contemplated under the terms of the earlier grievance settlement: it timely informed both Menard and Acklin's management of his documentation deficiency, raised the issue of his qualifications with management repeatedly—while simultaneously expressing concern over Menard's qualifications and communicating employee concerns—and even suggested that Menard be allowed to bid for a lower-skilled position as a means for keeping him employed. Only after it learned that Acklin had erroneously made Menard a permanent electrician did the Union re-

⁸ We find that it was reasonable for the Union to rely on Curtis's and LeBarr's opinions that Menard was not qualified. The judge declined to give weight to Curtis' "expressed . . . opinion that Menard lacked the skills necessary," on the ground that Curtis failed to document or otherwise act on this opinion. Although Curtis' failure to document and timely act on those deficiencies was rightly criticized by Echler, there is, however, no evidence suggesting that Curtis' opinion of Menard's skills was unfounded. For the same reason, we find that Supervisor LeBarr's failure to counsel Menard regarding his deficiencies does not render his opinion of Menard's skill unreliable.

⁹ The letter of recommendation that Acklin subsequently chose to give Menard, cited by our dissenting colleague, is therefore irrelevant.

¹⁰ In addition, even if the Union had alternatives to seeking Menard's discharge, that alone would be insufficient to compel the finding of a violation. As stated in *Planet Corp.*, supra:

It is immaterial to the issue here that the Union might have been able to obtain redress by other means – by action against Planet, or as it actually did, by disciplining [the employee] through internal union procedures. As the [union]'s effort to seek enforcement of the contractual provision through discharge of the individual who created the problem of enforcement was not otherwise unlawful, it could not become so simply because the [union] may have had other avenues of recourse open to it.
144 NLRB at 802.

quest his discharge on the basis of its earlier objections. The Union's actions did not depart from the objective procedure it had established for checking the qualifications of new hires, but rather conformed with it.¹¹

We do not agree with the judge's inference that the earlier grievance settlement, confirming the Union's right to review new hires' qualifications, was "only applicable during the probationary period," at least to the extent this suggests that the Union was barred from pursuing the qualification issues it had raised on a timely basis.¹² Even assuming that some justification were required, as the judge believed, for the Union's failure to take additional action to contest Menard's employment before his probation ended, the record provides that explanation. Menard did not, as he promised, provide Straub with more definitive documentation, and Curtis failed to reply to Straub's queries on when Menard's probation would end and followup on Straub's "good idea" of posting a production job for Menard to bid on. Particularly under these circumstances, to hold that the Union acted unlawfully would effectively penalize the Union for Menard's failure and Acklin's negligence.

B.

In addition to establishing the legitimacy of its concerns about Menard, the Union established that its actions were related to the enforcement of a contractual grievance settlement. Insofar as safety concerns were involved, the Union's representational role was clearly

¹¹ Contrast *Stage Employees IATSE Local 720 (Production Support Services)*, 352 NLRB 1081, 1085-1086 (2008) (unlawful denial of work referral for employee's failure to pay union fine for one-time use of racial epithet, where there was no issue of his qualifications and no employer complaints); *Stagehands Referral Service*, 347 NLRB 1167, 1168-1171 (2006), enf. 2009 WL 648622 (2d Cir. 2009) (rejecting union's defense that employee was unqualified where union had been referring him for 2 years, no employers complained about him, and record showed disparate treatment); *Service Employees Local 1877 (American Building Maintenance)*, 345 NLRB 161, 163-166 (2005) (unlawful denial of work referral where union departed from established dispatch procedure with no showing of lawful reason or necessity).

¹² The judge's inference was apparently based on the following exchange at trial between McVicker and counsel for the General Counsel:

Q: Is it your belief that you have to question the qualifications and pass upon the person before the 90 days is over?

A: I'm sorry, if?

Q: Is it your understanding that that right that you have to review and evaluate and accept or not accept the qualifications of a trade skillsman [sic] has to occur within the probationary period?

A: Yes.

In light of the questions he was asked, we read McVicker's testimony as confirming that the Union was required to raise any issue of qualification during probation, not that the Union's right to pursue such an issue vanished when probation ended with management having failed, due to its own admitted inattentiveness, to address the matter.

implicated. "Few matters can be of greater legitimate concern to individuals in the workplace, and thus to the bargaining agent representing them, than exposure to conditions potentially threatening their health, well-being, or their very lives." *Minnesota Mining & Mfg.*, 261 NLRB 27, 29 (1982).

Just as a union may lawfully protect its role as a supplier of competent employees by refusing to refer unqualified workers, it may also properly act to ensure that the employees it represents are not harmed by unqualified coworkers. See, e.g., *Operative Plasterers Local 299 (Wyoming Contractors Assn.)*, supra, 257 NLRB at 1395 (refusal to place employee in priority referral group was lawful because employee had marginal experience and was a substandard performer); *Moving Picture Projectionists Local 150 (Mann Theatres)*, 268 NLRB 1292, 1295-1296 (1984) (refusal to refer applicant was lawful given applicant's history of job misconduct).

IV. CONCLUSION

For these reasons, we conclude that the Union showed that, in seeking the discharge of Menard, it acted on a good faith belief based on rational considerations that Menard was unqualified. Accordingly, we find that the Union's action did not violate Section 8(b)(2) and (b)(1)(A). It follows that Acklin, in discharging Menard at the Union's behest, also did not violate the Act. We will therefore dismiss the complaint.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. August 27, 2010

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER SCHAUMBER, dissenting.

It is well-settled Board law that "whenever a labor organization 'causes the discharge of an employee, there is a rebuttable presumption that [the labor organization] acted unlawfully because by such conduct [the union] demonstrates its power to affect the employees' livelihood in so dramatic a way as to encourage union membership among the employees.'" *Graphic Communications Local I-M (Bang Printing)*, 337 NLRB 662, 673 (2002) (citation omitted) quoting *Operating Engineers Local 478 (Stone & Webster)*, 271 NLRB 1382, 1382 fn.

2 (1984). The roots of this presumption of illegality lie in the exclusive representative status the Union enjoys and its concomitant duty to refrain “from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair.” *Miranda Fuel Co.*, 140 NLRB 181, 185 (1962). A labor organization can rebut the presumption of unlawfulness by affirmatively showing that its action was “necessary to the effective performance of its function of representing its constituency.” *Graphic Communications Local 1-M*, supra at 673.

The Board remanded this case to the judge and instructed him to address “whether, on the existing record, the Respondent Union has shown that its request to discharge [employee Niles] Menard was necessary to represent its members, and thereby sufficient to rebut the presumption of a violation.” *Acklin Stamping Co.*, 351 NLRB 1263, 1263 (fn. omitted) (2007). After carefully evaluating the evidence, the judge found that the Union failed to make such a showing. The judge concluded that any concerns the Union had about Menard were “built on innuendo, speculation, and hearsay evidence.” My colleagues disregard the judge’s thoughtful findings. I would adopt them and his further conclusion that Menard’s discharge violated the Act. Accordingly, I respectfully dissent.¹

Charging Party Menard began working for the Employer in February 2006 and there is no contention that the lone 30-day evaluation of his work conducted during his 90-day probationary period disclosed any deficiencies. The Respondent Employer did not conduct 60- or 90-day evaluations of his work, as is its custom, and these evaluations are typically relied upon to support a termination. Nevertheless, 2 days after he completed his probationary period, the Union sought Menard’s termination and the Employer acceded to its request.

The Union defends its action relying on alleged complaints about Menard’s work performance, but it failed to produce a single witness who testified to first-hand knowledge of his performance, causing the judge to conclude that “no concrete facts were produced by the Respondent Union to substantiate these allegations.” Fur-

ther, and significantly so, the record fails to explain the discrepancy between the apparently favorable performance evaluation that Menard received and the alleged complaints, causing the judge to conclude that the Union’s actions were founded on “mere supposition, rumor, and innuendo...without documentation.”

My colleagues disagree and rely on testimony of Union representatives describing what Menard’s first-line supervisor, Bob LeBarr, allegedly said about Menard’s abilities. But my colleagues fail to point out that LeBarr was never called as a witness to substantiate these statements and the Union representatives’ testimony was uncorroborated. LeBarr never memorialized these alleged concerns in writing or otherwise counseled Menard about them. Accordingly, the judge properly rejected the representatives’ hearsay testimony as insufficient to rebut the presumption of illegality.²

My colleagues also rely on the testimony of employer official Curtis who claimed that he believed Menard lacked the necessary work skills. But Curtis did not testify to first-hand knowledge of Menard’s deficiencies. He also said that he understood that in order to terminate an employee you must have supporting documentation, including performance evaluations, only emphasizing the judge’s point that no 60- and 90-day evaluations were conducted on Menard.

On top of this jumble of loose and contradictory evidence, following Menard’s discharge, the Respondent Employer wrote a letter of recommendation for Menard which stated that, due to circumstances with the Union, Menard was relieved of duty through no fault of his own. The letter recommended Menard for employment, stating that he was a valued worker with an exemplary attendance record and a positive work attitude. Although my colleagues characterize this letter as “irrelevant,” the letter of recommendation suggests that the Respondent Employer viewed Menard’s discharge as being driven more by union matters than by lack of qualifications or performance deficiencies.

On this state of the record, I agree with the judge that “in the absence of any hard evidence to substantiate performance deficiencies,” the Union and Employer had no justifiable basis supporting the discharge.

¹ My colleagues indicate that in deciding this case the judge may have applied the wrong legal standard. They say that the judge erred “to the extent that [he] required the Union to prove that Menard was in fact unqualified for the electrician’s slot for which he was hired.” The judge imposed no such burden when he found the Union had not introduced “conclusive evidence to provide or establish a legitimate or substantial concern that Menard created a safety concern.” The judge’s requirement that the Union provide a “legitimate or substantial concern” is compatible with the requirement that the Union prove its actions were done “based on rational considerations,” which is the standard my colleagues set forth and the one I also apply.

² Contrary to the majority, the judge was also correct to characterize testimony from union representatives that a number of unit employees had complained about Menard’s work as hearsay. It is clear from its exceptions that the Union is arguing first and foremost that Menard was unqualified to do his job and it is fair to say this testimony was offered to prove the truth of that assertion. In these circumstances, the judge’s characterization was apt, and this case is factually distinguishable from *Vencor Hospital-Los Angeles*, 324 NLRB 234 (1997), cited by the majority.

My colleagues, however, emphasize the absence of any evidence that the Union acted in bad faith. But it is not for the General Counsel or Charging Party to prove that the Union acted in bad faith. It is for the Union to prove that its action “was taken to fulfill its overriding duty to represent the legitimate interests of its constituency.” *Plasterers Local 299 (Wyoming Contractors Assn.)*, 257 NLRB 1386, 1395 (1981). The Union does not fulfill this evidentiary burden by offering only a “bare assertion” that it was representing the interests of its constituency. See *Stone & Webster*, supra at 1385.

Nor does the case law support my colleagues’ conclusion. For example, in *Plasterers*, supra at 1391–1392, the union met its burden by presenting testimony from those who observed that the employee in question lacked the necessary tools, did not know how to perform the “basic techniques” of the job, and had a poor attendance record. And in *Moving Picture Projectionists Local 150 (Mann Theaters)*, 268 NLRB 1292, 1295–1296 (1984), the union met its burden with uncontradicted evidence that it received numerous requests from employers that an employee no longer be dispatched to their jobs because of his poor performance. The Union presented no such evidence here and my colleagues’ conclusion that the Union’s actions were “done in good faith, based on rational considerations and were linked in some way to its need effectively to represent its constituency as a whole,” *Operative Plasterers*, supra, at 1395, neatly relieves the Union of its rebuttal burden and ignores the record evidence. Indeed, the Board’s decision today unwittingly increases the threat of union power being arbitrarily exercised against unit employees.

In sum, I agree with the judge that the Union presented “no hard evidence,” “no concrete facts,” and no “written record or other documentation” to support its discharge request. Accordingly, I respectfully dissent.

Dated, Washington, D.C. August 27, 2010

Peter C. Schaumber, Member

NATIONAL LABOR RELATIONS BOARD

Rudra Choudhury, Esq., for the General Counsel.
Joan Torzewski, Esq., of Toledo, Ohio, for the Respondent Union.
Renisa A. Dorner, Esq., of Toledo, Ohio, for the Respondent Employer.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. On December 28, 2007, the Board issued a Decision and Order (351

NLRB 1263) remanding the above captioned matter to the undersigned for further appropriate consideration and analysis. In its decision the Board stated “whenever a labor organization ‘causes the discharge of an employee, there is a re-buttable presumption that [the labor organization] acted unlawfully because by such conduct [it] demonstrates its power to affect the employees’ livelihood in so dramatic a way as to encourage union membership among the employees.’” *Graphic Communications Local 1-M (Bang Printing)*, 337 NLRB 662, 673 (2002), quoting *Operating Engineers Local 478 (Stone & Webster)*, 271 NLRB 1382 fn. 2 (1984). As the Board further explained in *Graphic Communications*, supra at 673, quoting *Operating Engineers Local 18*, 204 NLRB 681 (1973), enforcement denied on other grounds 496 F.2d 1308 (6th Cir. 1974) (emphasis added).

No question that read literally, Sections 8(b)(2) and 8(a)(3) of the Act specify only, in essence, failure to satisfy union security obligations as a basis for allowing labor organizations to lawfully cause or attempt to cause an employer to discharge an employee. That, of course, is not the situation presented here. Even so, under the Act a labor organization can engage in statutory “cause or attempt to cause” conduct “not only when the interference with employment was pursuant to a valid union-security clause *but also in instances where the facts show that the union action was necessary to the effective-performance of its function of representing its constituency.*”

The Board framed the issue to rebut the presumption that the discharge of Menard was unlawful, the Respondent Union must show that its action was “necessary to the effective performance of its function of representing its constituency.” The Board directed the undersigned to apply the applicable standard and determine on the existing record whether the Respondent Union has shown that its request to discharge Menard was necessary to represent its members, and thereby sufficient to rebut the presumption of a violation.

On January 14, 2008, after a previous conference call with the parties, I issued an Order holding that the record would not be reopened to take additional evidence. It was agreed, in lieu of filing additional posthearing briefs that I would rely on the record as a whole including the objections, answering and reply briefs and opposition brief filed previously with the Board and would prepare and serve a supplemental decision in due course.

The complaint alleges that the Respondent Union requested the Respondent Employer to discharge its employee Niles Menard because it refused to allow Menard membership in the Union and for reasons other than the failure to tender uniformly required initiation fees and periodic dues. Pursuant to the Respondent Union’s request, the Employer discharged Menard.

FINDINGS OF FACT

I. JURISDICTION

The Employer, with an office and place of business in Toledo, Ohio, is engaged in the business of metal stamping. The Employer, during the past calendar year, in conducting its business operations purchased and received goods valued in excess of \$50,000 directly from points outside the State of

Ohio. The Respondent Employer 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 and that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The parties are subject to a collective-bargaining agreement effective by its terms from October 18, 2005, to October 18, 2008 (GC Exh. 2). Pertinent provisions subject to this case include articles 3,¹ 6,² and 50.³

Since 1996, Daniel Twiss has been the International representative of Respondent Union in Region 2-B, which oversees the Union at the Respondent Employer. Twiss served as the Union's lead negotiator for the parties' current collective-bargaining agreement, executed it on behalf of the Union, and regularly assists the Union in the administration of their collective-bargaining agreement including the processing of grievances.

Linda Straub served as chairman of the Union at the Employer between 1997 and July 5, 2006.⁴ In an internal union election held on May 31, Joel McVicker was elected chairman and informally assumed the duties of the position on June 30, during the time that Straub was winding down her term of office.

Mark Echler holds the position of corporate director of human resources for Ice Industries and is headquartered in Sylvania, Ohio. Ice Industries owns the Respondent Employer and Echler oversees the human resources function at the facility assisted by onsite human resource assistant Cheryl Lyons.

Vince Curtis serves as the Employer's plant superintendent and has held the position since April 10. Bob LeBarr was Menard's first-line supervisor during the pertinent period herein.

Menard was contacted by Lyons in early February 2006,⁵ to discern whether he was interested in an electrician position at the Respondent Employer. Around the same time, Menard saw an advertisement in the Toledo Blade newspaper seeking applicants for the electrician position.⁶ Menard interviewed for the

position in February 2006, submitted a written application along with a resume and reference letters, and was offered the position by Lyons, who scheduled a starting date of February 20. Lyons requested Menard to provide a written summary of his related electrical experience to both the Employer and the Union. Menard complied with this request when he submitted a letter from his prior employer on or about February 15 (U. Exh. 4).

B. The 8(a)(1) and (3) and 8(b)(1)(A) and (b)(2) Allegations

1. The position of the parties

The General Counsel alleges in paragraph 8 of the complaint that about June 14, Respondent Union requested that Respondent Employer discharge its employee Menard because it refused to allow Menard membership in the Union and for reasons other than the failure to tender uniformly required initiation fees and periodic dues. On or about June 14, pursuant to the Union's request, Respondent Employer discharged Menard. Under these circumstances, the General Counsel alleges that the Respondent Union and Respondent Employer engaged in violations of the Act and both are jointly and severally liable for wages and benefits the employee lost due to the unlawful discharge.

The Respondent Employer argues that in an effort to maintain a positive relationship and avoid an expensive grievance with the Union, it acquiesced to the Union's demand to discharge Menard on the basis that the Union did not find Menard qualified under its membership requirements. Further, the Respondent Employer asserts that it had no intention of discharging Menard until the Union demanded that he be terminated.⁷

The Respondent Union asserts that it did not affirmatively request that Menard be terminated and therefore, it is not responsible for his subsequent discharge. Additionally, the Union argues that Menard did not have an apprenticeship or journeyman card and lacked the required 8-years experience required for the electrician position. Since Menard lacked the requisite qualifications and experience, the Employer terminated his employment.

2. The facts

Menard, on March 6, completed a union membership application and dues check-off authorization (U. Exh. 2). He continued to remit dues to the Union for the months of April, May, and June 2006 (U. Exh. 6). On the date of his termination, Menard had fully paid all periodic dues and initiation fees to the Union.

In or around April 2006, Straub approached Menard and requested that he supplement his electrical experience as the Union needed more detailed information to augment the letter that

¹ New employees' have a probationary period of 90 workdays. After the expiration of 90 workdays employees can become members of the Union.

² The Company agrees to discharge any employee covered by this contract when the Union submits proof to the Company that the employee is not in good standing in the Union because of the failure of the employee to pay his or her union dues.

³ New employees will have no seniority until they have been with the Company for a period of 90 workdays, at the termination of which they are accepted by the Company as permanent employees.

⁴ All dates are in 2006, unless otherwise indicated.

⁵ Lyons worked in human resources at Techneglas, where Menard had worked for 35 years.

⁶ The advertisement stated in pertinent part under education/experience required: must possess a journeyman's electrician's card or certification of having completed a U.S. Department of Labor recognized apprenticeship as a journeyman electrician, or have 8 years

of proven experience working as an electrician in a manufacturing environment, along with 2-years related experience.

⁷ By letter dated June 16, the Employer stated in pertinent part: Due to circumstances with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 12, Menard was relieved of duty through no fault of his own (GC Exh. 9).

he had provided from his prior employer.⁸ According to Menard, McVicker informed him that he did not need to give additional documentation to the Union if his supervisor was not requesting it. McVicker, however, denied that he informed Menard that supplemental documentation did not have to be provided to the Union. In any event, Menard did not supply any additional information to the Union.⁹

In or around early May 2006, Straub showed the letter that Menard had provided from his prior employer to both Twiss and Curtis. Straub noted that both individuals agreed that there wasn't enough information to verify Menard's electrical experience. Straub testified that after she asked Menard for more information, LeBarr told her that he did not think Menard was qualified to be an electrician. McVicker testified that between May and June 2006, a number of skilled tradesmen in the facility apprised him that they were not sure of Menard's skill level. Likewise, McVicker spoke with LeBarr prior to the completion of Menard's probationary period. LeBarr told McVicker that he knew that Menard was not qualified to be an electrician. McVicker told LeBarr that he had heard things from other skilled tradesmen to the same effect. On or about June 10, Curtis called Straub into his office and informed her that in his opinion Menard was not qualified for the electrician's job and he would like to create a position for him because he is a nice guy. He further told Straub that Menard lacked the skills necessary to be on his own in the facility because the machines were old and hard to work on. Straub informed Curtis that a skilled trade position could not be created for Menard because there were other workers with more seniority that would be entitled to bid on the job. Straub suggested that Curtis could create a production job and if Menard bid on the job and got it, it was fine. Curtis thought that was a good idea.

On June 12, a meeting occurred in Curtis's office that was attended by Lyons and Menard. During the meeting, Curtis informed Menard that he was happy to have him aboard as a full-time employee since he had successfully completed his 90-day probationary period.¹⁰

During the morning of June 14, Straub asked Curtis what had happened with Menard. Curtis informed Straub that Menard

had completed his probationary period and was a member of the Union. Straub asked Curtis if Menard was coming on board as a permanent employee in production. Curtis replied that Echler had overruled him and Menard would remain in maintenance performing electrical work. Straub immediately telephoned Twiss to apprise him of the situation with Menard.

Twiss, after talking with Straub on the morning of June 14, placed a telephone call to Echler who was unavailable but left a message for him to return the call.

Earlier on June 14, before Echler received the telephone message from Twiss, Curtis had called Echler and informed him that Menard was slow and did not catch on quickly. Echler informed Curtis that since Menard had completed his probationary period, the responsibility falls on either you or Lyons. Echler inquired if Curtis had performed the proper evaluations on Menard during the probationary period, and Curtis replied that we really did not do so.

Echler testified that he returned the telephone call to Twiss either later that morning or early afternoon.

Twiss testified that he informed Echler that the Union had a problem with Menard's qualifications and he did not hold a journeyman's card. According to Twiss, Echler said he did not know what Twiss was talking about. Twiss said, "We need to resolve the situation with Menard's qualifications." Twiss informed Echler that Curtis had told McVicker that he would take care of the problem. According to Twiss, Echler said he would just terminate Menard. Twiss said, "I am not asking you to do this."

According to Echler, after he returned the telephone call, Twiss informed him that the Union has an issue with Menard as he is not qualified to be an electrician. Echler said, "He has already reached his 90 days and he's beyond that point." Twiss said, "It doesn't matter, I don't care, this guy's not an electrician, you need to get him out of there." Echler said, "What you are trying to tell me is I should terminate him." Twiss said "yes." Echler said, "I will call Vince Curtis and I will let him know." Echler then telephoned Curtis and instructed him to terminate Menard.

Curtis testified that Echler telephoned him during the afternoon of June 14, and stated that Twiss asked that Menard be terminated. Echler then instructed Curtis to terminate Menard. Curtis contacted Menard to offer him a production job. Menard turned the offer down since it would be at a reduced rate of pay.

Thereafter, on the afternoon of June 14, Lyons telephoned Menard at home and told him not to come into work. She informed Menard that the Union would not accept him as an electrician, and therefore, she had to terminate him.

3. The agency status of Daniel Twiss

The Board and the Courts have uniformly held that whether someone acts as an agent under the Act must be determined by common law principles of agency. See, e.g., *NLRB v. Plasterers Local 90 (Southern III Builders Assn.)*, 606 F.2d 189 (7th Cir. 1979), enforcing 236 NLRB 329 (1978).

Applying these principles to the subject case, the evidence establishes that Twiss negotiated four contracts including the parties' current collective-bargaining agreement on behalf of the Union and routinely visits the facility to participate in dis-

⁸ Pursuant to a 2003 grievance settlement between the parties, it was agreed that the union chairman would be able to review all new hires for the skilled trade positions to check if the applicant has the qualifications for a journeyman card or the credentials to apply for one (GC Exh. 3, item 2). McVicker confirmed in his testimony that this entitlement only applied during the 90-day probationary period of the new hire.

⁹ Menard's assertion that McVicker told him that he did not need to provide any additional information about his electrician credentials is not credited. In this regard, the letter that Menard submitted did not detail the type of electrical experience that Menard possessed nor did it provide the title of the person who signed the letter (U. Exh. 4). Likewise, when McVicker allegedly made the statement he was not officially the union chairman and could not counter prior instructions given by Straub for Menard to produce additional evidence of his qualifications.

¹⁰ Menard completed his 90 days prior to June 20, because he worked sufficient overtime hours. Straub testified, without contradiction, that when somebody is satisfactory to the Company and they get their probation time in, they are acceptable to the Respondent Union.

cussions with the parties to resolve disputes including the processing of grievances. Additionally, Twiss acknowledged that he has a longstanding relationship with Echler on behalf of the Union and routinely deals with him on issues related to the administration of their collective-bargaining agreement.

Further evidence that impacts on the agency status of Twiss was his testimony that when he made the June 14 telephone call to Echler concerning Menard, it was on behalf of the Respondent Union.

For all of the above reasons, and contrary to the Respondent Union's denial of his agency status, I find that Twiss is an agent of the Union for all matters associated with this case.

4. Analysis

In *Wright Line*, 251 NLRB 1083 (1980), enf.d. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983). In *Manno Electric*, 321 NLRB 278 fn. 12 (1996), the Board restated the test as follows. The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in the protected activity.

The Supreme Court has held in *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65 (1991), that the "arbitrary, discriminatory, or in bad faith" standard applies to all union activity.

The Board has held that a labor organization violates Section 8(b)(1)(A) and (b)(2) of the Act when pursuant to a union-security agreement it seeks the discharge of employees who have been denied membership on grounds other than their failure to tender periodic dues uniformly required as a condition of employment. In addition, an employer violates Section 8(a)(1) and (3) of the Act when it discharges an employee, pursuant to a valid union-security agreement, if it is aware that the employee has tendered his periodic dues. *AMF Wheel Goods Div. of AMF Inc. & Kenneth D. Schwartz*, 247 NLRB 231 (1980).

As discussed above, the Board has previously held in statutory cause or attempt to cause conduct issues, not only when the interference with employment was pursuant to a valid union-security clause but also in instances when the facts show that the action was necessary to the effective performance of its function of representing its constituency, a union may lawfully cause an employer to discharge an employee. For example, in *Ashley, Hickham-UHR Co.*, 210 NLRB 32 (1974), and *Carpenters Local Union 1243*, 240 NLRB 1118 (1979), the Board found that the Respondent Union's action in placing experienced stewards on potentially troublesome jobsites was in fur-

therance of legitimate and valid concerns of the union membership. And in *Philadelphia Typographical Union No. 2 (Triangle Publications)*, 189 NLRB 829 (1971), the Board dismissed a complaint when the union's interference with a member's employment was necessary to deter felonious and egregious conduct which could seriously threaten the union's very financial survival—the offending employee there having embezzled a very substantial amount of union funds.

In the subject case, I find that the Respondent Union's concerns about Menard's qualifications, work performance, and safety record are built on innuendo, speculation, and hearsay evidence. For example, Straub and McVicker testified that a number of skilled tradesmen in the facility had concerns about his performance and Menard's first-line supervisor expressed doubts to them about his skill level and experience. No concrete facts were produced by the Respondent Union to substantiate these allegations and LeBarr was not called as a witness by Respondent Union to substantiate them. While Curtis expressed his opinion that Menard lacked the skills necessary to be in the facility because the machines were old and hard to work on, he never informed Menard of these shortcomings and did not prepare 60- or 90-day evaluations of his progress during the probationary period documenting these perceived deficiencies.¹¹ Likewise, LeBarr never counseled Menard or put in writing any of his perceived concerns about his skill level or performance on the job. Lastly, the Respondent Union did not introduce conclusive evidence to provide or establish a legitimate or substantial concern that Menard created a safety concern nor did it ever file a grievance with the Respondent Employer raising any issues of safety involving Menard. Accordingly, and in the absence of a written record or other documentation to establish that Menard was not qualified to become a full-time electrician or complete his probationary period, the Respondent Union's argument that the termination was undertaken to represent the interests of its constituency must fail. To the contrary, the Employer made him a permanent employee on June 12, based on his unblemished job performance.

As the Board found in *Graphic Communications Local 1-M (Bang Printing)*, supra, a statutory labor organization commits an unfair labor practice by reporting the possibility of misconduct without a genuine belief that such conduct occurred. Likewise, in the subject case, mere supposition, rumor, and innuendo about Menard's work performance without documentation cannot serve to protect the Union from its request to the Respondent Employer to terminate Menard's employment that was thereafter effectuated.

The record evidence fully establishes that Menard complied with his membership requirements including the tendering of

¹¹ Curtis testified that to support the termination of an employee, it is necessary to have supporting documentation including performance evaluations. The evidence established that only a 30-day evaluation was completed but the Respondent Employer neglected to conduct a 60- or 90-day evaluation for Menard. No evidence was introduced to establish that Menard experienced any work problems during the first 30 days of employment. Thus, in the absence of any hard evidence to substantiate performance deficiencies, the Respondent Employer and Respondent Union have no justifiable basis to support Menard's termination.

periodic dues and initiation fees and the Employer had never been apprised otherwise by the Union. Indeed, the Employer was aware through the check-off process that Menard had remitted his dues and initiation fee to the Union.

Contrary to the Union's argument that Twiss never requested that Menard be terminated, I find otherwise for the following reasons. It is not in dispute, and the Union did not contend otherwise, that Menard completed his 90-day probationary period on June 12. The grievance settlement, that the Union relies upon to check whether an applicant has the qualifications for a journeyman card or has the credentials to apply for one, is only applicable during the probationary period. On June 12, the Employer determined that Menard qualified as a permanent full-time employee and considered him part of its maintenance department that was responsible for the performance of electrical work. Indeed, Curtis apprised Straub of this fact on the morning of June 14, which prompted Straub's telephone call to Twiss. Therefore, it strains credulity that Echler would have independently terminated Menard without having first been requested to do so by the Union. Further, I credit Curtis's testimony that when Echler called on June 14, immediately after talking with Twiss, he told him that Twiss asked that Menard be terminated and he should carry out this act.

Lastly, I note that on June 16, the Employer prepared a letter to "whom it may concern" that due to circumstances with the Union, Menard was relieved of duty through no fault of his own. The letter further stated that the Employer would recommend him and viewed him as a valued worker with an exemplary attendance record and a positive work attitude who would hire him again if the opportunity should arise (GC Exh. 9).

Under these circumstances, and for all of the above reasons, I find that the Respondent Employer and the Respondent Union acted in an arbitrary and discriminatory manner and the Union breached its duty of fair representation owed to Menard. They further violated Section 8(a)(1) and (3) and 8(b)(1)(A) and (b)(2) of the Act when the Employer discharged Menard based on the Union's request for reasons other than the tendering of periodic dues and initiation fees uniformly required and without substantial evidence to support that the action was necessary to the effective performance of its function of representing its constituency.

CONCLUSIONS OF LAW

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

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

3. Respondent Union violated Section 8(b)(1)(A) and (b)(2) of the Act when it requested Acklin Stamping Company to terminate Menard for reasons other than the failure to tender uniformly required initiation fees and periodic dues and without substantial evidence to support that the action was necessary to the effective performance of its function of representing its constituency.

4. Respondent Employer violated Section 8(a)(1) and (3) of the Act when it terminated Menard based on the Union's re-

quest for reasons other than the failure to tender uniformly-required initiation fees and periodic dues.

REMEDY

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

Accordingly, I order the Respondent Employer to immediately reinstate Menard to his former or substantially equivalent job and that the Respondent Employer and Respondent Union jointly and severally make Niles Menard whole for any loss of earnings, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

ORDER

A. Acklin Stamping Company, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Terminating Niles Menard for reasons other than the failure to tender uniformly required initiation fees and periodic dues.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Immediately reinstate Niles Menard to his former or a substantially equivalent position and jointly and severally make him whole, with interest, for any loss of earnings suffered because he was terminated in the manner set forth in the remedy section of the decision.

(b) Within 14 days from the date of this Order, remove from the files of Acklin Stamping Company, any reference to the unlawful termination of Niles Menard, and within 3 days thereafter, notify him in writing that we have done so and that we will not use the termination against him in any way.

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

(d) Within 14 days after service by the Region, post at our offices, copies of the attached notice marked "Appendix A."¹³

¹² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Na-

Copies of the notices, on forms provided by the Regional Director for Region 8, after being signed by the Respondent Employer's authorized representatives, shall be posted and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent Employer has gone out of business it shall duplicate and mail, at its own expense, a copy of the notice to all employees at any time since June 14, 2006.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting at all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

B. Respondent United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local 12, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause Acklin Stamping Company to discriminate against Niles Menard or any other employee in violation of Section 8(a)(1) and (3) of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Jointly and severally make whole Niles Menard, with interest, for any loss of earnings suffered because he was terminated in the manner set forth in the remedy section of the decision.

(b) Within 14 days from the date of this Order, remove from the Union's files, any reference to the unlawful termination of Niles Menard, and within 3 days thereafter, notify him in writing that we have done so and that we will not use the termination against him in any way.

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

(d) Within 14 days after service by the Region, post at the union office, copies of the attached notice marked "Appendix B."¹⁴ Copies of the notices, on forms provided by the Regional

tional 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."

¹⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Director for Region 8, after being signed by the Respondent Union's authorized representatives, shall be posted and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent Union has gone out of business or closed the union office involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all employees and current members employed by Acklin Stamping Company at any time since June 14, 2006.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting by the Union at all places where notices to employees and members are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. February 15, 2008

APPENDIX A

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 in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer Niles Menard full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL, jointly and severally, make Niles Menard whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge, and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

ACKLIN STAMPING COMPANY

APPENDIX B
 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 in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, jointly and severally, make Niles Menard whole for any loss of earnings and other benefits resulting from our request to Acklin Stamping Company to terminate Niles Menard for reasons other than the failure to tender uniformly-required initiation fees and periodic dues, less any net interim earnings, plus interest and without substantial evidence to support that the action was necessary to the effective performance of our function in representing our constituency.

WE WILL, within 14 days from the date of this Order, remove from our files, any reference to our request to Acklin Stamping Company to terminate Niles Menard, and WE WILL, within 3 days thereafter, notify him in writing that we have done so and that we will not use the termination against him in any way.

UNITED AUTOMOBILE, AEROSPACE AND
 AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
 UAW, LOCAL 12