

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES – SAN FRANCISCO BRANCH OFFICE**

NORTHSHORE SHEETMETAL, INC.

and

Cases 19-CA-83657
19-CA-88465
19-CA-92102
19-CA-94575

SHEETMETAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL 66

and

PACIFIC NORTHWEST REGIONAL COUNCIL
OF CARPENTERS

and

Cases 19-CB-83623
19-CB-94048

SHEETMETAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL 66

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
BRIEF TO THE ADMINISTRATIVE LAW JUDGE**

Mara-Louise Anzalone
Carolyn McConnell
Counsel for the Acting General Counsel
National Labor Relations Board
Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

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I. OVERVIEW

The Act's protections are meaningless without the core right to employee free choice of a bargaining representative. As the Board has cautioned, "[t]he right of free choice . . . is a statutory right of employees, not of employers." *Lee Lumber Bldg. and Material Corp.*, 322 NLRB 175, 179 (1996).

In this case, the top management of Respondent Northshore Sheetmetal, Inc. ("Northshore"), arranged an industrial marriage of sorts for their own employees. Managers secretly courted a union, Respondent Pacific Northwest Regional Council of Carpenters ("Carpenters"), and then engineered a sequence of events calculated to procure the employees' support of that union. First, Northshore held an emergency, company-wide meeting at which the company's owners planted seeds of doubt among the workers as to whether their current bargaining representative, Charging Party Sheet Metal Workers Local 66 ("Local 66"), would be able to keep them employed in a tough economy. Next, Northshore surreptitiously negotiated a collective bargaining agreement with the Carpenters and corralled the workers into another last-minute, company-wide meeting, where management introduced the union that would rescue Northshore from the ailing economy. Northshore made sure to prevent the most visible Local 66 supporters among its employees from attending the meeting (and eventually retaliated against them for their resistance).

The Carpenters, for their part, gladly accepted Northshore's assistance; after Northshore rolled out the red carpet for them, the Carpenters stood by as Northshore Co-Owner Jeff Meyer told his employees that the only way to save their wages and benefits - and maybe even their jobs altogether - was to abandon Local 66 within 48

hours in favor of the Carpenters. Foremen (who amount to statutory supervisors and agents) then signed, solicited and collected Carpenters' authorization cards.

Northshore managers were so confident their coordinated plan of attack would be successful and the workers would capitulate that they finalized a contract with the Carpenters the day *before* the June 12 employee meeting. The contract recognized the Carpenters as the exclusive bargaining representative of employees they had yet to meet. It also referred to Northshore's withdrawal of recognition from Local 66.

Many of the employees got Northshore's pro-Carpenters message loud and clear. But Respondents' heavy-handed approach pushed some Local 66 supporters too far, and on June 12 they made a last-ditch effort to warn Local 66 officials of the Carpenters' ambush. The following day, Local 66 filed a petition seeking to become the workers' full § 9(a) representative. This petition was admittedly served on Northshore by Region 19's Seattle office the same day, while Northshore's foremen were holding a second meeting trying to collect enough cards for the Carpenters to present to Northshore as evidence of that union's (albeit coerced) majority status.

On June 14, Northshore doubled down, withdrawing recognition from Local 66 and signing its newly crafted § 9(a) contract with the Carpenters. Northshore answered the employees' resistance with tougher tactics, including baiting workers with promotions and threatening them with discharge if they did not get on board. In sum, June 2012 marked the demise of employee free choice at Northshore. As set forth below, Counsel for the Acting General Counsel requests that the Administrative Law Judge find merit to the alleged violations and order the full remedy requested.

II. PROCEDURAL BACKGROUND

On September 27, 2012, Region 19 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Complaint) setting a hearing for January 22, 2013. This hearing date was postponed pursuant to an unopposed request by Northshore. The Region amended the Complaint on December 26, 2012, and February 6, 2013. The hearing was held before Administrative Law Judge Eleanor Laws on March 5–8 and 13, 2013.

The amended Complaint alleges that Northshore unlawfully assisted the Carpenters in violation of § 8(a)(2), and then unlawfully recognized it as the § 9(a) representative of its journeymen and apprentices (the “Unit employees”) in the absence of uncoerced, unassisted majority support. The amended Complaint further alleges that the Carpenters violated § 8(b)(1)(A) by receiving such assistance and support from Northshore. Finally, the amended Complaint alleges that Northshore’s managers and Foremen made illegal promises of benefits and surveilled Unit employees in connection with its illegal assistance to the Carpenters. The amended Complaint seeks an order prohibiting the Carpenters from seeking recognition from Northshore for its employees. The amended Complaint also seeks an order holding Respondents jointly and severally liable for reimbursement of all initiation fees, periodic dues, assessments, and/or any other monies paid or withheld from Respondent Northshore’s employees’ paychecks, with interest, after June 14, 2012, pursuant to Respondents’ unlawful collective bargaining agreement, unless the employees voluntarily joined and became a member of Respondent Carpenters prior to June 14, 2012.

Before filing the charges, on June 13, Charging Party Local 66 filed a representation petition in Case 19-RC-83051 seeking an election among the Unit employees. On June 13, between 6:12 and 6:17 p.m., Region 19 sent Northshore and its outside counsel, via facsimile, notice of this petition. (Tr. 101–02, 784–8; GC 21)¹

III. FACTUAL BACKGROUND

A. Northshore’s Management

Northshore, an architectural sheet metal contractor, opened for business in 1986. (Tr. 31) Northshore furnishes and installs architectural metals (*i.e.*, metal siding, composite panels) and flashing on commercial buildings, as well as manufacturing products for sale to other contractors. (Tr. 32) During the summer of 2012, Northshore employed approximately 40 journeymen and apprentices. These workers are assigned to work either in Northshore’s shop or perform installation work in the field. It is undisputed that, prior to June 14, 2012, Local 66 represented these employees. (Tr. 673–74, GC 30)

Northshore maintains an office and shop in Everett, Washington, from which Co-Owner/Presidents Jeff Meyer and Brian Elbert operate the business. (Tr. 30, 33, 690) Jeff Meyer is in charge of contract management and performs some sales work. He is infrequently involved in day-to-day operations either in the field or the shop. (Tr. 32) Brian Elbert oversees Northshore’s day-to-day operations, but is rarely seen² at a job site. (Tr. 33, 285–86, 691) Respondent’s General Superintendent Leslie “Dino” Johnson is generally responsible for overseeing Respondent’s installation operations in

¹ References to the transcript will be designated as “(Tr. __)”. References to Counsel for the General Counsel Exhibits will be referred to as “GC,” followed by the exhibit number.

² Apprentice Johnston testified that, in his nearly ten years with Northshore, he had seen Co-President Elbert in the field on only about four occasions. Elbert did not deny this. (Tr. 286)

the field. (Tr. 37) Jeff Meyer, Elbert and Johnson, who are each admitted supervisors, are officed upstairs from Northshore's main shop. (Tr. 33, 516, 601)

Earland Millikan and Dan Meyer are the former Co-Presidents and current owners of Northshore. (Tr. 30, 258) They sit on the company's board of directors, but play no active role in its operations. (Tr. 58, 257) Dan Meyer is the original founder of Northshore and is also Jeff Meyer's father. (Tr. 31, 256–57)

B. Northshore's Field Operations

Installation crews vary widely in size, depending on the scope of the job, from a single installer to 80 employees. (Tr. 36) Field crews typically begin work between 6:00 and 7:00 a.m. and finish each day between 2:30 and 4:30 p.m. (Tr. 60, 255) While Superintendent Johnson travels between work sites and testified that he tries to visit each job once a week (Tr. 602), employee witnesses recalled seeing him more like once or twice a month, on average. (Tr. 285)

1. The Field Foremen

Superintendent Johnson considers his Field Foremen to be his "eyes and ears" in the field. (Tr. 37, 285, 602, 665, 775) In that regard, he relies on the Field Foremen to:

- interact with the general contractor on-site, resolve problems with other trades and keep the job running smoothly. (Tr. 602, 664–65, 812, 822; GC 16)
- update him on the status of the job, including reporting problems as they arise, as well as situations that require a change in the building plans. *Id.*
- announce work rules and expectations to the crews, such as hours of work and safety expectations for the job. (Tr. 733–34)

- communicate critical information to workers regarding their job security. It is common, for example, for workers to learn from their Foremen that they are being transferred or even laid off. (Tr. 123–24, 133–34, 359, 411, 602, 665, 794, 812–13)
- “roll out” new programs for Northshore employees. For example, when a new clocking-in and -out system was implemented at a job site, Foremen Larry Lucas and Roy Nakapaahu were responsible for announcing and implementing it. (Tr. 284–85)

Field Foremen are responsible, without consulting upper management, for assigning employees to particular tasks and work areas. (Tr. 397, 814–15) They do so based on nuanced judgments about the particular strengths and skills of employees, such as who is capable of heavy, difficult or faster-paced work and who has the touch for final trimming. (Tr. 455) As Foreman Nakapaahu testified, part of the Field Foreman’s job is to keep productivity up on the worksite. Foreman Champeaux confirmed this:

My job duties, well, are to not only work but to make sure that the rest of the guys are working. . . It’s my job to try to get that productivity up as high as we can every day.

(Tr. 745–46, 813) Thus, Field Foremen set the tone and have authority to order the installers to pick up the pace of work on a job. (Tr. 746, 773–74) Field Foremen are expected to keep jobs appropriately staffed by requesting more labor when needed. (Tr. 665) They also have the discretion to assign overtime, once overtime has been approved. (Tr. 665)

Field Foremen also address problems raised by the workers, such as broken tools and missing equipment. (Tr. 813) They may reward employees with a paid lunch for good work and assign approved overtime to specific employees based on their performance. (Tr. 403, 430, 818) As former Field Foreman Scott Waxler testified, Field Foremen also have the authority to discipline employees, and actually exercise that

authority, mainly in the form of verbal warnings. (Tr. 397, 406–07) As Dino Johnston admitted, Field Foremen are also expected to issue safety-related discipline “on the spot” without consulting upper management. (Tr. 640, 665–66) Current installer Matt Postma testified about such discipline occurring in 2010. (Tr. 353–54)

Field Foremen may effectively recommend employees for layoffs. This was established by the testimony of former Field Foreman Waxler, as well as that of installer Postma and apprentice Johnston, who had each witnessed specific instances of this. (Tr. 283–84, 402, 354–55) As former Field Foreman Waxler testified, Field Foremen may also effectively recommend transferring employees off a jobsite if they are not following directions, and he exercised this authority in the past. (Tr. 397–98) Foreman Champeaux testified that he had, over the years, recommended candidates for hire. (Tr. 748)

2. The Senior Field Foremen: Nakapaahu, Lucas and Champeaux

While some of Northshore’s Field Foremen may occasionally work as installers on other Foremen’s crews, this is not the case for its three most-senior Field Foremen: Roy Nakapaahu, Larry Lucas and Bruce Champeaux. (Tr. 429, 664) These long-term Field Foremen are also responsible for larger job sites. (Tr. 664, 811)

Field Foreman Bruce Champeaux has worked for Northshore for 27 years and was its first hire. (Tr. 39–40, 742) He and Jeff Meyer are cousins. (Tr. 40) Champeaux is entrusted to take charge of large jobs for Northshore and estimates that Superintendent Dino Johnson stops by his job sites less than most others. (Tr. 775, 811) As a senior Field Foreman, Champeaux has discretion to deviate from specified plans where appropriate, based on his own independent judgment. As he explained, in

order to avoid a “change order” (which can take two weeks to be processed through Northshore’s upper management), he has the discretion and authority, when appropriate, to deviate from the “scope of work” order dictated at the beginning of the job. (Tr. 750, 774–75) This was corroborated by Shop Foreman Todd McBee, who explained that, occasionally, when a part fabricated in the shop was off-spec, he would simply consult with the Field Foreman who ordered it to determine if it could be used anyway. (Tr. 581–82)

Nakapaahu has been employed by Northshore for more than 22 years. (Tr. 789) Until 2010, Nakapaahu’s job title was “Superintendent,” and he still carries business cards that identify him as a “Field Superintendent.” (Tr. 630, 790) Nakapaahu is in charge of some of Northshore’s largest jobs (typically overseeing 10 to 25 installers), is the company’s highest grossing Field Foreman, and is considered, in Jason Johnston’s words, to be “the best of the best.” (Tr. 279–81, 810) At the time he testified, Nakapaahu was in charge of 20 workers at a large, five-month project. He explained that after the first six weeks he spends most of his time performing non-installation work, including attending meetings with the general contractor, measuring and problem-solving at the work site. (Tr. 282, 808–10) Nakapaahu makes installers re-do work, if it is not performed to his satisfaction. (Tr. 282) Prior to Northshore’s withdrawal of recognition from Local 66, Nakapaahu regularly filled out periodic evaluations for the shop’s apprentices, which served as the basis for determining whether the apprentice would be entitled to elevation to a higher pay grade. (Tr. 803, 531–32; GC 24) Nakapaahu can effectively request certain installers be assigned to his crew and keep them assigned to him if he likes their work. (Tr. 282–83)

Larry Lucas has been employed with Northshore for 20 years. (Tr 664) Like Nakapaahu, he was also a Superintendent until 2010, and still carries cards identifying him as such. (Tr. 630, 790, 808)

C. Northshore's Shop Operation and Foreman McBee

Northshore's Shop Foreman Todd McBee reports directly to Co-Owner/President Elbert. (Tr. 514, 701) McBee is responsible for managing production in the shop, which involves organizing the work performed, assigning tasks to employees, inspecting work and collaborating with Elbert and Superintendent Johnson on scheduling issues. (Tr. 515–16) He spends the majority of his time in his office on the top floor of Northshore's main shop building, performing layout work and "managing what's going on on the floor." (Tr. 526–27, 516) While he may assist with fabrication work in the shop from time to time, this is unusual (perhaps an hour a week).

McBee assigns work to individual employees on a daily basis and exercises independent discretion (without any oversight) in assigning both particular tasks and approved overtime to specific employees based on the needs of the shop. (Tr. 527–29) McBee also exercises quality control based on his own independent judgment. He may, for example, inspect work performed in the shop and, without consulting with anyone higher up in management, determine that the product, as completed, is faulty and order an employee to remake it. (Tr. 517) During the relevant time period, McBee was also in charge of directing the daily work of Northshore's shop's driver. (Tr. 852–53)

McBee attends weekly meetings in Northshore's conference room with Co-Owner/President Elbert, Superintendent Johnston and Northshore's (non-bargaining unit) project managers, during which he updates the managers on the current status of

orders on the shop floor and the managers inform him of current project deadlines. Throughout the week, based on what he has learned in the meeting, he prioritizes the different stages of production on the shop floor. (Tr. 517–19, 727–28)

McBee testified that he has long been involved in the interviewing and hiring process at Northshore. Most recently, in approximately October 2012, he personally hired a driver for Northshore's shop. (Tr. 523, 552–53) Along with Co-Owner/Presidents Elbert and Jeff Meyer, McBee regularly attends interviews for programmer candidates and, most recently, a shipping manager candidate. (Tr. 520–21) During these interviews, McBee asks questions of the candidate and, following the interview, provides his input on their suitability to the co-owners. (Tr. 521) McBee considers his recommendations to be effective and considered seriously by management; Jeff Meyer confirmed that he has relied on McBee's recommendations in making between two to five hiring decisions. (Tr. 586, 850–51) McBee was also charged with contacting Local 66's hiring hall with Northshore's dispatch requests. (Tr. 522)

McBee also regularly makes effective recommendations regarding layoffs based on the needs of the shop. (Tr. 524) In fact, according to Northshore's own witnesses, McBee recommended to Superintendent Johnson that apprentice Jason Johnston be laid off in June 2012. Johnston was then laid off. (Tr. 593) McBee has also disciplined at least one employee for arguing with another employee on the job. (Tr. 525) Before Northshore withdrew recognition from Local 66, McBee, at the instruction of Superintendent Johnson, regularly filled out periodic evaluations for the shop's apprentices, which determined whether the apprentice would be entitled to elevation to

a higher pay grade. (Tr. 531–32; GC 24) These evaluations, which are filled out for field employees by Superintendent Johnson, were not reviewed by any other level of Northshore management. (Tr. 534, 536–37)

As Jeff Meyer testified, McBee is responsible for relaying information to management about Northshore’s shop operations. (Tr. 37–38) Meyer also relays his expectations for productivity in the shop through McBee. (Tr. 39) Northshore’s management has held McBee out as being in charge of the shop; apprentice Yuriy Kosmin testified that, when he complained to Co-Owner/President Elbert about a lack of training for shop work, Elbert directed him to raise that with McBee. (Tr. 203)

D. Local 66’s Historical Representation of the Unit Employees and Northshore’s Campaign to Replace Local 66 with the Carpenters

It is undisputed that, prior to June 14, Northshore’s Foremen, journeymen, and apprentices were covered by a collective-bargaining agreement with Local 66 which was effective between June 1, 2009, to May 31, 2012. (Tr. 82–83; GC 30) Apprentices Jason Johnston and Yuriy Kosmin stood out at work as the strongest Local 66 supporters. Starting in May 2012, Jason Johnston wore brightly colored, “hard to miss” t-shirts proclaiming his union affiliation nearly every day. (Tr. 259–60) Superintendent Johnson, who ultimately discharged Johnston, admitted that he knew Johnston’s father, Northshore Foreman Marvin Johnston, was pro-Local 66. (Tr. 256, 651) Kosmin also consistently wore his Local 66 t-shirt to work. (Tr. 260) Other employees, by contrast, wore Local 66 t-shirts occasionally or alternated them with t-shirts emblazoned with the Northshore insignia. (Tr. 260)

As of June 2012, as far as the Unit members knew, Northshore was negotiating a new agreement with Local 66. As the record revealed, however, Northshore and the Carpenters were actually working on a very different plan.

1. Respondents Clandestinely Negotiate a Contract

In mid-May, Jeff Meyer called John Torkelson, a representative of the Carpenters, and requested a meeting. (Tr. 40–42, 44–45; GC 3) A couple of weeks later, on May 21, Torkelson, along with the Carpenters' Director of Contract Administration Ed Triezenberg, met with Co-Owner/Presidents Jeff Meyer and Elbert at the Carpenters' Hall in Everett. (Tr. 42, 44–45, 246; GC 3) The location of the meeting was requested by Northshore; Meyer did not want to meet at the office complex Northshore happened to share with the Local 66 hall. As Meyer's correspondence indicates, Northshore was willing to meet anywhere but there. (Tr. 43–44; GC 3)

It is undisputed that the subject of this meeting was whether the Carpenters could provide Northshore with labor. (Tr. 43) After the meeting, Meyer emailed Triezenberg his cell phone number. (Tr. 46–47; GC 4) It is undisputed that Meyer, Elbert, Torkelson and Treizenberg met at least one other time in May to discuss a potential contract. (Tr. 737–38)

Starting on June 1, Meyer and Treizenberg exchanged more than a dozen emails containing various contract proposals. (Tr. 72; GC 5-19) On June 4, Meyer emailed a draft with a cover email that closed, "Let me know what you think. We postponed withdrawing recognition until tomorrow, so if you could look at this as soon as possible, I would appreciate it." (GC 6)

2. June 5: Northshore's Upper Management Primes the Unit Employees for Recognition of the Carpenters

Jeff Meyer admitted setting an all-employee meeting for June 5, although he claimed not to recall when he got the idea to do so. (Tr. 59) He emailed Triezenberg a draft contract at 10:58 a.m. that morning that contained, in his words, "just a few minor changes." (GC 13) In fact, the draft reflected the parties' final agreement on wage rates and benefits. (Compare GC 13 NSMI 000810, 000821-822 with GC 16) Within the next three hours, Northshore got the word out, through its Foremen, that employees were to lay down their tools and report to Northshore's Everett facility for a meeting.

Field Foreman Nakapaahu received a phone call on his company phone and then informed journeyman Matt Postma that everyone on Northshore's SeaTac Airport jobsite had to return to the Northshore shop for a meeting. (Tr. 333) Field Foreman Travis Elliott gave the same instructions to employees at his Puyallup jobsite. (Tr. 384) Shop Foreman McBee informed the shop employees that they all needed to go to Shop 2. (Tr. 153, 261-62, 541-42) No employees were left behind to keep working; the jobsites were all shut down. (Tr. 334, 385) There is no dispute that employees were paid to attend this meeting, as well as for their travel time to get there from their various work sites. (Tr. 60)

The meeting was held in a 400-500 square-foot office space within "Shop 2," a structure at Northshore's Everett facility. (Tr. 263, 585) Shop Foreman McBee unlocked the shop for the meeting, and, when employees arrived shortly after noon, they sat down in rows of chairs facing company co-founders Dan Meyer and Earland Millikan, Co-Owner/Presidents Jeff Meyer and Elbert, who stood. (Tr. 60-61, 262-63, 540, 542) Such an all-staff meeting was nearly unheard of at Northshore. Other than

holiday parties and company trips, Northshore simply does not hold all-employee events. (Tr. 152, 334, 385, 443) Even more unusual was for the company's owners to meet with employees; the installers and apprentices could not recall ever meeting with any owners, let alone all of them. (Tr. 335, 385) The presence of Dan Meyer and Earland Millikan was also noteworthy; even Co-Owner/President Jeff Meyer could not recall when he had last seen one of the two former executives at meeting for Unit employees. (Tr. 58–59, 543)

Co-Owner/President Elbert started the meeting with an update on upcoming jobs, telling workers that there were at least two large jobs on the horizon, but that Northshore needed more work, which “was why it was important to bargain with the union for lower wage rates, so they could keep us working.” (Tr. 155, 263–64, ll. 1-2, 710) Co-Owner/President Jeff Meyer then told the employees that work was slow, but that Northshore was working hard to keep everyone busy. He said that the company was “struggling” and specifically having trouble competing with contractors using other trade unions, including the Carpenters, due to the cost of Local 66's benefits package. (Tr. 62, 264, 753, 796) As current employee Matt Postma testified, Co-Owner/President Elbert then told employees that negotiations with Local 66 were stalling. (Tr. 336)

This prognosis was bleak, especially set against the undisputedly difficult economic circumstances facing a construction company once economically successful enough to take its workers on annual, four-day company trips to locations like Mexico and Hawaii. (Tr. 355–56) When apprentice Jason Johnston raised his hand and asked how it could be that other trades could take their work, Co-Owner/President Elbert appeared annoyed and told him to look at the Washington state labor laws. (Tr. 264–

65) Other employees then asked how the negotiations with Local 66 were going, but the owners told them they weren't allowed to talk about it further and that the employees should talk to their union. (Tr. 336)

Northshore's founder Dan Meyer then reminded the assembled employees of how the company had taken care of them in the past, including providing them with bonuses and company trips, and told the employees, "The Union has been slinging a lot of mud." (Tr. 265, 336) "Stick with us, trust us," he said. (Tr. 265, 336, ll. 24–25) He also instructed the "younger guys" to "talk to the other guys." (Tr. 156–57) Founder Millikan next mused about dreaming, as a young man, of starting a company that employed people. He continued, stating that, if Northshore "could bring in Carpenters at a lower wage, and keep the Sheet Metal Workers at the same wage, they would be profitable," at which point he was promptly shut down by Co-Owner/President Jeff Meyer, who said, "Don't say that." (Tr. 266) The meeting lasted approximately an hour. (Tr. 61)

It is undisputed that no Local 66 officials were invited to this meeting; in fact, even though Local 66's hall is located in the same industrial park as Northshore, Northshore has never, to date, invited Local 66 to speak with its employees on Northshore property. (Tr. 881) The following day, Local 66 appointed apprentice Yuriy Kosmin as shop steward for Northshore and notified Northshore of this fact in writing. (Tr. 97–98; GC 20) Shortly following this announcement, Superintendent Johnson engaged Kosmin in awkward banter about his new role, asking if he was going to "[r]eport on the evil empire." (Tr. 151)

3. Northshore Finalizes its Contract with the Carpenters and Declares a “New Approach”

Within the next week, Respondent’s secret contract negotiations both took a modified course and solidified. This was evidenced by an email, sent by Jeff Meyer to Triezenberg at 3:18 p.m. on June 11, explaining, “In light of our new approach, my attorney suggested making the following changes to the contract.” (Tr. 71; GC 17) Attached to the email was an updated draft contract with the document name, “Final Agreement Sent 6-12.” (GC 17) Significantly, the only new language in the draft was contained in a single paragraph that referred to Northshore’s “withdrawing recognition from a predecessor labor organization.” The new language also identified the Carpenters as the § 9(a) representative of the Unit employees. (Tr. 251–52; GC 17) It is undisputed that this new language was inserted by Northshore. (Tr. 252)

The Carpenters, for their part, were clearly on board; Triezenberg sent a response email at 6:50 p.m. that night, attaching a “Recognition Agreement,” that included “*Staunton Fuel*” language (*i.e.*, indicating that the Carpenters had majority support among the Unit employees, had demanded recognition from Northshore and had made a showing of majority support to the company). (GC 18; *see Staunton Fuel & Material, Inc.*, 335 NLRB 717 (2001)). None of this was true.

4. The Events of June 12

a. Shop Foreman McBee Assigns Apprentices Kosmin and Johnston Clean-Up Work and Sends Them Home Early

On June 12, apprentice Jason Johnston was scheduled to work from 6:00 a.m. to 2:30 p.m., and he reported to Shop Foreman McBee at Shop 1 approximately 10 minutes before the beginning of his shift. (Tr. 267) Early that morning, McBee sent

Johnston over to Shop 2 to collect some material, and Johnston discovered signs of a break-in. (Tr. 268) After Johnston informed McBee, the latter ordered him to clean it up, which involved sweeping up broken glass and blocking broken-out windows with large packing crates. (Tr. 268) Later that morning, McBee assigned apprentice Kosmin to assist Johnston. (Tr. 159, 269) There is no dispute that the clean-up work was menial work beneath their skill level. It was work, as Kosmin testified, that would typically be performed by one of Northshore's material handlers. (Tr. 160, 269)

Between 11:00 and 11:30 a.m., McBee informed apprentices Kosmin and Johnston that he was running out of work in Shop 1, and that they needed to be "all cleaned up and done and out of here by 12:00." (Tr. 269, II. 17–18) Johnson could not recall another instance during his nine years with Northshore when he had been sent home after half a day's work. (Tr. 322) The significance of sending Kosmin home early on the day of the June 12 meeting was documented: his time sheet for June 12 states, "Did not attend meeting per Todd." (GC 27; Tr. 618–19) Johnston was back at work the next morning, but McBee did not call Kosmin back to work for several days. (Tr. 269–70)

McBee's testimony regarding the circumstances of his sending Kosmin and Johnston home was inconsistent. First, he testified that he did not choose to send either of the men home but was instructed by Elbert to do so. (Tr. 565, II. 4-5, "Q: Was that at your discretion? A: It was not.") Later, he stated, "Brian called me around 9:00-ish and just told me to send [Kosmin] and one other guy home," and that he, in fact, picked Johnston. (Tr. 584–85, II. 19–20) Elbert testified that, at 10:00 a.m., he instructed McBee to send Kosmin and "someone else" home. (Tr. 719–21, 739) Elbert admitted

that, at the time, he was aware that Kosmin had recently been named Shop Steward for Local 66. (Tr. 738)

b. Northshore Delivers its Journeymen and Apprentices to the Carpenters

One week after the first all-employee meeting, Northshore repeated the process. For a second time, the jobsites were shut down, and the Field Foremen ordered the field installers and apprentices to Northshore's Everett facility. As before, McBee relayed the information to the shop employees and opened up Shop 2 for the meeting. (Tr. 337, 386-87, 543-44) Again, Jeff Meyer, Elbert, Dan Meyer and Earland Millikan were present. (Tr. 59, 569) It is undisputed that employees were paid to attend this meeting as well as for their travel time to get there. (Tr. 67)

This meeting was different from the first meeting, however, in two crucial respects. First, apprentices Yuriy Kosmin and Jason Johnston, having been sent home early, were not present. (Tr. 160-61, 269) Installer Postma was surprised not to see Local 66's newly appointed shop steward, Kosmin, at the meeting. (Tr. 338) Second, there were two new faces at this meeting: Northshore had arranged for Triezenberg and Torkelson to attend. (Tr. 65, 248, 338)

Co-Owner/Presidents Jeff Meyer and Elbert introduced their guests as Carpenters representatives. (Tr. 337) Jeff Meyer then said that the company needed to be more competitive and that the Carpenters offered it a way to do that. (Tr. 338, 445, 491-92) Foreman Champeaux testified that the presence of the Carpenters representatives alone convinced him that Northshore was planning for a change. (Tr. 755-56) As current employee Marvin Johnston testified, the message was clear "[t]hat we could not be sheet metal workers anymore, we could be carpenters." (Tr. 492)

Further, as installer Postma testified, the luxurious company trips were put on the line: employees were told that for the company to be successful and able to take the employees on trips, Northshore “needed a more competitive advantage,” and the Carpenters were about to tell them how this could happen. (Tr. 338)

Next, the owners retreated into an adjacent back room, where they waited for the duration of the meeting. (Tr. 339, 388, 585, 733) According to Elbert, they “didn’t think it was going to go on that long.” (Tr. 733) Although Northshore’s witnesses took great pains to describe the door connecting the two rooms as “sound proof,” McBee, who is familiar with the space, admitted that it was just a normal interior door. (Tr. 585) In fact, it is not clear that the door between the rooms was even closed; most employees had their backs to this door as they faced forward to listen to the Carpenters’ speakers up front, and the one employee who testified about the door recalled that it was left ajar. (Tr. 494)

c. The Assisted Solicitation of the Northshore Employees

Triezenberg gave his pitch for employees to join the Carpenters. (Tr. 340, 388) He told the employees that his union had been in discussions with Northshore’s management about representing their employees. As employees began asking questions of Triezenberg, Foreman Champeaux left the room to go into the adjacent room where the managers waited. When he returned, he came armed with questions for Triezenberg. (Tr. 494–96) Even though he claims nobody from upper management had explicitly told him so, Champeaux understood that the Carpenters’ presence meant that supporting the Carpenters was the only alternative to Northshore’s going either non-union or out of business. (Tr. 769–70)

Triezenberg told the men that their wages, benefits and apprenticeship program would be kept essentially the same, but any new employees would be hired as Carpenters. (Tr. 340) He passed out authorization cards and told the employees that they “needed to be signed that day,” before “the Local 66 people were able to file their authorization cards, or else we pretty much wouldn’t have a shot at doing it.” (Tr. 341–42, ll. 7–10, 13)

Current employees Postma and Bailey testified that, at that point, the owners came back into the room.³ According to Postma and Bailey, Jeff Meyer then told the employees that, if they signed up with the Carpenters, the owners would be able to talk directly to them about negotiations, and the sooner they signed cards the better, because the deal might not be there in a few days. (Tr. 342, 447–48) Triezenberg recalled seeing one or two employees sign cards. (Tr. 248) Northshore’s most-senior Foremen made their pro-Carpenter leanings well known during this meeting. It is undisputed that Foreman Nakapaahu openly signed a card at the meeting and handed it to one of the Carpenters representatives. (Tr. 816–17) At least one employee also recalled seeing Champeaux sign a card. (Tr. 497)

The signed cards were collected by Foremen Champeaux and McBee. (Tr. 390, 497) As Champeaux explained, he had figured out what was going on. (Tr. 756) If the company wanted its employees to go with the Carpenters, then he, as the company’s oldest employee, was going to take the lead to make that happen. (Tr. 344, 756–57) In this, Champeaux was taking a cue from founder Dan Meyer, who at the previous

³ Postma testified that Triezenberg and the other Carpenters representative stepped into the adjoining room and pulled the Northshore owners back into the meeting. (Tr. 342) Bailey corroborated Postma, testifying that Jeff Meyer and Brian Elbert came back into the room after Triezenberg finished his pitch. (Tr. 447)

meeting had told newer employees to talk to the older ones, nobody was “older” (*i.e.* longer term) than Champeaux. (Tr. 56–57) Several employees, however, balked at the pressure to abandon Local 66 and sign with the Carpenters that instant. (Tr. 343) At least one employee expressed concern being pressured into making such a speedy decision about the Carpenters, and said the employees were “concerned about the rush.” (Tr. 342–43, ll. 17–18) With the meeting threatening to get off track, Champeaux adroitly offered an out, suggesting that perhaps employees needed some time to talk amongst themselves. (Tr. 343, 756)

Northshore’s owners and the Carpenters representatives then filed back out of the room into the adjoining back room, allowing Champeaux to take over. (Tr. 344) He stood up and gave a speech (the most journeyman Scott Waxler could recall ever hearing him say at one time). (Tr. 390) Echoing the words of co-founders Millikan and Dan Meyer at the last meeting, Champeaux reminded the assembled employees of how well the company had taken care of them. (Tr. 344, 390, 756, 759) Noting that a sudden change like this was hard, Champeaux suggested to the employees that they all think about it overnight and come back the next day for another meeting, same time, same place. (Tr. 344–45) Then Champeaux retrieved Triezenberg from the adjoining room and told him that he (Champeaux) would be collecting the authorization cards for the Carpenters and, if Triezenberg wanted the cards, he should come back the next day at 3:00 p.m. (Tr. 345)

One or more Local 66 supporters in the room decided that Local 66 should know what was happening. (Tr. 345, 391) As such, an employee went next door to the Local 66 hall to bring someone back. (Tr. 448) It is undisputed that this was the first time that

Local 66 had any notice about the meeting. (Tr. 881) Local 66's Business Manager Eric Martinson and Business Agent Aaron Bailey arrived at Shop 2, gave their members a bargaining update, and told them to "stick together" and "hold strong," because Northshore was just trying to frighten them. (Tr. 346, 575, 761–62, 861)

Hearing this, Shop Foremen McBee got upset and accused the Local 66 representatives of making inappropriate personal attacks on Northshore's owners when they were not present to defend themselves. He assured the employees that he had known the managers a long time and the Local 66 representatives "don't really know what they were talking about." (Tr. 575–76, 799, ll. 12–14) Jeff Meyer then returned, informing the employees that the meeting was over because he needed to lock up. (Tr. 346)

Shop Foreman McBee testified unequivocally that, after the meeting, he let every shop employee know that, if they wanted to sign Carpenters cards, they could turn them in to him and he would make sure that the Carpenters representatives got them. (Tr. 544–45) It is likewise undisputed that, within the next two days, McBee collected four or five cards from shop employees and turned them over to Triezenberg.⁴ (Tr. 546, 579–80)

5. June 13: The Employees Meet Again and Foremen McBee and Champeaux Solicit on Behalf of the Carpenters

The next day unfolded as Foreman Champeaux had planned. Employees left their jobsites, some of them at their regularly scheduled times, others a bit early to make

⁴ Based on this testimony, Counsel for the Acting General Counsel moved to amend the complaint to state that, "[o]n or about June 14, 2012, Respondent Northshore, by Todd McBee at the Northshore main shop, gave assistance and support to Respondent Carpenters by offering to collect its employees' Carpenters authorization cards and soliciting of employees to place their signed Respondent Carpenters authorization cards in his office inbox." This motion was granted by the Administrative Law Judge. (Tr. 547–48)

it on time to this third meeting at the same Northshore shop. (Tr. 271, 347, 392) Alerted to this meeting by their co-workers and union representatives, shop steward Kosmin and pro-Local 66 apprentice Johnston came, armed with union talking points, t-shirts, and copies of Local 66's latest contract proposal. (Tr. 183–85, 271–72) Although Triezenberg was present again, the owners were not. (Tr. 248, 758)

Foreman Champeaux led the meeting. He started with a speech explaining that they were there to “ask some questions and think about it.” (Tr. 187-88, 190) Then Triezenberg took the floor and gave a brief pitch for the Carpenters. (Tr. 276, 347) Next, Kosmin spoke in favor of staying with Local 66. (Tr. 189) When Johnston tried asking Triezenberg questions, Triezenberg told him that he would know the answers had he attended the meeting the day before. (Tr. 276–77)

Champeaux closed the meeting with another speech. He told employees that he had spent time on the phone talking to Triezenberg in the last few days and he believed that signing with the Carpenters would let the company “get back in the ballgame.” (Tr. 190, ll. 8–9) It is undisputed that, at this meeting, Champeaux both handed out and collected about a dozen Carpenters authorization cards (Tr. 187–88, 190, 277–78, 347–48, 765–68), and Shop Foreman Todd McBee told employees they could drop cards in his office in-box. Triezenberg, cards in hand, then left. (Tr. 190, 452)

There was naturally some confusion over whether employees were to be paid for attending this meeting; employees Jason Johnston and Scott Waxler testified that they believed that they were paid for their time spent traveling to the meeting. (Tr. 271, 392) As Elbert testified, he had to send out a “clarification memo” to the entire workforce

explaining that they were not going to be paid for the time, “because [Northshore] didn’t have anything to do with” the meeting. (Tr. 736)

6. Champeaux Offers Apprentice Kosmin Journeyman Status in Exchange for Signing a Carpenters Card

On the way out of the June 13 meeting, Shop Steward Yuriy Kosmin stopped to talk with Foremen Champeaux, McBee and Don Compton in the parking lot. (Tr. 192) During that conversation, Champeaux told Kosmin that, if he signed a Carpenters card, he would be promoted to journeyman status, which would mean a 20 percent wage increase from Kosmin’s apprentice wages, in addition to use of a company truck. (Tr. 192, 233, 395–96) Champeaux did not deny having a conversation with Kosmin after the meeting. When asked if he had ever promised to “journey someone up” (*i.e.*, promote him to journeyman status), he responded, “I don’t believe so, no.” He then revised his answer slightly, stating that, if he had, in fact, done so, it would have been “tongue in cheek,” since he did not really have that authority. (Tr. 762–63)

E. Despite Local 66 Filing a Representation Petition, Northshore Withdraws Recognition and Signs with the Carpenters

It is undisputed that, on June 13, between 6:12 and 6:17 p.m., Region 19 faxed a copy of Local 66’s petition to Northshore, as well as to its outside counsel, and those faxes were received.⁵ (Tr. 101–02, 104–05, 784–87; GC 21, GC 29) According to Co-Owner/President Jeff Meyer, he found Local 66’s faxed petition in his office mailbox on June 14, but claims that he did not see the faxed petition until after he had signed with the Carpenters that day. (Tr. 99–102)

⁵ The evidence also establishes that a second copy of the petition was faxed to Northshore by Region 19 the following day at 1:22 PM. (Tr. 105–06, 784–87; GC 22)

According to Jeff Meyer, he arranged for the Carpenters to meet him at Northshore's offices either June 13 or the next morning. (Tr. 80–82) Meyer also dispatched Northshore employee Eric Knudtson with a letter, which Co-Owner/President Elbert claims to have signed “early” that day, to walk over to Local 66, notifying that union of Northshore's withdrawal of recognition. (Tr. 107, 716; GC 23) Meyer claims that he had not signed with the Carpenters before Knudtson delivered the letter, but then later admitted he did not actually know what time the letter was delivered. (Tr. 111–12, 130–31) Knudtson did not testify.

According to Meyer's own testimony, however, by the time he dispatched Knudtson, Triezenberg was already waiting for him at Northshore's facility with authorization cards to present. Once Meyer confirmed that his withdrawal notice had been delivered to Local 66, he called Triezenberg to his office. (Tr. 112) Triezenberg handed Meyer a stack of cards, which Meyer “just kind of thumbed through” and then handed back. (Tr. 79, ll. 19) Meyer admittedly did not count the cards and did not check the signatures. (Tr. 79) He recalls seeing three or four Northshore employee names on the cards. (Tr. 80) No one else from Northshore checked the cards. (Tr. 80, 714) As Triezenberg testified, he presented Meyer with 20 cards that day, but could vouch for the validity of only the two or three he had actually gotten signed himself. (Tr. 248–49)

Triezenberg requested recognition for the Carpenters as the Northshore employees' exclusive bargaining representative, and Meyer agreed. (Tr. 112) Meyer claims that he and Triezenberg then made “a few changes” to the latest version of the

draft agreement the two had been negotiating, printed it out and signed it.⁶ (Tr. 112) According to both Jeff Meyer and Elbert, Northshore's accountant, Joel Gustafson, was present for this meeting; Gustafson did not testify. (Tr. 78, 715)

Meyer claimed responsibility for the "final decision" to sign with the Carpenters and insisted that he did not make this decision until June 14. He offered multiple versions of how the decision came about. First, he testified that he decided to sign after consulting with Elbert, Millikan and Dan Meyer, either in person or on the phone. (Tr. 76–77) Then he claimed that he made the decision "alone," but "probably" after consulting with Elbert, in one of their offices. (Tr. 77–78) He then admitted that, prior to June 14, Northshore had made a "preliminary decision" to enter into an agreement with the Carpenters. (Tr. 135)

Following June 14, it is undisputed that Northshore consistently employed members of the Carpenters. (Tr. 395–96; GC 28 at NSMI 000995–996) As Superintendent Johnson explained, his typical method of obtaining Carpenters' labor has been to call Carpenters representative John Torkelson and inform him that Northshore was "looking for guys." (Tr. 619–20) Torkelson then arranges for Carpenters members to call Johnson so that he can review their qualifications. (Tr. 620–61; *see also* GC 28)

⁶ There were no major substantive changes to the contract after the June 11 draft. (See GC 17, 19)

F. Northshore Managers, Supervisors and Agents, Through their Coercive Conduct, Provide the Carpenters with Additional Assistance

1. Nakapaahu Offers Employees Increased Wages In Exchange for Signing Carpenters Authorization Cards

At 8:00 a.m. on June 14, Roy Nakapaahu called apprentice Jason Johnston, who was working at a jobsite at the time. (Tr. 279) In Johnston's words, Nakapaahu told him, "if I signed a Carpenters' card, that more than likely Northshore would start paying me a journeyman's rate." (Tr. 281, ll. 10-12) Nakapaahu was not asked about this incident by Northshore's counsel specifically, but instead offered a general denial regarding having ever called anyone to ask them to sign an authorization card. (Tr. 802)

2. Co-Owner/President Jeff Meyer Offers to "Take Care Of" Employees and Promote Them to Foreman in Exchange For Their Signing Carpenters Authorization Cards

By his own admission, Jeff Meyer rarely visits Northshore's job sites (only two or three times in a given six-month period) and typically only if there is a problem brought to his attention by the general contractor at the site. (Tr. 35-36) Yet on the afternoon of June 14, he made a special visit to the Puyallup jobsite where current employees Pat Bailey, Scott Waxler and Foreman Travis Elliott were working. (Tr. 452) They were startled to see him there. Bailey, for example, could recall seeing Meyer on a jobsite only four other times in the 14 years Bailey had worked at Northshore. (Tr. 453) The three stopped working and listened to what Meyer had to say. According to Bailey, Meyer told them that he had just withdrawn recognition from Local 66, and that if Bailey and Waxler would "go the direction they were trying to go with the Carpenters Union," he could get them back into Foreman positions. (Tr. 453, ll. 17-21) Waxler

corroborated this account, recalling that Meyer had told the men that, “if we decided to go along with the Carpenters that we would be running work again,” meaning acting as Foremen. (Tr. 393–94) Being made a Foreman would mean \$1 to \$3 an hour more in pay, depending on the type of work, use of a company truck, phone and paid gas to travel to work sites. (Tr. 395–96)

3. Superintendent Johnson Solicits and Threatens Installer Postma with Discharge If He Refuses to Support the Carpenters

Current installer Matt Postma testified that, on June 14, Foreman Nakapaahu informed him that Superintendent Johnson wanted to speak with him. Nakapaahu used his company phone to place the call and handed Postma the phone. (Tr. 348) Johnson told Postma that Northshore was really happy with him and wanted him to stay employed. (Tr. 348–49) Next, Johnson told Postma:

when they picked up work, that I could possibly be running that work as a Foreman, but they were going to go with the Carpenters, so I needed to be on-board with that.

(Tr. 349) Postma responded that it was a big decision and asked if he could have some time to decide. Johnson said he needed to know by the end of the day, because he would need time to line up a replacement for Postma. (Tr. 349, 350) In fact, Johnson admitted to telling Postma that, if he did not sign a Carpenters’ card, “he would have to quit.” (Tr. 663) Asked to confirm this statement, Johnston admitted, “[t]hat’s exactly what I told him.” (Tr. 663)

Postma protested that this was not the “deal” that he understood from the employees’ meetings with the Carpenters, and he thought that he was going to get a chance to vote on which union represented him. (Tr. 349) Johnston instructed him to

contact Jeff Meyer, who informed Postma that he was wrong and that what Johnston had told him was correct. (Tr. 349–50) Ultimately, after consulting with Local 66 and then speaking again to both Johnson and Jeff Meyer, Postma bravely called Northshore’s bluff and told Meyer he wanted to stay with Local 66. Meyer left him hanging, saying they would “see how it goes next week.” (Tr. 351)

4. Co-Owner/President Brian Elbert Threatens Employees With Discharge If They Refuse to Support the Carpenters

At the hearing, Elbert admitted meeting with groups of employees in Northshore’s main shop on either June 14 or 15 and informing them that they needed to sign Carpenters’ cards if they wanted to remain employed with Northshore.⁷ (Tr. 723–24, 739–40)

G. Northshore Discharges Apprentice Jason Johnston

On June 15, Superintendent Johnson told apprentice Johnston to report to work for Field Foreman Don Compton the following Monday, June 18, at Shop 1 at 6:00 a.m. (Tr. 286–87) Johnston arrived ten minutes early, but Compton never showed up. At 6:10 a.m., Johnston called Compton, who told him that the job had been rained out and that he should check with McBee for work. (Tr. 287) He did, but McBee told him there was no work for him, so apprentice Johnston called Superintendent Johnson. (Tr. 287) Superintendent Johnson told him to call again tomorrow, but before hanging up, apprentice Johnston mentioned that his father (Marvin Johnston) had told him that the workers had thirty days to sign Carpenters’ cards or “that was it.” (Tr. 288) Johnson’s

⁷ Although not specifically alleged in the amended Complaint, the undisputed evidence adduced at trial established that Elbert made these statements. Based on this evidence, Counsel for the Acting General Counsel, pursuant to § 102.7 of the Board’s Rules and Regulations, respectfully requests that the amended Complaint be so amended. Even if leave to amend is not granted, however, evidence of these threats may support an unfair labor practice finding despite the lack of a specific complaint allegation. *Garage Management Corp.*, 334 NLRB 940 (2001).

response was to invite apprentice Johnston up to his office for a talk. (Tr. 288) While Superintendent Johnson did not outright deny that this telephone call occurred, he testified instead that he: (a) did not recall, (b) “may have” had the conversation, and (c) did not know if he did. (Tr. 659–60)

What followed was a conversation in the superintendent’s office that resulted in Jason Johnston’s being laid off. Apprentice Johnston testified that Superintendent Johnson told him that Northshore was “working with the Carpenters on a wage package and we should wait until that package comes out before we make our decision.” (Tr. 288 ll. 21–23) At that point, apprentice Johnston announced, “I absolutely won’t sign a Carpenters’ recognition card ever.” (Tr. 289, ll. 3-4) He told Johnson that he had fought hard to be a Local 66 apprentice, and when he got laid off he would be in a good position to work HVAC.⁸ (Tr. 289) Johnson responded, “That is your decision. No hard feelings.” (Tr. 289) They shook hands, and Johnson reminded Johnston to call him later that day to see if there was work available the next day. (Tr. 289)

Although Superintendent Johnson’s version of the conversation is far less detailed, he agreed that that the conversation did involve a discussion of the rival unions. According to Johnson, apprentice Johnston made it clear that he was “concerned” about the current “drama” involving the rival unions and that “everything was getting a little more tense.” (Tr. 650, ll. 2-3, 660)

During the next week, Superintendent Johnson refused to give Johnston work, When Johnston called the Superintendent, as instructed, he was told there was no work for him and to call back the following day. When Johnston called back, there was no

⁸ Witness agreed that HVAC is a type of sheet metal installation that Northshore does not perform. (Tr. 301)

answer; when he followed up with a text message, Superintendent Johnson informed Johnston there was no work for him the rest of the week and told him to call back on Friday, June 22. When he did so, Superintendent Johnson announced that Johnston was laid off for a month for “lack of work.” (Tr. 289–90) Oddly, in the midst of an unrelated conversation with Yuriy Kosmin in late June, Johnson suddenly interjected, “I didn’t lay anybody off. I laid Jason off because he wanted to work HVAC.” (Tr. 199) In early August, apprentice Johnson called Johnston and told him he could return to work. (Tr. 290–91)

According to Jeff Meyer, Superintendent Johnson was responsible for the decision to lay off Jason Johnston. (Tr. 96) Johnson initially testified that Jason Johnston “wouldn’t have been laid off unless he asked.” (Tr. 649) In his words, “Jason laid Jason off.” (Tr. 649) Later, however, he admitted that Jason did not, in fact, actually request to be laid off, but had instead simply indicated that he would be “okay” with being laid off to pursue HVAC work. (Tr. 649, 660–61) Johnson also claimed that he based his decision on a recommendation by Shop Foreman McBee. (Tr. 593–94) According to Johnson, Northshore was “actively considering” layoffs in June, because “work was slow.” (Tr. 592, ll. 11, 14) The workforce was down to a “core group of guys” and Northshore was “just trying to keep guys busy.” (Tr. 592, ll. 20-24) Despite this testimony, payroll records established that, during every week between June 11 and August 12, Northshore offered overtime to the Unit employees. (GC 32, 33; *see also* GC 34)

In addition, there is no evidence that any other employees were laid off in June. Superintendent Johnson testified that he could recall no one other than apprentice

Johnston who was laid off. (Tr. 592, 606) Johnson testified that Respondent's accountant, Joel Gustafson, maintained documentation of all lay-offs and would be able to provide that information for June and July. Nonetheless, Gustafson did not testify, nor did Respondent produce the written evidence Johnson claimed existed. (Tr. 606–07)

H. Northshore Denies Steward Kosmin a Light-Duty Assignment

On June 18, Shop Steward Kosmin reported for work with a foot injury he had incurred off duty. (Tr. 194) He had already been scheduled to perform work that would constitute “light duty,” namely inventorying panels in Northshore's main shop. (Tr. 240) However, when he presented his doctor's note to then-Acting Shop Foreman Chris Dudek, who was filling in for an absent McBee, he was told that, per Co-Owner Jeff Meyer, he was to come back to work only when he was fully healed. (Tr. 195) When Kosmin tried to get Northshore to sign off on his disability insurance paperwork, Meyer refused. (Tr. 197-98) Apropos of nothing, Meyer also told a puzzled Kosmin, “Let's be clear. I didn't lay anybody off. I laid Jason off because he wanted to work HVAC.” (Tr. 199) Meyer was unable to provide any example of any employee other than Kosmin applying for, and being denied, light-duty work. (Tr. 99)

IV. LEGAL ARGUMENT

Under any reasonable reading, Respondents' collusive and coercive conduct constitutes a violation of the Act.

A. Northshore Provided Unlawful Support and Assistance

1. The Legal Standard

Section 8(a)(2) is designed to protect employees' free choice to select their bargaining representative without interference by their employer, who may well prefer dealing with a labor organization of its own choosing. As the Supreme Court has stated, "[t]here is nothing unreasonable in giving a short leash to [the] employer as vindicator of its employees' organizational freedom." *Lee Lumber*, 322 NLRB at 179 (citing *Auciello Iron Works*, 517 U.S. 781, 790 (1996)). To determine whether an employer provided unlawful assistance, the Board examines the totality of the circumstances to see whether the employer's actions interfered with its employees' free choice. *Dairyland USA Corp.*, 347 NLRB 310, 311–12 (2006); *Mar-Jam Supply Company*, 337 NLRB 337, 353 (2001). No single factor is necessary; rather, coercive acts may cumulatively be viewed as constituting unlawful interference with employee freedom to choose. *Dairyland*, 347 NLRB at 312.

Unlawful assistance can take the form of direct or indirect employer pressure. *Vernitron Elec. Components*, 221 NLRB 464, 465 (1975). Threat of consequences if the employee does not sign is (the most) direct pressure. *Dairyland*, 347 NLRB at 310–11; *Kosher Plaza Supermarket*, 313 NLRB 74, 81 (1993). However, threats are not a necessary element of unlawful assistance. See *Price Crusher Food Warehouse*, 249 NLRB 433, 438 (1980); *Vernitron*, 221 NLRB at 465. Being ordered or urged to sign cards by supervisors or employer agents also constitutes unlawful, direct pressure. *Vernitron*, 221 NLRB at 465. See also *Raymond Interior Sys.*, 355 NLRB 1278 (2010) (finding unlawful assistance where employer warned employees that there would be no

work if they failed to sign authorization cards “that day”); *Dairyland*, 347 NLRB at 310 (finding unlawful assistance where supervisor directed employees to sign cards); *Kosher Plaza Supermarket*, 313 NLRB at 81 (same).

Indirect pressure can be equally coercive and therefore unlawful. Where an employer summons its employees to a meeting with a union and creates conditions leading the employees to believe that management expects them to sign cards for the union and to do so promptly, illegal assistance is rendered. See *Price Crusher*, 249 NLRB at 438–39 (finding unlawful assistance where employer summoned its employees to a meeting, which it turned over to the union for the purpose of soliciting union membership); *Vernitron*, 221 NLRB at 465. Compare *Tecumseh Corrugated Box Co.*, 333 NLRB 1 (2001) (finding no unlawful assistance where, although employer permitted union to address employees at a staff meeting, the meeting had another, unrelated main purpose, and employer advised employees they were free to choose).

In a rival union situation, granting one union privileged access while denying or constraining the other’s access is a factor strongly suggestive of unlawful assistance. *Int’l Ass’n of Machinists v. NLRB*, 311 U.S. 72, 78 (1940); *Duane Reade, Inc.*, 338 NLRB 943 (2003); *Price Crusher*, 249 NLRB at 439. A crucial factor is proximity in time between a captive audience meeting and recognition of the union, as is an employer’s failure to verify authorization cards. *Vernitron*, 221 NLRB at 465, compare *Longchamps, Inc.*, 205 NLRB 1025 (1973) (finding no violation where 2 ½ weeks passed between meeting and recognition and employer recognized union only after cards were verified by a government agency). Paying employees to attend a union organizing meeting, especially where the employer has reason to believe employees

support another union, is another marker of unlawful assistance. *Mar-Jam*, 337 NLRB at 353 (citing *Windsor Place Corp.*, 276 NLRB 445 (1985)). Payment is not, however, a necessary condition for finding unlawful assistance. See *Garner-Morrison, LLC*, 356 NLRB No. 163 (May 27, 2011) (finding unlawful assistance where management indicated to employees that they should attend an unpaid meeting with union organizers and most employees did attend). In contrast, the Board has declined to find unlawful assistance, where although the employer allowed a union to solicit employees on company time and property, there was “an absence of any other factors which might serve to render the atmosphere ... coercive.” *Longchamps*, 205 NLRB at 1031. In *Longchamps*, management never asked its employees to join the union, there was no claim that any management representatives were present when cards were signed, no other union sought to represent the workers, and as noted above, the employer recognized the union several weeks after the meeting and only after independent card verification. *Id.*

Supervisor presence when cards are solicited and signed is nearly a *per se* violation. *Garner-Morrison*, 356 NLRB No. 163, slip op. at 3; *Duane Reade*, 338 NLRB 943. A manager’s ducking out of the room will not cure an otherwise coercive meeting. See *Midwestern Personnel Serv.*, 331 NLRB 348 (2001) (finding unlawful assistance although manager was not present during entire meeting at which cards were signed), *aff’d* 322 F.3d 969, 977–78 (7th Cir. 2003); *Price Crusher*, 249 NLRB at 435 (finding unlawful assistance although company president stepped out of room while employees voted to join union).

2. The June 12 Meeting Constituted Unlawful Support and Assistance

The record evidence establishes that Respondents' conduct in arranging and conducting the June 12 meeting undermined the Unit employees' free choice rights. As a preliminary matter, Northshore current and former owners actively deceived the employees, telling them a week before that meeting that it had their best interests at heart and was negotiating in good faith with Local 66, even though it was actually exchanging contract proposals with the Carpenters. They also insinuated that future job security might be contingent on working with the Carpenters. That such an all-staff meeting was virtually unheard of at Northshore lent weight to that fear-inducing claim.

By the time the employees attended the mandatory June 12 meeting, Northshore's managers were no longer just insinuating that the Unit members' job security relied on Carpenters' membership. Before the meeting was over, Co-Owner/President Jeff Meyer had:

- told the employees that Northshore needed to be more competitive and the Carpenter offered it a way to do that;
- in order to be successful and award employees with vacations to Mexico and Hawai'i, Northshore "needed a more competitive advantage" and, introducing Triezenberg and Torkelson, said the Carpenters were about to tell the employees how this could happen; and
- the sooner they signed the cards, the better, because the Carpenters' deal might be gone in a few days.

(Tr. 338, 342, 445, 447-48, 491-92) Thus, employees were made to understand that Carpenters representation was what the owners wanted and that the way to preserve their livelihoods was by shutting up and signing up. See *Price Crusher*, 249 NLRB at 438-39. Being told to hurry up added to the pressure. See *Raymond Interior Sys.*, 355

NLRB 1278. The message was not lost on the men; as Marvin Johnston testified, he understood, “[t]hat we could not be sheet metal workers anymore...” (Tr. 492)

Even the small details of the June 12 meeting were designed to coerce the employees. Elbert and McBee made sure that the employees most likely to derail Respondents’ plans – newly named Shop Steward Kosmin and outspoken Local 66 supporter Jason Johnson – had been sent home early. This did not go unnoticed by the rest of the workers. Also sending a message was the odd behavior of Northshore top management in theatrically stepping into a small back room, repeatedly filing in and out and using Foreman Champeaux to carry their pro-Carpenters message between the two rooms. This impression of surveillance added to the pressure on the Unit employees.⁹ See *Dairyland*, 347 NLRB at 312. Significantly, regardless of whether the door behind which the owners waited was open or closed, a reasonable employee would understand that the owners were waiting, for most of an afternoon, for them to sign with the Carpenters.

Northshore’s Foremen made sure the plan was executed; Foreman Nakapaahu signed a card in view of the employees at the meeting, and signed cards were collected by Foremen Champeaux and McBee. Champeaux played a special role, by echoing

⁹ The actions of Northshore owners and Champeaux at the June 12 meeting also amount to actual surveillance. An employer’s observations of its employees’ union activities constitute unlawful surveillance if the conduct would tend to interfere with, restrain, or coerce employees in their right to organize under Section 7 of the Act. *Metal Industries*, 251 NLRB 1523 (1980). Analysis of actual surveillance inverts analysis of impression of surveillance, focusing not on the employees’ perceptions but on the employer’s goals. *S.J.P.R., Inc. dba Sands Hotel and Casino*, 306 NLRB 172, 189 (1992). When an employer watches over protected activity through the instrumentality of cameras or human agents, it may rebut the inference of surveillance by demonstrating a lawful purpose (or that there was none at all). *Lechmere, Inc.*, 295 NLRB 92 (1989); *Stead Indus., dba Hoyt Water Heater Co.*, 282 NLRB 1348 (1987). Here, no such rebuttal is possible. There was no reason for the owners to congregate in the back room except to keep tabs on the meeting. As Champeaux moved back and forth between meeting and back room, he not only acted as the owners’ eyes and ears, but kept intervening in the meeting after returning from the back room. There is no other reasonable explanation for his and the owners’ behavior than that while they hid in the back room they surveilled the meeting through him.

management's refrain from the June 5 meeting that Northshore had always taken care of its employees. However, based on the credible evidence of Jeff Meyer's remarks during the meeting, it is clear that Northshore rendered unlawful assistance to the Carpenters during this meeting, regardless of whether the actions of its Foremen are imputed to it.¹⁰

There is no dispute that both the June 5 and the June 12 meetings were mandatory, as evidenced by the nearly 100 percent turnout, and equally clear that the meeting on the June 12 was held for no other purpose than to hear the Carpenters' presentation. Finally, there is no suggestion that, prior to being ordered to the June 12 meeting, any employee of Northshore desired to replace Local 66 with the Carpenters as their bargaining representative, or had even thought to do so.

3. The June 13 Meeting Amounted to Unlawful Assistance

Although both the Carpenters and Northshore had clearly hoped to get the employees signed up by June 12, when that plan went off track because of employee resistance, Bruce Champeaux's timely intervention got it back on track. Ownership did not attend this meeting and employees were not ordered to attend. But senior Foreman Champeaux organized the meeting and Northshore provided the space, allowed employees to leave jobsites in time to attend, and paid many of them for their travel time. Champeaux was clearly up to the task of carrying management's message to the employees.

¹⁰ This evidence is based on the testimony of Counsel for the Acting General Counsel's employee-witnesses Pat Bailey, Matt Postma and Scott Waxler. Testimony by current employees such as these men, which contradicts statements of their supervisors, is likely to be particularly reliable because these witnesses are testifying against their pecuniary interests. *Flexsteel Industries*, 316 NLRB 745 (1995); *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Shop-Rite Supermarket*, 231 NLRB 500, 505 n.22 (1977); *Georgia Rug Mill*, 131 NLRB 1304, n.2 (1961), *enf'd as modified*, 308 F.2d 89 (5th Cir. 1962).

It is expected that Respondents will argue that the June 13 meeting was an innocuous, employee-instigated meeting, but this contention is not supported by the record evidence. Northshore's allowing the Carpenters to use its premises on June 13 was itself unlawful assistance. See *Duane Reed*, 336 NLRB 943; *Price Crusher*, 249 NLRB 433. Even though employees were not ordered to attend this meeting, the stakes had already been laid out for them at the prior meeting – their very jobs were in the balance. The fact that there was a second meeting itself underscores the bind Northshore had put them in, and the confusion over whether they were to be paid for this meeting speaks volumes. Moreover, while Local 66's Shop Steward Kosmin and supporter Johnston were in attendance, Triezenberg's mocking of Johnston's absence at the prior meeting nullified any balance this may have lent in the employees' eyes. (Tr. 276-77)

4. Northshore Continued Its Unlawful Assistance Beyond the Meetings

a. Recognition

Northshore's management did not bother to wait even 24 hours between the June 13 meeting and its recognition of the Carpenters, but recognized the Carpenters instantly upon receiving cards, without actually verifying them. The Board considers both timing of recognition and failure to verify cards as weighty factors in unlawful assistance. *Vernitron*, 221 NLRB at 465.

b. Promise of Benefits by Jeff Meyer

In assessing whether a pattern of unlawful assistance exists, the Board may look to events both before and after recognition. *Dairyland*, 348 NLRB at 312. After Co-owner Meyer's recognition of the Carpenters, he remained anxious about whether his

employees were with the program. So on June 14 he took the extraordinary step of heading out to a jobsite with no other purpose than to dangle a carrot in front of some Local 66 supporters, offering to raise Waxler and Bailey back up to Foremen if they signed with the Carpenters.

c. Promise of Benefits by Roy Nakapaahu

Coincidentally or not, Roy Nakapaahu made the same offer to Jason Johnston on the same day. To disarm one of the most vocal opponents of the Carpenters would have garnered crucial assistance indeed.

d. Threats by Superintendent Dino Johnson

Not content with carrots, Northshore also tried sticks. Using Nakapaahu to relay the call, admitted supervisor Dino Johnson told installer Postma on June 14 he would have to sign with the Carpenters that day or lose his job. Jeff Meyer confirmed that Postma had to sign a card, although he equivocated on the timing.

Northshore's assistance was coercive, abundant, and pervasive. All told, "careful scrutiny of all the factors," here not especially subtle, reveals that Northshore restrained its employees' choice. *Int'l Ass'n of Machinists*, 311 U.S. at 80.

5. Northshore Unlawfully Recognized the Carpenters

In initial organizing situations where two or more unions are seeking to represent a set of employees but no valid election petition has been filed, an employer is free to recognize any union that represents "an uncoerced, unassisted majority." *Bruckner Nursing Home*, 262 NLRB 955, 957 (1982). Conversely, an employer violates § 8(a)(2) of the Act when it extends recognition to a union that does not represent an uncoerced majority of employees. *Garner-Morrison, LLC*, 356 NLRB No. 163, slip op. at 5 (*citing*

International Ladies Garment Workers Union v. NLRB (Bernhard-Altmann), 366 U.S. 731 (1961); *Dairyland*, 347 NLRB at 311); *Kosher Plaza Supermarket*, 313 NLRB 74; *Christopher St. Owners*, 286 NLRB 253 (1987).

Necessarily, unlawful assistance and unlawful recognition are closely related violations (assistance that does not result in recognition would be so ineffective as to hardly be unlawful). “[A]n employer unlawfully grants recognition if it has engaged in a pattern of unlawful assistance.” *Dairyland*, 347 NLRB at 312. The same standard applies to assistance and recognition: “[T]he Board ‘examines the totality of circumstances to determine whether the respondent’s conduct tainted the union’s majority status.’” *Garner-Morrison*, 356 NLRB No. 163, slip op. at 5 (citing *Clock Electric, Inc.*, 338 NLRB 806, 827 (2003). See also *MGR Equip. Corp.*, 272 NLRB 353 (1984) (employer violated § 8(a)(2) by recognizing unlawfully assisted union; employee was permitted to use working hours and company premises in efforts to form new union); *Farmers Energy Corp.*, 266 NLRB 722 (1983) (employer improperly initiated idea of bringing union into plant, permitted its facilities to be used by employee organizers, paid employees for participating in union activities, determined composition of employee negotiating committee, and threatened plant closure, discharges, and layoffs), *enfd*, 730 F.2d 1098 (7th Cir. 1984).

Where, as here, an employer sets up a paid staff meeting to allow a union to recruit its employees and permits its supervisors and agents to remain while the union solicits authorization cards, unlawful assistance has been rendered and the employer’s recognition of that union is tainted by such conduct. *Garner-Morrison*, 356 NLRB No. 163. See also *National Maritime Union (Monfort of Colo.) v. NLRB*, 683 F.2d 305 (9th

Cir. 1982) (court enforced Board order based on finding that employer unlawfully recognized union it assisted in obtaining authorization cards that were never verified). It is improper to engage in a strictly mathematical analysis, akin to that in election proceedings, of subtracting from the total the cards of those employees whose decision may have been affected by the assistance; instead, unlawful assistance taints all cards. *Dairyland*, 347 NLRB at 312.

Respondents were not content to enter into a typical construction industry § 8(f) agreement covering the workers. Even before the full-court press on June 12 and 13, Northshore planned a “new direction” for the relationship with its preferred (and agreeable) union: full § 9(a) status. It continued on that path undeterred by notice that Local 66 claimed to represent a majority of its employees. On June 12 and June 13, Northshore delivered its employees to the Carpenters; on June 14, it wrapped them up with a bow on top.

B. Northshore’s Foremen Are Supervisors or Agents

It is undisputed that Dino Johnson, Brian Elbert, Jeff Meyer, Dan Meyer and Earland Millikan are supervisors. Northshore denies, however, the supervisory and/or agency status of Todd McBee, Roy Nakapaahu, Larry Lucas and Bruce Champeaux. The record evidence clearly attributes certain conduct to each of these individuals that would amount to unlawful assistance and coercion should they be shown to be supervisors and/or agents.

1. **McBee, Nakapaahu, and Champeaux are Supervisors**

a. **The Legal Standard**

A supervisor under the Act is someone “having authority, in the interest of the employer” to exercise various forms of power over employees. See § 2(11). A supervisor is thus an agent of the employer in relation to its employees. Involvement of supervisors in union-organizing efforts, even their mere presence when cards are solicited and signed, is nearly *per se* unlawful assistance, because of its inherent coerciveness. *Garner-Morrison*, 356 NLRB No. 163, slip op. at 3; *Duane Reade*, 338 NLRB 943 (2003), *enfd*, 99 Fed. App’x 240 (D.C. Cir. 2004). In the context of assistance to a union, the Board does not follow strict agency principles; an employer is held responsible for the actions of its supervisors whether the conduct is known, actually authorized, or subsequently ratified by the employer. See, e.g., *Plumbers & Pipe Fitters Local 636 v. NLRB*, 287 F.2d 354 (D.C. Cir. 1961), *enforcing* 126 NLRB 1381 (1960).

Persons are supervisors under the Act if: a) they hold the authority to engage in any one of twelve listed functions (hire, transfer, lay off, recall, promote, discharge, assign, reward, discipline, responsibly direct, adjust grievances, or effectively recommend any of these actions); b) their exercise of that authority requires the use of independent judgment; and c) their authority is held in the interest of the employer. *In re Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). The party asserting supervisory status bears the burden to prove it by a preponderance of the evidence. *Id.* at 694.

In *Oakwood Healthcare*, the Board interpreted “assign” to mean the authority to designate an employee to places, times, or tasks, and it found charge nurses at a nursing home to have the authority to assign in that they matched employees to particular patients and areas of hospital units. *Id.* at 696. The Board further found that charge nurses within hospital units exercised independent judgment because they matched employees to work assignments based on their skills and the quality and quantity of the work. *Id.* at 697–98. That the judgment they used was guided by professional and technical expertise did not make it any less independent.¹¹ *Id.* at 692–93.

When an individual recommends personnel action and a higher official accepts the recommendation without review or with a cursory one, that individual “effectively recommends” and therefore is a supervisor. See *Donaldson Bros. Ready Mix*, 341 NLRB 958 (2004) (holding that the individual was a supervisor, where he performed hiring interviews and his hiring recommendations were followed by higher official after a cursory review of employment applications); *Mountaineer Park*, 343 NLRB 1473 (2004) (same, as to effectively recommending discipline).

In unfair labor practice cases, the Board is likely to consider, in addition to the twelve statutory forms of authority, secondary indicia. These include whether the individual is considered a supervisor in the view of fellow workers, *National Med. Hosp. of Compton dba Dominguez Valley Hosp.*, 287 NLRB 149 (1987); attends management meetings, *Maine Yankee Atomic Power Co. v. NLRB*, 624 F.2d 347 (1st Cir. 1980);

¹¹ Supervisory status has not frequently been addressed by the Board in the construction context post-*Oakwood Healthcare*. In one construction case cited by counsel for Carpenters in his opening statement, the Board found foremen not to be supervisors. *Shaw, Inc.*, 350 NLRB 354 (2007). In that case, however, the foremen met daily with managers to receive their marching orders and those managers visited each jobsite at least once a day. *Id.* at 355–56. The foremen assigned tasks to crew members based on what trade each belonged to; thus, there was no independent judgment involved. *Id.*

receives a higher wage rate than fellow workers, *Liquid Transporters*, 250 NLRB 1421 (1980); and receives benefits that rank and file employees do not. *McClatchy Newspapers, Inc.*, 307 NLRB 773 (1992). When refusing to treat certain employees as supervisors would leave a job site without any supervisors, the Board has relaxed its supervisory status standards. *Salvation Army Williams Mem'l Residence*, 293 NLRB 944 (1989); *Luke's Supermkt.*, 228 NLRB 763 (1977).

b. Shop Steward McBee

By the Board's standards, Shop Foreman McBee is a supervisor. It is undisputed that McBee has hired several employees, or at the least that he effectively recommended doing so. McBee testified that he is the only person able to judge the technical skills of certain applicants; Jeff Meyer necessarily took his say-so on the hires.¹² According to Kosmin, McBee was held out by Elbert as having the ultimate authority to respond to employee complaints in the shop.

Indicia of McBee's supervisor status are interwoven with the record evidence of the violations in this case. He ordered the shop employees to the Carpenter's organizing meetings, unlocked the door for the meetings, and instructed them that they could leave their signed authorization cards in his office in-box. On June 12 at least, McBee assigned tasks (shop cleaning to Kosmin and Johnston), and this assigning of tasks (if not the particular task he assigned them that day) was of a piece with his normal running of the shop. After being told to send Yuriy Kosmin and someone else home early on June, McBee selected Jason Johnston, much as earlier he had directed an employee who misbehaved to leave the shop. He used independent judgment in

¹² That McBee's judgment was technical does not make it any less "independent." See *Oakwood Healthcare*, 348 NLRB at 692-93.

selecting hires, choosing who to assign to the June 12 clean up tasks, and choosing to send Local 66 supporter Johnston home early.

c. Field Foremen Nakapaahu, Lucas and Champeaux

Although the Field Foremen do not officially have the authority to hire or fire, numerous witnesses testified that they can and do effectively recommend that certain employees should be fired, or at the very least pulled off of a job. They also issue discipline and award approved overtime. They assign tasks to particular employees based on their independent judgment as to who, in the words of former Field Foreman Pat Bailey, can handle heavy, fast work or can make sure a job is finished to spec. (Tr. 455) As Foreman Champeaux testified, they are entrusted with the discretion to vary from work specs or to adjust the order of work based on their independent judgment.

The Field Foremen also possess secondary indicia of supervisory status. There is no one permanently assigned to the job higher-ranked than the Foreman; to find that Foremen are not supervisors would leave job sites unsupervised the vast majority of the time. Furthermore, they receive higher wages and additional benefits in the form of truck, gas card, and company phone. Northshore Field Foremen attend planning meetings with upper management and meet during the course of jobs with general contractors. Thus, Northshore is responsible for the actions not only of its admitted supervisors Jeff Meyer, Elbert, and Johnson, but also of supervisors McBee, Nakapaahu, and Champeaux.

2. **McBee, Nakapaahu, Lucas and Champeaux Are Agents for Northshore**

Even when the Board has been unwilling to find individuals to be supervisors under § 2(11) of the Act, it has frequently found them to be § 2(13)¹³ agents in the context of unlawful assistance. The standard the Board applies for finding an individual to be the employer's agent is whether, under the circumstances, other employees would reasonably believe that the employee was reflecting company policy and speaking and acting for management. *Mar-Jam*, 337 NLRB at 337 (citing *Cooper Indus.*, 328 NLRB 145 (1999)). The burden of proving agency falls on the party asserting it. *In re Pan Oston Co.*, 336 NLRB 305, 306 (2001).

The Supreme Court has explained that an employer may be held to have provided unlawful assistance “even though the acts of the so-called agents were not expressly authorized or might not be attributable to him on strict application of the rules of respondeat superior.”¹⁴ *Int'l Ass'n of Machinists*, 311 U.S. 72, 80 (1940). In this context, the Court stated:

[w]e are dealing here not with private rights ... nor with technical concepts pertinent to an employer's legal responsibility to third persons...but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination or influence.

Id. In the *Machinists* case, the alleged agents were old and trusted employees, “more or less assistant forem[e]n” with employees working under them. They had no power to hire or fire, but “they did exercise general authority over the employees and were in a

¹³ “In determining whether any person is acting as an ‘agent’ of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.” 29 U.S.C. § 152(13).

¹⁴ Congress ratified this view with the Taft-Hartley amendments to the Act in 1947, when it added § 2(13). 61 Stat. 137.

strategic position to translate to their subordinates the policies and desires of management,” and they did so. *Id.* Therefore, the Court held the employer responsible for their assistance of the favored union.

In *Mar-Jam*, the Board affirmed the administrative law judge’s reasoning that an employee who ran a warehouse and frequently delivered the employer’s messages to employees was an agent of the employer in providing assistance to a union. 337 NLRB at 348–49. See also *Cooper Indus.*, 328 NLRB at 145-46 (finding employee “facilitators” to be agents where they were held out as a conduit for transmitting information from management to other employees); *Hausner*, 326 NLRB at 428 (finding department heads to be agents because they were “the link between employees and upper management”); *but compare Pan Oston*, 336 NLRB 305 (finding “group leaders” not to be agents where there was no relation between the scope of their duties and their alleged assistance). In the *Kosher Plaza Supermarket* case, the Board found agency where the remarks of an alleged agent and those of a company’s owners were similar. *Kosher Plaza Supermarket*, 313 NLRB 74.

Here, like the assistant foremen in *Int’l Ass’n of Machinists*, Champeaux and Nakapaahu are old and trusted employees. As with the department heads and facilitators in *Mar-Jam* and *Cooper Indus.*, it is an essential part of the function of Northshore Foremen to relay information from upper management to rank-and-file employees; the record is replete with examples of their doing just that. The employees regarded the Foremen as their bosses on the jobsite and in the shop. The relationship between the Foremen’s actions assisting the Carpenters and their status as Foremen is

tight. Shop Foreman McBee, for example, spoke with the assurance that he was within his authority in offering his company in-box for receiving union cards.

Likewise, Champeaux's offer of the use of Northshore's second shop for a third meeting was a logical extension of his authority to relay other orders from management to attend the previous meetings. His delivery of a pitch in favor of joining the Carpenters was of a piece with his directing his crews on the jobsites. Indeed, like the manager's statements in *Kosher Plaza Supermarket*, his words on June 12 echoed those of management at the June 5 meeting. His shuttling back and forth to the owners during the June 12 meeting was akin to his regularly relaying messages from management on critical subjects such as layoffs and transfers. Foreman Nakapaahu's offer to raise Johnston to Foreman if he signed with the Carpenters was credible because Nakapaahu regularly conveyed the owners' messages and Foremen have power over similar personnel actions, such as choosing employees for layoff or overtime. It was therefore reasonable for employees to believe that McBee, Champeaux and Nakapaahu were speaking for Northshore.

C. Northshore Was on Notice of a Rival Union's Petition

The Board draws a bright line barring recognition of rival unions when election petitions have been filed with the Board. *Bruckner*, 262 NLRB at 957. Even where no petition has been filed, an employer recognizes one union at its peril, because the claim of majority support by that union might turn out to be false. *Id.* at 957 n.13. But once an employer has been notified of the filing of an election petition by a union, it may not grant recognition to any rival union. *Id.* See also *Incisa U.S.A., Inc.*, 327 NLRB 563 (1999) (applying *Bruckner* in construction context; finding violation where employer

granted § 9(f) recognition to one union after filing of an election petition by another, incumbent § 8(f) union).

In such a situation, employer knowledge of the petition is crucial. *Mar-Jam*, 337 NLRB at 354. However, the Board does not require *actual* employer knowledge; it will impute knowledge in a situation where an employer has been effectively put on notice of the petition. *Clow Water Systems Co.*, 317 NLRB 126 (1995), *enforcement denied*, 92 F.3d 441 (6th Cir. 1996) (finding fax communication during regular business hours sufficient to place employer on notice of petition). *See also Mar-Jam*, 337 NLRB at 352 and 352 n.83 (imputing knowledge of petition to employer where petition was faxed to employer at admitted fax number and receipt was confirmed by transmission reports); *compare Rollins Transp. Sys.*, 296 NLRB 793 (1989) (finding no violation where employer recognized union on same day another union filed a petition but before notice of the petition had been given to the employer). The Board places responsibility on the employer “for maintaining adequate office procedures concerning fax transmissions.” *Clow*, 317 NLRB at 127.

Here, as in *Mar-Jam*, the Region successfully faxed Local 66’s petition to the employer’s undisputed fax number. Both the employer and its attorney admit receipt of the faxed petition on June 13, 2012. Although Northshore claims that Jeff Meyer did not see the fax until the afternoon of June 14, 2012, as the Board made clear in *Clow*, actual awareness is not the standard. 317 NLRB at 127. Meyer recognized the Carpenters and signed a collective bargaining agreement with them well into regular business hours on June 14, 2012. The Board having faxed the petition on June 13, 2012, knowledge of the fax is properly imputed to Northshore by the time it recognized

the Carpenters. That rendered the recognition unlawful, even in the absence of any improper assistance to the Carpenters.

Northshore's recognition of the Carpenters was therefore unlawful on two independent grounds: first, the Carpenters did not represent an "uncoerced, unassisted majority" of Northshore's employees, as described above, and second, Northshore recognized the Carpenters when it was on notice of Local 66's petition.

D. The Carpenter's Acceptance of Northshore's Assistance and Recognition Was Unlawful

A union that accepts unlawful assistance or unlawful recognition from an employer violates § 8(b)(1)(A) of the Act. *MV Public Transp., Inc.*, 356 NLRB No. 116, slip op. at 14 (March 22, 2011); *Garner-Morrison*, 356 NLRB No. 163, slip op at 7; *Windsor Castle Health Care Facilities*, 319 NLRB 579 (1994), *enf'd as modified*, 13 F.3d 619 (2d Cir. 1994). Here, the Carpenters violated § 8(b)(1)(A) by receiving and accepting unlawful assistance in solicitation of membership by Northshore's current and past owners and managers at the June 12 meeting, including Co-Owner/President Jeff Meyer, who warned employees to sign up with the Carpenters within 48 hours or risk losing their current wage and benefit package. See *Brooklyn Hosp. Ctr.*, 309 NLRB 1163 (1992), *aff'd sub nom. Hotel, Hosp., Nursing Home & Allied Servs. Local 144 v. NLRB*, 9 F.3d 218 (2d Cir. 1993). See also *Duane Reed*, 338 NLRB 943.

There is no evidence that any Northshore employee had ever contacted the Carpenters about representation before they surreptitiously negotiated a § 9(a) agreement with Northshore's owners and accepted an invitation to solicit authorization cards on site in the middle of a work day. On June 12, the Carpenters accepted delivery of Northshore's employees. Nor did they utter any protest at the odd behavior

of the owners in shuttling in and out of the back room. Instead, Triezenberg made his pitch and handed out authorization cards in this coercive context. Indeed, Triezenberg and Torkelson stood by while Co-Owner/President Jeff Meyer told the entire Unit that their livelihood depended on signing with the Carpenters within 48 hours.

On June 13, Triezenberg capitalized on Local 66 supporter Johnston's forced absence from the prior meeting by mocking his questions as already having been answered. Again, there is absolutely no evidence that, before the intervention of Northshore management, any single Unit member was interested in Carpenters representation. Only after the employees had been strong-armed – in the Carpenters' presence – by Northshore's Foremen and admitted supervisors, the Carpenters then were able to collect signed cards. Triezenberg gladly took them, thereby accepting Northshore's illegal assistance.

The following day, Torkelson did not protest when Meyer made no effort to verify cards before signing a collective-bargaining agreement that granted the Carpenters § 9(a) status based on the parties' explicit agreement that they had presented proof of majority status. On June 14, Torkelson quickly signed a CBA containing § 9(a) recognition language and a union-security provision that had been clandestinely negotiated well before the Carpenters were introduced to the Unit employees. In sum, the Carpenters were ready and willing to become the exclusive bargaining representatives of Northshore's employees regardless of what the Unit employees wanted.

By entering into, maintaining, and enforcing a collective-bargaining agreement with a union-security clause at a time when it does not represent an uncoerced majority

of employees, a union additionally violates § 8(b)(2) of the Act. *MV Public Transp.*, 356 NLRB No. 116, slip op. at 14 (*citing Dairyland*, 347 NLRB 310; *Duane Reade*, 338 NLRB at 944). That a union mistakenly, in good faith, believes that it is the majority representative of a group of employees is no defense to a § 8(b)(1)(A) violation. *Bernard-Altmann*, 366 U.S. 731 (1961). Likewise, a union's lack of knowledge that a rival union had petitioned for a representation election before it obtained recognition is not a valid defense. *Haddon House*, 269 NLRB 338, 340, n.9 (1984).

Here, the Carpenters additionally violated § 8(b)(1)(A) by accepting recognition from Northshore after receiving its unlawful assistance and after following Local 66's filing of a petition for representation. Indeed, the Carpenters were complicit in creating a sham § 9(a) relationship intended to fend off a petition by Local 66 and, before he had even been introduced to the Unit employees, Triezenberg provided Northshore with "*Staunton Fuel*" language intended to document this sham agreement. Finally, the Carpenters violated and continues to violate § 8(b)(2) of the Act by entering into and maintaining a collective-bargaining agreement with Northshore that contains a union-security clause.

E. Northshore's Actions Taken Against Apprentices Kosmin and Johnston Violated § 8(a)(3) of the Act

As Northshore attempted to coerce its employees into giving up their allegiance to Local 66, it targeted visible Local 66 supporters Kosmin and Johnston. Apprentice Johnston, who had questioned Elbert's dire predictions about losing work at the June 5 meeting, and apprentice Kosmin, who was designated as Local 66's first-ever Northshore Shop Steward following the June 5 meeting, were strategically sent home, after being assigned clean up duties, before the Unit employees were introduced to the

Carpenters at the June 12 meeting. Within two weeks following Northshore's unlawful recognition of the Carpenters, both Johnston and Kosmin were missing from the workplace: Johnston was laid off while the remaining Unit employees worked overtime and Kosmin was denied light-duty work he had previously been scheduled to perform. Under any reasonable reading, the record evidence supports a finding that each of these actions would not have occurred in the absence of the two apprentices' support of a union Northshore was unlawfully replacing with the Carpenters.

1. The Legal Standards

The party asserting discrimination under the Act bears the burden of demonstrating by a preponderance of the evidence that: a) the employee engaged in protected activity; b) the employer knew about that activity; c) the employee suffered an adverse employment action; and d) animus against the activity was a motivating factor for the adverse action. *American Gardens Management Co.* 338 NLRB 644 (2002) (citing *Wright Line*, 251 NLRB 1083 (1980)).

That an adverse employment action was motivated by animus can be proven by circumstantial evidence, including timing. *In re Merrill Iron and Steel, Inc.*, 335 NLRB 171 (2001). Indeed, timing alone can be enough. *NLRB v. Rain-Ware, Inc.*, 732 F.2d 1349 (7th Cir. 1984). An employer may rebut the inference of discrimination by producing evidence of a lawful motive, but if there is evidence that the employer's explanations are pretextual the rebuttal fails, *Hyatt Regency Memphis*, 296 NLRB 259, 260 (1989), and indeed pretext provides further support for an inference of illegal motivation.¹⁵ See, e.g., *Active Transp.*, 296 NLRB 431 (1989) (pretextual reasons

¹⁵ This is a distinct (if, in this case, closely related) issue from an employer's affirmative defense under *Wright Line*.

indicate illegal motivation); *HS Healthcare, dba Springfield Manor*, 295 NLRB 17 (1989) (shifting reasons indicate animus).

Once the General Counsel has established the elements of discrimination, the burden of both production and persuasion shifts to the respondent to demonstrate that it would have taken the same action regardless of the employee's protected activity. *Hyatt Regency Memphis*, 296 NLRB at 260.

2. Assigning Kosmin and Johnston Undesirable Work and Sending Them Home Early

It is undisputed that Johnston and Kosmin were the most visible Local 66 supporters at Northshore. Johnston wore brightly Sheet Metal Workers t-shirts to work, both in the shop and the field, nearly every day during the period leading up to his layoff. Superintendent Johnson admitted that he knew that Johnston's father was a Local 66 supporter, too. (Tr. 256, 651) At the June 5 meeting, Johnston was also visibly (and irritatingly, to Northshore management) stubborn in his support for Local 66, asking inconvenient questions about the Carpenters and speaking in favor of Local 66. (Tr. 264–65, 276–77) Likewise, Kosmin became the face of Local 66 the day following the June 5 meeting, when he was named Northshore's first-ever Local 66 Shop Steward. With respect to both men, the elements of protected activity and employer knowledge are clearly demonstrated.

Against this backdrop, Northshore assigned the two apprentices work cleaning up glass from an apparent burglary – duties normally assigned to material handlers, not craftsmen – on the very day that the Carpenters were scheduled to speak to the Unit employees. Then Elbert, who was well aware of Kosmin's new appointment as Local 66's Shop Steward, instructed Shop Foreman McBee to send Kosmin and somebody

else home. McBee complied, ensuring that Kosmin and Johnston were gone before noon. Kosmin and Johnston not only lost half a day's work, but they were strategically and conspicuously absented from a Carpenters' card signing meeting. Indeed, that Northshore management was concerned about Kosmin and Johnston's vocal Local 66 support affiliation is suggested by the very act of leaving them out of a meeting that, according to Elbert, was not expected to last very long.¹⁶ That this was no mere oversight is evidenced by the notation on Kosmin's time card: "did not attend meeting."

3. Jason Johnston's Lay-Off

Following his exclusion from the June 12 meeting, Johnston continued in his unabashed support of Local 66. He and Kosmin attempted to level the playing field at the June 13 meeting by bringing Local 66 t-shirts and even the most recent Local 66 contract proposal. With the assistance of Local 66-drafted talking points they attempted to debate Triezenberg on the merits of Carpenters' representation. (Tr. 183–85, 271–72) Shortly after the June 13 meeting, Johnston and Kosmin each rejected offers (from Foremen Nakapaahu and Champeaux, respectively), to be promoted to journeyman status in exchange for their support of the Carpenters. Moreover, on June 18, Johnston made his affiliation crystal clear, telling Dino Johnson that he would never sign a Carpenters' card.

Indeed, Johnston was laid off closely following his telling Superintendent Johnson that he said he would never sign with the Carpenters. While Johnson attempted to characterize his decision to discharge Johnston as merely acquiescing to the latter's quitting to pursue HVAC work, this frankly does not withstand scrutiny, in

¹⁶ Because Northshore manipulated its employees' schedules in a manner designed to assist the Carpenters' solicitation efforts, this conduct additionally violates § 8(a)(2) of the Act. See *Windsor Castle Health Care Facilities*, 310 NLRB 579 (1993), *en'd as modified*, 13 F.3d 619 (2d Cir. 1994).

part because of the undisputed testimony that Johnston repeatedly called in for work after the conversation in question.¹⁷ Indeed, Johnson eventually admitted that Johnston never asked to be laid off. Superintendent Johnston's version of events is suspect in any event, in that he displayed an enthusiastic effort to outright mischaracterize events where he thought it would aid Northshore's case.¹⁸

Each non-discriminatory reason offered by Northshore for Johnston's layoff rings hollow. Northshore witnesses claimed that it was planning layoffs in June, apparently suggesting that Johnston would have been laid off for legitimate business reasons regardless of his protected activity. However, as noted above, this claim is not supported by the evidence; no one else was laid off that summer and employees worked overtime throughout Johnston's layoff. Furthermore, Northshore's witnesses each pointed the finger at each other; Jeff Meyer said Dino Johnson decided to lay Johnston off and Johnson said, in alternation, that McBee suggested laying Johnston off or that Johnston somehow laid himself off. These shifting rationales strongly suggest pretext. *Shattuck Dean Mining Corp.*, 151 NLRB 1328 (1965), *enf'd* 362 F. 2d 466 (9th Cir. 1966); *HS Healthcare*, 295 NLRB 17. Thus, the totality of the circumstances demonstrates that a substantial factor in Johnston's layoff was his support of Local 66.

4. Denial of Kosmin's Light Duty Request

Denials of light-duty are adverse employment actions which may be discriminatory. See, e.g., *Greenbrier Hotel*, 216 NLRB 721 (1975) (finding

¹⁷ Where there is controversy over whether an employer quit or was discharged, quitting has been found to require a voluntary action of the employee, not mere pronouncements. *Tex-Togs, Inc.*, 112 NLRB 973-74 (1955).

¹⁸ For example, Johnston denied three times that Shop Foreman Todd McBee (whose 2(11)/2(13) status is denied by Northshore) recommended that apprentice Johnston be laid off. He was impeached by his own signed declaration in which he clearly states that McBee did exactly that, and, moreover, that Johnson relied on this recommendation in making the lay-off decision. (Tr. 590--594)

discrimination where employer had past practice of offering light duty to employees but refused to grant it to a union supporter). Yuriy Kosmin, a well-known Local 66 supporter, who had already been targeted by the employer for an afternoon's loss of work, asked for light duty and was refused it within a month after he attempted to disrupt the final orchestrated meeting with the Carpenters. As such, the elements of protected activity, employer knowledge, adverse employment action, and animus are all present. Northshore attempts to rebut the inference of discrimination by claiming a legitimate reason for its actions, namely that it never offered employees light duty for off-the-job injuries. However, Jeff Meyer could not provide any example of an employee other than Kosmin requesting and being denied light duty in the last two years and his bizarre, unsolicited comment to Kosmin, linking his light-duty denial with Johnston's discharge, speaks volumes as to his motivation.

V. CONCLUSION

Based on the foregoing, Counsel for the Acting General Counsel prays that the Administrative Law Judge find that Northshore violated §§ 8(a)(1), (2) and (3) of the Act as alleged in the Complaint, that the Carpenters violated § 8(b)(1)(A) and § 8(b)(2) of the Act as alleged in the Complaint, and order that Respondents cease and desist from such unlawful conduct, order that Northshore withdraw its recognition from the Carpenters, order that the Carpenters cease seeking recognition from Northshore as the exclusive bargaining representative of Northshore's Unit employees, order that Northshore and the Carpenters post an appropriate Notice to Employees and Notice to

Members, respectively,¹⁹ and order such other relief as is necessary and appropriate under the circumstances.

DATED at Seattle, Washington, this 25th day of April, 2013.

Respectfully submitted,



Mara-Louise Anzalone
Carolyn McConnell
Counsel for the Acting General Counsel
National Labor Relations Board
Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

¹⁹ A copy of a proposed Notice to Employees and a proposed Notice to Members is attached.

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

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

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT assist Pacific Northwest Regional Council of Carpenters (the “Carpenters”), or any other union, in obtaining union authorization cards from you.

WE WILL NOT hold meetings in order to get you to support the Carpenters or any other union.

WE WILL NOT recognize the Carpenters, or any other union, as your collective-bargaining representative at a time when they do not represent an uncoerced majority of you.

WE WILL NOT maintain, enforce or give effect to our 2012–2013 collective bargaining agreement, including its union security clause and hiring hall provision, with the Carpenters covering you unless and until we have been certified by the Board as your collective-bargaining representative, although we will not diminish any wages or benefits that you are receiving under that agreement.

WE WILL NOT enter into or give effect to a collective-bargaining agreement with the Carpenters, at a time when the Carpenters does not represent an uncoerced majority of you.

WE WILL NOT threaten you with discharge or loss of benefits based on your union activity or affiliation.

WE WILL NOT ask you about your support for Sheet Metal Workers, Local 66 (“Local 66”), the Carpenters, or any other union.

WE WILL NOT ask you to sign an authorization card for the Carpenters or any other union.

WE WILL NOT direct you to turn in signed authorization cards for the Carpenters, or any other union, to our Shop Foreman.

WE WILL NOT attempt to enforce any unlawful union security clause against you by telling you that you have to sign a Carpenters’ authorization card or be fired in 30 days.

WE WILL NOT promise you increased benefits and/or promotions to journeyman or foreman positions in exchange for signing a Carpenters’ authorization card, or to discourage you from supporting Local 66.

WE WILL NOT watch you in order to find out about your union activities on behalf of Local 66, the Carpenters, or any other union.

WE WILL NOT make it appear to you that we are watching out for your union activities.

WE WILL NOT temporarily lay you off, reduce your hours or deny you light-duty work assignments because you are a member of, or support, Local 66.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL pay Jason Johnston for the wages and other benefits he lost because we laid him off.

WE WILL pay Yuriy Kosmin for the wages and other benefits he lost because we denied him a light-duty work assignment.

WE WILL remove from our files all references to the lay-offs of Jason Johnston and the denial of Yuriy Kosmin's light-duty work assignment and **WE WILL** notify them in writing, within 14 days of the approval of this settlement agreement, that this has been done and that these actions will not be used against them in any way.

WE WILL, jointly and severally with the Carpenters, reimburse all of you who joined the Carpenters on or after June 14, 2012, for initiation fees, periodic dues, assessments, or any other moneys, which may have been paid or which may have been withheld from your pay pursuant to our 2012-2013 agreement, with interest. However, reimbursement does not extend to those employees who voluntarily joined and became members of the Carpenters prior to June 14, 2012.

WE WILL withdraw and withhold all recognition from the Carpenters as your exclusive collective-bargaining representative unless and until they have been duly certified by the Board as your collective-bargaining representative.

WE WILL immediately cease using the Carpenters' hiring hall unless and until the Carpenters has been duly certified by the Board as your collective-bargaining representative.

NORTHSHORE SHEET METAL, INC.

(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy 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 or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

915 2ND AVE
STE 2948
SEATTLE, WA 98174-1006

Telephone: (206) 220-6300
Hours of Operation: 8:15 a.m. to 4:45 p.m.

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

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

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT accept assistance from Northshore Sheet Metal, Inc. (“Northshore”) in obtaining union authorization cards from you.

WE WILL NOT accept recognition from Northshore, as your § 9(a) exclusive collective-bargaining representative at a time when we do not represent an uncoerced majority of you.

WE WILL NOT enter into or give effect to a collective-bargaining agreement with Northshore, at a time when we do not represent an uncoerced majority of you.

WE WILL NOT maintain, enforce or give effect to our 2012-2013 collective bargaining agreement, including the union security clause and hiring hall provision, with Northshore covering you unless and until we have been certified by the Board as your collective-bargaining representative.

WE WILL NOT dispatch our members to work for Northshore unless and until we have been certified by the Board as your collective-bargaining representative.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under § 7 of the Act.

WE WILL immediately cease referring our members to work for Northshore unless and until we have been certified by the Board as your collective-bargaining representative.

WE WILL, jointly and severally with Northshore, reimburse all of you who joined our labor organization on or after June 14, 2012, for initiation fees, periodic dues, assessments, or any other moneys, which may have been paid or which may have been withheld from your pay pursuant to our 2012-2013 agreement, with interest. However, reimbursement does not extend to those employees who voluntarily joined and became members of our labor organization prior to June 14, 2012.

**PACIFIC NORTHWEST REGIONAL COUNCIL
OF CARPENTERS**

(Labor Organization)

Dated: _____

By: _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy 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 or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Counsel for the Acting General Counsel's Brief to the Administrative Law Judge in cases 19-CA-83657, 19-CA-88465, 19-CA-92102, 19-CA-94575, 19-CB-83623, and 19-CB-94048 was served by e-mail and e-file, as noted below, on April 25, 2013, on the following parties:

E-filing:

Administrative Law Judge Eleanor Laws
National Labor Relations Board
Division of Judges
901 Market Street, Suite 300
San Francisco, CA 94103

E-mail:

Christopher L. Hilgenfeld, Esq.
Davis Grimm Payne & Marra
chilgenfeld@davisgrimmpayne.com

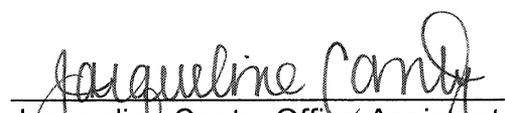
Selena C. Smith, Esq.
Davis Grimm Payne & Marra
ssmith@davisgrimmpayne.com

Joseph G. Marra, Esq.
Davis Grimm Payne & Marra
jmarra@davisgrimmpayne.com

Daniel M. Shanley, Esq.
DeCarlo Shanley
dshanley@deconsel.com

Judy Juang, Esq.
DeCarlo Shanley
jjuang@deconsel.com

Daniel Hutzenbiler, Esq.
Robblee Detwiler & Black PLLP
dhutzenbiler@unionattorneysnw.com



Jacqueline Canty, Office Assistant
National Labor Relations Board
Subregion 36