JD–37–13
Elburn, IL

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

A.E. FRASZ, INC.

and Case 13–CA–093123

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 150, AFL-CIO

Kevin McCormick, Esq.,
for the Acting General Counsel.
Michael Hughes, Esq.,
for the Respondent.
Melinda Hensel and Elizabeth LaRose, Esqs.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEOFFREY CARTER, Administrative Law Judge. This case was tried in Chicago, Illinois on April 10–11, 2013. The International Union of Operating Engineers, Local 150, AFL-CIO (the Union or Local 150) filed the charge on November 13, 2012[1] and the Acting General Counsel issued the complaint on February 8, 2013.

The complaint alleges that A.E. Frasz, Inc. (Respondent) violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) by: (a) on or about July 23, 2012, conditioning its offer of employment to Erik Thorson on his withdrawal from the Union; and (b) on or about October 20, 2012, discharging Erik Thorson because he assisted the Union and engaged in protected concerted activities, and to discourage other employees from engaging in those activities. Respondent filed a timely answer denying the alleged violations in the complaint.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Acting General Counsel, the Union and Respondent, I make the following

---

[1] All dates are in 2012, unless otherwise indicated.

[2] The transcripts in this case are generally accurate, but I hereby make the following corrections to the record: page 179, lines 4–5 should read "the last question is not probative"; page 188, lines 10–11 should read "request for a directed verdict, essentially"; and page 188, lines 19-20 should read "it also has some evidence that could be used to support a pretext argument as well."

I also emphasize that although I have included several citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather are based on my review and consideration of the entire record for this case.

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation based in Elburn, Illinois that engages in the business of excavating, grading, and sewer, water and septic construction. In 2012, Respondent provided services valued over $50,000 to customers such as Bunge Limited, a global agribusiness and food company headquartered in White Plains, New York. Respondent is thus an entity directly engaged in interstate commerce. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. A.E. Frasz, Inc. – Overview and Union History

Respondent A.E. Frasz, Inc., which is owned by Andrew Frasz, is a construction contractor that performs residential and commercial excavating work, including laying underground pipe and installing septic systems. (Tr. 147–148.) Since 2000, Respondent has entered into a series of collective-bargaining agreements with the Truck Drivers, Chauffeurs, Warehousemen & Helpers Union, Local 707 (Local 707), an affiliate of the National Production Workers Union. According to Frasz, Local 707 permits Respondent to operate as a "merit shop contractor," which enables Respondent to promote employees based on talent instead of seniority. (Tr. 174, 176, 195–196.)

Respondent's current collective-bargaining agreement with Local 707 covers the time period from January 1, 2011 to December 31, 2013, and contains the following union-security clause:

> It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of [Local 707] in good standing on the date of which this Agreement is signed shall remain members in good standing, and those who are not members on the date on which this Agreement is signed shall, on the ninety-first (91st) day following the date on which this Agreement is signed, become and remain members in good standing with [Local 707]. It shall also be a condition of continued employment that all employees covered by this Agreement hired after the date on which this Agreement is signed shall, on the ninety-first (91st) day following the beginning of such employment, become and remain members in good standing with [Local 707].

(Respondent (R) Exh. 1, Article II, Section 1; see also id. at Section 5 (noting that a new employee is on probation for the first 91 days of his or her employment); Tr. 196–198.) Neither Respondent nor Local 707 strictly enforced the terms of the union-security clause for "temporary" or "part-time" employees. For example, if an employee worked for Respondent for longer than 90 days without joining Local 707, but was assigned to a job that would end in a few additional weeks, neither Local 707 nor Respondent invoked the union-security clause against the employee. (Tr. 182–183.)

There is no evidence that Respondent has ever entered into a collective-bargaining relationship with Local 150. Local 150 has, however, attempted to organize Respondent's employees in the past. (Tr. 198.)

B. Erik Thorson Seeks Employment with Respondent

Erik Thorson has worked as a heavy equipment operator for several years, and has experience with operating excavators, backhoes, loaders, bulldozers and other earth-moving equipment. Thorson became a member of Local 150 in 1996. (Tr. 20–21.)

In October 2011, Thorson attended a Local 150 meeting, at which the business agent for Local 150 asked Thorson to go to one of Respondent's worksites to try to get a job. Accordingly, on October 24, 2011, Thorson visited a project that Respondent was handling in Sugar Grove, Illinois and asked Respondent's superintendent Jim Giese if Respondent had any work available. Giese replied that he thought Respondent might be able to use Thorson, and provided Thorson with company owner Frasz' telephone number. (Tr. 22–23, 337–338.)

Thorson called Frasz, who agreed to come to the Sugar Grove worksite later that morning to meet Thorson and speak with him about the possibility of working for Respondent. Frasz advised Thorson that he had a lot of work coming up, and that he thought he could use Thorson on some of Respondent's jobs. Upon learning that Thorson was a member of Local 150, Frasz stated that Thorson would need to obtain a withdrawal card from Local 150 before working for Respondent, and would also need to join Local 707. (Tr. 23–24, 202–203.)

Consistent with Frasz' instructions, on October 31, 2011, Thorson went to the Local 150 office and paid a five dollar fee to obtain a withdrawal card. (Tr. 25.) After receiving the withdrawal card in the mail on November 4, 2011,[3] Thorson called Frasz that same day to tell him that he obtained the withdrawal card, and to find out if Frasz had any work for him. Frasz replied that he did not have any work at that time. However, on November 19, Frasz contacted Thorson to see if he was available to work during Thanksgiving week. Thorson was not available, and ultimately Frasz promised to contact Thorson in the spring of 2012, when he expected to have some new work. (Tr. 26–29, 93–94, 205, 270; GC Exh. 2.)

In the months that followed, Thorson and Frasz stayed in touch about the possibility of Thorson working for Respondent. In a May 2012 conversation, Frasz confirmed that Thorson was still interested in working for Respondent, explained that he expected Respondent to have a lot of big jobs coming up, and reiterated that Thorson would need to provide a copy of his Local 150 withdrawal card when he started working for Respondent. (Tr. 29, 95; see also Tr. 206–207, 271 (Frasz also called Thorson in late winter or early spring to see if he was still available).)

[3] Although Thorson obtained his Local 150 withdrawal card on November 4, 2011, he resumed paying Local 150 union dues on January 9, 2012. (R. Exh. 5) There is no evidence that Thorson notified Respondent that he resumed paying Local 150 union dues after obtaining his withdrawal card.

C. The Bunge Oils Project

1. Project overview

5 In mid-July 2012, Respondent began working on a project at Bunge Oils (Bunge), a food processing company located in Bradley, Illinois. Specifically, Bunge was building a new refrigerated warehouse as an addition to its existing facility, and general contractor RFW Construction (RFW) brought on Respondent as a subcontractor to handle the excavation work for the project. (Tr. 30–31, 148–149, 208, 213, 262–263; see also R. Exhs. 2–4 (bid, scope of 10 work, and subcontracting paperwork for the Bunge project).)

2. July 2012 – Respondent hires Thorson for the Bunge project

On July 13, Frasz contacted Thorson to offer him a job working on the Bunge project. In 15 a handful of conversations over the following days,[4] Frasz advised Thorson that he would start work on July 23, after filling out a job application, providing a copy of his driver's license, and completing a safety training course required by Bunge. Frasz also advised Thorson that he could turn in his Local 150 withdrawal card with his application paperwork, and also noted that Respondent would provide a hard hat and reflective safety shirts for Thorson to wear while 20 working on the job. (Tr. 30–34, 208–211.) Thorson agreed, and promised to arrive in the morning on July 23 to complete his paperwork and attend the safety training class. (Tr. 34–35.)

On July 23, Thorson reported to the Bunge worksite, where other members of Respondent's team were gathering. When Frasz arrived, he provided Thorson with a hard hat 25 and five reflective shirts to wear while on the worksite, as well as a job application to complete. Thorson provided Frasz with a copy of his Local 150 withdrawal card, which Frasz accepted and later stored in Respondent's files.[5] (Tr. 35–37, 58, 96, 295–297; GC Exh. 17.)

---

[4] Thorson testified that in a July 19 voicemail, Frasz asked him to start work on July 23, and told Thorson to bring his Local 150 withdrawal card and other materials with him when he reported to the worksite. (Tr. 34.) Respondent maintains that Thorson's credibility is damaged because he did not produce a copy of this voice mail when this case went to trial (approximately 9 months later). (R.Posttrial Br. at 18–19.) I do not share Respondent's view. As a preliminary matter, I note that although Thorson was working with Local 150, it does not follow that he would have had the legal knowledge and forethought to save the voice mail to litigate a potential unfair labor practice claim. Furthermore, none of the parties asked Thorson what happened to the voice mail, and thus it would be sheer speculation for me to make any conclusions about whether it was available at the time of trial. Given the state of the record on this issue, I do not find that Thorson's credibility was weakened by the fact that no July 19 voice mail was offered as evidence in the trial.

[5] Frasz denied telling Thorson at any point that he would need to obtain a withdrawal card from Local 150 before working for Respondent. (Tr. 204.) I do not credit that testimony because it is not plausible that Thorson would have gone through the trouble of obtaining the withdrawal card had Frasz not asked for it, nor is it plausible that Respondent would have accepted and filed Thorson's withdrawal card when Thorson provided it when he started working for Respondent on July 23, 2012. (See GC Exh. 17.)

I also note that I did not give any weight to the evidence that Respondent presented to show that it did not seek union withdrawal cards from other Local 150 members who have previously worked for Respondent. Specifically, Respondent presented evidence that former employees C.H., D.O. and C.T. were all Local 150 members. (See R. Exhs. 6–8.) Respondent, however, provided very limited

3. Initial safety training

Before starting work on July 23, Thorson and the other employees who were present attended Bunge's safety training class.[6] While part of the training focused on requirements that employees needed to satisfy while working inside the Bunge facility (given that the facility was used for food processing), the Bunge training did emphasize the importance of wearing hard hats at all times (unless inside a machine/vehicle), as well as safety glasses and high visibility vests/shirts. Noting that Respondent was in the excavating business, the Bunge trainer mentioned that Bunge had a fatality at another worksite involving an excavating subcontractor. At the conclusion of the training, employees received a red sticker to place on their hard hats, as well as a wallet card, each of which established that the employee had completed the training and was authorized to work on the project. The Bunge trainer advised employees (including Thorson) that the red training sticker needed to be visible at all times on their hard hats while at the worksite. The trainer added that an employee without a training sticker on his/her hard hat could be asked to leave the worksite, and a contractor with multiple violations could risk losing their contract. (Tr. 37–38, 58, 96–98, 121, 226–229, 234, 279, 281–282, 330–331, 340–342, 368–372, 375–379, 393–395, 397–398; see also GC Exh. 18 (copy of the wallet card that Thorson received after completing the safety training class).)

A couple of weeks later, RFW conducted its own safety training class, which Thorson and other employees attended. The RFW training covered basic safety and the importance of wearing safety gear such as hard hats, safety goggles and high visibility work shirts. At the end of the RFW safety training class, Thorson and other employees at the training received a white label/sticker that they were required to place on their hard hats. The RFW trainer advised employees that they could be asked to leave the worksite if they failed to wear their RFW safety training label on their hard hats.[7] (Tr. 58, 98–100, 229–230, 278, 343–345, 396–397; see also R. Exh. 2, par. 32 (advising subcontracting bidders that their employees would have to participate in a "Day One" training led by RFW, and wear badges issued by RFW at all times indicating that they participated in the training).)

---

information about when employees C.H., D.O. and C.T. actually worked for Respondent, and thus it is not possible to determine reliably whether their Local 150 membership overlapped with their work for Respondent. (See Tr. 184, 211–213 (Frasz testified that C.H. and D.O. worked for Respondent on unspecified dates off and on for 20 years, while he guessed that C.T. probably worked for him in spring or summer 2010).) Moreover, even if Respondent had provided reliable information about dates of employment, the experiences of C.H., D.O. and C.T. when they worked for Respondent are not relevant to the issues in this case regarding whether Respondent violated the Act in its dealings with Thorson.

[6] Although the witnesses had somewhat different recollections about which employees attended this training on July 23, I find that the following employees were present: Frasz; Giese; Dale Swanson (Respondent's underground superintendent); Thorson; and employees R.S., R.W. and S.S.. (See Tr. 37–38, 102, 340, 395; see also Tr. 392.)

[7] RFW also conducted weekly safety talks that Thorson and other employees attended. The safety talks generally focused on one topic for the entire 15–20 minute meeting. (Tr. 100–101.)

4. Thorson's initial work performance and interactions with coworkers

Thorson initially received positive feedback about the work that he was performing on the Bunge job. On Thorson's first day on the job (July 23), Frasz told Thorson that he liked Thorson's work, and hoped that Thorson could develop into his go-to person for using the GPS bulldozer (a bulldozer that used GPS technology to determine land elevations). Frasz also indicated that he expected to have additional work coming up at other projects. (Tr. 39–40.)

Thorson's first two months at the Bunge job were not problem-free, however, in large part because Thorson was not shy about sharing his opinions about how work should be performed at the worksite. For example, in early August, Thorson questioned some of his coworkers about whether they were using the correct chains to lift a heavy object. When the coworkers continued to use chains and other equipment in a manner that Thorson believed was unsafe, Thorson (on or about August 27) took it upon himself to use his cell phone to make a video recording of a chain lift that his coworkers were performing that day.[8] (Tr. 41–45, 47, 104–106; see also Tr. 124–125, 240–241, 312 (Thorson told Frasz about his concern that employees were not using proper lifting equipment, and also told Frasz that a pipe lifting device that Frasz purchased was inadequate and a waste of money).)[9] Thorson's cell phone use did not go over well, because the next time he took out his cell phone and appeared to be taking a picture of his coworkers' activities, one of his coworkers warned that he would take Thorson's phone and break it if Thorson continued. (Tr. 47, 110–111.)[10]

Similarly, Thorson expressed some frustration with the GPS technology on the bulldozer that he often used, because at times, the GPS feature provided inaccurate information due to

---

[8] The witnesses presented conflicting testimony about whether Thorson was inside his bulldozer while it was running or on the ground when he made his video recording. (Compare Tr. 45 with Tr. 404.) The dispute about that issue is not material to my analysis.

[9] In its posttrial brief, Respondent makes much of the fact that neither the Acting General Counsel nor the Union asked Thorson to play the August 27 video at trial. (R. Posttrial Br. at 23; see also Tr. 104 (Thorson testified that he still had the video, and had previously shown it to a Board agent).) Specifically, Respondent argues that because neither the Acting General Counsel nor the Union played the video during trial, I should infer that the video would not have corroborated Thorson's testimony. (R. Posttrial Br. at 23.) I do not find that such a conclusion is warranted. Respondent certainly could have asked to review Thorson's video during trial, but there is no record that he ever made such a request. Perhaps more important, there really is no dispute that Thorson questioned the safety of some of Respondent's lifting practices, as Frasz himself admitted that Thorson asserted that employees were not using proper lifting equipment. (Tr. 312.)

[10] I note that Respondent did not prohibit photographs at the worksite. To the contrary, both Giese and Dale Swanson acknowledged that occasionally they would take photographs to document work that Respondent performed at the worksite. (Tr. 362–363, 382–384, 435–436; GC Exh. 19.) Thorson also took photographs for that purpose, including one photograph that he sent to Giese in August to document work that was completed (in case Giese needed to show the photograph to the general contractor), and three additional photographs that he sent to Swanson on September 20 to show that employees had to drill through bedrock to complete a particular task (a fact that might support an increase in Respondent's contract price). (Tr. 46–53, 114–117; GC Exhs. 3–8, 13; see also Tr. 55–57, 119–120, 264 (explaining that Thorson erroneously wrote "Jim Giese" on GC Exhibit 13 as the recipient of the photographs that he sent, and that GC Exhibit 13 lists Swanson's cell phone number as the phone number that Thorson sent the photographs to).)

interference from nearby buildings and other structures. Thorson told both Giese and Frasz that he preferred to use the bulldozer in the "regular" way, with stakes and lasers used to mark off the bulldozing elevations. (Tr. 241–242, 299, 358, 360, 384–386.)

And, when two additional employees (M.J. and B.J.) joined the project in mid-August and wore their own hard hats instead of the hard hats that Respondent provided (a practice that Respondent permitted), Thorson made a point of inspecting M.J.'s hard hat during the lunch break and telling M.J. that his hard hat was unsafe because it had expired (according to the expiration date etched under the brim of the hat). (Tr. 59–61, 289–290.)

Notably, Respondent did not discipline Thorson for any of these issues, beyond underground superintendent Dale Swanson (at Frasz' direction) telling Thorson in late September or early October (before October 11) to stop taking photographs and videos while on duty.[11] (Tr. 405–408, 428, 430, 434.)

5. Employee S.S. receives a safety glasses infraction, and Thorson loses his hard hat stickers

In mid-September, Frasz learned that employee S.S. had been written up by one of Bunge's safety inspectors. As described to Frasz (by S.S. and Swanson),[12] S.S. was using a pressure washing device when water splashed from the ground and covered S.S.'s safety glasses with muddy water. Since S.S. could not see, another employee shut off the device and S.S. then stepped back and removed his safety glasses to clean them. The Bunge safety inspector spotted S.S. at that moment, and cited him for not wearing safety glasses at the worksite. Based on those circumstances, Frasz decided that Respondent should not discipline S.S.,[13] but rather inform S.S. that if he accrued three such infractions (from Bunge/RFW), he could be asked to leave the worksite.[14] (Tr. 155–157, 234–236, 292–295, 326, 401–403, 427–428.)

In the same timeframe, the Bunge and RFW training stickers that were attached to Thorson's hard hat came off. In the following weeks (up to October 11), no one on behalf of Respondent (or Bunge or RFW) told Thorson that he needed to replace the missing stickers. (Tr.

---

[11] Although no discipline was issued, I note that Giese verbally reminded Thorson on two or three occasions to put on his hard hat before exiting the bulldozer he was driving (no hard hat was required when Thorson was inside the machine). Similarly, Giese verbally reminded other employees to put on their hard hats before exiting their vehicles in the worksite staging area. (Tr. 355–356.)

[12] The evidentiary record does not include a first-hand account of the safety glasses incident. To the extent that the parties presented hearsay evidence about the incident, I allowed it only for the purpose of showing what information led to Frasz' decision not to discipline S.S..

[13] The only disciplinary record entered into evidence for the entire trial was from July 7, 2003, when Frasz gave S.S. a written warning that identified the following misconduct: (a) running the Bobcat in high gear (despite being told twice not to do so), and running the Bobcat in an abusive manner; (b) hitting a gas line on July 2, 2003 that was clearly marked and pointed out by a supervisor; and (c) not showing the expected skill level or improvement in skill level, and not working efficiently when unsupervised. (Tr. 171–173; GC Exh. 15.)

[14] For certain safety infractions, Bunge and RFW followed a "three-strike" rule, under which an employee who received three safety infractions could be excluded from the worksite. (Tr. 157–158, 291–292, 294.)

58, 85–86, 120–121; see also Tr. 441–443 (no stickers were on the hard hat that Respondent presented at trial as Thorson's company hard hat.)

6. October 11, 2012 – Thorson begins talking to employees about supporting Local 150

On October 11, Thorson reported to work and spent the morning running the bulldozer in what was to be a loading dock area. At lunchtime, Thorson went to his truck and replaced the hard hat that Frasz provided with his own hard hat that bore several Local 150 stickers. Thorson also opened his jacket to reveal a sweatshirt with the Local 150 logo. Thorson then joined Swanson and employee R.S. for lunch, during which he spoke about the benefits of joining Local 150 and handed out Local 150 authorization cards and the business card of one of Local 150's organizers. (Tr. 62–67, 69, 126–127, 138, 408–412; GC Exhs. 11–12; see also Tr. 70 (indicating that Thorson also spoke with employees S.S. and M.J. about supporting Local 150, and provided them with authorization cards and business cards).) Swanson let Thorson "say his piece" about the benefits of joining Local 150, but did assert that Frasz would never go union and would rather go out of business before he went union.[15] (Tr. 127, 133, 141–142, 410.) In addition, upon noticing that Thorson's hard hat did not have the Bunge or RFW safety training stickers on it, Swanson mentioned to Thorson that the stickers were required in order to be on the job. (Tr. 418.)

After the lunch break on October 11, Swanson called Frasz to tell him that Thorson was wearing a hard hat and sweatshirt with Local 150's logo on it, and spoke to Respondent's employees during the lunch break about supporting Local 150. Swanson also mentioned that Thorson's hard hat did not have the safety training stickers attached to it. When Swanson asked if he should do anything to respond to Thorson's activities, Frasz asked Swanson to reiterate to Thorson that the safety training stickers were required, but otherwise take no action since Thorson was confining his union activities to the lunch break. Accordingly, on or about October 16, Swanson again told Thorson that he was required to have the Bunge and RFW safety training stickers on his hard hat.[16] (Tr. 151, 246–247, 419–420; see also GC Exh. 9.) Notwithstanding

[15] I did not credit Frasz' denial of Swanson's summary of his union views, because Frasz initially was equivocal in his denial (he denied making a specific statement), and then relied on closed questions and answers to deny making other specific anti-union statements set forth by Respondent's attorney during direct examination. (Tr. 247–248.) Similarly, I did not credit Swanson's efforts to deny that Frasz stated he would close the company if employees unionized. When asked if Frasz made such a statement, Swanson initially responded that Frasz did not make the statement "at that time" (on or about October 11). Upon further questioning, Swanson was only able to deny that Frasz made a specific statement (again, phrased by Respondent's attorney) regarding shutting the company down if employees chose Local 150. (Tr. 417.)

[16] Thorson testified that Swanson never said anything to him about his hard hat. (Tr. 71–72, 78–79, 126.) Since Swanson's and Thorson's testimony on this point were equally credible, I find that the "tie" goes to Respondent (i.e., I have credited Swanson's account on this point), since the Acting General Counsel bears the burden of proving the allegations in the complaint by a preponderance of the evidence. See *Central National Gottesman*, 303 NLRB 143, 145 (1991) (finding that General Counsel did not meet its burden of proof because the testimony that the allegation occurred was equally credible as the testimony that denied the allegation); *Blue Flash Express*, 109 NLRB 591, 591–592 (1954) (same), questioned on other grounds, *Allegheny Ludlum Corp. v. NLRB*, 104 F.3d 1354 (D.C. Cir. 1997). I did not, however, credit Frasz' characterizations of what Swanson told Thorson about his hard hat (see Tr. 153, 255–258), since Frasz has no first-hand knowledge of those conversations.

Swanson's remarks, for the duration of his employment with Respondent, Thorson continued to wear his own hard hat (with the Local 150 stickers, and without the Bunge and RFW safety training stickers) and encourage employees to support Local 150. (Tr. 71, 414–415; see also Tr. 127–129 (Thorson spoke with Frasz by telephone on October 12 to confirm that Frasz wanted him to work during the week of October 14, and neither Frasz nor Thorson raised the issue of Thorson's hard hat, union sweatshirt or Local 150 organizing activities at the worksite.)

7. October 17, 2012 – Thorson leaves the worksite briefly for a personal errand

On October 17, Thorson took a break from his work in the morning to drive to a nearby gas station to buy a soda. Thorson did not speak to Swanson to ask permission to leave the worksite before running his errand.[17] Thorson was away from the worksite for approximately 5–20 minutes. (Tr. 72–75, 137, 420–421.)

It was not uncommon for Respondent's employees to leave the worksite briefly to run personal errands. In particular, some employees regularly left the worksite 10–15 minutes before the lunch break to purchase food at nearby fast food restaurants, but still took the full lunch break after returning to the worksite. In addition, both Swanson and Thorson agreed that on a different day, Thorson (this time with Swanson's permission) ran a personal errand for 10–15 minutes to a nearby gas station to purchase some items. (Tr. 73, 75, 88, 421–422, 438.)

8. October 20, 2012 – Respondent terminates Thorson

On October 20, Frasz called Thorson at home to tell him that he was terminated from his employment with Respondent. Frasz advised Thorson that instead of explaining the reasons for Thorson's termination over the telephone, Frasz would send Thorson a termination letter in the mail. (Tr. 21, 76–77, 131–132, 150, 260–261, 294.) Consistent with that representation, Frasz subsequently sent Thorson a termination letter dated October 26, 2012, that states as follows:

> Erik,
>
> Per my phone call to you Saturday morning, 10–20–12, we are terminating your temporary employment with A.E. Frasz, Inc. for the following reasons:
>
> 1. You were issued a new company approved hard hat that displayed the two safety training stickers required to be displayed on the job site. You wore a different helmet of quality and age unknown that did not display the safety stickers. On October 16, 2012, Dale Swanson, your supervisor, informed you to wear the company issued hard hat. You continued to wear the non-issued hard hat thereafter.
>
> 2. You were observed on 2 occasions by 2 fellow employees taking video during working hours on 10/9/12 and 10/16/12.

[17] Thorson asserted that he did ask Swanson for permission to run an errand on October 17. (Tr. 73–74, 83.) I have not credited Thorson's testimony on that point because once again, Swanson's conflicting testimony was equally credible, and the Acting General Counsel bears the burden of proof. See Findings of Fact (FOF) Section II(C)(6), fn. 16, supra.

3. You left the job site during working hours without asking or notifying your supervisor on 10–17–12.

As you were hired to work this specific job, which is winding down, and the primary machine you ran was moved off the job on 10–12–12, your time with us was limited to a few more weeks. However, we cannot tolerate an employee who seems to have a separate agenda to the work at hand.

Enclosed is your paycheck for the 10–19–12 payday. If you submit your hours outstanding to date, you can pick up your paycheck on Friday, 11–2–12, after having returned your company issued hard hat and 5 shirts in a cleaned condition to our office or the Bunge jobsite.

Drew Frasz,
President

(GC Exh. 9; see also Tr. 77–78.)

At trial, Frasz admitted that the termination letter set forth incorrect dates for when Thorson took video. (Tr. 160–161, 319–321; see also Tr. 79–82; GC Exhs. 10, 16 (showing that Thorson was not at work on October 9).) Frasz also acknowledged that he did not attempt to obtain Thorson's explanation for or responses to any of the alleged misconduct. (Tr. 153, 159, 293–294, 318, 321.) Finally, Frasz explained that Thorson's alleged hard hat infractions provided the impetus for his decision to terminate Thorson, and that while Thorson's alleged infractions regarding taking video and leaving the job site violated rules of common sense, they were not the main reasons for Thorson's termination. (Tr. 258–260; see also Tr. 252 (Frasz did not take any action against Thorson upon learning that he was recording video, other than to state that he did not approve, and to ask Swanson to keep an eye out); Tr. 254 (Frasz merely told Swanson to keep an eye on Thorson upon learning that Thorson left the work site on October 17).)

COMPLAINT ALLEGATIONS

The complaint alleges that Respondent violated Section 8(a)(3) and (1) of the Act by, on or about July 23, 2012, conditioning its offer of employment to Erik Thorson on his withdrawal from Local 150. (GC Exh. 1(c), pars. V(a), (c).)

The complaint also alleges that Respondent violated Section 8(a)(3) and (1) of the Act by, on or about October 20, 2012, discharging Erik Thorson because he assisted Local 150 and engaged in protected concerted activities, and to discourage other employees from engaging in those activities. (GC Exh. 1(c), pars. V(b), (c).)

LEGAL STANDARDS

A. Witness Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an ALJ may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). Credibility findings need not be all-or-nothing propositions — indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB at 622.

B. Section 8(a)(1) Violations

Under Section 7 of the Act, employees have the right to engage in concerted activities for their mutual aid or protection. Section 8(a)(1) of the Act makes it unlawful for an employer (via statements, conduct, or adverse employment action such as discipline or discharge) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7. See *Station Casinos, LLC*, 358 NLRB No. 153, slip op. at 18 (2012).

The test for evaluating whether an employer's conduct or statements violate Section 8(a)(1) of the Act is whether the statements or conduct have a reasonable tendency to interfere with, restrain or coerce union or protected activities. *KenMor Electric Co.*, 355 NLRB No. 173, slip op. at 4 (2010) (noting that the employer's subjective motive for its action is irrelevant); *Yoshi's Japanese Restaurant., Inc.*, 330 NLRB 1339, 1339 fn. 3 (2000) (same); see also *Park N' Fly, Inc.*, 349 NLRB 132, 140 (2007).

C. Section 8(a)(3) Violations

The legal standard for evaluating whether an adverse employment action violates Section 8(a)(3) of the Act is generally set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). To sustain a finding of discrimination, the General Counsel must make an initial showing that a substantial or motivating factor in the employer's decision was the employee's union or other protected activity. *Pro-Spec Painting, Inc.*, 339 NLRB 946, 949 (2003). The elements commonly required to support such a showing are union or protected concerted activity by the employee, employer knowledge of that activity, and animus on the part of the employer. *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009); see also *Relco Locomotives, Inc.*, 358 NLRB No. 37, slip op. at 14 (2012) (observing that "[e]vidence of suspicious timing, false reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices, tolerance of behavior for which the employee was allegedly fired, and disparate treatment of the discharged employees all support inferences of

animus and discriminatory motivation").

If the General Counsel makes the required initial showing, then the burden shifts to the employer to prove, as an affirmative defense, that it would have taken the same action even in the absence of the employee's union or protected activity. *Consolidated Bus Transit, Inc.*, 350 NLRB at 1066; *Pro-Spec Painting*, 339 NLRB at 949; *Bally's Atlantic City*, 355 NLRB 1319, 1321 (2010) (explaining that where the General Counsel makes a strong initial showing of discriminatory motivation, the respondent's rebuttal burden is substantial), enfd. 646 F.3d 929 (D.C. Cir. 2011). The General Counsel may offer proof that the employer's reasons for the personnel decision were false or pretextual. *Pro-Spec Painting*, 339 NLRB at 949 (noting that where an employer's reasons are false, it can be inferred that the real motive is one that the employer desires to conceal — an unlawful motive — at least where the surrounding facts tend to reinforce that inference.) (citation omitted); *Frank Black Mechanical Services*, 271 NLRB 1302, 1302 fn.2 (1984) (noting that "a finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not in fact relied upon, thereby leaving intact the inference of wrongful motive established by the General Counsel"). However, a respondent's defense does not fail simply because not all the evidence supports its defense or because some evidence tends to refute it. Ultimately, the General Counsel retains the burden of proving discrimination. *Relco Locomotives, Inc.*, 358 NLRB No. 37, slip op. at 13.

The *Wright Line* standard does not apply where there is no dispute that the employer took action against the employee because the employee engaged in activity that is protected under the Act. In such a case, the only issue is whether the employee's conduct lost the protection of the Act because the conduct crossed over the line separating protected and unprotected activity. Specifically, when an employee is disciplined or discharged for conduct that is part of the res gestae of protected concerted activities, the pertinent question is whether the conduct is sufficiently egregious to remove it from the protection of the Act. In making this determination, the Board examines the following factors: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was, in any way, provoked by an employer's unfair labor practice. *Relco Locomotives, Inc.*, 358 NLRB No. 37, slip op. at 13 (citing *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979)).

DISCUSSION AND ANALYSIS

A. Credibility Findings

My credibility findings are generally incorporated into the findings of fact that I set forth above. My observations, however, were that the witnesses who testified (Thorson, Frasz, Giese and Swanson) generally were credible except in instances where they strayed into areas about which they lacked personal knowledge (Frasz did this the most often). As noted above, where I could not resolve a conflict in testimony between equally credible accounts, I gave the benefit of the doubt to Respondent, since the Acting General Counsel bears the burden of proof.

B. Did Respondent Violate the Act by Conditioning its Offer of Employment to Thorson on Thorson Providing a Local 150 Withdrawal Card?

It is well established that an employer will run afoul of Section 8(a)(1) of the Act if it requires employees to submit union withdrawal cards as a condition of their hire or continued employment. See *APF Carting, Inc.*, 336 NLRB 73, 79 (2001), enfd. 60 Fed. Appx. 832 (D.C. Cir. 2003); *Lemay Caring Center*, 280 NLRB 60, 68 (1986), affd 815 F.2d 711 (8th Cir. 1987). Respondent does not contest that basic premise here, but rather maintains that Thorson decided on his own to obtain a Local 150 withdrawal card and provide it to Respondent. Respondent adds that to the extent that Frasz did discuss union membership with Thorson when they first met on October 24, 2011, Frasz did so only to raise the question of whether Thorson could be a member of two unions in light of the union-security clause in Respondent's collective-bargaining agreement with Local 707.

I do not find Respondent's arguments to be persuasive. First, it is undisputed that Respondent accepted a copy of Thorson's union withdrawal card when Thorson provided it on his first day of work (July 23, 2012), and it is also undisputed that Respondent retained the withdrawal card in its files. (See FOF, Section C(2), supra.) Those actions alone undermine Respondent's argument that Thorson took it upon himself to provide a Local 150 withdrawal card, because it stands to reason that Respondent would have declined the withdrawal card when Thorson offered it if Respondent indeed believed that the card was unnecessary.

Second, while Respondent did have a union-security clause with Local 707, nothing in that clause prohibited employees from supporting or being members of other unions. Instead, the union-security clause only required employees to become members of Local 707 by the 91st day of their employment (a cutoff time that Thorson never reached). Since nothing in the union-security clause required Thorson to withdraw from Local 150, much less to withdraw well before Respondent hired him and well before the post-hire deadline for Local 707 membership, I did not credit Frasz' characterization of his conversation with Thorson about Thorson's Local 150 membership. (See FOF, Sections A–B, supra.)

Since Respondent's arguments are not supported by the evidence, and the evidentiary record shows that Respondent did indeed condition its job offer to Thorson on his providing a Local 150 withdrawal card, I find that Respondent violated Section 8(a)(1) of the Act as alleged in paragraph V(a) of the complaint.[18]

---

[18] Since it will not materially affect the remedy for this violation, and since the Acting General Counsel implicitly abandoned the issue in its brief (by only arguing that Respondent's request for a Local 150 withdrawal card violated Section 8(a)(1) of the Act, see GC Br. at 9), I decline to rule on whether Respondent also violated Section 8(a)(3) of the Act when it required Thorson to provide a Local 150 withdrawal card at the time of his hire. In that connection, I note that there is no allegation in this case that Respondent refused to hire or discharged Thorson because he failed to obtain a withdrawal card (allegations that would be covered by Section 8(a)(3)), nor is there an allegation that Respondent maintained a policy of not hiring workers unless they provided Local 150 withdrawal cards (also an allegation that would be covered by Section 8(a)(3)). See *Stafford Construction Co.*, 250 NLRB 1469, 1473 (1980) (finding that the employer violated Section 8(a)(3) of the Act by maintaining a policy of refusing to hire applicants because of their membership in the union).

C. Did Respondent Violate the Act when it Terminated Thorson?

The Acting General Counsel's allegation that Respondent violated Section 8(a)(3) and (1) of the Act when it terminated Thorson is covered by the well established *Wright Line* standard for determining whether an employer took an adverse employment action against an employee for discriminatory reasons. Applying that standard, I find that the Acting General Counsel presented sufficient evidence to make an initial showing of discrimination. It is undisputed that Thorson began advertising his support for Local 150 on October 11, 2012, by wearing union attire (a hard hat with Local 150 stickers, and a union sweatshirt), and by speaking to Respondent's employees about the benefits of supporting Local 150. It is also undisputed that Respondent was well aware of Thorson's activities, since Thorson spoke directly to Swanson about supporting Local 150, and Swanson reported Thorson's activities to Frasz. I also find sufficient evidence of anti-union animus, given that: Frasz conditioned its job offer to Thorson on Thorson providing a Local 150 withdrawal card; Frasz stated (as communicated to Thorson by Swanson) [19] that he would never go union and would rather go out of business before Respondent went union; and Respondent terminated Thorson less than two weeks after he began speaking to Respondent's employees about supporting Local 150 (suspicious timing). *North Carolina License Plate Agency #18*, 346 NLRB 293, 294 (2006), enfd. 243 Fed. Appx. 771 (4th Cir. 2007) (suspicious timing of adverse employment action can provide strong evidence of an employer's animus).

Since the Acting General Counsel made an initial showing of discrimination, the burden shifts to Respondent to show, as an affirmative defense, that it would have terminated Thorson even in the absence of his union activities. Although Respondent asserted three reasons for Thorson's termination in its October 26, 2012 letter to Thorson, at trial Respondent effectively abandoned two of those reasons[20] and zeroed in on one specific rationale for Thorson's discharge – that Thorson wore a hard hat that did not have the RFW and Bunge safety training stickers attached, even after Swanson advised him of that problem on October 11 and 16. (See FOF, Section II(C)(8), supra.)

I find that Respondent's proffered explanation for Thorson's termination is not credible, and is a pretext for discrimination. First, I note that an inference of pretext is supported by the fact that Frasz admitted that he made no effort to speak to Thorson to investigate the merits of the alleged infractions. Frasz was willing to hear employee S.S.'s side of the story when Bunge

[19] I note that Swanson himself was one of Respondent's supervisors as defined by the Act. See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006) (outlining the standard for supervisory status under the Act). Swanson served as Respondent's underground superintendent at the Bunge worksite, and Respondent itself identified Swanson as a supervisor in Thorson's termination letter. (See FOF, Section C(8), supra.)

[20] Specifically, Respondent abandoned the following discharge rationale: (a) that Thorson took video during working hours on two occasions; and (b) that Thorson left the worksite on October 17 without notifying his supervisor (Swanson). Respondent's decision to abandon those reasons is understandable, given that Respondent initially tolerated Thorson's photo taking; Swanson resolved the video recording issue when it became a problem by simply telling Thorson to stop taking photographs and videos on the job; and, regarding leaving the worksite, Respondent tolerated employees leaving the worksite briefly (and without requesting permission) to run personal errands like picking up something to eat before the lunch break. (FOF, Section II(C)(7)–(8).)

cited S.S. for a safety glasses infraction, but he did not extend the same consideration to Thorson when Thorson's hard hat stickers became an issue only a few weeks later. See *Relco Locomotives, Inc.*, 358 NLRB No. 37, slip op. at 14 (2012) (evidence that the respondent failed to adequately investigate alleged misconduct supports an inference of animus and discriminatory motivation).

Second, I find that Respondent has offered shifting (and inaccurate) descriptions of the alleged infractions that led to Thorson's termination. For example, Respondent incorrectly asserted that Thorson made video recordings at the worksite in October, when Thorson in fact made those recordings earlier, and Respondent addressed the issue by simply telling him to stop. Additionally, Respondent cited Thorson in his termination letter for wearing a noncompany hard hat of unknown age and quality despite allowing other employees to engage in that conduct, but then abandoned that aspect of Thorson's alleged hard hat infraction at trial (focusing instead on the safety training stickers for the hard hat). See *Master Security Services*, 270 NLRB 543, 552 (1984) (animus demonstrated where an employer used a multiplicity of reasons to justify disciplinary action).

And third, I find that although Thorson's failure to display the proper safety stickers on his hard hat (despite two verbal reminders to do so) arguably warranted some corrective action, it did not supply a basis for termination given Respondent's disciplinary practices. The evidentiary record shows that Respondent followed very informal and lenient disciplinary practices. For most safety infractions on the job, and especially "technical" violations (i.e., violations where an employee broke a safety rule, but there was no or very limited actual risk of injury), Respondent did not issue discipline of any kind, but rather found it sufficient to verbally remind the employee of the applicable rule and proper procedures. Indeed, Respondent followed that approach when: employees (including Thorson before he began encouraging employees to support Local 150) momentarily neglected to put their hard hats on; Bunge cited employee S.S. for removing his safety glasses to clean them because they were covered with muddy water; and Thorson took unwelcome photographs/video at the worksite. Respondent's disciplinary practices were in fact so informal that the only written disciplinary action in the evidentiary record is from 2003, when Respondent cited S.S. for multiple deficiencies and infractions (including running the Bobcat in high gear despite being told twice not to do so), but still only took the limited step of issuing a written warning. However, when Thorson began organizing for Local 150, Respondent's leniency disappeared, and it terminated Thorson for not displaying safety stickers as verbally advised, even though Respondent had only issued a written warning when confronted with similar circumstances in the past (with employee S.S., who also did not respond to verbal corrections). See *Medic One, Inc.*, 331 NLRB 464, 475 (2000) (evidence of departures from past practices, tolerance of behavior for which the employee was allegedly fired, and disparate treatment of the discharged employee all supports an inference of animus and discriminatory motivation).

Given the strength of the Acting General Counsel's initial showing of discrimination, and the evidence demonstrating that Respondent's proffered reasons for Thorson's termination (as set forth in Thorson's termination letter and at trial) were pretexts for discrimination, I find that Respondent terminated Thorson for discriminatory reasons in violation of Section 8(a)(3) and (1) of the Act, as alleged in paragraph V(b) of the complaint.

CONCLUSIONS OF LAW

1. By conditioning its June 23, 2012, offer of employment to Erik Thorson on his withdrawal from Local 150, Respondent violated Section 8(a)(1) of the Act.

2. By discharging Erik Thorson on or about October 20, 2012, because he engaged in union and protected concerted activities, Respondent violated Section 8(a)(3) and (1) of the Act.

3. The unfair labor practices stated in conclusions of law 1–2 above are unfair labor practices that affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

The Respondent, having discriminatorily discharged employee Erik Thorson, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010).

For all backpay required herein, Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate the discriminatee for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Latino Express, Inc.,* 359 NLRB No. 44 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER

Respondent, A.E. Frasz, Inc., Elburn, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Conditioning offers of employment to job applicants on the applicant withdrawing from the International Union of Operating Engineers, Local 150, AFL-CIO or any other union.

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

(b) Discharging or otherwise discriminating against any employee for supporting the International Union of Operating Engineers, Local 150, AFL-CIO or any other union.

(c) Discharging or otherwise discriminating against any employee for engaging in union or concerted activities protected by Section 7 of the Act.

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

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

(a) Within 14 days from the date of the Board's Order, offer Erik Thorson full reinstatement to his former job or, if his job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Erik Thorson whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge of Erik Thorson, and within 3 days thereafter notify Erik Thorson in writing that this has been done and that the discharge will not be used against him in any way.

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

(e) Within 14 days after service by the Region, post at its facilities in Elburn, Ohio, copies of the attached notice marked "Appendix."[22] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, the notice shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Further, the Respondent shall mail copies of the attached notice, at its own expense, to all current and former employees who were employed by the Respondent at any time from the onset of the unfair labor practices found in this case until the date of this

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

decision. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.[23]

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

Dated, Washington, D.C. May 28, 2013

GEOFFREY CARTER
Administrative Law Judge

[23] I am requiring Respondent to mail notices because the trial testimony indicated that many employees do not work at Respondent's Elburn, Illinois facility, but rather simply report directly to Respondent's various worksites.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT condition our offers of employment to job applicants on the applicant withdrawing from the International Union of Operating Engineers, Local 150, AFL-CIO or any other union.

WE WILL NOT discharge or otherwise discriminate against any employee for supporting the International Union of Operating Engineers, Local 150, AFL-CIO or any other union.

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in union or concerted activities protected by Section 7 of the National Labor Relations Act (the Act).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

WE WILL make Erik Thorson whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, plus interest compounded daily.

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

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate quarters.

WE WILL compensate Erik Thorson for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

A.E. FRASZ, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: **Error! Hyperlink reference not valid.**

The Rookery Building, 209 South LaSalle Street, Suite 900, Chicago, IL 60604-5208
(312) 353-7570, Hours: 8:30 a.m. to 5 p.m.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (312) 353-7170.