

**Porta Systems Corporation and International Industrial Production Employees Union, Cases 29-CA-5445, 29-CA-5534, and 29-CA-5718**

September 19, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO  
AND TRUESDALE

On May 24, 1978, Administrative Law Judge John F. Corbley issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

We agree with the Administrative Law Judge's conclusion that the attendance at various union meetings held at a church auditorium and a bowling alley by Leadpersons Keller, Schane, and Pantano, all of whom possessed supervisory authority, constituted unlawful surveillance in violation of Section 8(a)(1) of the Act. The meetings were held on November 20 and December 16, 1976, sometime in February 1977, and May 5, 1977. Keller attended all four meetings and Schane and Pantano attended the first one. Prior to the first meeting, Pantano and Schane<sup>2</sup> had exercised the authority to direct employees to refrain from becoming union members or giving support to it.<sup>3</sup> Therefore, the employees were aware prior to the meetings that leadpersons had such disciplinary authority. Thus, we agree that their attendance at the meetings was coercive and constitutes unlawful surveillance.

We do not agree, however, with the Administrative Law Judge's conclusion that Foreman Taylor and Leadperson Schane engaged in unlawful surveillance when they watched Christopher Porter and Christina

Smith Porter passing out union leaflets and talking to union organizers in Respondent's parking lot.

The Board has held that "[u]nion representatives and employees who choose to engage in their union activities at the Employer's premises should have no cause to complain that management observes them."<sup>4</sup> Since the employees herein passed out leaflets and met with union organizers on Respondent's own parking lot we find that no unlawful surveillance occurred.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Porta Systems Corporation, Syosset, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

<sup>4</sup> *Milco, Inc., et al.*, 159 NLRB 812, 814 (1966); *Chemtronics, Inc.*, 236 NLRB 178 (1978); *Larand Leisurelies, Inc.*, 213 NLRB 197, 205 (1974); *Mitchell Plastics, Incorporated*, 159 NLRB 1574, 1576 (1966).

DECISION

STATEMENT OF THE CASE

JOHN F. CORBLEY, Administrative Law Judge: A hearing was held in this case on November 28, 29, and 30, 1977 at Brooklyn, New York, pursuant to: a charge filed (in Case 29-CA-5445) by International Industrial Production Employees Union (hereinafter referred to as the Union) on February 3, 1977, and served by registered mail upon Respondent on or about February 6, 1977; a charge filed by the Union (in Case 29-CA-5534) on March 28, 1977, and served by registered mail upon Respondent on or about April 1, 1977; on a charge filed by the Union (in Case 29-CA-5718) on June 27, 1977, and served by registered mail upon Respondent on or about June 29, 1977; on a complaint and notice of hearing issued by the Regional Director for Region 29 of the National Labor Relations Board on April 29, 1977; on an order consolidating cases, consolidated complaint, and notice of hearing issued by the Regional Director on June 14, 1977, and on an order further consolidating cases, amended consolidated complaint, and notice of hearing issued by the Regional Director on July 27, 1977, which complaints and orders consolidating cases were also duly served upon Respondent. The complaint, consolidated complaint, and the amended consolidated complaint (all of which will sometimes be referred to hereinafter simply as the complaint), as further amended on the record at the hearing, allege that Respondent violated Section 8(a)(1) of the Act, by: the assistance of its supervisors and agents in the preparation and circulation of a petition opposing the Union; by permitting the circulation of this same petition by employees on its premises during working

<sup>1</sup> The Respondent excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>2</sup> The record does not reveal the precise day in November that Schane directed employees to cease engaging in union activities.

<sup>3</sup> The Administrative Law Judge found both these instances to be violations of Sec. 8(a)(1).

hours; by threatening employees to refrain from discussing, joining, or giving assistance to the Union; by keeping union meetings under surveillance; by advising employees that Respondent would withhold wage increases or other benefits if the employees joined or assisted the Union; and by interrogating employees by pinning "Vote No" buttons on them<sup>1</sup> and that Respondent violated Section 8(a)(1) and (3) of the Act by: discharging nine employees on January 26, 1977, and thereafter refusing to reinstate them in order to discourage union membership and activities and by maintaining a 5-percent absentee rule since a date on or before January 26, 1977, the purpose of which is likewise to discourage union membership or activities. In its answer to the complaint, which was also duly served and amended on the record at the hearing, Respondent has denied the commission of any unfair labor practices.

For reasons which will appear hereinafter, I find and conclude that Respondent has violated the Act essentially as alleged in the complaint.

At the hearing the General Counsel and Respondent were represented by counsel. All parties were given full opportunity to examine and cross-examine witnesses, to introduce evidence, and to file briefs. The General Counsel made a closing statement. Respondent waived this right.<sup>2</sup> Briefs have subsequently been received from the General Counsel and Respondent and have been considered.

Upon the entire record<sup>3</sup> in this case, including the briefs and from my observation of the witnesses, I make the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

At all times material herein Respondent has maintained its principal office and place of business at 6901 Jericho Turnpike in the Town of Syosset, State of New York, hereinafter referred to as the Syosset plant, where it is, and has been at all times material herein, engaged in the manufacture, sale, and distribution of electronic products and related products.

During the year preceding the amended consolidated complaint issued on July 27, 1977, which one year period is representative of its annual operations generally, Respondent in the course and conduct of its business operations, manufactured, sold, and distributed at its Syosset plant products valued in excess of \$50,000—of which products valued in excess of \$50,000 were shipped from said plant in interstate commerce directly to States of the United States other than the State of New York in which it is located.

<sup>1</sup> A further allegation that Respondent increased benefits to induce employees to refrain from assisting the Union was dismissed from the bench, in the absence of proof, on the basis of a joint motion of the parties.

<sup>2</sup> The Charging Party's representative had earlier waived participation in this phase of the hearing.

<sup>3</sup> On May 1, 1978, I issued upon the parties an order to show cause to me in writing why the record in these proceedings should not be corrected in certain particulars. No party having responded unfavorably within the time allotted, certain errors in the record are hereby noted and corrected.

Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. Respondent's Hierarchy

The complaint alleges, and the answer as amended admits, that the following named individuals are, and have been at all times material herein, agents of Respondent, acting on its behalf, and supervisors within the meaning of Section 2(11) of the Act: Paul De Luca, president; Joan Newlin, personnel manager; Otto Gutbrod, foreman; and Harry Taylor, foreman.<sup>4</sup>

I further conclude that Robert S. Dietz, production foreman, was an agent of Respondent and a supervisor within the meaning of Section 2(11) of the Act at all times material herein, based on his position which was, at all times material, similar to that of admitted agent and supervisor Harry Taylor, his authority responsibly to direct as many as 100 employees, his role in discharging employees including half of those discharged on January 26, 1977, as will appear (which role I conclude was that of effective recommendation involving the use of independent judgment), and his giving of written warnings to employees which I further conclude embraced the authority to discipline them.

I likewise conclude that Michael Tancredi, Respondent's controller, is an agent of Respondent, acting in its behalf, for, as Tancredi testified, he is responsible for Respondent's personnel policy.

The complaint further alleges, but Respondent denies, that Olga Evers, Nancy Pantano, and Mary Schane, Elizabeth Keller were agents of Respondent and its supervisors within the meaning of the Act at all times pertinent hereto.

I conclude that each of these individuals were agents of Respondent, acting on its behalf, and its supervisors within the meaning of Section 2(11) of the Act at all times material herein.

Employees generally are assigned to work under one leadperson.<sup>5</sup> The four leads in question have overseen the work of as many as 15 or 20 to 65 rank and file employees.<sup>6</sup> The work relationship of each leadperson to her foreman (Taylor and Dietz) and the manner in which leadpersons carry out their work are almost identical.<sup>7</sup> Leadpersons make work assignments to the employees,<sup>8</sup> and see to it that the work is done within a period of time.<sup>9</sup> Leadpersons also

<sup>4</sup> The positions of Newlin, Gutbrod, and Taylor are shown by the record.

<sup>5</sup> Newlin, the personnel manager, so admitted.

<sup>6</sup> In January 1977, Foreman Dietz had 100 employees and leads under his supervision. Foreman Taylor began with 30 employees in October 1976 and had about 90 employees and leads working under him in November 1977.

<sup>7</sup> Schane, who had worked under Taylor and Dietz, and has also worked with Evers, Keller, and Pantano, credibly so testified.

<sup>8</sup> Taylor so admitted. Employee Schaller credibly so testified.

<sup>9</sup> I base this finding on a composite of the credible testimony of Taylor and Schane on the point.

make certain that employees have enough work to keep them busy.<sup>10</sup>

While Respondent has set times when employees will be considered for raises (e.g., 2 months, 6 months, and 1 year after hire), such raises are not automatic.<sup>11</sup> Because the leadperson is more familiar with the work of each employee than is the foreman, foreman consult with the leadpersons about the performance of each employee due for a raise.<sup>12</sup> The recommendations of the leadpersons are generally followed in awarding the pay increases.<sup>13</sup>

Leadpersons also select employees to work overtime.<sup>14</sup> In so doing they consider the capability of individual employees to perform the overtime work required.<sup>15</sup> Leadpersons also check for lateness and absenteeism.<sup>16</sup>

Leadpersons give warnings to employees<sup>17</sup> and have authority to maintain plant discipline.<sup>18</sup>

Leadpersons also criticize the performance of employees working with them and so advise their foremen.<sup>19</sup>

Based on the foregoing, I conclude that each of the leadpersons in question responsibly directs the work of the employees assigned to her, effectively recommends wage increases for such employees, has the authority to—and does—discipline these employees, and assigns employees to regular and to overtime work—all in a manner requiring the exercise of independent judgment. I, accordingly, conclude that each is a supervisor within the meaning of Section 2(11) of the Act and enjoyed that status at all times pertinent hereto.<sup>20</sup> Based on said supervisory status and particularly the authority of leadpersons to give warnings and maintain plant discipline, I further conclude that they are agents of Respondent acting in its behalf at all times pertinent hereto.

<sup>10</sup> Pantano credibly so testified.

<sup>11</sup> Newlin so admitted.

<sup>12</sup> Schane, Pantano, and Evers credibly so testified.

<sup>13</sup> Schane credibly so testified.

<sup>14</sup> Keller, Evers, and Dietz credibly so testified.

<sup>15</sup> Dietz so admitted.

<sup>16</sup> Evers so testified. Schane assists in maintaining such records.

<sup>17</sup> Schane credibly so testified.

<sup>18</sup> Schane told alleged discriminatee Bradeen to put away a union card and she so directed him because she is "a lead."

<sup>19</sup> Pantano credibly so testified.

<sup>20</sup> My findings as to the authority of the leadpersons is based largely on their testimony as to their duties in which they did not always state the times when they possessed or exercised such authority. I have further concluded that they possessed and exercised such authority at the time in question here because, in part, they so testified and also because there is no indication that the authority of leadpersons has changed to become greater or lesser since the period involved herein. My findings, *supra*, are also consistent with the responsibilities of leadpersons as outlined in the prehearing affidavits executed by Evers, Schane, Keller, and Pantano at times very close in time to the events in question here.

I specifically discredit any testimony by any of these same individuals made in an effort to disavow these affidavits. All signed them and swore to their veracity. In seeking to avoid responsibility for these affidavits, I found all of these witnesses evasive, argumentative, and entirely unconvincing in their demeanor and in the reasons they claimed why individual statements in the affidavits could not be attributed to them. These efforts bordered on the absurd. For example, Keller testified she could not read a number of words on the affidavit when it was presented to her at the trial. However, it developed later that she wears glasses to read whereas her testimony, *supra*, that she could not read certain words in her affidavit was given with a straight face—sans her glasses. At another point in her testimony she did concede, however, that she read the whole affidavit before signing it.

## B. Background and Sequence of Events

On or about October 1976, the Union began its campaign to organize Respondent's employees. This included the circulation of union leaflets and union cards. Employee participants in the Union's campaign included alleged discriminatees Timothy Bradeen, Christopher Porter, and Christina Smith Porter. Union meetings were held on November 20, 1976, and December 16, 1976.

On January 3, 1977, the Union demanded that Respondent recognize it as the collective-bargaining representative of Respondent's employees, but Respondent declined to recognize the Union.

On January 4, 1977, a petition, in Case 29-RC-3687, was filed by the Union for a Board-conducted election. This was followed on January 17, 1977, by a Stipulation for Certification Upon Consent Election and the election was scheduled to take place on February 25, 1977.

On January 26, 1977, nine<sup>21</sup> employees were discharged purportedly for exceeding a 10-percent absentee rate. No 10-percent absentee rule had been established prior to that time by Respondent. The discharge of these nine individuals and Respondent's subsequent failure to reinstate eight of them are alleged as violations of Section 8(a)(1) and (3) of the Act.

The complaint further alleges in this same regard that Respondent has maintained a 5-percent absence discharge rule since on or before January 26, 1976, in violation of Section 8(a)(3) and (1) of the Act.

The election scheduled for February 25, 1977, was blocked by the filing of the first charge herein on February 3, 1977, alleging that the discharges which occurred on January 26, 1977, were unlawful.

A request to proceed was later filed by the Union and the election was rescheduled for July 1, 1977, but the filing of the later charges in March and June 1977 have further blocked the holding of an election and as of November 1977 (when the hearing herein was held) no election has been conducted.

In February 1977, Paul De Luca, Respondent's president (and now its board chairman) delivered a speech to the employees at the plant in which he opposed the Union. One aspect of this speech is alleged by the complaint as a violation of Section 8(a)(1) of the Act.

Also in February 1977, another union meeting was held.

Beginning on or about February 15, 1977, and thereafter, an antiunion petition was circulated at the plant. The alleged assistance by supervisors in the preparation and circulation of this petition and the authorization of supervisors to employees to engage in the circulation of the petition are, separately, alleged as violations of Section 8(a)(1) of the Act.

On various dates from October 1976 to June 1977 the complaint alleges that Respondent through its supervisors and agents warned employees to refrain from discussing the Union in violation of Section 8(a)(1) of the Act.

On March 28, 1977, another unfair labor practice charge was filed against Respondent by the Union.

<sup>21</sup> One discharge, that of Robin Cizek, was rescinded shortly thereafter, in view of the illness of Cizek.

On or about May 5, 1977, another meeting was held. The complaint alleges, *inter alia*, that attendance by Respondent's supervisors at this and the earlier union meetings constituted surveillance in violation of Section 8(a)(1) of the Act.

In June 1977, "Vote No" buttons were distributed at the plant. The complaint alleges that supervisors participated in this effort in violation of Section 8(a)(1) of the Act.

The third charge herein was filed by the Union on June 27, 1977.

### Concluding Findings

#### 1. Alleged warnings by supervisors to employees to refrain from becoming members of the Union or giving support to it (paragraph 11 of the amended consolidated complaint)

Respondent has an informal "no solicitation" rule that employees are not permitted to engage in any type of solicitation during company time.<sup>22</sup> The rule, according to Respondent's president, De Luca, does not forbid solicitation during off duty hours or during breaks or lunch.

Although the rule is not written, employees are aware of it.<sup>23</sup>

In October 1976, Leadperson Pantano observed employee Alma Bradeen speaking with some new employees about the Union on break time. Pantano told Bradeen not to bother the new employees nor to talk to them about the Union. Bradeen responded that she could do so on her time. To this Pantano rejoined that unions were "no good" because her husband was the officer of one—and then Pantano walked away.<sup>24</sup>

On a day in November 1976, before work began, Timothy Bradeen (now an alleged discriminatee) was showing some employees, including Christopher Porter (now also an alleged discriminatee), some union cards at the plant. Mary Schane, upon seeing this, came up and said "You can't be talking this—ton Company premises." Bradeen responded that he was allowed to do so on his own time. Schane shrugged her shoulders and walked away.<sup>25</sup>

In May 1977, employee Gerard Jones spoke to Supervisor Gutbrod and told Gutbrod that Jones and employees Escabedo and Monk were part of the union committee and were petitioning for an election. Gutbrod said that he would fire them all and then Gutbrod walked upstairs. A few minutes later Gutbrod returned, much calmed down, after apparently speaking with higher authority, and told Jones that Gutbrod didn't know "they" knew about it. Gutbrod asked if the employees desired to have a "sick day" if they were going to be out. But Jones said they would not be sick but were going to the Labor Board. When the employees returned from the instant trip, Gutbrod asked them if they had a good time.

<sup>22</sup> De Luca credibly so testified, as did Michael Tancredi, Respondent's controller.

<sup>23</sup> De Luca credibly so testified. This testimony is confirmed by the credible testimony of employee Jones of a warning to him to this effect in May 1977 by his Supervisor Gutbrod.

<sup>24</sup> Alma Bradeen credibly so testified without dispute.

<sup>25</sup> Timothy Bradeen and Christopher Porter credibly so testified. Schane essentially so admitted.

In June 1977, Jones again told Gutbrod that Jones would be going to the Labor Board. Gutbrod replied that sooner or later Jones would be on the "10 percent absentee list." Jones knew that employees on that list are discharged. (The nine employees discharged on January 26, 1977, were discharged when Respondent claimed that their absences had exceeded 10 percent.)<sup>26</sup>

As noted, Respondent's no-solicitation policy does not bar union activities during nonwork time at the plant.<sup>27</sup> Yet as I have found, Alma Bradeen, Timothy Bradeen, and Christopher Porter were warned by Leadpersons Pantano and Schane not to engage in such activities during nonwork time at the plant. In so warning Alma Bradeen, Pantano told Alma that unions were no good. Schane's warning to Timothy and Christopher was given in anger.

I, accordingly, conclude that said warnings by Pantano and Schane had no justifiable business basis and that said warnings were an attempt to coerce the Bradeens and Porter to refrain from the exercise of their Section 7 right to engage in union activities. Said warnings, therefore, violated Section 8(a)(1) of the Act.

I further conclude that Gutbrod, at least in the second incident involving Jones recounted above, threatened Jones with discharge (being put on the 10-percent list) because Jones was engaged in his Section 7-protected right to engage in the union activity of seeking a Board-conducted election and that Respondent also thereby violated Section 8(a)(1) of the Act.

#### 2. Alleged surveillance (paragraph 12 of the amended consolidated complaint)

Leadperson Elizabeth Keller attended all of the Union's meetings (i.e., November 20 and December 16, 1976, the one in February 1977, and that of May 5, 1977). Leadpersons Schane and Pantano attended the first one.<sup>28</sup> Schane admitted that her attendance was based on her curiosity to "know the names—the nature of it."

These meetings were held, variously, at a bowling alley and a church auditorium. I have found Schane, Keller, and Pantano to be supervisors within the meaning of the Act at all times pertinent hereto.

In October 1976 Foreman Taylor and Schane watched Christopher Porter and Christina (nee Smith) Porter passing out union leaflets and talking to union organizers in the Respondent's parking lot.<sup>29</sup>

I conclude that by the attendance of Schane, Pantano, and Keller at union meetings on the dates indicated and by the acts of Taylor and Schane in observing the employees speaking with union organizers and passing out leaflets outside the plant in October 1976, Respondent has engaged in surveillance of the union activities of its employees in violation of Section 8(a)(1) of the Act.

<sup>26</sup> Jones credibly so testified without dispute. Gutbrod did not testify.

<sup>27</sup> Indeed it would be presumptively unlawful if it did. *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615, 617 (1962).

<sup>28</sup> Alma Bradeen credibly so testified without dispute. Schane and Keller so admitted.

<sup>29</sup> The Porters credibly so testified without dispute. Taylor admitted observing Timothy Bradeen speaking to union organizers but the date of this incident was not shown.

3. The discharge of nine employees on January 26, 1977; the subsequent failure to reinstate them; the continued maintenance of the 10-percent absenteeism discharge rule (paragraphs 15-19 of the amended consolidated complaint)

On January 26, 1977, Respondent discharged the following named employees:

Timothy Bradeen	Carol Palame
Gary Christianson	Christopher Porter
Robin Cizek <sup>30</sup>	Christina Smith <sup>31</sup>
Otto Credle	Loretta Zaza
Janice D'Adolph	

This is the largest number of employees ever discharged before or since on a single day.

Later on January 26, 1977, Newlin, who had notified Cizek that Cizek was discharged, spoke telephonically with Cizek and, still later, on the same date, mailed Cizek disability forms for Cizek's doctor to complete.

On February 3, 1977, Newlin sent Cizek a letter formally canceling Cizek's telegraphic notice of termination. Cizek then went on disability, was restored to health, and returned to work on May 10, 1977. Cizek resigned on July 15, 1977.

Respondent has subsequently refused and failed to reinstate the other eight employees discharged on January 26, 1977.<sup>32</sup>

Three of the nine individuals discharged on January 26, 1977, had actively participated in the union's campaign—Timothy Bradeen, Christopher Porter, and Christina Smith Porter, as I have already mentioned in connection with my Section 8(a)(1) violation findings, *supra*. Based on my findings of surveillance and warnings to employees, *supra*, it is evident, and I find, that Respondent was well aware of the union activities of these three employees.

The General Counsel urges, essentially, that these three and the remaining six alleged discriminatees were the victims of a mass discharge designed to rid the Respondent of the known union adherents and to demonstrate to all the employees in a manner which could be expected to chill any interest that they might have had in the Union that Respondent can, with impunity, control the tenure of its personnel. Arguing in support of this second claim, the General Counsel observes that Respondent has opposed the Union at all pertinent times. He also notes that the mass discharge took place shortly before the date originally scheduled for the holding of a Board-conducted election.

Respondent, for its part, urges that these employees were discharged for a legitimate business reason—absenteeism in excess of 10 percent (whereas the industry average is 4 percent). It says that the timing was occasioned by a need to cut the absentee rate in order to carry out the production schedule which had just come out for the new calendar

quarter (January-March 1977). It urges that two of the employees discharged were probationary. It notes that the discharge of Cizek was rescinded when her disability was ascertained. It further notes that since there is no evidence of union activities on the part of any alleged discriminatee (except T. Bradeen, Porter, and Smith-Porter) there is no basis upon which to conclude that the 10-percent standard was applied discriminatorily, i.e., there is no evidence it was applied to union adherents on the one hand and not applied to employees who opposed the Union on the other.

I reject Respondent's defenses and find merit in the General Counsel's contentions.

I will address the defenses first.

The discharges occurred after a meeting of management personnel on January 24 or 25, 1977, which included Personnel Manager Newlin, Foremen Dietz and Taylor, Controller Tancredi, Carney (Respondent's vice president of manufacturing), and Ganzi, Respondent's plant manager. Prior to this meeting, Respondent had no policy standard in respect to the number of absences which would result in discharge, although supervisors, individually, had exercised their discretion, on an *ad hoc* basis, in seeking the discharge of employees whose absentee rate was considered unacceptable.

The matter of absenteeism was discussed at this management meeting along with lateness and also employee drinking. It was generally agreed at the meeting that 10 percent seemed to be a large absentee rate and that employees would be selected for discharge with that as a cut off point. The lateness and absentee records kept by the supervisors were then reviewed with particular attention to records of employees who had been absent lately. Carney did the rough calculations from these cards which resulted in the preparation of a list of employees (and their absenteeism percentages—along with lateness figures) which included those discharged that day (along with Debbie Grippe, who was, apparently, disabled at the time). The decision was then made to discharge all but Grippe—and only on the basis of absenteeism (not lateness or drinking). The decision was carried out on January 26.<sup>33</sup>

As I have previously mentioned, Respondent argues that the development of this new absentee policy was occasioned by the need to cut the absentee rate in order to meet Respondent's newly issued production schedule for the winter (January-March 1977). To support this contention Respondent introduced testimony by its two principal foremen, Taylor and Dietz, and by Newlin, that the meeting was called at the behest of Dietz and Taylor to see if something could be done by management to support Dietz and Taylor in carrying out their responsibilities under the new production schedule.

I reject this contention for two reasons: (1) the testimony of Taylor and Dietz does not jibe (nor is the testimony of either consistent with the logic of events) and (2) the testimony of Dietz and Taylor as to the timing of, and reasons for, the meeting at which the new policy was formulated is at odds with the testimony of Tancredi, Respondent's controller.

<sup>30</sup> Respondent's answer, as amended, admits the discharge of all these employees except Cizek. However, as is shown by Exh. 6 (a telegram from Respondent to Cizek, dated January 26, 1977, which was authorized by Personnel Manager Newlin), Cizek was terminated effective that date.

<sup>31</sup> As I have noted, Christina Smith is now Christina Porter.

<sup>32</sup> The answer as amended so admits. The complaint, as amended, excludes Cizek from its "refusal to reinstate" allegation.

<sup>33</sup> These findings are based on the credible testimony of Newlin in this regard. Dietz and Taylor participated in the decision.

Taylor testified that the new production schedule was passed out in the third or fourth week of December 1976. Dietz, on the other hand, testified that the schedule was passed out in early January 1977. In Dietz's recollection, he and Taylor then asked for a meeting which was held promptly upon their request. He testified that he did not realize that the meeting was not held until late January 1977 (it was held on January 24 or 25).

Dietz's testimony (besides being contrary to that of Taylor) does not make sense. For it would be poor, if not useless, management to pass out a work schedule sometime in the first week of January, where the scheduled work would have begun (effective January 1) before or at about the same time as the schedule was passed out. Hence I credit the testimony of Taylor that the schedule was passed out in the third or fourth week of December 1976 (i.e., before the new quarter began). However, I attach no weight to the testimony of either Dietz or Taylor or that of Newlin that the management meeting on January 24 or 25 was held in response to their problems of meeting the production schedule in the face of absenteeism. For absenteeism had been a continuing plant problem even before the schedule had been passed out,<sup>34</sup> yet no action was taken in regard to absenteeism until a month after that schedule was published, i.e., the action did not come until after the advent of the Union and shortly before a scheduled Board-conducted election.

In discrediting this testimony, I further note that Tancredi, Respondent's controller, who is responsible for Respondent's personnel policies and whom I have found to be an agent of Respondent, testified to a different reason for the meeting and the subsequent discharges.

He said that prior to the coming of the Union, Respondent followed the practice of discharging employees whenever their absenteeism records became too serious. However, he said this policy was temporarily halted in mid-November 1976, after the Union had begun its organizing drive, for the reason that Respondent was unaware what rights it had to discharge employees while such a drive was going on. Tancredi continued that Respondent resumed its normal practice when advised by counsel that, notwithstanding the Union's organizing drive, Respondent could continue to do business as it traditionally had. He said that an evaluation of the entire employee complement was thereafter accomplished and a decision made to discharge the instant employees at the January 24 or 25 meeting.

Tancredi explained the accumulation on the nine employees, with purportedly bad absentee records, on the basis that Respondent had been holding back any discharge action for several months during the period while it was uncertain of its legal rights, as described above.

Not only is Tancredi's reason different from that of Taylor, Dietz, and Newlin but, contrary to Tancredi, Respondent did not resume its normal practice in this regard as it had existed prior to the union campaign. That practice was for the supervisors individually to initiate the discharge action on an *ad hoc* basis. Instead, as the result of the meeting of January 24 or 25, Respondent embarked upon a newly inaugurated *across-the-board* absentee-percentage discharge policy.

<sup>34</sup> Dietz admitted it was an "age-old problem."

Further questions are raised in respect to the application of the 10-percent policy to the employees in view of the disparate treatment of at least one known union adherent (Bradeen) and an inaccurate calculation to the detriment of another known union adherent, Christopher Porter.

Thus, when Debbie Grippe, who had a 30-percent absentee rate, was told on or about January 26, 1977, that she was going to be discharged, Grippe responded she had been sick much of the time.<sup>35</sup> Upon learning this management gave consideration to the fact that she had called in sick, and she was not discharged.<sup>36</sup> No consideration was given, however, to the sickness excuses by Timothy Bradeen, even though his mother had reported to Mary Schane at least five times that Timothy was out because of sickness. Since Bradeen's absentee rate was only 13 percent, subtraction of these five reported illnesses would have lowered Timothy Bradeen's unexcused rate to 8 percent.

Christopher Porter and Timothy Bradeen were both roughly calculated at 100 days employment whereas Porter began work on August 23, 1976 and Bradeen began on September 7. If Porter's full employment had been accurately computed, the calculation of his absenteeism, which Respondent had determined on the basis of rough figures to be exactly 10 percent, would have been reduced to below 10 percent. This reduction would have eliminated Porter from the discharge list.

In view of all the foregoing, I reject Respondent's reasons that the 10-percent absentee rate discharge policy was developed for legitimate business reasons.

I rather conclude that this 10 percent rule was established by Respondent arbitrarily as a basis to discourage the union activities of all its employees and to provide a pretext for the discharge of three known and active union adherents (Porter, Smith-Porter, and T. Bradeen) and that in applying said rule to the nine employees discharged on January 26, 1977, Respondent has violated Section 8(a)(1) and (3) of the Act.<sup>37</sup>

In holding that Respondent established the rule as a basis upon which to discriminate against its employees in order to discourage their union activities, I deem it significant that the rule was laid down and implemented at a time when the Union was campaigning to organize the employees and was also seeking to win a scheduled Board-conducted election among them. By discharging employees during such a campaign—and graphically demonstrating who has the whip hand in determining their tenure—Respondent, if it is not called to account, could obviously thwart the campaign. For given the timing of the establishment of the rule,<sup>38</sup> the normally foreseeable effect of the discharges, which had to result from its application, was to instill a doubt in the minds of all Respondent's employees

<sup>35</sup> Newlin credibly so testified.

<sup>36</sup> Newlin so admitted. Grippe was still working for Respondent at the time of the hearing.

<sup>37</sup> *Piezo Manufacturing Corp.*, 125 NLRB 686 (1959), *enfd.* 290 F.2d 455 (C.A. 2, 1961); *A-Z Manufacturing Sales Co., Inc.*, 177 NLRB 254 (1969); *Morgan Precision Parts*, 183 NLRB 1141 (1970), *enfd.* 444 F.2d 1210 (C.A. 5, 1971). As noted in these cited cases, it is not necessary that all nine employees be found to be union activists in order to support the conclusion that their discharges were in violation of Sec. 8(a)(1) and (3) of the Act.

<sup>38</sup> *Pat M. Courington, et al., d/b/a Sand Mountain Broadcasting Service*, 191 NLRB 362 (1971); *Federal Copper & Aluminum Co.*, 193 NLRB 819 (1971).

as to the wisdom of selecting the Union as their bargaining representative and a fear of further consequences should they vote for the Union in the (then) upcoming Board election.<sup>39</sup>

In addition to the timing and predictable effect of the establishment of the rule, I also rely on Respondent's opposition to Union almost from the beginning of the Union's campaign,<sup>40</sup> on Respondent's other unfair labor practices and on the facts that the rule was unprecedented and was promulgated without notice to the employees.<sup>41</sup> Further, supporting my conclusion that the motivation behind the rule was unlawful, is the circumstance that in defending against this allegation of the complaint, Respondent's officials, as I have mentioned, gave shifting and diverse reasons for Respondent's inauguration of the rule.<sup>42</sup>

Totally aside from the foregoing compelling *circumstantial* evidence that the rule was established to discourage the union activities of all of Respondent's employees,<sup>43</sup> there is also *direct* evidence that the rule (which, as I will find, is still in effect) has that purpose. Thus, when Supervisor Gutbrod learned in June 1977 that employee Jones was going to the Labor Board, Gutbrod threatened to punish Jones by informing the latter that sooner or later Jones would be on the "10 percent absentee list." As Jones testified, employees are fired when they are put on this list.

As noted, Robin Cizek's discharge was later changed to a disability status and she eventually returned to work for Respondent. The other eight discriminatees discharged on January 26, 1977, have not been reinstated, although Respondent had substantially augmented its work force since that time. Against the background of the discharges, I conclude that Respondent has failed and refused to reinstate these eight individuals primarily for the same reason it established the 10-percent absentee discharge rule, that is, to undermine the interest of all its employees in joining or

<sup>39</sup> *Piezo Manufacturing Corp.*, *supra*, 696 697. As I have mentioned, because of the several unfair labor practice charges against Respondent that election has yet to take place.

<sup>40</sup> De Luca so admitted.

<sup>41</sup> While some of the employees, who were discharged, had been warned for absenteeism on at least one occasion before January 26, 1977, (e.g., Timothy Bradeen and Christina Smith Porter), the 10-percent rule was non-existent prior to the date of the management meeting at which it was formulated (on or about January 24 or 25, 1977). Newlin so admitted.

<sup>42</sup> See, e.g., *Winston Rose, et al., d/b/a Ideal Donut Shop*, 148 NLRB 236, 246 (1964), *enfd.*, 347 F.2d 498 (C.A. 7, 1965).

<sup>43</sup> In finding that the establishment of the rule and its implementation were unlawful, I have attached no weight to the testimony of Respondent's officials that the rule was established for business reasons. See *Shattuck Denn Mining Corporation v. N.L.R.B.*, 362 F.2d 466, 470 (C.A. 9, 1966), where the court, in speaking of the evaluation of an employer's motive for discharge, stated:

Actual motive, state of mind, being the question, it is seldom that direct evidence will be available that is not also self-serving. In such cases, the self-serving declaration is not conclusive; the trier of fact may infer motive from the total circumstances proved. Otherwise no person accused of unlawful motive who took the stand and testified to a lawful motive could be brought to book. Nor is the trier of fact—here the trial examiner—required to be any more naïf than is a judge. If he finds that the stated motive for discharge is false, he certainly can infer that there is another motive. More than that, he can infer the motive is one the employer desires to conceal—an unlawful motive—at least where, as in this case, the surrounding facts tend to reinforce that inference.

I attach no significance to the fact that one or two of the dischargees may have been probationary employees. The question is why were they discharged, not their status at the time.

supporting the Union. I further conclude that by failing and refusing to reinstate all of the employees discharged on January 26, 1977, (except Cizek), Respondent has further violated Section 8(a)(1) and (3) of the Act.

The rule remains in existence although it has never formally been instituted. Indeed other employees have been discharged pursuant to the rule since the mass discharge of January 26, 1977.<sup>44</sup> In view of the genesis of the rule on or about January 24 or 25, 1977, as an effort to chill unionism and in the light of the implicit admission of Gutbrod to Jones in June 1977 that this was the purpose of the rule, I find and conclude that by maintaining the rule at all pertinent times thereafter, Respondent has violated, and is violating, Section 8(a)(3) and (1) of the Act.<sup>45</sup>

#### 4. De Luca's speech to the employees on or about February 11, 1977

De Luca gave a speech to three separate groups of the employees on or about this date. He read the speech from a prepared text to the first two groups, but, when he gave it to the third group, he varied from it somewhat. On that occasion, when speaking of wage increases, he said there would be none such because the Union was on the scene or that there would be none until after the vote for the Union.<sup>46</sup>

Whichever of these two versions was given by De Luca, his words left the clear impression on this third group of employees that any withholding of wage increases was the fault of the Union and resulted from the Union's organizational campaign. By creating this impression Respondent, by De Luca, violated Section 8(a)(1) of the Act.<sup>47</sup>

#### 5. Alleged supervisory participation in the circulation of an antiunion petition; alleged discriminatory application of Respondent's no-solicitation rule in permitting employees further to circulate the petition on company time (paragraphs 9 and 10 of the amended consolidated complaint)

Leadperson Schane, whom I have found to be a supervisor, credibly testified, and I find, that she was one of four or five people who decided to prepare an antiunion petition and circulate it among the employees. This was done beginning on or about February 15, 1977.<sup>48</sup> Personnel in Schane's department signed the petition after she placed it on a work bench on a table in her department to enable them to do so.

<sup>44</sup> Newlin so admitted.

<sup>45</sup> While the complaint alleges that the Respondent has maintained a "5 percent" discriminatory rule, the parties litigated the case on the basis of the "10 percent" rule, the establishment of which I have found unlawful in all the circumstances in this case.

<sup>46</sup> Alma Bradeen testified that he said "because the Union was on the scene." In her pre-trial affidavit she said De Luca stated there would be no raises until after the vote for the Union. I find that De Luca made the one statement or the other—the difference, insofar as my conclusions are concerned, being immaterial. De Luca did not precisely deny either version I have found. At first his testimony was that he followed the wording of the speech (which was innocuous on this point) word for word. Significantly, he changed his testimony later in the proceeding to admit that his third rendering of the speech varied from the written text.

<sup>47</sup> *American Paper & Supply Company, Container Division*, 159 NLRB 1243, 1244 (1966).

<sup>48</sup> The dated petition is in evidence.

Thereafter, Schane gave copies of the petition to Leadpersons Pantano and Evers whom I have also found to be supervisors. Pantano and Evers showed the petition to employees in their department and gave them an opportunity to sign it. Evers then gave a copy of the petition to Leadperson Keller, likewise found to be a supervisor. The petition was thereafter passed around among employees supervised by Keller.

I find that by the actions of Schane, Pantano, Keller, and Evers in assisting in the preparation and the circulation of this antiunion petition among the employees, Respondent violated Section 8(a)(1) of the Act.<sup>49</sup>

I further conclude that in permitting circulation of the petition, Respondent discriminatorily applied its no-solicitation rule.

That rule, of which the employees were aware, forbade them to engage in solicitation during work time at the plant. Indeed employee Jones was warned by Supervisor Gutbrod when Jones received a union card during working time in May 1977, that employees could be fired for this. Further, Gutbrod told Jones, again in May 1977, that Jones was not allowed to read union leaflets on Company time.<sup>50</sup>

The instant antiunion petition was, however, circulated among the employees working under Leadperson Keller during working time. The employees stopped their work, handled the petition, and read and signed it at such time.<sup>51</sup>

Employees working under Pantano also read and signed this petition during working time at the plant.<sup>52</sup>

It is thus clear that, contrary to Respondent's no-solicitation rule, employees were not warned or disciplined in any fashion for handling, reading, or signing the antiunion petition at the plant during work hours. And Respondent was well aware that employees were engaged in this activity because the petition was introduced into the various departments by Leadpersons Schane, Pantano, Evers, and Keller.

I conclude therefore that Respondent applied its no-solicitation rule in a discriminatory fashion. Thus, whereas it warned employee Jones, for example, against reading a union leaflet on Company time and told him employees could be fired for receiving union cards during work time, it took no action when employees were handling and reading the antiunion petition during work time. The employees were permitted to deal with the latter petition without any interference from Respondent. By this discriminatory application of its no-solicitation rule, I conclude that Respondent has further violated Section 8(a)(1) of the Act.<sup>53</sup>

#### 6. Alleged interrogation by Pantano and other supervisors involving the use of "Vote No" buttons (paragraph 14(a) of the amended consolidated complaint)

In June 1977, leadperson Pantano handed "Vote No" buttons to some employees at the plant and pinned such buttons on other employees.<sup>54</sup>

<sup>49</sup> Cf., *Sperry Gyroscope Company, Division of Sperry Rand Corporation*, 136 NLRB 294 (1962).

<sup>50</sup> Jones credibly so testified without dispute.

<sup>51</sup> Arthur Burns, who is still employed, credibly so testified.

<sup>52</sup> Alma Bradeen credibly so testified.

<sup>53</sup> E.g., *J. W. Mortell Company*, 168 NLRB 435, 436 (1967), enf'd. as modified 440 F.2d 455 (C.A. 7, 1971).

<sup>54</sup> Alma Bradeen credibly so testified without dispute.

This activity is a convenient device for finding out if employees support or oppose a union or for interfering with their right to support one. That is, if an employee refuses a "Vote No" button proffered by a supervisor, he is very likely to be a union supporter. If an employee accepts such a button he opposes the Union. Or, if an employee accepts such a button (even though a secret union supporter) because he feels pressured to do so, his ardor in exercising his Section 7 right to support the Union is necessarily dampened.

Against the background of Respondent's other unfair labor practices, I conclude that by Pantano's instant activities Respondent coercively interrogated employees in violation of Section 8(a)(1) of the Act.<sup>55</sup>

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above, occurring in connection with its operations described in Section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

1. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) of the Act:

(a) By engaging in surveillance of union meetings and other union activities of its employees, variously, in October, November, and December 1976, and in February and May 1977.

(b) By warning employees in October and November 1976 and in June 1977 to refrain from joining the Union or giving support to it.

(c) By making a speech to its employees, in February 1977, in which it created the impression that the Union was the cause of Respondent's failure to provide wage increases.

(d) By assisting in the preparation and circulation of an antiunion petition in February 1977 among the employees at the plant.

(e) By discriminatorily enforcing its no-solicitation rule in February 1977 by permitting employees to handle, read, and sign an antiunion petition during working time at the plant whereas it forbade employees to solicit for the Union during working time at the plant.

(f) By coercively interrogating its employees through the use of "Vote No" buttons in June 1976.

4. Respondent has violated, or is violating, Section 8(a)(1) and (3) of the Act:

(a) By discharging Timothy Bradeen, Christopher Porter, Christina Smith Porter, Robin Cizek, Gary Chris-

<sup>55</sup> See, e.g., *Bieser Aviation Corporation*, 135 NLRB 399, 400 (1962).

tianson, Otto Credle, Janice D'Adolph, Carol Palame, and Loretta Zaza on January 26, 1977.

(b) By failing and refusing to reinstate all of the above named employees (except Robin Cizek) since January 26, 1977.

(c) By establishing a so-called 10 percent absentee rate discharge rule on or about January 24 or 25, 1977, and maintaining it since that time.

5. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend an Order requiring it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act which will include the posting of an appropriate notice to its employees.

The recommended Order shall contain the conventional provisions for cases involving unlawful restraint, coercion, and interference in violation of Section 8(a)(1) of the Act and unlawful discharge and refusal of reinstatement in violation of Section 8(a)(1) and (3) of the Act. As to the affirmative aspects of the remedy for the Section 8(a)(1) and (3) discharge and refusal to reinstate violations, Respondent will be required to offer Timothy Bradeen, Gary Christianson, Otto Credle, Janice D'Adolph, Carol Palame, Christopher Porter, Christina Smith Porter, and Loretta Zaza immediate and full reinstatement to their former positions, or if such positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges.<sup>56</sup> Each of the above named employees, along with Robin Cizek, will be made whole for any loss of earnings he or she may have suffered by reason of Respondent's discrimination by payment to each of a sum of money equal to that which he or she may would have earned from January 26, 1977, the date of their mass discharge, to the date of the offer of reinstatement, less net earnings, if any, to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 286 (1950), with interest thereon as required by *Florida Steel Corporation*, 213 NLRB 651 (1977).<sup>57</sup>

I shall also recommend that Respondent be required to cease enforcement of, and to rescind, its 10-percent absenteeism rate discharge rule.

Finally, it will be recommended, in view of the unfair labor practices in which Respondent has engaged (see *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536) that Respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed employees by Section 7 of the Act.

Upon the foregoing findings of fact and conclusions of law and upon the entire record in this case and pursuant to

<sup>56</sup> Cizek has already been reinstated. While Bradeen appeared to testify in the uniform of the United States Army, it was not shown whether he was on a short Reserve tour or on extended active duty. I leave to compliance the timing of his reinstatement if he is on extended leave duty.

<sup>57</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>58</sup>

The Respondent, Porta Systems Corporation, Syosset, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in, or activities on behalf of, International Industrial Production Employees Union, or any other labor organization, by discriminating, or creating rules for the purpose of discriminating, in regard to the hire and tenure of employment or in any other manner in regard to any term or condition of employment of any of Respondent's employees in order to discourage union membership or union or other concerted activities.

(b) Enforcing its 10-percent absenteeism discharge rule.

(c) Engaging in surveillance of union meetings or other union activities by its employees.

(d) Warning its employees to refrain from joining or supporting a union.

(e) Assisting in the preparation and circulation of an anti-union petition.

(f) Discriminatory enforcing its rule prohibiting solicitation during working time at the plant.

(g) Coercively interrogating its employees in respect to their union membership or support.

(h) Creating the impression among employees that the above-named Union is responsible for their failure to receive wage increases.

(i) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to the following named employees to their former positions or, if such positions no longer exist, to substantially equivalent positions—

Timothy Bradeen	Carol Palame
Gary Christianson	Christopher Porter
Otto Credle	Christina (nee Smith) Porter
Janice D'Adolph	Loretta Zaza

and make the above-named employees and Robin Cizek whole for any loss of pay they may have suffered as the result of their discriminatory discharge in the manner set forth in "The Remedy" section of the Administrative Law Judge's Decision.

(b) Rescind its 10-percent absenteeism discharge rule.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records neces-

<sup>58</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

sary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its plant in Syosset, New York, copies of the attached notice marked "Appendix."<sup>59</sup> Copies of this notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

<sup>59</sup> In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

After a hearing at which all sides had the chance to give evidence, it has been decided that we have violated the National Labor Relations Act, as amended, and we have been ordered to post this notice.

The National Labor Relations Act gives you, as employees, certain rights, including the rights to:

- To self-organization.
- To form, join, or help unions.
- To bargain collectively through a representative of your own choosing.
- To act together for collective bargaining or other mutual aid or protection.
- To refrain from any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT discharge you, or take any other reprisal against you, because you join, support, or engage in activities in behalf of International Industrial Production Employees Union, or any other labor organization.

WE WILL NOT initiate or continue to enforce an absenteeism rule or any other rule for the purpose of discriminating against you in order to discourage you from joining, supporting, or assisting the above named labor organization or any other union.

WE WILL NOT engage in surveillance of union meetings or other union activities; warn you to refrain from joining or assisting a labor organization; create the impression that the above named Union is responsible for your failure to receive wage increases; assist in the preparation or circulation of antiunion petitions; discriminatorily enforce our no-solicitation rule; coercively interrogate you concerning your union beliefs or activities particularly by offering you "Vote No" buttons; or interfere with any of your rights set forth above.

WE WILL offer immediate and full reinstatement to the following named employees to their former positions or, if such positions no longer exist, to substantially equivalent positions:

Timothy Bradeen	Carol Palame
Gary Christianson	Christopher Porter
Otto Credle	Christina Smith Porter
Janice D'Adolph	Loretta Zaza

WE WILL make up all pay lost by the above-named employees and Robin Cizek plus interest because the Board has found that said employees and Cizek were discriminatorily discharged.

WE WILL rescind our 10-percent absenteeism discharge rule.

PORTA SYSTEMS CORPORATION