

**John Cuneo of Oklahoma, Inc. and Road Sprinkler
Fitters Local No. 669, Case 16-CA-7382**

September 29, 1978

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On May 19, 1978, Administrative Law Judge Marvin Roth issued the attached Decision in this proceeding. Thereafter, Respondent and Charging Party, hereinafter called the Union, filed exceptions and supporting briefs.

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 briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, as modified herein, and to adopt his recommended Order.

Respondent is engaged in the business of designing and installing automatic fire protection sprinkler systems. C. W. Morgan, an installer employed by Respondent for 6 years, became interested in joining the Union in May 1977.¹ On July 19 or 20, W. H. Smith Respondent's president, telephoned Morgan at the latter's home, advising him that he was terminated because he was attempting to join the Union. Respondent does not dispute that Morgan was discharged because he sought membership in the Union, but contends that Morgan's discharge was nonetheless lawful because he was a supervisor and/or a managerial employee and therefore not entitled to the protection of the Act.

The Administrative Law Judge concluded that Respondent's discharge of Morgan violated Section 8(a)(3) and (1) of the Act.² In so concluding, the Administrative Law Judge found it unnecessary to pass on the supervisory status of Morgan or other installers because, for more than 2 months immediately preceding his discharge, Morgan had not been the foreman on the jobs where he worked. Accordingly, the Administrative Law Judge found that at the time of his discharge Morgan was acting as an employee within the meaning of Section 2(3) of the Act, and, therefore, the discharge violated Section 8(a)(3) and (1) of the Act.

¹ All dates hereinafter are 1977 unless otherwise indicated.

² The Administrative Law Judge found that any discretion Morgan exercised on the jobsite was within limits set by Respondent's officers. We adopt this finding and, therefore, conclude that Morgan was not a managerial employee.

We agree with the Administrative Law Judge, for the reasons stated by him, that Respondent unlawfully discharged Morgan because of his desire to join the Union. However, for the reasons set forth below, we find merit in the Charging Party's exception to the Administrative Law Judge's failure to find that at all material times Morgan was an employee within the meaning of Section 2(3) of the Act.

In July 1977, Respondent, in addition to its two superintendents, who are in charge of operations and sales, had five employees installing sprinkler systems. These five employees, titled "installers," were divided into two categories, "helpers" and "fitters." The individual in charge of any particular job was known as the foreman of the job. At the time of Morgan's discharge, at least three of Respondent's five employees were experienced enough to be and had been in charge of specific jobs. Thus, an individual who was designated as foreman on one job might well work under the direction of another installer on his next assignment. The Administrative Law Judge found, *inter alia*, that when an installer is designated as foreman on a particular job he directs the work of other employees and may orally reprimand them, authorize small amounts of overtime or time off, hire additional help if authorized by the area superintendent, transfer or lay off other employees if no longer needed on the job, and resolve minor jurisdictional disputes with members of other crafts. Although such functions as those listed in many instances serve as indicia of supervisory status, taking into consideration all the circumstances of this case, we find that the record establishes that Morgan was an employee rather than a supervisor within the meaning of Section 2(11) of the Act.

Although foremen are allowed to grant small amounts of overtime³ and time off and to attempt to resolve minor disputes with other crafts, it is clear from the record that their authority to take such action is severely limited. Thus, limited amounts of overtime can be granted by foremen only in circumstances where it is apparent that a job could be completed if the men worked an additional half hour. As to sick leave, it appears from the record that the foremen serve essentially as a conduit for notifying the area superintendent, Smith, that an employee is ill, rather than giving the employee permission to be absent from work. Morgan testified that when acting as foreman, he would have the employees call Smith themselves for other requests of leave. As for the minor disputes that foremen resolve with members of other crafts, such disputes do not require the exercise of independent judgment, but are resolved by, for ex-

³ Approval by the area superintendent is required whenever more than a few hours of overtime are involved.

ample, a decision by representatives from the various crafts to work in different areas on the jobsite so as to avoid any conflict.

As a foreman, the installer also hires help (usually temporary), but only when he needs workers in addition to those originally assigned to work with him and only when specifically authorized to do so by the area superintendent. When this situation arises the foreman first contacts his supervisor to see if the Respondent has any other employees available, and, if not, his supervisor authorizes the foreman to hire additional help. However, it is clear from the record that individuals hired on these occasions are casual employees who would apparently be excluded from any bargaining unit. Accordingly, we find that the exercise of the limited authority to hire such workers is not sufficient to warrant a finding that the installer-foremen are supervisors within the meaning of the Act.⁴

Similarly, although during the course of a job the foreman, if he finds the job overstaffed, can lay off or transfer employees from the job, he may do so only with the prior approval of the area superintendent. He does not have the authority to discharge employees and plays no role in grievance processing. Furthermore, when acting as foreman, an installer is paid the same wage he receives when he is not and, like other employees, is paid overtime. Indeed, he spends the great bulk of the workday doing the same work as the other installers; when he does give directions to others on the job, the record establishes that such directions do not require the exercise of independent judgment. In this regard, the record establishes that job assignments are made according to instructions given to the foreman by Smith at the jobsite. The day-to-day decisions involved in installing overhead sprinkler systems are in large part preordained by blueprints, which determine where the pipes and sprinkler heads are to be installed. Although the blueprint is generally explicit, when variation from the blueprint appears warranted, the foreman contacts his superior for instructions. Furthermore, the National Fire-Protection Association (N.F.P.A.) booklet regulates significant aspects of sprinkler installation. Finally, most of the employees working with the foreman are capable of running a jobsite themselves and do not need close supervision.

Although the Administrative Law Judge found that when acting as a foreman, the installer is authorized to reprimand employees orally, if necessary, there was no evidence presented at the hearing as to what effect, if any, these reprimands have on an employee's job status. The record shows that the oral

⁴ Morgan effectively recommended the hiring of one friend, but this incident occurred at least 3 years prior to his discharge.

reprimands are limited to telling other employees on the worksite to get back to work if they are not busy. The foreman does not have the authority to impose any disciplinary measures on other employees, and Morgan has never recommended such action be taken. Consequently, we find that the authority orally to reprimand employees has no significant effect on the employees' status.⁵

Foremen also record hours on timesheets and sign the sheets. In addition, while on the project they are able to purchase supplies (not usually in excess of \$500 without approval from Smith), using a purchase order form with a designated signature line for the foreman and the date of the completion of the job, and test the sprinkler system and sign certificates to that effect. However, any qualified employee can test the system, and if two experienced fitters are working on a particular job either the foreman or the other fitter might perform the test. As to the employees' timesheets, Smith, a witness for Respondent, testified that the fitter who keeps the time is not necessarily the foreman at the jobsite. Furthermore, the recording of time is merely a routine clerical function, not necessarily indicative of supervisory status.⁶ With respect to the use of purchase order forms, all the employees who are qualified to act as foremen have such forms and are able to make purchases of supplies whether or not they are acting as the foreman on a particular job.

Based on the foregoing and our review of the entire record, we conclude that when installer-fitters act as foremen,⁷ they do so as leadmen rather than supervisors within the meaning of the Act. We have already found that their hiring of additional help as casuals is pursuant to specific authorizations from management and in any event is sporadic in nature, that layoffs or transfers are accomplished with prior approval of the area superintendent, and that any oral reprimands given on the job have no effect on the employees' employment status. Similarly, the directions and work assignments they give to other crewmembers, including occasional assignments of small amounts of overtime, do not involve the use of independent judgment but are, obviously, of a routine nature, as are their recordkeeping and testing duties and purchasing authority. Consequently, we find that the fitter-foremen, including C. W. Morgan, were employees as defined in the Act at all times material herein. Accordingly, for this reason, as well as that stated by the Administrative Law Judge, we find that by discharg-

⁵ See *Westlake United Corporation*, 236 NLRB 1095 (1978); *Esten Dyeing & Finishing Co., Inc.*, 219 NLRB 286 (1975).

⁶ *Lawson-United Feldspar & Mineral Co.*, 189 NLRB 350, 354 (1971), and cases cited therein.

⁷ It is well established that an individual's functions and authorities, rather than his title, determine his status under the Act. See, e.g., *Orr Iron, Inc.*, 207 NLRB 863, fn.2 (1973).

ing Morgan because of his interest in joining the Union. Respondent violated Section 8(a)(3) and (1) of the Act.

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, John Cuneo of Oklahoma, Inc., Oklahoma City, Oklahoma, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge: This case was heard at Oklahoma City, Oklahoma, on January 12 and 13, 1978. The charge was filed on July 29, 1977, by Road Sprinkler Fitters Local No. 669 (herein the Union). The complaint, which issued on August 31, 1977, alleges that John Cuneo of Oklahoma, Inc. (herein the Company or Respondent), violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. The gravamen of the complaint is that the Company allegedly discharged its employee C. W. (Pete) Morgan because he applied for membership in the Union. The Company's answer denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs.

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, an Oklahoma corporation with an office and place of business in Oklahoma City, Oklahoma, is engaged in the business of designing and installing automatic fire protection sprinkler systems. The Company is an operating subsidiary of John Cuneo, Inc., of Chattanooga, Tennessee, which fabricates and also installs the systems which are installed by the Company in Oklahoma and neighboring States. In the operation of its business, the Company annually purchases and receives good valued in excess of \$50,000 directly from outside the State of Oklahoma. I find, as the Company admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE ALLEGED UNFAIR LABOR PRACTICE: THE DISCHARGE OF C. W. MORGAN

C. W. (Pete) Morgan began working from the Company in 1971 as an installer of its sprinkler systems. Morgan began working as a "helper," performing unskilled work and gradually learning on the job all aspects of the trade. In 1974, Morgan's immediate supervisor, W. H. Smith, who is president of the Company and superintendent of Cuneo operations in the Oklahoma area, decided that Morgan had attained sufficient experience and ability to be able to take charge of an installation job when necessary. Morgan continued to perform installation work and was sometimes put in charge of the job; otherwise, a fellow installer would be in charge, and Morgan would work under his direction. Morgan testified that he was in charge of about one-half of the jobs on which he worked. The Company, relying on weekly timesheets for the 1-year period immediately preceding Morgan's discharge, contends that Morgan was in charge of most of the jobs on which he worked. Morgan testified that the individual in charge of the job was known as the "leadman," that installers who were qualified to run a job were known informally as "fitters," and that those who were not yet qualified were referred to as "helpers." B. R. Splawn, who is president of John Cuneo, Inc., and secretary-treasurer of the Company, testified that the Company has two categories of installers—specifically, "helpers," who are not qualified to run a job, and "fitter-foremen," who are—and that the individual in charge of the job is known as "foreman." Smith and Splawn testified that the Company does not use the term "leadman." In view of the fact that the individual in charge of the job uses purchase order forms which designate him as "foreman," I credit Smith and Splawn concerning the use of that term, and I shall henceforth refer to the individual in charge of the job as the foreman. In July 1977 the Company had a complement of five installers, of whom three (Morgan, Hart Anderson, and Charles Hutton) and possibly a fourth (Ralph Houck) were fitter-foremen. A fifth installer, Matt Stevens, was not yet sufficiently experienced to run a job. The fitter-foremen received their regular rate of pay, which varied among them, regardless of whether they were in charge of the job.

Morgan testified that in May 1977¹ he called union business agent Russell Lemmons and expressed his interest in joining the Union. At the time Morgan was making \$8.50 per hour. Union scale was at least \$9.27 per hour, and one fitter-foreman (Anderson) was making \$10.10 per hour. Lemmons told Morgan that he needed verification of Morgan's work experience, specifically, W-2 forms or letters from other employees. Morgan asked Smith for the W-2 forms. Seven to ten days later Smith asked Morgan why he needed the forms, saying that they were in Chattanooga and that they would take 2 or 3 days to locate. Morgan did not give the reason. However, he asked other employees for letters confirming his work experience, and such letters were sent by the employees to the Union. About 2 weeks after his discharge, Morgan received a journeyman's card from the Union.

¹ All dates herein are in 1977 unless otherwise indicated.

Morgan testified that on July 19 or 20, while he was at home, Smith telephoned him and said that Splawn informed him (Smith) that the Company could not work Morgan any longer because he was trying to get into the Union, and the Company was nonunion. When Morgan pointed out that Smith himself had a union card, Smith said that it did not make any difference, because he was a part owner. About 2 or 3 days later, when Morgan was arranging to have some company supplies and equipment removed from his property, Smith said that he didn't mean that Morgan was terminated for trying to join the Union. However, Smith gave no other explanation for Morgan's sudden termination. Smith, in his testimony, admitted that Morgan was a good worker and that as of the time of Morgan's discharge he had intended to assign him to another job. Neither Smith nor Splawn denied the testimony of Morgan or offered any reason for his discharge. Rather, the Company rests its defense in this case solely upon its contention that Morgan "was a supervisor within the definition of Section 2(11) of the [Act], or was a managerial employee as that term has been defined by the Board", and therefore that Morgan did not enjoy the protection of the Act.

The minimal authority exercised by Morgan and his fellow installers when acting as job foremen fails to warrant their classification as "managerial employees." *In Bell Aerospace, A Division of Textron, Inc.*, 219 NLRB 384, 385 (1975), the Board adhered to its definition of that term as stated in *General Dynamics Corporation, Convair Aerospace Division, San Diego Operations*, 213 NLRB 851, 857 (1974):

... those who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy. . . . managerial status is not conferred upon rank-and-file workers, or upon those who perform routinely, but rather it is reserved for those in executive-type positions, those who are closely aligned with management as true representatives of management.

At most the job foremen are firstline supervisors, who spend most of their time performing installation work and whose limited discretion concerns jobsite matters and which can only be exercised within the limits set by the Company's officers.

The functions of the installers when acting as foremen include some functions which have been held to be indicia of supervisory status. The foremen direct the work of their helpers, reprimand them when deemed necessary, allow or disallow time off, authorize small amounts of overtime (more than a few hours' overtime must be approved by the area superintendent), hire help (usually temporary) when authorized to do so by the area superintendent, lay off employees from the job when no longer needed or recommend to the superintendent that they be transferred to another job, and attempt to resolve jurisdictional disputes (usually minor) with other crafts. Absent an extreme situation (and there is no evidence that such a situation has ever arisen), the foreman does not have authority to discharge an employee. However, these functions occupy only a small portion of the foreman's time. A typical job may necessitate only two or three installers, including the foreman, and at

least one of the others may be a fitter-foreman who requires no supervision. Sometimes the nominal foreman is the only installer on the job. The Glasgow, Kentucky, job on which Morgan acted as foreman was unusually large, with a crew of about seven installers. (For the purpose of this job, Morgan was temporarily transferred to the payroll of John Cuneo, Inc., and was responsible to Cuneo Area Superintendent Bob South.)

I find it unnecessary, for the purpose of deciding this case, to determine whether, on the basis of an overall appraisal of Morgan's job history, he or other installers could be classified as supervisors. This is not a representation proceeding in which the question is presented as to whether Morgan should be included in an appropriate bargaining unit. Rather, this case involves the question of whether an employee was discriminatorily discharged. If at the time of his discharge Morgan was an employee within the meaning of Section 2(3) of the Act, then his discharge was unlawful. The evidence indicates that Morgan was an employee under the Act, because for more than 2 months immediately preceding his discharge, Morgan had not been the foreman on the jobs where he worked. On May 16 and 17 he worked alone, and for the balance of May he did not work on any jobs. From June 3 through July 1, except for a week during which he was on leave, Morgan worked as an installer on the Wilson store job in Tyler, Texas (job Tx-40). Charles Hutton was foreman on the job. For the first 2 weeks in July, Morgan worked as installer on the Safeway job in Woodward, Oklahoma (job Ok-114). Hart Anderson was foreman on the Safeway job. At the time of his discharge, Morgan had been laid off from the Safeway job and was awaiting his next assignment. Superintendent Smith testified that Morgan was scheduled to be in charge of the Logan County Hospital job in Guthrie, Oklahoma beginning sometime in August. However, his responsibilities in that capacity would not have begun until he arrived for work at the jobsite. As of July 19 and 20, Morgan was an installer, or "fitter," on temporary layoff. Therefore, Morgan was an employee who was at that point entitled to the protection of Section 8(a)(1) and (3) of the Act, regardless of whether in the past he had been job foreman during more than 50 percent of his working time and whether as foreman he had performed functions of a supervisory nature. Morgan was discharged because he applied for union membership. Therefore the Company violated Section 8(a)(1) and (3) of the Act.

In support of its contention that Morgan was a supervisor who was not entitled to the protection of the Act, the Company relies principally on *Westinghouse Electric Corporation*, 163 NLRB 723, 727 (1967). In *Westinghouse*, which was a representation proceeding, the Board excluded from the election unit those individuals who spent more than 50 percent of their time in a supervisory capacity, notwithstanding that at the time of the election they might be assigned to a nonsupervisory position. In adopting this policy, the Board applied the rationale of its earlier decision in *The Great Western Sugar Company*, 137 NLRB 551 (1962), also a representation proceeding, in which the Board included seasonal supervisors in the election unit, because they spent most of the year performing work as rank-and-file employees. Both *Westinghouse* and *Great Western* manifested a

careful and expressed intent to accommodate both the rights of employees under the Act and the right of the employer to rely upon the loyalty of its supervisory personnel. However, the Board made clear that this accommodation did not give the employer license to engage in unfair labor practices against individuals acting as employees, even if they were excluded from the unit, any more than it gave license to individuals in the unit to engage in conduct proscribed by the Act while functioning as supervisors. Thus the Board stated in *Great Western* (137 NLRB at 554):

It is, most importantly, an adjustment which accommodates the requirements of the statute for separating supervisors from employees, to those protections which the statute holds out to persons who are employees to engage in self-organization and bargaining, *and during their status as employees, to be free from unfair labor practices by employers or by unions.* When the seasonal supervisors lose their supervisory powers, we see no reason why they should be deprived of the law's protection for "employees," which they then become. And as noted before, if these protections were denied them, it would also adversely affect the efforts of the other year-round employees to protect their terms and conditions of employment. [Emphasis supplied.]

Conversely, the Board made clear that "[o]ur decision to this effect is not to be taken as a license to those employees to utilize their supervisory authority to interfere with, restrain, or coerce other employees to vote for or against representation." *Great Western, supra* at 555, fn.9.

In sum, Morgan was an employee entitled to the protection of the Act when he was discharged, and that fact is dispositive of the present case. It is also significant that when superintendent Smith discharged Morgan, he failed to indicate that this decision had anything to do with Morgan's alleged supervisory status. Rather, Smith simply indicated that Splawn directed his discharge because he sought union membership, thereby leaving the implication that any of the Company's installers might meet the same fate. Neither Smith nor Splawn testified that Morgan was discharged because of his alleged supervisory status. Rather, the Company presented evidence concerning Morgan's status as a *post hoc* rationalization for his discharge. Even according to the Company's theory, Splawn was not aware of Morgan's supervisory status until, in anticipation of the present hearing, he ascertained that Morgan had been foreman during more than 50 percent of his working time. If the Company were concerned about the loyalty of its supervisory personnel, it is more likely that it would have given Morgan advance notice of such a policy, e.g., by stating that "our supervisors cannot be union members," rather than summarily discharge Morgan without even indicating that supervisory status had anything to do with his discharge. Therefore, the Company not only discharged Morgan in his capacity as an employee, but it left the implication that this was the Company's intent. If an employer engages in conduct toward a part-time supervisor which, if directed toward an employee, would be violative of the Act, then such conduct is unlawful unless the conduct is directed to and limited to the individual in his capacity as a supervisor. Here, the Company's action was not so limited, and

therefore the Company violated the Act by discharging Morgan.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discharging and by failing or refusing to reinstate C. W. Morgan because he applied for membership in the Union, the Company has violated and is violating Section 8(a)(1) and (3) of the Act.
4. The aforesaid 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 the Company has committed violations of Section 8(a)(1) and (3) of the Act, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Company discriminatorily terminated C. W. Morgan, it will be recommended that the Company be ordered to offer him immediate and full reinstatement to his former job or, if it no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings that he may have suffered from the time of his discharge to the date of the Company's offer of reinstatement. The order shall not be construed as requiring the Company to offer, or Morgan to accept, supervisory duties which would deprive him of the protection of the Act. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in the manner and amount prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).² It will also be recommended that the Company be required to preserve and make available to the Board, or its agents, on request, payroll and other records to facilitate the computation of backpay due.

As the unfair labor practices committed by the Company are of a character striking at the root of employees' rights safeguarded by the Act, the inference is warranted that the Company maintains an attitude of opposition to the purposes of the Act with respect to the protection of employee rights in general. Accordingly, I shall recommend that the Company be ordered to cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act. See *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (C.A. 4, 1941).

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

² See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716, 717-721 (1962).

ORDER³

The Respondent, John Cuneo of Oklahoma, Inc., Oklahoma City, Oklahoma, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Road Sprinkler Fitters Local No. 669, or any other labor organization, by discriminatorily terminating employees or in any other manner discriminating against them with regard to their hire or tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights to organize; to form, join, or assist labor organizations, including said Union; to bargain collectively through representatives of their own choosing; to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from any and all such activities.

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

(a) Offer C. W. Morgan immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights, and make him whole for losses he suffered by reason of the discrimination against him, as set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records and reports and all other records necessary to analyze the amount of backpay due.

(c) Post at its office and place of business in Oklahoma City, Oklahoma, and at each of its jobsites, if possible, copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60

³ 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.

⁴ In the event that this Order is enforced by a judgment of the 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."

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.

(d) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

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

After a hearing in which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice and to carry out its provisions.

WE WILL NOT discourage membership in Road Sprinkler Fitters Local No. 669, or any other labor organization, by terminating employees or in any other manner discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights to organize; to form, join, or assist labor organizations, including Road Sprinkler Fitters Local No. 669; to bargain collectively through representatives of their own choosing; to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from any and all such activities.

WE WILL offer C. W. Morgan immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights, and make him whole for losses he suffered by reason of the discrimination against him.

All our employees are free to become, remain, or refuse to become or remain members of Road Sprinkler Fitters Local No. 669, or any other labor organization.

JOHN CUNEO OF OKLAHOMA, INC.