

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

NORTH AMERICAN DISMANTLING CORP.
NORTH AMERICAN DEMOLITION CORP.

and

Case 7-CA-39923

JEFFREY G. POWELL,
An Individual

and

Case 7-CA-40151(1)

ROBERT W. GILTROP,
An Individual

and

Case 7-CA-4015(2)

JAYSON ZEITZ,
An Individual

John Ciaramitaro of Detroit, Michigan,
for the General Counsel
Hiram S. Grossman, Esq., of Flint, Michigan
(*Daniel and Grossman*), for the Respondent.

DECISION

Statement of the Case

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Flint, Michigan, on March 26 and 27, 1998. Upon an unfair labor practice charge filed by Jeffrey G. Powell in Case 7-CA-39923, on June 13, 1997¹ against Respondents, North American Dismantling Corp. and North American Demolition Corp., referred to respectively as Dismantling and Demolition, and upon further charges filed by Robert W. Giltrop and Jayson Zeitz, in Cases 7-CA-40151 (1) and (2), the Regional Director for Region 7 issued an order consolidating cases, consolidated complaint and notice of hearing on September 30. The consolidated complaint, as amended at the hearing, alleges that Dismantling and Demolition violated Sections 8(a)(3) and (1) of the National Labor Relations Act, referred to as the Act, by discharging Powell, Giltrop and Zeitz on May 9 because they refused to work for wages below union scale. By its timely answer, as amended, Dismantling denied that the Respondents had engaged in the alleged unfair labor practices.

¹ All dates are in 1997, unless otherwise indicated.

Findings of Fact

I. Jurisdiction

5 Respondents, corporations with an office and place of business in Lapeer, Michigan,
engage in the demolition commercial and residential structures. During 1996, Dismantling and
Demolition, respectively, in conducting their business operations, purchased and received at the
Lapeer, Michigan facility, goods valued in excess of \$50,000 from local dealers of Caterpillar
Corp., located in the State of Michigan, which had received these goods directly from points
10 outside the State of Michigan. Respondents admit and I find that they are employers engaged
in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Alleged Unfair Labor Practices

15 A. The Facts

At all times material to these cases, Rick Marcicki has been the owner and president of
both Dismantling and Demolition. He established Dismantling in 1984 to perform demolition
work as a non-union employer. When necessary, though, Dismantling would sign union
20 contracts to cover a individual jobs. In 1994, after the union side of Dismantling's operations
had increased substantially, Marcicki established Demolition to perform the unionized portion of
his demolition operations.

Normally, the two firms employ approximately 50 full-time employees, which include the
office staff, estimators and supervisors. Also, under normal conditions, Dismantling and
25 Demolition employ 4 crews to perform demolition work.

Demolition has collective-bargaining agreements with Michigan laborers union locals in
Flint, Pontiac, Ann Arbor, and Detroit. In addition, Demolition has a contract with a laborers
union in Dayton, Ohio, and with operating engineers locals in Ohio and Michigan. The hourly
30 wage rate for Demolition's unionized laborers is \$17.30, plus an additional \$2 per hour in fringe
benefits. Dismantling's basic hourly wage rate is \$10.

Jerry Powell began working as a laborer for Dismantling on February 3, 1991, with an
hourly rate of \$13. Powell began working for Demolition in May 1995 and in the same month
35 joined Laborers Local 334, based in Detroit. After May 1995, Marcicki divided Powell's working
time between Demolition and Dismantling. This arrangement continued until May 9, the last
day of Powell's employment by the Respondents.

Robert Giltrop, a member of Laborers Local 959 out of Ann Arbor, and Jayson Zeitz, a
40 member of the same local, began working for Demolition in February. After employing them on
a demolition site for two or three weeks, Giltrop and Zeitz were laid off. In April, Demolition
recalled them. Giltrop and Zeitz remained at work for Demolition until May 9. During 1997,
Marcicki assigned them to do some work for Dismantling. When they worked for Dismantling,
45 Giltrop and Zeitz each received an hourly wage of \$10.

On May 7 and 8, Demolition employed Powell, Giltrop, Zeitz, along with Jason Malady
and another laborer, whose first name was Russell, at a site identified as Botsford Commons, a
union job. On the afternoon of May 8, Malady informed Powell that their immediate supervisor,
Donald Borashko, had told Malady that their crew would be working at a different site on the
next day. Malady told Powell that it would be a non-union job. Zeitz also reported the new

assignment to Powell on May 8. At the end of the workday on May 8, Supervisor Borashko told Powell, Giltrop, Zeitz and the rest of the crew, to report to a demolition job at Lake Angelus, Michigan, at 7:00 a.m., the next morning. Borashko gave his crew instructions on how to drive to the Lake Angelus job site. Borashko did not tell his crew that Lake Angelus would be a non-union job.² Instead, when asked, Borashko declined to tell Giltrop and Zeitz whether the Lake Angelus job was union or non-union.

The next day, Powell, Giltrop, Zeitz and the rest of Borashko's crew reported to the Lake Angelus job at approximately 7:00 A.M. Upon their arrival, Powell, Giltrop, and Zeitz concluded that the Lake Angelus job was non-union. Soon thereafter, the men became unhappy about being transferred from a union job to a non-union job. The employees growing displeasure notwithstanding, Borashko persisting in telling the crew that he was uncertain as to whether it was a union or a non-union job. Marcicki was at the site early in the day but none of the employees spoke to him about whether the job was union or non-union, nor did they tell him or Borashko that they were unwilling to work on this site because it was non-union. As found above, Powell, Giltrop, and Zeitz had previously worked for Dismantling on non-union jobs. After giving the crew their assignments, Borashko left the site to get scaffolding and pick up the crew members' paychecks from the prior week.

After Borashko left the job site, Powell, Giltrop, and Zeitz decided to make some phone calls to find out if the job was union or not. Giltrop called his local union in Ann Arbor and was told to get in touch with the Pontiac laborers local, which had jurisdiction over the job site. The representative of the Ann Arbor local also advised Giltrop that he and his fellow crew members should not be on a non-union job, and that if their employer did not agree, by noon, to pay union scale to them, they should walk off the job. Zeitz made a telephone call to Laborers Local 1076 in Pontiac. A business agent of Local 1076 advised Zeitz that he and the rest of the crew should negotiate with their supervisor at lunchtime and seek union scale.³

² Giltrop and Zeitz testified that when they asked him on May 8 if the Lake Angelus job was union or non-union, Borashko declined to disclose that information. Borashko testified on direct examination that he told his crew on the afternoon of May 8 that the Lake Angelus job was non-union. At first, Powell testified that Malady had told him that Borashko had disclosed to Malady that the Lake Angelus job would be non-union. However, upon further reflection, Powell testified that Malady had not disclosed the source of this information. Malady's testimony, offered by Respondents, shows that he did not receive that information from Borashko. Instead, Malady credibly testified that he knew from his experience with the Respondents that the type of work they would be performing at Lake Angelus was non-union. Marcicki testified that Borashko told him that he had told the employees that the Lake Angelus job was non-union. However, as Marcicki was not present to hear whatever Borashko told the employees on May 8, I have accorded little weight to this testimony. As Giltrop and Zeitz impressed me as candid witnesses and in light Malady's testimony, I find that Borashko did not disclose to his crew on May 8 whether the Lake Angelus job was union or non-union.

³ According to Powell's testimony, Zeitz told him that the Pontiac local had advised the employees to stay on the job until a business agent appeared. According to Zeitz, the Pontiac local told him that the employees should negotiate with their supervisor at lunchtime and seek union scale. As it was Zeitz, who engaged in conversation with the Pontiac local, and as he seemed to have a firm recollection of its content, I have credited Zeitz's testimony in this regard.

After completion of the phone calls, Powell, Giltrop, Zeitz and the rest of Borashko's crew began working with Richard Christie, the operator of Christie Construction Company, the general contractor on the Lake Angelus job site. They assisted Christie in moving furniture from a house which was to be stripped and renovated. While working, Powell, Giltrop and Zeitz
 5 complained among themselves about the job being non-union, repeating to each other that they would not work for "scabs," meaning non-union people.

During Borashko's absence from the Lake Angelus job site, Powell approached general contractor Christie and complained that it was a non-union job, but that as far as Powell was
 10 concerned, it would become a union job. Powell also stated to Christie that he and his fellow employees would not work on this job for non-union wages. Continuing, Powell asserted that his hourly wage rate on this job was only \$13 and that the union scale was \$17.30. He asked if Christie would make up the difference. Christie answered that he had an agreement with Dismantling and Marcicki. When Powell asked for details of that agreement, Christie declined
 15 to provide them. After assuring Christie of his determination to obtain a union wage rate, Powell declared that he could do the job for Christie "a lot cheaper than Rick [Marcicki] is." When Christie asked for an explanation of this remark, Powell responded that he could "put some people together and do this job for you for cash." I find from Christie's testimony that Powell repeated his offer to Christie five or six times in the course of the morning of May 9.⁴
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Borashko returned to the job site at between 11:00 a.m. and 11:30 a.m. When he came upon his crew, Borashko suggested that it was time for lunch. Powell said he and his colleagues wanted to telephone Marcicki. Borashko replied that they had no reason to contact Marcicki. Borashko stated that he, as their boss, could answer any questions that the
 25 employees had. Powell told Borashko that the Pontiac local had advised Powell, Giltrop, and Zeitz to walk off the job if Dismantling refused to pay them at the union scale. Giltrop and Zeitz echoed Powell's remarks. The three insisted that they wanted union scale wages for their work at Lake Angelus. Borashko became indignant and said the employees would not get union scale and if they did not like that they should leave and find another job. The three employees
 30 left the job.⁵ At the time of this confrontation, Borashko had not yet heard about Powell's

⁴ I based my findings regarding Christie's exchanges with Powell upon Christie's testimony. When cross-examined about his remarks to Christie, Powell seemed evasive and reluctant to
 35 disclose their content. Powell was also quick to answer that he did not recall details of his May 9 encounters with Christie. These responses suggest that Powell was not doing his best to search his recollection. In contrast, Christie testified about these encounters in a candid manner, seeming to search his recollection. I also noted that employee Malady's testimony provided some corroboration for Christie's testimony in this regard.

⁵ I based my findings regarding the confrontation between Borashko and employees Powell, Giltrop, and Zeitz on the testimony of the three employees. On direct examination, Borashko testified that he attempted to contact Marcicki at the employees' request and that he was
 40 unable to reach Marcicki. However, on cross-examination, when asked to recall his exchange with Powell, Giltrop, and Zeitz, Borashko omitted any reference to his attempt to contact Marcicki or any report of such efforts to Powell. I also note Malady's testimony to the effect that Borashko attempted to reach Marcicki before the three employees had left the job site. This testimony does not support Borashko's testimony that he made the attempt at the outset of his confrontation with Powell. Further, Powell, Giltrop, and Zeitz seemed to be giving an accurate
 45 account of what was a dramatic confrontation between them and their supervisor. On the other hand, Borashko did not seem to be making a serious effort to relate either the nature of, or the

Continued

remarks to Christie.⁶ At the hearing before me, Marcicki admitted that Powell was discharged on May 9. I find from Giltrop's and Zeitz's testimony that they understood from Borashko's final statement to them on May 9, that he had fired them when he told them to find another job if they were not willing to work for the non-union rate.

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At about 3:00 p.m. or 3:30 p.m. on the same day, Marcicki arrived at the Lake Angelus job site. He spoke with Christie and Borashko and learned that Powell had offered to perform Dismantling's work at the site for less money and for cash. Marcicki also heard from Borashko that Powell, Giltrop, and Zeitz had complained about their wage scale and had demanded union scale. Borashko reported to Marcicki that he had told Powell, Giltrop, and Zeitz that if they did not want to work for non-union wages, they should go and find another job.

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After May 9, neither Marcicki nor any other representative of either Demolition or Dismantling contacted Giltrop or Zeitz. Powell did call Demolition on May 22 and asked to speak with Marcicki⁷. A secretary, Toni Francis, answered the telephone. After a brief pause during which Francis conferred with Marcicki, the secretary returned to the phone. Francis told Powell that Marcicki was busy and had no time to talk to Powell, and that as far as Marcicki was concerned, Powell no longer had a job with the Respondents.

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In June 1997, Powell filed an unemployment compensation claim against Dismantling with Michigan's Employment Security Commission. In response to that claim, which arose from Powell's discharge on May 9, Dismantling's representative, the Gibbens Company, provided two reasons for the discharge. In a letter to the Commission dated June 25, Gibbens asserted that Dismantling discharged Powell for inciting other employees to walk off the job and refuse to work, and for offering "his own personal services as a carpenter to do work for [Christie]" on the Lake Angelus job.

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details of the confrontation. In sum, I found from their demeanor that Powell, Giltrop, and Zeitz were more reliable witnesses than Borashko was in recalling this confrontation.

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⁶ According to Christie, he met Borashko upon the latter's return to the Lake Angelus job site at close to 11:30 a.m. on May 9 and reported Powell's effort to take the job away from Dismantling. On cross-examination, Borashko admitted that he did not receive Christie's report until after Powell, Giltrop and Zeitz had departed. The record shows that Borashko considered the report of Powell's attempt to wrest the Lake Angelus job from Dismantling as serious misconduct. Yet the testimony regarding Borashko's confrontation with Powell on May 9 shows that the supervisor did not mention it in their conversation. This fact, combined with Borashko's recollection of having been told after lunch, convinced me that Christie did not mention Powell's efforts to take over the job from Dismantling until after the three crewmen had left the job site.

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⁷ Powell testified that he telephoned Marcicki on May 13. However, Toni Francis testified credibly that the date of the call was May 22. She recalled that on the latter date, Marcicki was preparing a bid that was due on the following day. As Francis impressed me as a conscientious and candid witness, I have credited her testimony in this regard.

B. Analysis and Conclusions

Section 7 of the Act guarantees employees the right to engage in "concerted activities" not only for self-organization, but also "for the purpose of...mutual aid or protection...." The broad protection of Section 7 applies with particular force to unorganized employees, who, because they have no designated bargaining representative have "to speak for themselves as best they [can]." *NLRB V. Washington Aluminum Co.*, 370 U.S. 9, 14 (1962).

Section 8(a)(1) of the Act protects an employee's right to engage in concerted activities by making it an unfair labor practice "to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7." Thus, an employer violates Section 8(a)(1) of the Act by discharging an employee for engaging in concerted activities protected by the Act. *JMC Transport, Inc.*, 272 NLRB 545, n.2 (1984), *enfd.* 776 F.2d 612 (6th Cir. 1985). It is well established that employees' concerted activities directed toward improving their terms and conditions of employment are protected by the Act. *JMC Transport, Inc.*, *supra*, at 550. See also *NLRB v. Lloyd A. Fry Roofing Co.*, 651 F. 2d 442, 445 (6th Cir. 1981). Such protected concerted activities includes that directed at improving wages. *JMC Transport, Inc.*, *supra*, at 550.

The record shows that on May 9, Powell, Giltrop, and Zeitz engaged in protected concerted activity. Soon after their arrival at the Lake Angelus job site, they decided to find out if the job site was union or non-union. They made telephone calls to local unions in Ann Arbor and Pontiac. They received advice from the locals to talk to their employer and try to obtain the union scale wage. The Pontiac local told them to walk off the job if their employer refused to pay them the union scale. As they worked, the three discussed the situation and resolved to seek union scale.

When Borashko returned to the job site, Powell, Giltrop, and Zeitz approached him. Powell sought Borashko's help in contacting Marcicki. Borashko insisted that it was not necessary to contact Marcicki. Borashko claimed that he could handle the questions of Powell, Giltrop, and Zeitz. Speaking for Giltrop and Zeitz as well as himself, Powell told Borashko that the Pontiac local had advised them to walk off the job if Dismantling refused to pay them union scale. In the ensuing discussion, Powell, Giltrop, and Zeitz insisted that they wanted union scale for their work at Lake Angelus. Thus, the three employees showed their shared concern about the wage scale they were to receive for their work at Lake Angelus and acted in concert to attain a higher wage. They apparently intended to stage a walkout if Dismantling rejected their demand.

I find, contrary to Respondents' contention in their brief, that Powell, Giltrop, and Zeitz did not engage in a strike. Rather, I find that Borashko averted a strike by rejecting the three employees' demand for a higher wage and telling them that if they did not accept the lower wage scale, they should leave and find another job. Powell, Giltrop, and Zeitz interpreted these remarks to constitute their discharge. I find that Powell, Giltrop, and Zeitz reasonably interpreted Borashko's remarks as their conditional discharge. That is, they were fired unless they were willing to accept the lower non-union wage scale. *NLRB v. Ridgeway Trucking Co.*, 622 F. 2d 1222, 1224 (5th Cir., 1980); *Hale Manufacturing Co., Inc.*, 228 NLRB 10, 13 (1977) *enfd.* 570 F.2d 705 (8th Cir. 1978). By walking off the job, the three employees showed they were not willing to accept the lower wage. Simultaneously, Borashko discharged them.

At a hearing before the Michigan Employment Security Board of Review involving

Powell's claim for unemployment benefits, Marcicki testified that he discharged Powell on May 9. Any May 9 decision by Marcicki, though, only ratified what Borashko had already done. Thus, it was Borashko who discharged Powell and informed Marcicki of that fact only after Powell had left the site.

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The record also shows that Marcicki ratified Borashko's discharge of Giltrop and Zeitz. Neither Marcicki nor any other representative of Respondents made any effort to contact Giltrop or Zeitz after the May 9 incident. No representative from Respondents ever sought to notify Giltrop or Zeitz that Borashko had not in fact discharged them. Accordingly, I find that Respondent's discharged Giltrop and Zeitz.

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Under Board policy, where the record shows that an employer's hostility toward concerted activity protected by Section 7 of the Act was a substantial or motivating factor in a decision to discharge an employee, the discharge will be found unlawful, unless the employer demonstrates, as an affirmative defense, that it would have discharged the employee even in the absence of the protected activity. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 402-403 (1983), affg. *Wright Line, a Div. Of Wright Line, Inc.*, 251 NLRB 1083 (1980), enf'd. On other grounds, 662 F.2d 899 (1st Cir. 1981) cert. denied, 455 U.S. 989 (1982); *Manno Electric, Inc.*, 321 NLRB 278, 280 n. 12 (1996). Where it is shown that the business reason or reasons advanced by the employer for the discharge were pretextual — that is, that the reasons or reasons either do not exist or were not in fact relied upon—it necessarily follows that the employer has not met its burden and the inquiry is logically at an end. *Wright Line, Inc.*, 251 NLRB at 1084.

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In the instant cases, I find that the General Counsel has shown that Powell, Giltrop, and Zeitz engaged in concerted activity protected by Section 7 of the Act on May 9 when they approached Borashko and insisted upon union scale wages for their work at the Lake Angelus job site. *NLRB v. Lloyd A. Fry Roofing Co., Inc.*, 651 F. 2d 442, 445 (6th Cir. 1981). The record also shows that this insistence upon union scale as a condition of employment was a motivating factor in Respondents' decision to discharge these three employees. Borashko rejected the demand and advised the three employees that if they did not accept the lesser wage scale they should leave and seek employment elsewhere. In their explanation of Powell's discharge to the Michigan Employment Security Commission, Respondents admitted that one of the reasons for his discharge was that he incited other employees to "walk of the job and refuse to work on...Friday, May 9..." I also find from the testimony of Respondents' witness, Gerald Jason Malady, that on May 9, Borashko warned Powell that Powell, "would be gone" if he walked off the Lake Angelus job. In sum, I find ample evidence that Borashko's decision to discharge Powell, Giltrop and Zeitz was motivated by their insistence upon union scale wages for their work at Lake Angelus.

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The Respondents have not sustained their burden of persuasion by showing that they would have discharged the three employees even if they had not engaged in protected activity. As to Giltrop and Zeitz, the Respondents have not advanced any business reason to explain their decision to discharge the two employees on May 9. In an effort to rebut the General Counsel's evidence, the Respondents proffer Powell's offers to replace Dismantling as the sub-contractor on the Lake Angelus job as misconduct justifying his discharge. However, Borashko did not rely upon that misconduct on May 9, when he decided to discharge Powell. Indeed, Borashko did not know of Powell's overtures to Christie until after Powell and his colleagues had left the job site. I also note that when Powell telephoned Respondents on May 22, Marcicki response to Powell was that he no longer had job there. Absent from Marcicki remarks was

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any reference to Powell's overtures to Christie. Marcicki's neglect to mention these overtures suggests that he was ratifying what Borashko had done on May 9 and was not attaching any importance to those overtures. Accordingly, I find that by discharging Powell, Giltrop, and Zeitz on May 9, Respondents interfered with, restrained and coerced them in the exercise of the rights guaranteed in Section 7 of the Act. *Dayton Typographical Service, Inc.*, 273 NLRB 1205 (1984) enfd. In pertinent part 778 F.2d 1188, 1193 (6th Cir. 1985).⁸

Conclusions of Law

1. Respondents, North American Dismantling Corp. and North American Demolition Corp., are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. By discharging employees Jeffrey G. Powell, Robert W. Giltrop and Jayson Zeitz on May 9, 1997, Respondents have violated Section 8(a)(1) of the Act, and such violations affect commerce within the meaning of Section 2(6) and (7) of the Act.

3. Respondents have not violated Section 8(a)(3) of the Act by discharging employees Jeffrey G. Powell, Robert W. Giltrop and Jayson Zeitz.

Remedy

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

The Respondents having unlawfully discharged employees, Jeffrey G. Powell, Robert W. Giltrop, and Jayson Zeitz, they must offer each of the three employees reinstatement and make them whole for any loss of earnings and other benefits each may have suffered as a result of his unlawful discharge. Backpay shall be computed on a quarterly basis from the date of their respective discharges to the date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

⁸ The consolidated complaint alleged that the three discharges violated Section 8(a)(3) of the Act. However, the record did not show that Respondent's decision to discharge the three employees was motivated by a desire to encourage or discourage membership in a labor organization. Absent such a showing, I cannot find a violation of Section 8(a)(3) of the Act. Accordingly, I shall recommend dismissal of that allegation.

⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondents, North American Dismantling Corp. and North American Demolition Corp., Lapeer, Michigan, their officers, agents, successors, and assigns, shall

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1. Cease and desist from

(a) Discharging or otherwise disciplining their employees because of their exercise of protected concerted activities.

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

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

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(a) Within 14 days from the date of this Order, offer Jeffrey G. Powell, Robert W. Giltrop and Jayson Zeitz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

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(b) Make Jeffrey G. Powell, Robert W. Giltrop, and Jayson Zeitz whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Such restitution shall be made in the manner set forth in the remedy section of the decision.

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(c) Within 14 days from the date of this Order, remove from their files any reference to the unlawful discharges of Jeffrey G. Powell, Robert W. Giltrop and Jayson Zeitz, and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

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(d) Preserve and, within 14 days of a 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 necessary to analyze the amount of backpay due under the terms of this Order.

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(e) Within 14 days after service by the Region, post at their facility in Lapeer, Michigan copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings the Respondents shall duplicate and mail, at

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¹⁰ If 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."

their own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 13, 1997.

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

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

Dated, Washington, D.C. July 10, 1998

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Leonard M. Wagman
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

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

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The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

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- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

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WE WILL NOT discharge or otherwise discipline our employees because of their exercise of protected concerted activities.

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

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WE WILL offer Jeffrey G. Powell, Robert W. Giltrop and Jayson Zeitz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

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WE WILL make Jeffrey G. Powell, Robert W. Giltrop and Jayson Zeitz whole for any loss of earnings and other benefits suffered as a result of their discharges, less any net interim earnings, plus interest.

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WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Jeffrey G. Powell, Robert W. Giltrop and Jayson Zeitz and WE WILL, within 3 days thereafter, notify each of them, in writing that this has been done and that the discharges will not be used against them in any way.

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(Employer)

Dated _____

By _____

(Representative)

(Title)

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This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313-226-3244.

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The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

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Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

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WE WILL NOT discharge or otherwise discipline our employees because of their exercise of protected concerted activities.

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

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WE WILL offer Jeffrey G. Powell, Robert W. Giltrop and Jayson Zeitz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

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WE WILL make Jeffrey G. Powell, Robert W. Giltrop and Jayson Zeitz whole for any loss of earnings and other benefits suffered as a result of their discharges, less any net interim earnings, plus interest.

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WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Jeffrey G. Powell, Robert W. Giltrop and Jayson Zeitz and WE WILL, within 3 days thereafter, notify each of them, in writing that this has been done and that the discharges will not be used against them in any way.

(Employer)

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Dated _____ By _____
(Representative) (Title)

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477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313-226-3244.