

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

DOUGLAS ELECTRICAL CONTRACTING, INC.

and  
Cases 11-CA-17176

11-CA-17471  
INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, AFL-CIO,  
LOCAL UNIONS 342 AND 379

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NC, for the General Counsel.  
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of Winston-Salem, NC, for the  
Respondent.

DECISION

Statement of the Case

JOHN H. WEST, Administrative Law Judge: International Brotherhood of Electrical Workers, AFL-CIO, Local Unions 342, 379, 474, 553 and 776 (Union) filed a charge against Douglas on September 5, 1996, in Case 11-CA-17176, General Counsel's Exhibit 1(a). The charge was amended on January 27, 1997, General Counsel's Exhibit 1(c). On January 28, 1997, a complaint issued alleging that Douglas collectively violated Sections 8(a)(1) and 8(a)(1) and (3) of the National Labor Relations Act, as amended, (Act), by discharging and thereafter failing and refusing to reinstate named employees, by refusing to consider for hire, and/or to hire named employees, by failing and refusing to reinstate named employees who were engaged in an unfair labor practice strike after they made an unconditional offer to end their strike, by denying overtime to a named employee, and by changing its hiring policy, General Counsel's Exhibit 1(e). On April 18, 1997, Locals 342 and 379 of the Union filed a charge in 11-CA-17471 against Douglas, General Counsel's Exhibit 1(j). This charge was amended on May 5, 1997, and August 6, 1997, General Counsel's Exhibits 1(l) and 1(m), respectively. On October 3, 1997, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (complaint) issued reiterating the above-described allegations and also alleging that Douglas violated Sections 8(a)(1) and 8(a)(1) and (3) of the Act, collectively, by interrogating employees about their union activities, by threatening its employees that the business will close if the employees engage in activities on behalf of the

Union, and by delaying the reinstatement of named employees who were engaged in the unfair labor practice strike after they made an unconditional offer to end their strike, General Counsel's Exhibit 1(p). Respondent denies violating the Act.

A hearing was held on October 20, 1997, at Winston-Salem, North Carolina. Douglas chose not to participate in that no representative entered an appearance at the hearing, no witnesses testified on behalf of Douglas and no evidence was introduced by Douglas at the hearing. Upon the entire record in this proceeding, including my observation of the demeanor of the witnesses and consideration of the brief filed by General Counsel on November 20, 1997, I make the following:

## Findings of Fact

### I. Jurisdiction

Douglas, a corporation with an office in Statesville, North Carolina, has been engaged in electrical contracting work at various job sites in North and South Carolina, Virginia, and Tennessee. The complaint alleges, Douglas admits, and I find that at all times material herein, Douglas has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and the Union has been a labor organization within Section 2(5) of the Act.

### II. The Alleged Unfair Labor Practices

#### The Facts

On an unspecified date in April 1996 Allen Craver went to a job site of Douglas at Extended Stay on Hampton Inn Court in Winston-Salem and applied for a job. Craver filled out an application. He spoke with Douglas' foreman at the site, Bill Josey, who wanted him to begin working that day. Craver told Josey that he would begin working at the designated starting time, 7 a.m., the next day. That evening Craver went to the Union hall and told Maurice about being hired. Maurice testified that he gave Craver permission to seek employment at Douglas.

The next day Craver began working for Douglas. Around noon Josey asked him if he would be interested in running the job. Craver said that he would have to think about it after being asked a second time later that day. That evening Craver spoke to either Maurice or Clodfelter. Craver was told that he should take the foreman's job. Maurice testified that Craver consulted with him before taking the foreman's position.

The following day Craver told Josey that he would take the foreman's job.

The third day that he worked for Douglas Frank Black, its owner, came to the job site and told Craver that Josey was going to be placed on a job in Danville, Virginia and Black wanted Craver to do the hiring, firing, and purchasing for the Winston-Salem job. Craver accepted the offer. Black gave Craver blank

applications for employment at Douglas.

Shortly thereafter Craver decided that he needed help on the job. He went to the Union hall and indicated that he needed electricians.

On May 14, 1996, Bob Barnett, a union electrician, applied at Douglas' Winston-Salem job. Craver hired him and later Craver also hired union members David Jones, Nick Warren, Rob Young, and Richard Brooks, all of whom filled out their applications at the job site. Craver gave the applications to Frank Black when he came by the job site on payday to pick up the time sheets and other paperwork relating to such things as purchases. Jones testified that he was told about this job at the Union hall. Barnett testified that he was hired by Craver on May 12, 1996; that he filled out the application at the job site and was hired on the spot; that he is a member of the Union; and that he did not wear Union insignia when he applied for this job and he did not indicate his Union affiliation in his application.

On May 28, 1996, Ray Singleton applied for work at Douglas' Extended Stay job site in Greensboro, North Carolina. He spoke with Don Smith, who introduced himself as a supervisor for Douglas. Smith told him that he, Smith, had to telephone the owner of the company. Subsequently Singleton was told that he was hired and that Respondent could use him on a job in Mt. Airy, North Carolina.

On May 29, 1996, Singleton reported for work at Douglas' Greensboro job site.

On May 30, 1996, Singleton worked at Douglas' Hampton Inn job site at Mt. Airy. Brian Ellis was the foreman on the job. Singleton testified that Ellis instructed him in his work; and that Ellis asked him if he knew anyone who wanted to work. Singleton brought Leslie Burgess to the job and Ellis hired him. Both Singleton and Burgess filled out job applications on June 5, 1996. Singleton testified that he did not put anything on his application to indicate that he was affiliated with the Union.

According to the testimony of Jones, in early June 1996 Frank Black came to Douglas' Winston-Salem job site. Jones testified that he had a conversation with Frank Black in the presence of Craver and Barnett; that since he had worked at Douglas' Mt. Airy job on a few occasions he asked Frank Black how the job was coming; that Frank Black said that he did not know if the new guys he had there were going to work out in that one of his employees noticed that one of the individuals he hired was union; and that Black said "if they try to organize me, I'll just have to close the doors and open back up under a different name." Barnett corroborated Jones, testifying that Frank Black said that if the Union organized his company he would shut it down and reopen it under his son's name, and he had made his money and the only reason he was in this mess was to aid his son.

According to his testimony, on either June 8, 1996, a Saturday, or June 9, 1996, a Sunday, Jeffery McDaniel, responding

to a newspaper ad, telephoned Douglas and spoke to Frank Black. He met Black on a job in Greensboro and he was hired by Black at that time to go to work in Danville, Virginia on the Hampton Inn job as a supervisor. Black told him that as soon as Josey left the job he, McDaniel, would have to hire a helper. Frank Black gave him an application to fill out but Black never asked for the completed application. McDaniel testified that when he applied for this job he did not say anything to indicate his affiliation with the Union.

On June 10, 1996, McDaniel began working at the Danville job with Josey and James Sneed, who McDaniel had hired over the weekend. Sneed also filled out an application but McDaniel was never asked to turn it in. McDaniel was in charge of the job when Josey left about one week later. McDaniel testified that no one from Douglas' management visited the job. Sneed corroborated McDaniel's testimony, testifying that, among other things, McDaniel ran the job after Josey left which occurred just a few days after he, Sneed, started working; that he filled out an application on June 9, 1996; and that he gave the application to McDaniel.

On June 10, 1996, Brooks, who heard of the job from his friend Barnett, was hired by Craver at Douglas' Winston-Salem job. He believed that he filled out an application that day.

On June 10, 1996, Maurice telephoned Ronnie Green, who is an assistant business manager and organizer for Local 474 in Memphis, Tennessee, and told him that Douglas would have a job in Memphis. When Green was unable to locate the job he telephoned Douglas and asked about working on the job. Green testified that he did not tell Mary Black about the fact that he worked for the Union; that he gave her his home telephone number and that evening Don Smith, who introduced himself as a superintendent for Douglas, telephoned him; that Smith asked him if he was in the Union and he said no did he need to be; that Smith indicated that he, Green, could run the job; that they agreed to meet at the job site the next day; and that because of another commitment he could not keep the appointment and he telephoned Douglas and gave Mary Black the name and telephone number of someone else.

On June 10, 1996, Michael Miller, who is president and organizer of the Union's Local 379 in Charlotte, North Carolina, telephoned Douglas and asked Frank Black about working in the Charlotte area. Miller testified that Black said the Douglas was working at the Holiday Inn Express in Pineville, North Carolina and he should speak to Jody Morrison who was the foreman on the job; and that he did not tell Black that he was affiliated with the Union.

On June 10, 1996, Roger Bowyer, who is a member of IBEW Local 379 out of Charlotte, learned of Douglas' Pineville job from Miller. Bowyer then telephoned Frank Black and was hired over the telephone and told to report to Morrison who, as indicated above, was running the Pineville job. When Bowyer went to the job site later that day Morrison gave him an application and told him to report the next morning at 7 a.m. Bowyer

testified that at no time during the hiring process did he reveal his union affiliation.

When Bowyer reported to Douglas' Pineville job on June 11, 1996, he was wearing a union shirt and baseball cap pursuant to the instructions of Miller. Bowyer testified that Morrison was in charge of the job, giving instructions regarding what he wanted done. At about 9 a.m. Morrison told Bowyer that Frank Black told him to be on the lookout for a Union man who was supposed to be coming out to the job that day. When Miller arrived at lunchtime Bowyer introduced him to Morrison who gave Miller a job application. When Miller went to Douglas' Pineville job and filled out an application, General Counsel's Exhibit 5, he was wearing a Union shirt and on the application he indicated that he was employed by Local 379 of the IBEW. Miller testified that he was never subsequently contacted by anyone at Douglas.

On June 11, 1996, pursuant to the instructions of Maurice, Craver and the other Union members on Douglas' Winston-Salem job began wearing union paraphernalia at the site. That evening, as he was leaving the job, Craver was approached by Frank Black who asked him if he and the other employees he hired were Union. Craver replied in the affirmative. Craver testified that Black then said that while they were doing a good job, he was not going to be a union contractor and he would go bankrupt before he would sign up to be a union contractor.

Singleton wore a union ballcap to his Mt. Airy job site on June 11, 1996, at the direction of Maurice. This was the first day that he wore such attire to this job site and he wore union clothing every day after that.

Pursuant to the instructions of Maurice, McDaniel and Sneed wore union affiliated tee shirts on June 11, 1996, at Douglas' Danville job. Sneed testified that when he and McDaniel wore union shirts that day Josey asked if they were with the Union and they replied yes.

Wahlgren testified that on June 11, 1996, he was assistant business manager/organizer of Local 474 IBEW; that he is a journeyman electrician with 25 years experience; that on June 11, 1996, Don Smith "beeped" him on the number Green had given Smith and he telephoned Smith; that Smith asked him (a) if he was interested in working for Douglas which had a contract to do an Extended Stay motel in Memphis, and (b) if he belonged to the Union; and that when asked if he belonged to the Union he replied "no, do I need to."

Regarding June 11, 1996, Maurice testified that he was getting ready to telephone Douglas and speak with the owner and he was worried about the job security of the employees who the Union was going to represent for collective bargaining purposes so he suggested to the involved union members who were employed at the involved job sites that on June 11, 1996, they all wear union insignia to work; that he telephoned Douglas that day and told Frank Black that the Union had been authorized by what he

deemed to be a majority of Douglas' employees to represent them; that Black said that he had no use for the Union and he would find out who on Douglas' jobs is in the Union; and that Black said that he intended to stay union free.

On June 12, 1996, Frank Black came back to Douglas' Winston-Salem job site and told Craver that henceforth he, Black, would have to see the applications of prospective employees and Craver would give him the applications or send the applicants to Statesville to fill out the application. Maurice testified that he spoke with Craver that evening and Craver told him that he could no longer hire at the job site and applications would have to be forwarded to Frank Black.

Also on June 12, 1996, a Wednesday, Singleton was having automobile problems and instead of arriving at work at 7 a.m. he and Burgess, who rode with him, arrived at 10 a.m. Singleton had telephoned Ellis and told him of his automobile problems. Singleton testified that when he arrived at work Ellis said that he and Burgess would have to come to work on time or they would be fired; that Ellis also said that Frank Black telephoned and said that there were some union guys on the job; that Ellis asked him if he had a union card and he replied yes; that Ellis said that he told Frank Black that Craver was union because he worked with Carver once; that about 2 p.m. Frank Black came to the job site and told him that he had to wear hard soled boots and a hard hat; that Ellis and Barry Theresa did not have hard hats and they were wearing tennis shoes; that Burgess was with him when this occurred; and that Frank Black told him to get his stuff and leave and Burgess left also. Jones testified that he worked at Douglas' Mt. Airy job site about four times and he never wore a hard hat there, and Frank Black, who worked on this job, did not wear a hard hat on the job either. Singleton telephoned Maurice and told him that he, Singleton, had been fired. Craver heard that Black fired two helpers at Douglas' Mt. Airy job. One of them, Ray Singleton, was a Union member.

Frank Black telephoned Craver and told him that he was sending the paychecks for the two fired employees to the Winston-Salem job site and when they came to pick them up he, Craver, was to hire them if he needed them "because what happened in Mt. Airy was a misunderstanding ...."

On June 13, 1996, Bowyer left Douglas' Pineville job at 2 p.m. at the direction of Morrison because OSHA State inspectors were on the job and Morrison did not have a hard hat for Bowyer to wear. Bowyer testified that neither he nor Morrison wore a hard hat on that job; and that Douglas did not supply him with a hard hat. Maurice testified that when Bowyer could not reach his organizer, Miller, he telephoned him; that Bowyer discussed what had happened to him regarding Douglas; that he told Bowyer about what happened with Singleton and Burgess; and that Bowyer asked him about an unfair labor practice strike.

On June 13, 1996, Wahlgren went to Douglas' Memphis job site. He testified that Don Smith asked him "you sure you're not Union" to which he replied "no, why"; that Smith then said that

all the Union electricians in North Carolina wear overalls and he was wearing overalls; that Smith gave him an application to fill out and Smith said that he had to telephone Frank Black and he went into the job trailer; that when Smith came back out of the trailer there was an electrical inspector from the Code of Enforcement who said that Wahlgren could not work for Douglas because it was not licensed in Shelby County and Smith could not do any work because he was not licensed in that county; that the inspector indicated that Wilson Electric (Wilson) had taken out the electrical permits for the job and Wahlgren could work for that company but Smith would have to get an apprentice license and work under Wahlgren; that Smith telephoned Jerry Hamm, the owner of Wilson, and Hamm came to the job site and indicated, after he obtained Smith's apprentice license, that the Union was trying to cause trouble; that Smith then said that Douglas was having trouble with the Union in North Carolina; that after Hamm left, Smith telephoned Black to tell Black that Hamm had obtained the license, and when he got off the telephone with Black Smith said "we just fired those two of those Union SOB's down in the Carolinas"; that later that day Smith asked him when Green was getting back in town and whether Green was Union to which he replied that Green was not; and that Smith stayed on the job that day.

According to his testimony, on Friday June 14, 1996, Craver gave Maurice's application to Black, who before placing it in his automobile, asked what the "Union boss" was "doing looking for a job, filling out an application."

When the two employees who were fired at Mt. Airy came to the Douglas Winston-Salem job site to pick up their paychecks Craver offered them jobs.

Singleton testified that on June 14, 1996, Frank Black telephoned him and told him that he could pick up his paycheck at the Winston Salem job site. When he went to that job site Craver offered him a job and he began working at that job site on June 17, 1996. Maurice testified that to his knowledge Singleton and Burgess were never made whole by Douglas for being sent off the Mt. Airy job site.

On June 14, 1996, Miller, who was in Chattanooga, Tennessee, was informed by Maurice that Local 379 union member Bowyer, who had been working at Douglas' Pineville job, had joined an unfair labor practice strike.

On June 14, 1996, Bowyer went to Douglas' Pineville job site and told Morrison that he was going on strike. Bowyer testified that he went on strike because on the first day he worked at Douglas' Pineville job he was interrogated about his union affiliation, Morrison made the statement that a union man was coming to the job, and he was told by Miller or Maurice that two other union men were fired on another Douglas job when they revealed their union affiliation. Bowyer picketed at the job site for about 45 minutes, carrying a sign which indicated " [O]n strike against Douglas Electric for unfair labor practice."

On June 14, 1996, when Wahlgren arrived at the job site in Memphis, Smith told him that he was having trouble with one of the jobs in North Carolina and he would have to leave at 9 a.m. because he had a 12 hour drive; that Smith put him in charge of the job and told him to hire Green and some young people who would be willing to work straight time on weekends; and that Smith said "be careful when you hire because the Union is out to get us."

By letter dated June 14, 1996, Maurice, as here pertinent, sent Frank Black a copy of the OSHA standards requiring the employer to furnish personal protective equipment including, but not limited to, 'hard hats,' General Counsel's Exhibit 9. Also by letter dated June 14, 1996, Maurice advised Black that Bowyer had joined illegally-discharged employees Singleton and Burgess on an unfair labor practice strike, General Counsel's Exhibit 10. Both letters were sent under the same certified number and they were received by Douglas, General Counsel's Exhibit 9(a).

On June 17, 1996, Green reported to work at Douglas' Memphis job. He testified that he worked for 3 hours; that he and Wahlgren went out on strike after they discussed (1) the fact that Wahlgren overheard Smith on the telephone discussing the fact that a couple of union guys in North Carolina had been fired, and (2) the fact that he and Wahlgren were interrogated about their union affiliation; and that before going on strike that day they ran a conduit so that a scheduled concrete pour could take place. Wahlgren testified that he telephoned Smith that morning because there was a question regarding how much to pay Green and Smith raised Wahlgren's pay so that he would make more than Green because Wahlgren was going to run the job; and that at about 11 a.m. he and Green went out on a unfair labor practice strike because Douglas "kept wanting to know if we were Union and the fact that they had fired two Union men off the job."

Craver testified that on or about June 19, 1996, he began his preapproved vacation.

On June 21, 1996, Maurice again telephoned Frank Black who said that he was not interested in becoming a union contractor.

On June 24, 1996, Singleton went out on strike. He testified that he went on strike because he felt that he was being treated wrong being transferred from one job to another; that Burgess, Barnett and Brooks also went out on strike that day; that he discussed going out on strike with Burgess who felt the same way; that when he told Maurice on June 24, 1996, that he did not like the way he was being treated Maurice suggested an unfair labor practice strike; and that he and Burgess picketed the Mt. Airy Douglas job site that day, carrying signs which they got from the Union hall, which signs indicated ULP Strike. Jones testified that he went out on strike because of the treatment of Singleton, which he learned of from Maurice. Barnett testified that he walked the picket line with Brooks. Brooks testified that he went out on strike because it was kind of an organizing campaign and "[b]asically because the rest of them

were"; that he telephoned Douglas and told them that he was going out on an ULP strike; and that he walked the picket line on June 24, 1996, with Barnett until lunchtime, carrying a sign that said "Unfair Labor Practice ULP Strike." McDaniel testified that he telephoned Frank Black from the Danville job site and notified him that he and Sneed were going on strike; that Black asked him why and then said "you must be in the Union too"; and that Maurice told them to go on strike that day.

On June 24, 1996, Miller, Bowyer and William Atkinson, who is an organizer in Local 379 of the Union, went to Douglas' Pineville job where Miller and Bowyer picketed while Atkinson filled out an application. Atkinson also picketed after he filled out the application. Miller's picket sign said "Unfair Labor Practice Douglas Electric." Bowyer testified that he picketed with a sign similar to the one described above for 2 hours that day.

On June 24, 1996, Charles Booe, who is in Local 342 and is a journeyman wireman, testified that he filled out an application for employment with Douglas, General Counsel's Exhibit 6, and he gave it to Maurice; that it was his understanding that the application was going to be turned into Douglas; that he wrote "union organizing" on the application; and that he never heard from Douglas after he filled out the application, and to his knowledge the application was sent to Douglas.

By letter dated June 24, 1996, Maurice advised Frank Black that named Douglas employees had engaged in an unfair labor practice strike against Douglas. Also on June 24, 1996, Maurice faxed two applications to Douglas. Maurice testified that the blank application forms were supplied by Craver earlier.

When Craver returned from vacation on July 1, 1996, helper James Wesolowski was running Douglas' Winston-Salem job. Wesolowski, who thought that Craver was on strike, telephoned Frank Black. Subsequently, Wesolowski told Craver that he would have to turn in his beeper and the keys to the trailer. Wesolowski continued to run the job as foreman. Craver continued to buy material for the job. Those working on the job included Craver, Wesolowski and his two brothers and a friend of the Wesolowski, all of whom came off Douglas' Greensboro, North Carolina job.

Craver testified, with respect to the Winston-Salem job, that he noticed that some work which was not done on Friday was done when he came in on Monday; that one of the Wesolowski brothers told him that Frank Black gave them a raise to work Saturday and Sunday one weekend; that he was never asked to work overtime; and that he never told Frank Black that he would not work occasional overtime but he did tell Black when he started working for Douglas that while he did not mind working a little overtime from time to time, he did not want to work for an extended period 7 days a week, 12 hours a day.

On July 12, 1996, Miller drove Union members Michael and Tommy Hill to Douglas' Pineville job where they were told that

they would have to go to Statesville to apply for a job with Douglas. Tommy Hill corroborated Miller, testifying that Morrison told him and his brother that they had to go to Statesville to apply. Tommy Hill also testified that he was not wearing any Union insignia that day.

On July 15, 1996, Singleton made an offer to return to work. He testified that he telephoned Douglas and told Mary Black that he and Burgess were ending their strike; that Mary Black said that his position was permanently filled and he was no longer needed; that he told Maurice that he was making an unconditional offer to return; and that Douglas never offered to reinstate him. Maurice testified that he dialed Douglas' telephone number and handed the telephone to Singleton.

By letter dated July 15, 1996, Clodfelter advised Douglas that Singleton and Burgess effective July 15, 1996, had ended their Unfair Labor Practice Strike and agreed to return to work unconditionally, General Counsel's Exhibit 12. Clodfelter testified that the certified letter came back refused but the faxed letter went through.

On July 16, 1996, Craver took four applications to Douglas' Winston-Salem job site and turned them in to James Wesolowski. Craver had received the applications the day before at the Union hall. Clodfelter testified that Craver brought the blank applications to the Union hall when he was foreman at Douglas' Winston-Salem job and gave them to him and he had Union members fill them out such as Durham, who came to the hall to sign the out of work list. London, who is a Union journeyman electrician with 7 years experience, testified that General Counsel's Exhibit 8(b) is his application; that entries on the application show that he is affiliated with the Union in that he listed a union sponsored apprenticeship training program, four union contractors and his references were Union affiliated; and that he was never contacted by Douglas after that. Durham, who is a Union journeyman inside wireman with 24 years experience, testified that General Counsel's Exhibit 8(c) is his application; that he was unemployed when he filled the application out; that one of the three contractors he listed is a union contractor, one of the other two became a union contractor and he left the third and joined the strike against it when his supervisor told him that he did not like union members on his job; and that he was never contacted by Douglas after that. Druhl testified that he is a Union journeyman inside wireman; that General Counsel's Exhibit 8(a) is his application; that he was working at the time but it was very sporadic; and that Douglas did not contact him after he filled out the application.

At the end of the workday on August 2, 1996, Craver went out on strike at the direction of Maurice.

On August 5, 1996, McDaniel telephoned Douglas and told Mary Black that he and Sneed "were ending our strike unconditionally and ready to go back to work." McDaniel testified that Mary Black said that they had been permanently replaced; and that Douglas never offered to reinstate him. Sneed also testified

that he did not receive an offer to return to work from the company.

By letter dated August 5, 1996, Clodfelter advised Douglas that McDaniel and Sneed effective August 5, 1996, have ended their Unfair Labor Practice Strike and agree to return to work unconditionally, General Counsel's Exhibit 19. Clodfelter testified that the certified letter came back refused and the faxed letter did not go through.

Also by letter dated August 5, 1996, Clodfelter advised Douglas that Craver effective August 2, 1996, has joined the Unfair Labor Practice Strike, General Counsel's Exhibit 18. Clodfelter testified that the certified letter came back unclaimed and the faxed letter did not go through.

On August 22, 1996, Brooks telephoned Douglas and told the woman who answered that he was willing to come back to work unconditionally. She told him that he had been permanently replaced. Douglas never offered to reinstate him.

By letter dated August 23, 1996, Clodfelter advised Douglas that Brooks, effective August 22, 1996, has ended his Unfair Labor Practice Strike and agreed to return to work unconditionally, General Counsel's Exhibit 20. Clodfelter testified that the certified letter came back refused and the faxed letter did not go through.

On December 10, 1996, Miller and Atkinson went to Douglas' Sleep Inn job in Charlotte and spoke with Don Smith. Atkinson gave Smith a business card indicating that Atkinson was an IBEW organizer. Smith told them that he did not have any applications and that two had been filled out that day.

On January 27, 1997, Craver and Barnett telephoned Douglas from the Union hall and offered to return to work. Mary Black told them that they had been permanently replaced. Bowyer testified that he made the same type of telephone call on this day and he received the same response from the same person.

By letter dated January 27, 1997, Clodfelter advised Douglas that Craver and Barnett have agreed to end their Unfair Labor Practice Strike, effective immediately, and return to work unconditionally, General Counsel's Exhibit 17. Clodfelter testified that, as evidenced by page two of the document, the letter came back refused.

On January 28, 1997, Miller sent Union members Tony Smith and William Owen to apply for work at Douglas' Sleep Inn job in Charlotte on North Train. Miller testified that these two members later told him that they were told at the job site that they had to go to Statesville to apply for a job with Douglas. Owen testified that he and Smith drove to Douglas' Sleep Inn job site in his truck; that they were both unemployed at the time; that they parked in front to the job trailer used by Douglas and went inside; that he was wearing a union shirt and ballcap; that he has a 10 inch union sticker on the back window of his truck;

that an individual named Mark told them that they would have to go to Statesville to apply for a job with Douglas; and that they returned to the Union hall and Miller told them that he had previous knowledge that applications were previously taken on that job and it would probably be of no use to go to Statesville.

By letter dated January 29, 1997, Frank Black advised Craver that he could return to work on February 10, 1997, at a Douglas job in Myrtle Beach, South Carolina, General Counsel's Exhibit 2. Craver testified that he did not go to the Myrtle Beach job because it was a 5 hour drive from where he lives and he knew that Douglas had work a lot closer than that, namely at Greensboro, Mt. Airy, and Charlotte, North Carolina, all of which were within 30 to 90 minutes driving time from his residence. Barnett expressed the same sentiments indicating that he was not being paid enough to drive to Myrtle Beach and he was aware that Douglas had a job in Greensboro at the time. Barnett was not contacted by Douglas after that. Bowyer testified that he understood that Douglas had work in the Charlotte area and he felt Douglas' offer was not a bona fide offer to return to work but rather it was done to persuade him not to come back to work.

By letter dated February 4, 1997, Frank Black advised Maurice that he should not telephone Douglas' office and any further questions should be addressed to its attorney.

By letter dated February 5, 1997, Maurice advised Frank Black, with respect to Douglas' offers of reinstatement to Craver and Barnett, that before they would seriously consider the offers they wanted to know about alternative opportunities in North Carolina or per diem for the out-of-town assignment. Maurice testified that he was authorized to represent the two employees; that the letter was faxed, General Counsel's Exhibit 15, and mailed, General Counsel's Exhibit 16; and that while the faxed letter was successful, the certified letter was unclaimed.

On February 7, 1997, Billy Forester, who is a journeyman in Local 342 of the IBEW with 30 years experience, went to Douglas' Danville job looking for work. Bill Crawford, of Douglas, who indicated that he was in charge of the job, told Forester that Douglas was hiring but he would have to go to the Statesville office to fill out an application. Forester was wearing a Union jacket and baseball hat at the time. He did not go to Statesville, which is 150 miles from Danville. Maurice testified that Forester reported to him what occurred.

On April 16, 1997, Kenneth Hanks and Okey Mullins, both of whom are in Local 342 of the Union, went to Douglas' Hampton Inn, Danville job site to apply for jobs. Hanks testified that the foreman on the job, Don Smith, and the other man on the job, Crawford, said that they needed help but that while Smith had the authority to hire before there had been an unspecified problem on the job and he had to forward the applications to their main office; that Smith said that Douglas had plenty of work and he specified some locations, including Danville and Dublin, Virginia, and Pineville and Charlotte; that he and Mullins received applications and they filled them out and returned them

to Smith; that Smith said that some of Douglas' work had to be subbed out to different contractors; that he did not wear any union clothing to the job site and he did not have any union stickers on the truck he drove that day; that nothing on his application indicated that he was affiliated with the Union; and that Douglas never contacted him. Mullins corroborated Hanks and also testified that Crawford asked him why he did not come back when he was offered a job earlier; and that he told Crawford the driving would be too much to do alone but Hanks was willing to share it. Mullins identified General Counsel's Exhibit 22 as being part of his application. Mullins also testified that he did not wear any Union clothing when he went to the job site with Hanks; that he did not say anything to either Smith or Crawford which would indicate that he was affiliated with the Union; that he did not have anything in his application which would indicate his affiliation with the Union; and that he never heard from Douglas. Maurice testified that he suggested they apply at Douglas' Danville job site.

Maurice testified that on July 18, 1997, Don Smith telephoned him "unsolicited"; that at the time Smith was a superintendent with Douglas but he considered himself more of a vice president; that Smith said that he had witnessed Respondent having people back date applications to dates prior to when they actually filled them out or went to work for Douglas in order to make it look like they had actually been submitted prior to Union applicants; that Smith gave some names; that Smith said that Douglas was in dire need of people at a Sleep Inn project in Charlotte and at a shopping center in Statesville; that Douglas was trying to recruit people with whom Respondent had prior experience so that there were no applications; and that Smith telephoned him because Smith was dissatisfied.

General Counsel introduced a summary of what it was indicated are all of the applications, along with the applications, that were submitted to the Region by Respondent during the investigation of this matter. It was indicated that the summary is an attempt to set forth, based on the information provided by Respondent, which individuals were hired; that the exhibit reflects that Douglas continued to hire up through the date of the last investigation which was April 17, 1997; and that since the Respondent did not appear at the hearing and produce documents which General Counsel had subpoenaed - which documents would have established exactly who Douglas has hired and when, General Counsel can only establish that Douglas continued to hire people by the applications which reflect that an individual was hired on a specified date by a specified supervisor. The exhibit was received as General Counsel's Exhibit 23.

#### Analysis

Since Respondent choose not to participate in the trial of this matter, none of the testimony or documentary evidence introduced by General Counsel is refuted. Such testimony and evidence is credited. Except to the extent noted below, Douglas violated the Act as alleged in the complaint.

Paragraph 7(a) of the complaint alleges that Respondent, through Don Smith, at Memphis on June 10, 1996, unlawfully interrogated its employees concerning their union activities. Green's above-described testimony is not refuted. On brief, General Counsel, citing *Godsell Contracting*, 320 NLRB 871 (1996), correctly points out that under the circumstances existing here asking someone if they are in the union during a job interview is inherently coercive interrogation and violates Section 8(a)(1) of the Act.

Paragraph 7(b) of the complaint alleges that Respondent, through Frank Black, at Winston-Salem on June 11, 1996, threatened its employees that the business will close if the employees engage in activities on behalf of the Union. The above-described testimony of Jones and Barnett regarding what Frank Black said in early June 1996 is not refuted. On brief, General Counsel, citing *Garney Morris, Inc.*, 313 NLRB 101 (1993), correctly points out that a threat to shut down a business and open up under a different name in order to avoid unionization violates Section 8(a)(1) of the Act.

Paragraph 8 of the complaint alleges that Respondent discharged, and thereafter failed and refused to reinstate Singleton and Burgess from June 12, 1996 until June 17, 1996. The General Counsel has the initial burden of establishing that union activity was a motivating factor in Respondent's action which is alleged to be in violation of Section 8(a)(3) and (1) of the Act. The elements required to support such a showing of discriminatory motivation are union activity, employer knowledge, timing, and employer animus. Once such unlawful motivation is shown, the burden of persuasion shifts to the Respondent to prove that the alleged discriminatory conduct would have taken place even in the absence of protected activity. *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F. 2d 899 (1st Cir. 1981) cert denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). The test applies whether the case involves pretextual reasons or dual motivation. *Frank Black Mechanical Services*, 271 NLRB 1302 n.2 (1984). As noted above, on June 11, 1996, Singleton wore a union ballcap to the Mt. Airy job site for the first time. The following day the foreman of the job asked Singleton if he had a Union card. Frank Black later showed up at the job site and fabricated an issue out of a non-issue, viz., hard hats and hard-soled shoes on a job where at the time there is no overhead work and none of the people who are doing Douglas' work were wearing hard hats. Respondent's anti-union animus is set forth above. Wahlgren's testimony about superintendent Don Smith's June 13, 1996, statement to him after Smith spoke with Frank Black, that they had "just fired those two Union son of bitches down in the Carolinas" was not refuted. There was no business justification for these discharges. And as pointed out by General Counsel on brief, even though Singleton and Burgess were reinstated within a few days of their discharge, their firing remained an unremedied unfair labor practice. Respondent violated the Act as alleged in this paragraph of the complaint.

Paragraph 10 of the complaint alleges that on or about June

12, 1996, Respondent changed its hiring policy, and paragraph 9 of the complaint alleges that Respondent failed and refused to consider for hire, and/or to hire specified employees on specified dates. On brief, General Counsel contends that after learning about the hiring of union members, Frank Black changed the hiring policy in an attempt to thwart the efforts of union-affiliated individuals to apply for jobs with Respondent; that the record shows that at some job sites Respondent allowed individuals to apply for and to be hired by applying at the job site or Respondent hired over the telephone, or there was some combination thereof; that the timing of Respondent's change in policy demonstrates that it was unlawfully motivated; that the change in policy was not applied evenhandedly at all of Respondent's job sites in that when Respondent believed that an applicant was affiliated with the Union it would direct the applicant to apply at the Statesville office but when someone seeking a job with Respondent did not overtly reveal their union affiliation, they were allowed to fill out an application on the job site (i.e. Mullins and Hanks); that Don Smith's statement to Hanks that Smith was now required to forward applications to the main office due to some unspecified trouble makes it clear that Respondent's changed policy was an effort to avoid hiring union individuals; that job applicants are employees protected by the Act, *NLRB v. Town & Country Electric, Inc.*, \_\_\_ U.S. \_\_\_, 116 S. Ct. 450, (1995); that an employer violates the Act by refusing to consider for hire job applicants because of their union activities; that evidence of record shows that Respondent was hiring and continued to hire employees during the time union members were applying; that General Counsel's Exhibit 23 demonstrates that from June 11, 1996, to April 17, 1997, Respondent hired approximately 52 additional employees for its various job sites; that applicants were considered to work at job sites other than where they applied; that there is anti-union animus on the part of Respondent; that Respondent knew that each of the applicants named in paragraph 9 of the complaint was affiliated with the Union; that since Respondent did not assert any defense at the hearing, it did not even attempt to meet the Wright Line, *supra*, burden of establishing that it would have taken the same action regardless of the employee's union affiliation; that there is no assertion that the involved applicants were not bonafide applicants for employment who were seeking and would have accepted employment; and that Respondent did not consider the involved individuals for hire because they were affiliated with the Union. For the reasons given by General Counsel, as set forth here, Respondent violated the Act as alleged in paragraphs 9 and 10 of the complaint. In short, the record supports a finding that the 12 applicants found to have been discriminated against had applied for jobs with Respondent, they were qualified for available jobs for which Respondent was seeking employees, they were not hired for antiunion reasons, and after refusing to hire these 12 applicants Respondent hired other applicants for the involved positions.

Paragraph 11 of the complaint alleges that on or about June 14, 1996, employees of Respondent engaged in an unfair labor practice strike, and paragraph 12 of the complaint alleges that Respondent failed and refused to reinstate specified employees

who engaged in the unfair labor practice strike after they made an unconditional offer to end their strike on a specified date. On brief, General Counsel contends that the record shows that the Union orchestrated the strike and even participated in picketing with some of the strikers; that Respondent's discriminatory discharge of Singleton and Burgess was the primary factor precipitating the unfair labor practice strike; that since one of the reasons for the strike was an unfair labor practice, the strike was an unfair labor practice strike; that the Union notified the Respondent that the basis for the strike was the illegal discharge of Singleton and Burgess; that the Union was aware that each of the involved employees offered to return to work; that whether appropriate vacancies existed for the strikers is a matter to be determined at compliance; that Singleton and Burgess would be entitled to replace workers hired between their strike dates (June 24, 1996) and their offer to return (July 15, 1996), Brooks would be entitled to replace someone hired between his strike date (June 24, 1996) and his offer to return (August 22, 1996); that regarding Sneed, Respondent continued to hire at Danville as late as April 1997; that while Respondent offered Myrtle Beach to Bowyer, the Pineville job was still in progress and, therefore, Myrtle Beach was not substantially equivalent employment; and that Bowyer is entitled to replace anyone hired between the date of his strike (June 14, 1996) and his offer to return (January 27, 1997). The involved strike was an unfair labor practice strike since it was based on the actions of Respondent which have been found herein to be unfair labor practices. Unfair labor practice strikers are entitled to immediate reinstatement upon making unconditional offers to return to work. Mary Black's assertion that those who telephoned her in an attempt to return to work had been permanently replaced does not speak to the issue at hand since they were not economic strikers. Respondent violated the Act as alleged in paragraph 12 of the complaint.

Paragraph 13 of the complaint alleges that Respondent delayed reinstating Barnett and Craver who engaged in the unfair labor practice strike after they made an unconditional offer to end their strike on January 27, 1997. On brief, General Counsel contends that while Respondent's Myrtle Beach offers to Barnett and Craver were valid with respect to location because the Winston-Salem job had been completed by the time of their offer to return, Craver and Barnett are still entitled to limited backpay running from the date of their offer to return (January 27, 1997) until the date their reinstatement was slated to commence (February 10 and 15, respectively) since although traditionally the Board has commenced backpay 5 days after the striker's offer to return, here Respondent did not offer to return them to work within the 5 days and it never offered any explanation as to why these two employees could not be returned to work earlier than the above-specified dates in February; that, therefore, no grace period applies and Craver and Barnett are entitled to backpay running from the dates of their offers to return until their respective dates of reinstatement. The Board, in *Drug Package Co.*, 228 NLRB 108, 114 (1977) indicated as follows:

... in those instances [where] the employer has made it clear that it does not intend to reinstate the unfair labor practice strikers .... there is no reason to permit it 5 days in order to effectuate an orderly reinstatement and the Board will not, in this circumstance, do so. The 5-day period is not to enable the employer to delay reinstatement or to obtain 5 days during which he is not required to pay backpay, but is in recognition of the practical difficulties he may face in reinstating the employees, when he is not in a position to know exactly when they may seek to return.

Here when Craver and Barnett, with Craver's telephone call, unconditionally offered to return they were told that they had been permanently replaced. This was what Mary Black was telling the above-described employees who telephoned Douglas indicating that they wanted to unconditionally return. Subsequently Respondent changed its position with respect to three of the employees, namely, Bowyer, Craver and Barnett and offered them, in writing, Myrtle Beach. As noted, General Counsel takes the position that the Myrtle Beach offer to Bowyer was not valid but because the Winston Salem job on which Craver and Barnett worked was complete, the Myrtle Beach offer to them is valid "insofar as to place." Respondent has moved its employees around between North Carolina job sites, i.e. Jones, the Wesolowski brothers, the unnamed friend of the Wesolowski brothers, Singleton and Burgess. Indeed the Wesolowski brothers and the unnamed friend of theirs were transferred from Greensboro to Craver and Barnett's Winston-Salem job site. If Douglas had any work available in North Carolina, there would be a question as to whether Myrtle Beach, which is approximately a 5 hour drive from the Winston-Salem area, is substantially equivalent employment. In my opinion, Respondent is not entitled to the 5-day grace period in that even with respect to Carver and Barnett it was not making a valid offer. Respondent chose not to participate in this proceeding. It chose not to provide subpoenaed documents. Superintendent Don Smith did not testify to deny Hanks' and Mullins' testimony that in April 1997 Smith said Douglas had a lot of work, not enough help and it had to subcontract. And, according to Hanks, when Smith said that Douglas had a lot of work he included Pineville and Charlotte. Respondent did not refute Craver's testimony that in January 1997 Douglas had work at Greensboro, Mt. Airy and Charlotte. In these circumstances, I would include Craver and Barnett among the employees listed in paragraph 12 of the complaint.

Paragraph 14 of the complaint alleges that beginning on or about July 1, 1996, and continuing thereafter, Respondent denied overtime to Craver at its Winston-Salem job site. On brief, General Counsel contends that Craver was never offered the opportunity to work overtime because of his union activities and Respondent thereby violated the Act. Craver's testimony about what he told Frank Black about overtime is not refuted. It is credited. Craver, a union member, hired union members. Respondent knew this and took measures to preclude the continuation of this practice. Respondent's anti-union animus is described above. Since it did not participate at the hearing herein Respondent did not offer any business justification for

denying overtime to Craver. It has not been shown that absent the union activity of Craver he would have been denied the involved overtime. Respondent violated the Act as alleged in paragraph 14 of the complaint.

#### Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Sections 2(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. The Respondent violated Section 8(a)(1) of the Act by interrogating an employee concerning his union activities and by threatening its employees that the business will close if the employees engage in activities on behalf of the Union.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by:

(a) Discharging on June 12, 1996, and thereafter failing and refusing to reinstate Ray Singleton and Leslie Burgess until June 17, 1996.

(b) Failing and refusing to consider for hire, and/or to hire Michael Miller, Charles Booe, Paul Vogler, Mike Hill, Tommy Hill, David London, Robert Durham, James Druhl, Thomas West, Tony Smith, William Owen, and Bill Forester.

(c) Changing its hiring policy on June 12, 1996.

(d) Failing and refusing to reinstate the following employees who engaged in the unfair labor practice strike after they made an unconditional offer to end their strike: Ray Singleton and Leslie Burgess on July 15, 1996; James Sneed on August 5, 1996; Richard Brooks on August 23, 1996; and Roger Bowyer, Bobby Barnett and Al Craver on January 27, 1997.

(e) Denying overtime on July 1, 1996, and thereafter to Al Craver at Respondent's Winston-Salem job site.

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

#### Remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action set forth below to effectuate the policies of the Act.

Having found that Respondent discharged Ray Singleton and Leslie Burgess in violation of Section 8(a)(1) and (3) of the Act, it is recommended that Respondent offer Ray Singleton and Leslie Burgess immediate and full reinstatement to their former

jobs, or if those jobs no longer exist, to a substantially equivalent position without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay they may have suffered as a result of the discrimination against them by payment to them of a sum of money equal to that which they would have earned as wages during the period from the date of their discharge to the date of their reinstatement less net earnings, if any, during said period with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987)

Having found that Respondent unlawfully discriminated against 12 job applicants, it will be recommended that Respondent offer them employment to positions at projects in the North Carolina, South Carolina, Tennessee and Virginia and Respondent shall make the 12 job applicants whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful discrimination against them, from the date they applied for employment, to the date that the Respondent makes them a valid offer of employment. Such amounts shall be computed in the manner prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), and shall be reduced by net interim earnings, with interest computed in accordance with *New Horizons*, supra.

Having found that Respondent failed and refused to reinstate seven strikers who offered to return, it will be recommended that they be offered immediate and full reinstatement to their former jobs, dismissing if necessary anyone who may have been hired or assigned to perform the work they had been performing, or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or to rights and privileges previously enjoyed by them, and that Respondent make them whole for any loss of earnings that they may have suffered by reason of the unlawful failure to reinstate them by payment to them of a sum of money equal to that which they normally would have earned as wages, from the date of the unlawful failure to reinstate them, to the date of their actual reinstatement less net earnings, computed in the manner prescribed in *F.W. Woolworth Co.*, supra, and shall be reduced by net interim earnings, with interest computed in accordance with *New Horizons*, supra.

Having found that Respondent denied overtime to Al Craver on July 1, 1996, and continuing thereafter, it will be recommended that Respondent make Al Craver whole by the payment to him of the overtime wages that he would have earned but for Respondent's unlawful discrimination against him, from July 1, 1996, until Al Craver went out on strike, with interest computed in accordance with *New Horizons*, supra.

Having found that Frank Black told employees that if the Union tries to organize him, he will close the doors and open back up under a different name, having found that Respondent has engaged in extensive unfair labor practices and since Respondent did not participate in the hearing herein and did not supply the documents subpoenaed by General Counsel, it will be recommended that the imposition of an extraordinary remedy is necessary and appropriate in these circumstances. *Miami Springs Properties, Inc.* 245 NLRB 278 (1979).

Upon the foregoing findings of fact and conclusions of law, and on the entire record, I issue the following recommended:

ORDER

The Respondent, Douglas Electrical Contracting, Inc., of Statesville, North Carolina, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Interrogating an employee concerning his union activities.

(b) Threatening its employees that the business will close if the employees engage in activities on behalf of the Union.

(c) Discharging on June 12, 1996, and thereafter failing and refusing to reinstate Ray Singleton and Leslie Burgess until June 17, 1996.

(d) Failing and refusing to consider for hire, and/or to hire Michael Miller, Charles Booe, Paul Vogler, Mike Hill, Tommy Hill, David London, Robert Durham, James Druhl, Thomas West, Tony Smith, William Owen, and Bill Forester,

(e) Changing its hiring policy on June 12, 1996.

(f) Failing and refusing to reinstate the following employees who engaged in the unfair labor practice strike after they made an unconditional offer to end their strike: Ray Singleton and Leslie Burgess on July 15, 1996; James Sneed on August 5, 1996; Richard Brooks on August 23, 1996; and Roger Bowyer, Bobby Barnett and Al Craver on January 27, 1997.

(g) Denying overtime on July 1, 1996, and thereafter to Al Craver at Respondent's Winston-Salem job site.

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

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

(a) Within 14 days from the date of the Board's Order, offer Michael Miller, Charles Booe, Paul Vogler, Mike Hill, Tommy Hill, David London, Robert Durham, James Druhl, Thomas West, Tony Smith, William Owen, and Bill Forester employment in positions for which they applied or, if such positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights or privileges to which they would have been entitled absent the discrimination.

(b) Within 14 days from the date of the Board's Order,

offer Ray Singleton, Leslie Burgess, James Sneed, Richard Brooks, Roger Bowyer, Bobby Barnett and Al Craver 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.

(c) Make Michael Miller, Charles Booe, Paul Vogler, Mike Hill, Tommy Hill, David London, Robert Durham, James Druhl, Thomas West, Tony Smith, William Owen, Bill Forester, Ray Singleton, Leslie Burgess, James Sneed, Richard Brooks, Roger Bowyer, Bobby Barnett and Al Craver whole for any loss of earnings they may have suffered by reason of the discrimination against them as set forth in the remedy section of this Decision.

(d) Within 14 days from the date of the Boards's Order, remove from its files and remove any and all references to the unlawful refusal to reinstate former strikers who made unconditional offers to return to work and the unlawful refusals to hire and consider for hire the discriminatees named in the complaint and within 3 days thereafter notify the discriminatees in writing that this has been done and that the above-described unlawful refusals will not be used against them in any way.

(e) If Respondent closes, in the event that Respondent, any corporate or other enterprise in which Respondent or any principal of Respondent, including but not limited to Mary Black and Frank Black, or any nominee, proxy, dummy, fiduciary, trustee, deputy, partner, associate, manager, superintendent, foreman, supervisor, agent, attorney, subordinate, employee, designee, or person acting for or in concert with or subject to the authority of the foregoing, singly or together, directly or indirectly, has or have a controlling interest, resumes, initiates, or conducts any electrical contracting or related operation, in North Carolina and in Danville, Virginia or within 100 miles of Danville, Virginia, within a period of 10 years from the date of the Order herein, then and in that event he, she, it, or they and their associates shall, immediately prior to actually commencing any such operation establish and for 1 year thereafter maintain a preferential hiring list for each such enterprise and location, giving immediate, absolute, and unqualified hiring preference to each of the seven former strikers unlawfully denied reinstatement listed in paragraph 2(b) of this Order, and thereafter secondary hiring preference to the 12 applicants Respondent failed and refused to consider for hire, and/or to hire listed in paragraph 2(c) of this Order before hiring any other persons at or for any such enterprise or location. Written notice of such preferential hiring requirement shall be publicly and prominently posted and continuously maintained during said year at all job sites, local headquarters and offices, and at all other places where employees therefore are locally interviewed for hire, hired or paid. Such posting shall be in such form and wording as shall be provided or approved in advance by the Regional Director for Region 11 and shall not be removed, altered, defaced, or covered by any other material during said 1-year period.

(f) 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.

(g) Within 14 days of service by the Region, post at its Statesville, North Carolina facility and all current job sites and mail to all former employees employed at former job sites, and to named discriminatees, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to the named discriminatees, and all current employees and former employees employed by the Respondent at any time since June 10, 1996.

(h) 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 the Respondent had taken to comply.

Dated, Washington, D.C. December 17, 1997.

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John H. West

Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

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

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

WE WILL NOT interrogate you concerning your union activities.

WE WILL NOT threaten you that the business will close if you engage in activities on behalf of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL UNIONS 342, 379, 474, 553 AND 776.

WE WILL NOT discharge you and thereafter fail and refuse to reinstate you if you engage in activities on behalf of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL UNIONS 342, 379, 474, 553 AND 776.

WE WILL NOT fail and refuse to consider for hire, and/or to hire Michael Miller, Charles Booe, Paul Vogler, Mike Hill, Tommy Hill, David London, Robert Durham, James Druhl, Thomas West, Tony Smith, William Owen, and Bill Forester,

WE WILL NOT change our hiring policy.

WE WILL NOT fail and refuse to reinstate the following employees who engaged in the unfair labor practice strike after they made an unconditional offer to end their strike: Ray Singleton, Leslie Burgess, James Sneed, Richard Brooks, Roger Bowyer, Bobby Barnett and Al Craver.

WE WILL NOT deny you overtime if you engage in activities on behalf of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL UNIONS 342, 379, 474, 553 AND 776.

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

WE WILL within 14 days from the date of the Board's Order, offer Michael Miller, Charles Booe, Paul Vogler, Mike Hill, Tommy Hill, David London, Robert Durham, James Druhl, Thomas West, Tony Smith, William Owen, and Bill Forester employment in positions for which they applied or, if such positions no longer exist, to

