

AC Specialists, Inc. and United Association of Plumbers, Pipefitters & HVAC Refrigeration Mechanics, Local Union 123, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Case 12-CA-076395

July 2, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

On October 12, 2012, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions with supporting argument. The Acting General Counsel and the Charging Party each filed an answering brief, as well as cross-exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions,¹ cross-exceptions, and briefs, and has decided to affirm the judge's rulings, findings,² and conclusions only to the extent consistent with this Decision and Order, to amend his remedy, and to adopt his recommended Order as modified and set forth in full below.³

1. The Respondent is a family-owned company that provides heating, ventilation, and air conditioning services to residential and commercial customers. Comanagers David Winston and his son Tim Winston are, respectively, the Respondent's former owner and its current owner.⁴ In February 2012,⁵ the Respondent's three

technicians—James Stahl, Jerome Gordon, and Michael Noel—sought representation by the Charging Party Union and signed authorization cards. On March 5, Stahl notified Union Organizer Russell Leggette that the technicians wanted him to “take the cards” and do whatever was necessary for the Union to represent them. Accordingly, on March 9, Leggette and Todd Vega, Local 123's president, went to the Respondent's facility and informed the Winstons that the three technicians wanted the Union to be their collective-bargaining representative and requested that the Respondent recognize the Union based either on their signed authorization cards or an election. The Union's representatives showed the authorization cards to the Winstons. After looking at the cards, David Winston said, “F—ck the Union,” and ordered the Union's representatives to leave the facility. The representatives did so.

Immediately after ejecting the Union's representatives, the Winstons turned their attention to dealing with the technicians. Initially, the Winstons' exchanges with each of the technicians occurred over the telephone, as the technicians were in their trucks at various locations attending to their first service calls of the day. During these conversations, the Winstons repeatedly threatened the technicians that union representation was incompatible with continued employment by the Respondent, and discharged all of them. David Winston, for example, told employee Gordon that “there wasn't going to be [a] union here, this isn't a union shop, and if [Gordon] wanted to be in a union, then [Gordon] need[ed] to get a union job.” David Winston then reiterated that the Respondent was not “going to be union” and that Gordon “needed to decide what [he was] going to do.” In addition, David Winston questioned employee Stahl about his union activities. Stahl informed Winston that he had been in contact with the union and that the employees “needed to talk about a lot of things.” In response, David Winston told Stahl to “bring in his truck.” Similarly, Tim Winston, after questioning employee Noel about his union activities and learning that Noel had been in contact with the Union, told Noel to finish his call and come “turn in your stuff.” Subsequent exchanges between the employees and the Winstons occurred in person when the technicians returned their trucks to the facility after the Winstons had discharged them.

2. The judge found that the Respondent violated Section 8(a)(1) of the Act by telling the technicians that selecting the Union would be futile, threatening one of them with discharge, and threatening another with ar-

¹ The Charging Party filed a motion to strike those portions of the Respondent's exceptions alleged to be unsupported by the record. In light of our disposition here, we find it unnecessary to pass on the Charging Party's motion.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ In accordance with *Latino Express, Inc.*, 359 NLRB 518 (2012), we shall modify the judge's recommended Order to require the Respondent to compensate affected employees for adverse tax consequences, if any, and to adhere to the Social Security Administration reporting requirements identified there. We shall also modify the judge's recommended Order to include a broad cease-and-desist provision, to add a notice-reading requirement, to conform to the violations found, and to reflect the Board's standard remedial language. Finally, we will substitute a new notice to conform to the modified Order.

⁴ In its answer to the complaint, the Respondent admitted that Tim Winston was a supervisor within the meaning of Sec. 2(11) of the Act, and that both Tim Winston and David Winston were agents within the meaning of Sec. 2(13) of the Act. Accordingly, the Respondent is liable for the Winstons' unlawful conduct.

⁵ All dates are in 2012, unless otherwise indicated.

rest.⁶ The judge further found that the Respondent violated Section 8(a)(3) by discharging the technicians.⁷ The judge found that the Respondent did not violate Section 8(a)(1) by interrogating the technicians. In light of the Respondent's unfair labor practices, particularly its discharge of the entire three-member bargaining unit in the immediate wake of the Union's request for recognition, the judge found that the Respondent's unlawful conduct warranted imposing a remedial *Gissel* bargaining order under category I of the *Gissel* standard.⁸ He nevertheless dismissed the allegation that the Respondent violated Section 8(a)(5) by failing to recognize and bargain with the Union because "the Respondent never agreed to recognize the Union upon the presentation of evidence of a card majority."

3. We agree with the judge, for the reasons he states, that the Respondent unlawfully discharged the three technicians and that its unfair labor practices warrant a remedial bargaining order. Contrary to the judge, however, we also find that the Respondent coercively interrogated the technicians in violation of Section 8(a)(1) and that it violated Section 8(a)(5) by refusing to recognize the Union.

4. With respect to the interrogations, the evidence shows as follows. Noel testified that Tim Winston telephoned him and asked, "[W]hat this union stuff was about" and also why he had joined the Union. Gordon testified that David Winston "asked me who is this union guy that I'd been talking to . . . what made me want to be

union

. . . [and] what made me want to talk to a union guy." Stahl testified that David Winston accused him of being behind the union organizing effort and asked him "who the people were with the union."

The judge found that the Winstons' questioning of Noel, Gordon, and Stahl was not unlawful because the three technicians knew that the Union was going to notify the Respondent about their desire to be represented and thus reveal their union sympathies to the Respondent. The judge therefore found that these interrogations merely confirmed to the Respondent known facts and, thus, were not coercive. We disagree.

The well-established test for evaluating whether interrogations reasonably tend to restrain, coerce, or interfere with the exercise of employees' Section 7 rights requires the Board to assess all of the circumstances, even where the employees questioned are open union supporters.⁹ Accordingly, in analyzing whether an alleged interrogation is unlawful, the Board may examine such factors as the background, the nature of the information sought, the identity of the questioner, and the place and method of interrogation.¹⁰ Here, the background was coercive. In the same conversations in which the Winstons questioned the technicians, they also unlawfully threatened at least one employee with discharge for engaging in union activity and unlawfully told all of those questioned that selecting the Union would be futile. Further, the interrogations, which were conducted by the highest-ranking company officials, went far beyond simply confirming representations made by the union agents; they sought to explore the reasons for the technicians' declared union sympathies and to coerce them to abandon their support for the Union. When the technicians did not yield to that coercion, the Respondent summarily discharged them. Interrogations occurring in such circumstances are clearly coercive and violate Section 8(a)(1). See *Cardinal Home Products*, 338 NLRB 1004, 1007-1008 (2003) (finding that open union adherent was subjected to unlawful coercive interrogation where interrogation took place in context of substantial employer hostility to union organizational campaign).

5. With respect to the allegation that the Respondent unlawfully refused to recognize the Union, the judge misconstrued the Acting General Counsel's theory of the violation. That theory was not, as the judge stated, that the Respondent had breached an agreement to recognize the Union based on a card-majority showing, an agreement the judge found had not been made. Rather, the

⁶ We adopt these 8(a)(1) findings, to which no exceptions were filed. The judge also found that the Respondent did not violate Sec. 8(a)(1) by threatening the three technicians with discharge concurrent with and after their actual discharges. We find it unnecessary to pass on these alleged threats of discharge as they are cumulative of the threat of discharge violation found above. Further, the judge dismissed allegations that the Respondent violated Sec. 8(a)(1) by creating an impression of surveillance of employees' union activities; there were no exceptions to those dismissals.

In his decision, the judge made certain inadvertent errors, which we correct here. In discussing the 8(a)(1) violations alleged in complaint par. 6, the judge inadvertently erred in recommending dismissal of "subparagraphs 7(a) and (b) of paragraph 7" rather than subpars. 6(a) and (b) of par. 6. As stated, there is no exception to the judge's dismissal of the impression of surveillance violation alleged in subpar. 6(a) and, as discussed below, we reverse his dismissal of the interrogation violation alleged in subpar. 6(b). In addition, the judge inadvertently erred in recommending dismissal of the 8(a)(1) threat of futurity violation alleged in complaint subpar. 8(b) and finding the 8(a)(1) threat of discharge violation alleged in subpar. 8(c). It is clear from his decision that the judge intended to recommend finding the former and dismissing the latter. As stated, we adopt, in the absence of exceptions, the threat of futurity violation alleged in complaint subpar. 8(b) and find it unnecessary to pass on the threat of discharge violation alleged in subpar. 8(c).

⁷ The Respondent subsequently reinstated Gordon and Noel, and therefore we shall not order their reinstatement here.

⁸ See *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

⁹ *Rossmore House*, 269 NLRB 1176 (1984), aff'd. sub nom. *HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

¹⁰ *Id.* at 1178 fn. 20.

Acting General Counsel's theory was that the Respondent had engaged in "outrageous and pervasive misconduct" within the meaning of *Gissel* "category I," making the holding of a fair election impossible and thus justifying imposition of a remedial bargaining order.¹¹ In such circumstances, the Board will find an 8(a)(5) violation if there is proof of a majority-based recognition demand. See, e.g., *Mercedes Benz of Orland Park*, 333 NLRB 1017, 1017 fn. 7 (2001) (finding that where respondent embarked on its unlawful course of conduct before the union demanded recognition based on authorization cards from a majority of unit employees, respondent's obligation to recognize and bargain with the union commenced as of date of request for recognition), *enfd.* 309 F.3d 452 (7th Cir. 2002); see also *Trading Port, Inc.*, 219 NLRB 298, 301 (1975) (same).¹² It is undisputed that the Union demanded recognition on March 9. Accordingly, contrary to the judge, and in consideration of the Respondent's swift and egregious response to the employees' union activity, including the unlawful discharge of the entire unit, we find that the Respondent's refusal to recognize and bargain with the Union violated Section 8(a)(5).¹³

AMENDED CONCLUSIONS OF LAW

1. Replace the judge's Conclusion of Law 2 with the following paragraph and renumber the judge's Conclusion of Law 2 as Conclusion of Law 3.

"2. The Respondent, by interrogating employees about their union activities and sympathies, violated Section 8(a)(1) and Section 2(6) and (7) of the Act."

2. Add the following paragraph as new Conclusion of Law 4.

"4. The Respondent, by refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of all full-time and regular part-time service technicians employed by the Respondent at its Tampa, Florida facility, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act, violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act."

¹¹ *Gissel*, 395 U.S. at 614.

¹² In dismissing the 8(a)(5) allegation, the judge relied on *Terracon, Inc.*, 339 NLRB 221 (2003), *affd.* 361 F.3d 395 (7th Cir. 2004), which we find inapposite. That case stands for the well-established proposition that, **absent** circumstances warranting a *Gissel* bargaining order, an employer is not obligated to recognize a union upon demand.

¹³ Inasmuch as the request to bargain occurred on the same day as the commencement of unfair labor practices justifying a remedial bargaining order, we shall make the bargaining order retroactive to that date, March 9, 2012. E.g., *John Cuneo, Inc.*, 253 NLRB 1025, 1027 (1981), *enfd.* sub nom. *Road Sprinkler Fitters Local 669 v. NLRB*, 681 F.2d 11 (D.C. Cir. 1982), *cert. denied* 459 U.S. 1178 (1983).

AMENDED REMEDY

Having found that the Respondent violated Section 8(a)(1) in several ways, including by interrogating its employees about their union activities and sympathies, we shall order that it cease and desist therefrom. Having concluded that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union, we shall order it, effective March 9, 2012, to recognize and, upon request, bargain with the Union as the exclusive collective-bargaining representative of all full-time and regular part-time service technicians employed by the Respondent at its Tampa, Florida facility, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

We also have decided to issue a broad cease-and-desist order. In response to its employees seeking to exercise their Section 7 right to be represented by a union, the Respondent acted swiftly and egregiously by making numerous threats to the employees, interrogating them about their union sympathies and, ultimately, discharging the entire bargaining unit. We find that such misconduct by the Respondent demonstrates a "general disregard for the employees' fundamental statutory rights" and warrants a broad order. *Hickmott Foods*, 242 NLRB 1357 (1979).

Additionally, in accordance with our recent decision in *Latino Express, Inc.*, 359 NLRB 518 (2012), we shall order the Respondent to compensate James Stahl, Jerome Gordon, and Michael Noel for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

We shall also order that the Board's notice be read aloud to the Respondent's employees by Respondent's owner, Tim Winston, in the presence of a Board agent or, at the Respondent's option, by a Board agent in Tim Winston's presence. We find that requiring the notice to be read aloud is warranted by the egregious and pervasive nature of the Respondent's unfair labor practices. Reading the notice to the employees in the presence of a responsible management official serves as a minimal acknowledgment of the obligations that have been imposed by law and provides employees with some assurance that their rights under the Act will be respected in the future. We find that such assurance is clearly warranted under the circumstances of this case. See, e.g., *Homer D. Bronson Co.*, 349 NLRB 512, 515-516 (2007), *enfd.* mem. 273 Fed. Appx. 32 (2d Cir. 2008). We do not, however, grant the Charging Party's request that we also order the notice to be printed in Spanish and read aloud in that language at the request of the Charging

Party as the record before us does not present facts warranting such a remedy.

ORDER

The National Labor Relations Board orders that the Respondent, AC Specialists, Inc., Tampa, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Threatening employees that selecting a union representative would be futile.
 - (b) Threatening employees with discharge if they select the Union as their bargaining representative.
 - (c) Threatening employees with arrest if they select the Union as their bargaining representative.
 - (d) Coercively interrogating employees about their union activities.
 - (e) Discharging or otherwise discriminating against employees for supporting the Union.
 - (f) Failing and refusing to recognize and bargain collectively with United Association of Plumbers, Pipefitters & HVAC Refrigeration Mechanics, Local Union 123, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the unit described below.
 - (g) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed 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 this Order, offer James Stahl full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.
 - (b) Make James Stahl, Jerome Gordon, and Michael Noel whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision as amended in this decision.
 - (c) Compensate James Stahl, Jerome Gordon, and Michael Noel for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.
 - (d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of James Stahl, Jerome Gordon, and Michael Noel, and within 3 days thereafter, notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(e) On request, bargain with the Union as the exclusive collective-bargaining representative, retroactive to March 9, 2012, of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time service technicians employed by Respondent at its Tampa, Florida facility, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

(f) Within 14 days after service by the Region, post at its facility in Tampa, Florida, copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 all current employees and former employees employed by the Respondent at any time since March 9, 2012.

(g) Within 14 days after service by the Region, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached notice marked "Appendix" is to be publicly read by the Respondent's owner, Tim Winston, in the presence of a Board agent or, at Respondent's option, by a Board agent in Tim Winston's presence.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 12 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.

¹⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT threaten you that selecting a union representative would be futile.

WE WILL NOT threaten you with discharge if you select the Union as your bargaining representative.

WE WILL NOT threaten you with arrest if you select the Union as your bargaining representative.

WE WILL NOT coercively interrogate you about your union activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting United Association of Plumbers, Pipefitters & HVAC Refrigeration Mechanics, Local Union 123, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (the Union) or any other labor organization.

WE WILL NOT fail and refuse to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL, within 14 days from the date of this Order, offer James Stahl full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make James Stahl, Jerome Gordon, and Michael Noel whole for any loss of earnings or other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL compensate James Stahl, Jerome Gordon, and Michael Noel for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration

allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of James Stahl, Jerome Gordon, and Michael Noel, 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.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment, and, if an understanding is reached, embody that understanding in a signed agreement:

All full-time and regular part-time service technicians employed by us at our Tampa, Florida facility, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

AC SPECIALISTS, INC.

Christopher C. Zerby, Esq., for the General Counsel.

Thomas M. Gonzalez and Matthew Evans, Esqs., for the Respondent.

Brian A. Powers, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Tampa, Florida, on August 13 and 14, 2012, pursuant to a consolidated complaint that issued on May 30, 2012.¹ The complaint alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) in several respects, Section 8(a)(3) of the Act by discharging three employees because of their union activity, and Section 8(a)(5) of the Act by failing and refusing to bargain with the Union. It seeks a bargaining order as a remedy for the foregoing alleged unfair labor practices. The answer of the Respondent denies any violation of the Act. I find that the Respondent violated the Act substantially as alleged in the complaint and that a bargaining order is warranted.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all parties, I make the following²

FINDINGS OF FACT

I. JURISDICTION

The Respondent, AC Specialists, Inc., the Company, is a Florida corporation with an office in Tampa, Florida, engaged

¹ All dates are in 2012, unless otherwise indicated. The charge in Case 12-CA-076395 was filed on March 12 and amended on April 2 and 25.

² The Charging Party's unopposed motion to correct the transcript by inserting the word "not" between the words "had" and "performed" at p. 59, L. 22, of the transcript is granted.

in providing heating, ventilation, and air conditioning services to residential and commercial customers. The Respondent annually derives gross revenues in excess of \$500,000 and purchases and receives goods valued in excess of \$5000 directly from points outside the State of Florida. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that United Association of Plumbers, Pipefitters & HVAC Refrigeration Mechanics, Local Union 123, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview

The Respondent is a family owned company. David Winston, the former owner, began operating it in 1994. In 2007, his son, Timothy (Tim) Winston, became the owner. David Winston continued to be involved in the operations of the Company. His daughter, Kristy Winston, works in the office, dispatching service technicians, paying bills, and dealing with customers. His wife, Mary F. (Fran) Winston, works when needed, performing the same work as Kristy Winston. In February and early March, there were three service technicians, James Stahl, Jerome Gordon, and Michael Noel. When necessary, Tim Winston worked as a service technician.

The critical events occurred in a less than a 2-hour period on March 9, 2012. The three service technicians employed by the Company all signed union authorization cards on February 23. On the morning of March 9, Union Organizer Russell Leggette and Local 123 President Todd Vega went to the Company's office. Exactly what was said in their short visit is in dispute. They departed. Shortly thereafter, the three service technicians were discharged. Gordon and Noel were reinstated about a month after they were discharged. Stahl was not.

The complaint alleges that the following unit is appropriate for collective bargaining:

All full-time and regular part-time service technicians employed by Respondent at its Tampa, Florida facility, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

The Respondent's amended answer admits that the foregoing unit, absent James Stahl who the Respondent contends was a supervisor, is appropriate. I shall first deal with the supervisory contention and then address the unfair labor practice allegations.

B. Supervisory Status of James Stahl

The Respondent's answer and amended answer to the complaint plead that Stahl is a supervisor. Tim Winston, at the hearing, asserted that Stahl was service manager. In two affidavits given prior to the hearing, one in the initial investigation and another prior to a 10(j) proceeding in this matter, he made no such assertion, stating that Stahl was a service technician.

David Winston never made that assertion. He testified that the Company had three service technicians, Stahl, Gordon, and Noel. Although David Winston initially claimed that Stahl could terminate employees, he amended that claim, explaining that Stahl "could terminate them if he wanted to, but he had to come to us first." Stahl credibly denied having any such authority, and I credit that denial. Testimony relating to a statement by Stahl that the Company should fire Gordon and Noel, a recommendation that was neither accepted nor implemented, confirms that Stahl had no authority to discharge or effectively recommend discharge insofar as neither Gordon nor Noel were fired. David and Timothy Winston made the decisions.

Tim Winston claimed that he told Stahl that he was service manager and had informed Gordon and Noel of that fact. I do not credit that testimony. As pointed out in the brief of the General Counsel, Tim Winston's attempt to explain why he did not identify Stahl as service manager in his affidavits was that his belief that he was service manager did not occur until "once I got the definition of everything." That would have occurred only after the charges here had been filed. Stahl credibly denied that he was ever service manager, explaining that he had twice sought a promotion to that position but that the position had been denied. Both Gordon and Noel credibly denied that they were ever informed that Stahl was service manager.

Stahl credibly denied that he possessed or exercised the authority to hire, discharge, promote, reward, or adjust the grievances of the other service technicians. There is no probative evidence to the contrary, nor is there any evidence that he had the authority to transfer, suspend, lay off, or recall an employee.

Tim Winston claimed that his sister, Kristy Winston, did "some of the dispatching, but if Jim [Stahl] was there and she was answering the phone, he would dispatch." When Fran Winston was asked whether anyone other than Kristy Winston and herself dispatched, she answered, "No." Stahl acknowledged that, on "four or five" occasions when Kristy left the office for a short period of time, he had dispatched. He noted that Kristy Winston, before she left, would "tell me who was available next."

The Board, in *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006), held that the term "assign" referred to "designation of significant overall duties . . . not to the . . . ad hoc instruction that the employee perform a discrete task." Stahl's dispatching was only occasional and was performed in accordance with the instructions given to him by Kristy Winston. There is no evidence that Stahl had the authority to assign employees. His occasional dispatch of another service technician in accord with Kristy Winston's instructions, at best, constituted an "ad hoc instruction," not assignment of "significant overall duties." Dispatching was the responsibility of Kristy and Fran Winston, not James Stahl.

Stahl, who had been exposed to selling techniques at a prior employer, obtained videos from a thrift shop of a "training series by Charlie Greer" relating to selling techniques. He suggested to David and Tim Winston that the techniques could increase sales for the Company, and they agreed. During the last few weeks of his employment, those videos were shown. Stahl, Gordon, and Noel watched them. Contrary to the testi-

mony of Tim Winston, Gordon, Noel, and Stahl recall that he attended some of the sessions. Stahl reviewed invoices to determine whether a particular customer should be approached regarding the sale of additional equipment or services. I note that there is no claim that Stahl gave any training; the videos gave the training. Seeking to make sales does not confer supervisory authority. There is no evidence that attendance at the showing of the videos was mandatory. No directives were given to employees that they follow any specific procedure suggested in the videos.

Tim Winston and Stahl agree that Stahl had limited authority to negotiate prices, such as agreeing to do work for less than the customary charge or selling a system at a higher price. Authority related to prices does not establish authority related to people. Stahl had no authority over his fellow service technicians.

Tim Winston claimed that Stahl was in charge of safety meetings. Stahl and Noel both credibly testified that Tim Winston ran those meetings. I credit Stahl and Noel.

Tim Winston also noted that Stahl had suggested placing all service technicians on a commission, rather than hourly pay basis, in order to increase productivity. That suggestion was accepted by him and his father, David Winston. Employees, at some time in the past, had been compensated on a commission rather than on an hourly basis. The acceptance of that suggestion, indeed the acceptance of any suggestion by an employee, does not establish supervisory authority over employees.

The burden of establishing supervisory status is upon the party asserting that status. The Respondent has not met that burden. David and Tim Winston made the decisions. Stahl was not a supervisor and should not be denied the protections of the Act.

C. Facts

The three service technicians signed union authorization cards on February 23. Union Organizer Russell Leggette told them that the Union could seek recognition by an election or use the cards to seek recognition but that he needed to check with the Union's attorney because "labor laws were changing at that time." Stahl told Leggette that the employees did not want him to do anything immediately, that they wanted to get "our next paycheck and . . . figure out how we wanted to approach this." On March 5, Stahl told Leggette that the employees wanted him to "take the cards" and do whatever was necessary to seek representation." Leggette recalled that he spoke with each of the service technicians rather than only Stahl. I find that he was mistaken in that regard.

Stahl informed Gordon and Noel that Leggette would contact the Company on March 9, and cautioned them that David Winston might fire them. The service technicians carried personal tools with them on the company trucks. Noel, anticipating a worst case scenario, removed many of his personal tools from his truck on the evening of March 8.

On March 9, Leggette and Local 123 President Todd Vega went to the Company's office. Upon entering, they observed two women, Fran Winston and Kristy Winston, at desks to the left of the door through which they had entered. They asked to speak with Tim Winston. Kristy Winston called out to him, and Tim Winston came out of an office on the right. Whether

Vega remained at door throughout the conversation or stood near Leggette is immaterial insofar as it is undisputed that Leggette was the spokesman and that Vega said nothing.

Leggette introduced himself and Vega and stated that they were from Plumbers and Pipe Fitters Local 123 and were out talking to union contractors. Tim Winston replied that "he was doing fine and didn't need any help from the Union." At that point, David Winston came out of the office on the right and stated the "he wasn't hiring any union people here and he had no use for the union." Leggette replied that was "fine with him, but his employees wanted to be in the Union." David Winston responded saying that Leggette "had never spoken to his employees." Leggette replied that he had. David Winston asked "where and when." Leggette answered that "was none of his business." Leggette told David Winston that "his employees wanted Local 123 to be the collective bargaining agent for terms and wages and conditions of employment" and "either wanted to have an election or for him to recognize Local 123 as a majority status based on the authorization cards." David Winston again asserted that Leggette had not talked to his employees. Leggette "then offered the authorization cards out on a yellow tablet" and asked David and Tim Winston if they wanted to look at them. They said they did. After looking at the cards, David Winston said, "[F]uck the Union. The unions have ruined this country." He told Leggette and Vega to leave, and they did so.

Although David Winston denied that Leggette stated that the Company could "recognize us [the Union] or we could have an election," he admitted that he heard Leggette say to Tim Winston, "we want you to recognize the Union." He recalled that was what Leggette "first started saying when he was talking to Tim." Tim Winston was asked whether he recalled that Leggette informed him that "the employees have authorized the Union to represent them." Tim Winston admitted that he "said something like that, yes, sir."

Although Fran Winston denied seeing the authorization cards, she acknowledged that she heard "them," actually it was Leggette, say, "your employees have signed authorization cards to authorize the Union to represent them." Kristy Winston did not testify.

Vega acknowledged that he did not hear Leggette mention an election or request recognition. Vega explained that he was focused on David Winston who was agitated, that throughout his conversation with Leggette, David Winston was "walking back and forth."

David and Tim Winston dispute that Leggette showed the cards to them. Both acknowledge that Leggette had cards in his hand that he was "shuffling around." Vega credibly testified that Leggette held the cards up for the Winstons to see, "they were fanned out under his thumb." I credit Leggette. David Winston admitted that Leggette told Tim Winston that he wanted the Company to "recognize the Union." There was no reason for Leggette to present the cards except to show that the employees had authorized the Union to represent them. Whether the Winstons looked at the cards is immaterial.

Immediately after Leggette and Vega departed, David Winston called service technician Jerome Gordon and asked, "[W]hat is this union stuff." Gordon answered that "we've

been talking to them.” David Winston asked, “[W]e?” Gordon answered, “Yeah, me, Jim [Stahl] and Mike [Noel].” David Winston asked what he meant by “talking to them.” Gordon answered that “we joined the Union.” David Winston said, “[W]ell, we are not a union shop. So please return to the shop with your truck.”

Gordon recalled that David Winston asked him who was “this Union guy that I’d been talking to.” Gordon replied that he had talked with Leggette. David Winston stated that “there wasn’t going to be union here, this isn’t a union shop, and if I wanted to be in a union, then I need to go get a union job.” David Winston repeated that “they weren’t going to be union,” that Gordon “needed to decide what I’m going to do.” Gordon remained silent and Winston told him “to call him back once I decided what I want to do.”

Gordon called back and spoke with Tim Winston. He told him that he “wanted to be union.” Tim Winston asked whether he wanted him to “run my service call and then turn my van in, or did I want to turn my truck in now.” Gordon replied that “if I’m being fired, then I should turn my truck in now.”

Tim Winston recalled that, when Gordon called him, he asked what was going on. Tim Winston replied that there were “some guys here earlier.” He claimed that Gordon replied that he was “going to work for the Union.” Tim Winston claims that he asked Gordon how he could “work for the Union and me both at the same time.”

Gordon dropped off his personal tools at his cousin’s house, met Stahl at a nearby motel, and then drove to a gasoline station near the offices of the Company.

Tim Winston called Michael Noel. Noel testified that Tim Winston called him and asked, “[W]hat this union stuff was about.” Noel replied that he had “joined the Union.” Tim Winston asked why he would do that, that Noel “could have come to me if you had any problems.” Noel answered that “it wasn’t anything against him.” Tim Winston replied that it “had everything to do with him,” that Noel did it “behind his back.” He told Noel to finish his call and come in and “turn in your stuff.” Noel went to the motel where he and Gordon met Stahl, and they all then drove their trucks to the nearby gasoline station.

Tim Winston recalled that he asked Noel what was going on and claims that Noel, like Gordon, replied that “he was going to work for the Union.” Tim Winston stated that he replied, “I don’t know how you’re going to work for the Union and for me, too.” He told Noel to bring in his truck. As already noted, Noel had removed many of his personal tools the night before.

I do not credit the testimony of Tim Winston that Gordon and Noel said they were “going to work for the Union.” As pointed out in the brief of the Charging Party, any such statement would have been untrue. Tim Winston’s rote recitation that both said they were “going to work for the Union” and that he replied he did not know how they were going to “work for the Union” and him was not credible. He admitted that neither Gordon nor Noel said that they were quitting or resigning. Gordon’s wanting “to be Union” and Noel’s having “joined the Union” related to union representation not employment. Tim Winston could not have honestly concluded otherwise.

David Winston, after speaking with Gordon, called James

Stahl. He asked whether he had talked to the Union. Stahl answered that he had and that “it was going to be hot this summer and that we needed to talk about a lot of things.” David Winston then told Stahl to bring his truck in. David Winston was asked whether he “felt that him [Stahl] being a member of the Union and being an employee of your Company were things that couldn’t co-exist, correct?” David Winston answered, “Correct.”

Stahl recalls that David Winston called him and asked, “[W]hat the fuck was I trying to do to him.” He stated that he knew Stahl was “behind this,” that Gordon and Noel were “not smart enough to do this.” Stahl replied that he “had signed the union card and that we’d all signed union cards together.” David Winston stated that “wasn’t going to happen,” that Stahl “didn’t have a job.”

Shortly thereafter, Tim Winston called Stahl and told him to run the call he had been assigned and then return and turn in his truck. Stahl said, “[O]kay.” After thinking about the fact that he had been terminated, Stahl felt that it would not be appropriate. He called Tim Winston back and explained that he “didn’t feel it was appropriate” for him to run the call. Tim Winston called Stahl “a treasonous fucker and then told me to turn the vehicle in and come and see him face-to-face and see what happens.”

Tim Winston claimed that Stahl called him. I do not credit that testimony. David Winston had discharged Stahl. Tim Winston was seeking to have Stahl, a discharged employee, make a service call. Tim Winston claims that he asked Stahl what was going on, but Tim Winston already knew what was going on, he had talked to Gordon and Noel. He recalled that Stahl replied that “this was the best route for him to go, it was in the best interest for everybody.” Tim Winston told Stahl that “AC Specialists was not a union shop.” Stahl answered that he thought it should be. Tim Winston replied that he told Stahl that he did not “know anything about unions” and that, if he wanted to work for unions, there was nothing he could do for him. Tim Winston did not deny telling Stahl, who had already been discharged by David Winston, to run a call, calling him a “treasonous fucker” or requesting that he come to see him “face-to-face and see what happens.” I credit Stahl.

After the employees met together, they drove to the nearby gasoline station. Stahl explained that, after what had been said to them, “there was a high probability that they [the Winston’s] were angry at us,” so he called the office of the Hillsborough County Sheriff to have a deputy “escort us to the property.”

Upon arrival at the facility, the service technicians parked their trucks. Tim Winston told Gordon and Noel that they could thank Stahl for “getting you guys fired.” He told Stahl that “he couldn’t believe you could do this to me” and said that he would ruin Stahl. Stahl replied that they “just wanted to work there, we wanted to negotiate this.” Tim Winston twice told the police officer that he wanted him to arrest Stahl, initially the reason was for “having the Union.” He then claimed that Stahl had his tools. Gordon, after turning in his keys and telephone, placed a union pin on his shirt. David Winston said to him, “I don’t care about you putting your union pin on. We are not going to be union here.” The three discharged employees left. As already noted, Gordon and Noel were reinstated in

early April, a little more than a month after they were discharged. Stahl was not reinstated.

The Company had discharged Stahl in February because of an alleged unauthorized purchase and alleged misuse of a company vehicle. It is undisputed that the discharge was rescinded. Although the Company presented evidence relating to that discharge, Tim Winston acknowledged that he did not decide on March 9 to discharge Stahl for the alleged purchase or misuse of a vehicle. Asked whether Stahl was fired “because he had joined the Union,” Tim Winston admitted, “He was fired mainly for that.”

D. Analysis and Concluding Findings

1. The 8(a)(1) allegations

Paragraph 6 of the complaint alleges that David Winston, by telephone, (a) created the impression that employees’ union activities were under surveillance, (b) interrogated employees about their union membership, activities, and sympathies and the union membership, activities, and sympathies of other employees, (c) told employees that it was futile for them to choose the Union as their collective-bargaining representative, and (d) threatened employees with discharge because of their union activities.

Organizer Leggette informed David and Tim Winston that all three service technicians had signed union authorization cards and “fanned [them] out” for them to see. Whether they looked at the cards is immaterial. The employees knew that the Union was going to the Respondent’s office to seek recognition. Stahl had, on behalf of the three unit employees, told Leggette to “take the cards” and seek representation. He informed Gordon and Noel that Leggette would contact the Company on March 9. The argument in the brief of the General Counsel that the employees had not “personally revealed” their union sympathies has no merit. The employees understood that their support of the Union would be revealed. Stahl even cautioned them that David Winston might fire them. David Winston’s subsequent conversations with Gordon and Stahl confirming what he had been told did not constitute coercive interrogation. David Winston’s comment to Stahl, that he knew he was “behind this,” was explained by his reference to Gordon and Noel not being “smart enough to do this,” not by surveillance of employee union activity. I shall recommend that subparagraphs 7(a) and (b) of paragraph 7 be dismissed.

David Winston told Jerome Gordon that “there wasn’t going to be union here, this isn’t a union shop, and if I wanted to be in a union, then I need to go get a union job.” He then told Gordon that he “needed to decide what I’m going to do.” The statement that “there wasn’t going to be a union here” threatened the futility of union representation. The statement that Gordon “needed to decide” what he was going to do threatened discharge because of his union activities. Both statements, as alleged in subparagraphs 6(c) and (d) of the complaint violated Section 8(a)(1) of the Act.

Paragraph 7 of the complaint alleges that Tim Winston, by telephone, (a) interrogated employees about their union membership, activities, and sympathies and the union membership, activities, and sympathies of other employees, (b) threatened employees with discharge because of their union activities, (c)

told employees that it was futile for them to choose the Union as their collective-bargaining representative.

Tim Winston called employee Mike Noel asking what this union stuff was about. Noel replied that he had “joined the Union.” Tim Winston told Noel that he could have come to him. Noel responded that “it wasn’t anything against him” Tim Winston replied that it “had everything to do with him,” that Noel did it “behind his back.” He told Noel to finish his call and come in and “turn in your stuff.” There was no threat of discharge. Tim Winston discharged Noel.

After David Winston told Jerome Gordon that he “needed to decide,” Gordon called Tim Winston and told him that he “wanted to be union.” Tim Winston asked whether he wanted to “run my service call and then turn my van in, or did I want to turn my truck in now.” Gordon replied that “if I’m being fired, then I should turn my truck in now.” There was no threat of discharge. Gordon was discharged.

As already discussed, insofar as Leggette had identified the service technicians as having authorized the Union to represent them, I find that no interrogations in that regard were coercive. Noel and Gordon were not threatened with discharge by Tim Winston. They were discharged. I shall recommend that subparagraphs 7(a) and (b) be dismissed.

Stahl had already been discharged when he spoke with Tim Winston insofar as David Winston had told him to bring his truck in. That was the reason that he felt it would be inappropriate for him to make a service call. Tim Winston admits telling Stahl that “AC Specialists was not a union shop.” Stahl answered that he thought it should be.” Tim Winston replied that he told Stahl that he did not “know anything about unions” and that, if he wanted to work for unions, there was nothing he could do for him.” The foregoing statement informed an unlawfully terminated employee that employees’ selection of the Union as their collective-bargaining representative was futile. In doing so the Respondent violated Section 8(a)(1) of the Act.

Paragraph 8 of the complaint alleges that David Winston, at the facility, (a) created the impression that employees’ union activities were under surveillance, (b) told employees that it was futile for them to choose the Union as their collective-bargaining representative, and (c) threatened employees with discharge because of their union activities.

There is no evidence of any statement by David Winston that created an impression of surveillance when the employees returned their trucks to the facility, and there was no threat of discharge. The employees had already been discharged. David Winston’s statement to Gordon that he did not care about his putting his union pin on his shirt, that “[w]e are not going to be union here,” did inform employees that their activities in support of the Union were futile. I shall recommend that subparagraphs 8(a) and (b) of the complaint be dismissed. By informing employees, as alleged in subparagraph 8(c), that selection of the Union as their collective-bargaining representative was futile, the Respondent violated Section 8(a)(1) of the Act.

Paragraph 9 of the complaint alleges that Tim Winston, at the facility, (a) threatened employees with discharge because of their union activities and (b) threatened to have employees arrested because of their union activities.

The employees had, at the point that they returned the trucks, already been discharged. Thus there was no threat of discharge. I shall recommend that subparagraph 9(a) be dismissed.

The uncontradicted testimony of Stahl establishes that Tim Winston sought to have him arrested for “having the Union.” The officer had the good sense not to act upon that request. The request that Stahl be arrested for his union activity, as alleged in subparagraph 9(b), violated the Act.

2. The 8(a)(3) allegations

David Winston admitted that “being a member of the Union” and being an employee of his Company were “things that couldn’t co-exist.” The alleged misconduct of Stahl that resulted in his February discharge was condoned. The Respondent rescinded the discharge and continued Stahl’s employment. *United Parcel Service*, 301 NLRB 1142, 1143 (1991). When Tim Winston was asked whether Stahl was fired “because he had joined the Union,” he admitted, “He was fired mainly for that.”

The analysis prescribed in *Wright Line*, 251 NLRB 1083 (1980), enf.d. 662 F.2d 899 (1st Cir. 1981), is applicable in dual motive cases. This is not a dual motive case. Union membership was incompatible with employment by the Respondent. The Respondent, by discharging James Stahl, Jerome Gordon, and Michael Noel because of their activities on behalf of the Union, violated Section 8(a)(1) and (3) of the Act.

3. The 8(a)(5) allegation

The Respondent, in its answer and at the hearing, argued that the Union was seeking an 8(f) prehire agreement. In its brief, the Respondent asserts that “A/C Specialists was entirely within its rights when it declined to enter into what it perceived to be a Section 8(f) pre-hire agreement.” There is no evidentiary basis for that assertion. Tim Winston told Stahl that he did not “know anything about unions.” If he did not know anything about unions he would not have known the difference between a prehire agreement and recognition pursuant to Section 9(a). Neither David nor Tim Winston mentioned Section 8(f) in their testimony. The Union’s presentation of signed authorization cards by employees in the existing work force is inconsistent with it seeking an 8(f) agreement.

As hereinafter set out, I find that the termination of all of the members of the bargaining unit because they “joined the Union,” warrants the imposition of a bargaining order. Nevertheless, the evidence establishes without any question that the Respondent never agreed to recognize the Union upon the presentation of evidence of a card majority. Thus there is no basis for any finding that the Respondent violated Section 8(a)(5) of the Act. *Terracon, Inc.*, 339 NLRB 221 (2003). Thus, I shall recommend that the 8(a)(5) allegation be dismissed.

E. Bargaining Order

The General Counsel and the Charging Party seek a bargaining order. In *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), the Supreme Court identified two types of cases in which a bargaining order would be warranted: category I cases in which the unfair labor practices were “outrageous and perva-

sive,” and category II cases involving “less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election process.”

The Respondent’s amended answer admits that a unit of service technicians is appropriate. Although the amended answer denies that an “uncoerced majority” of the employees in the unit designated the Union as their collective-bargaining representative, there is no evidence of any coercion. Each member of the appropriate service technicians bargaining unit confirmed that they had signed an authorization card designating the Union as their collective-bargaining representative. There is no issue with regard to majority status.

The Respondent argues that a bargaining order is not appropriate and cites the decision of the court of appeals in *Grandee Beer Distributors, Inc. v. NLRB*, 630 F.2d 928 (2d Cir. 1980), which denied enforcement of the bargaining order that the Board had imposed. That case is inapposite. In *Grandee Beer Distributors, Inc.*, 247 NLRB 1280 (1980), the employer had interrogated employees, threatened discharge, and promised a wage increase. No employee was discharged. In this case the entire unit was discharged.

The discharges of all of the members of a bargaining unit constitute “outrageous and pervasive” unfair labor practices. In this case, as in *Allied General Services*, 329 NLRB 568, 570 (1999), “the Respondent’s highest officials swiftly reacted with draconian actions that affected the livelihood of every one of the unit employees. Clearly, there is a strong likelihood that the Respondent’s unfair labor practices will have a pervasive and lasting deleterious effect on the Respondent’s employees’ exercise of their Section 7 rights.” The Board then set out the following language from a prior decision, *Cassis Management Corp.*, 323 NLRB 456, 459 (1997), enf.d. 152 F.3d 917 (2d Cir. 1998), cert. denied 525 U.S. 983 (1998):

Discharge of an entire bargaining unit is the ultimate retaliation for union activity, the final assault on the employment relationship. It is difficult to conceive of unfair labor practices with more severe consequences for employees or with more lasting effects on the exercise of Section 7 rights. Mass discharges leave no doubt as to the response that the employees will reasonably fear from their employer if, after reinstatement, they persist in their support for a union.

The decision in *Allied General Services* concludes with a finding that the foregoing conduct places the case “in the realm of those exceptional cases warranting a bargaining order under category I of the Gissel standard, such that traditional remedies cannot erase the coercive effects of the conduct, making the holding of a fair election impossible.”

In this case, the response to the recognition request of the Union was followed by threats of futility, discharge, and arrest in conversations that were laced with profanity and the discharge of the entire unit. As in *Allied General Services*, I find that “traditional remedies cannot erase the coercive effects of the conduct, making the holding of a fair election impossible.” I shall, therefore recommend the imposition of a bargaining order.

CONCLUSIONS OF LAW

1. The Respondent, by informing employees that selection of the Union as their collective-bargaining representative would be futile, threatening employees with discharge because of their union activities, and threatening employees with arrest because of their union activity, violated Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. The Respondent, by discharging employees because of their union activity, violated Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

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

The Respondent, as already noted, reinstated Jerome Gordon and Michael Noel. The Respondent, having unlawfully discharged James Stahl, it must offer him reinstatement. The Re-

spondent must also make James Stahl, Jerome Gordon, and Michael Noel whole for any loss of earnings and other benefits. Backpay shall be computed on a quarterly basis from March 9, 2012, to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).³

The Respondent must recognize and bargain with the Union.

The Respondent will also be ordered to post and email an appropriate notice.

[Recommended Order omitted from publication.]

³ Gordon and Noel received backpay when they were reinstated. If the amounts they received did not make them whole, they shall be paid additional backpay. I shall leave for compliance the determination as to whether the amounts they received made them whole.