

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

**SQUIRES LUMBER COMPANY, INC.**

**and**

Cases 20-CA-160279; 20-CA-162074;  
20-CA-162418; 20-CA-162722;  
20-CA-162732; 20-CA-162834;  
20-CA-166576; 20-CA-167530

**CARPENTERS LOCAL 2236, UNITED  
BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA**

*Matthew C. Peterson, Esq.,*  
for the General Counsel

*Dwight L. Armstrong, Esq.,*  
for Respondent

*Matthew J. Gauger, Esq.,*  
for the Charging Party

**DECISION**

MARY MILLER CRACRAFT, ADMINISTRATIVE LAW JUDGE. In this case, the General Counsel requests a *Gissel* bargaining order to remedy alleged “serious and substantial” unfair labor practice conduct of Squires Lumber Company, Inc. (Respondent). The General Counsel asserts these unfair labor practices preclude conducting a fair election.

Based on unfair labor practice charges filed by Carpenters Local 2236, United Brotherhood of Carpenters and Joiners of America, a consolidated complaint issued on January 12, 2016.<sup>1</sup> Another case was consolidated prior to hearing.<sup>2</sup> The complaint was further amended before and at hearing. The resulting pleading will be referred to as the complaint. Respondent duly answered all complaint allegations, admitting and denying certain allegation, and raising affirmative defenses. The hearing was held in San Francisco, California on February 22-26, 2016.

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<sup>1</sup> The original unfair labor practice charges were filed by Carpenters Local 2236, United Brotherhood of Carpenters and Joiners of America (Local 2236) in 2015 as follows: Case 20-CA-160279 on September 16 and amended on December 21; Case 20-CA-162074 on October 15; Case 20-CA-162418 on October 21; Case 20-CA-162722 on October 26 and then amended on October 27 and again on December 21; Case 20-CA-162732 on October 26; Case 20-CA-162834 on October 27; and Case 20-CA-166576 on December 21.

<sup>2</sup> On February 8, 2016, the complaint issued in Case 20-CA-167530 based on a charge filed by Local 2236 on January 11, 2016, and amended on January 15, 2016. By an order further consolidating, this case was consolidated with the prior cases.

On the record as a whole,<sup>3</sup> and after thorough consideration of briefs filed by all parties, the following findings of fact and conclusions of law are made.

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#### A. Jurisdiction

Respondent is a corporation with offices and places of business in Colton and Suisun City, California where it is engaged in the distribution and nonretail sale of lumber and plywood and construction of panels for concrete forms. During the calendar year 2015, Respondent purchased and received at its Colton and Suisun City, California facilities goods valued in excess of \$50,000 directly from points outside the State of California. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act).<sup>4</sup> Thus the National Labor Relations Board (the Board) has jurisdiction of this controversy pursuant to Section 10(a) of the Act.<sup>5</sup>

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#### B. Labor Organization Status

Respondent denies that Carpenters Local 2236, United Brotherhood of Carpenters and Joiners of America (Local 2236) is a labor organization within the meaning of Section 2(5) of the Act, 29 U.S.C. §152(5). That section provides, inter alia, that the term “labor organization” may be an organization of any kind which exists in whole or in part, to deal “with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

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John Robert Pock (Pock), lead organizer for the campaign at Respondent’s northern California facility, is employed by Northern California Carpenters’ Regional Council (the Regional Council), an umbrella organization that covers the 22 Carpenters’ locals in 46 counties in northern California with about 35,000 members. The Charging Party, Local 2236, is one of those locals. Pock is assigned to this local. Field representatives from the locals work directly with the membership and contracting employers. The field representatives talk with employees

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<sup>3</sup> Specific credibility resolutions have been made based upon a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to the factual findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

<sup>4</sup> Sec. 2(2) of the Act, 29 U.S.C. §152(2), sets out inclusions and exclusions from the term “employer.” Sec. 2(6), 29 U.S.C. §152(6), defines the term “commerce” to mean, inter alia, interstate trade, traffic, commerce, transportation, or communication. Sec. 2(7) of the Act, 29 U.S.C. §152(7), defines “affecting commerce” to mean “in commerce, or burdening or obstructing commerce or the free flow of commerce. . . .” The Board has limited its statutory jurisdiction to cases having a substantial impact on commerce. Annual outflow or inflow, direct or indirect, across state lines of at least \$50,000 is the current discretionary jurisdictional standard for non-retail enterprises. *Siemons Mailing Service*, 122 NLRB 81 (1959).

<sup>5</sup> Sec. 10(a) of the Act, 29 U.S.C. §160(a), provides, inter alia, that the Board is empowered to prevent any person from engaging in any unfair labor practice affecting commerce.

about their working conditions, wages, and basically anything to do with their employment.

On September 2, 2015,<sup>6</sup> the Regional Council presented Respondent with authorizations signed by its three directly-employed<sup>7</sup> mill worker employees to represent them in negotiations with Respondent “for higher wages, better health and pension benefits, safe work conditions, respect on the job, and all other terms and conditions of employment.” Thus, I find that the charging party, Local 2236, is an organization that exists in whole or in part to deal with employers concerning employees’ wages, rates of pay, and conditions of employment and is a labor organization within the meaning of Section 2(5) of the Act. I further find that the Regional Counsel is a labor organization within the meaning of Section 2(5) of the Act. Both Local 2236 and the Regional Council will be referred to throughout this decision as the Union.

### C. Facts and Analysis

#### 1. Background

Respondent was established in 1946 and has operated since that time in southern California in Colton, California. Chris and Kyle Paxson are president and vice president, respectively, of the corporation and their mother is the CEO. In April 2015, Respondent opened a new facility in Suisun City in northern California. John Gilfillan (Gilfillan) is the northern California operations manager and works in the new Suisun City facility. Respondent admits that he is a supervisor within the meaning of Section 2(11) of the Act.<sup>8</sup> Respondent denies that Gilfillan is its agent within the meaning of Section 2(13) of the Act.<sup>9</sup> Caleb Alvarez (Alvarez), whose supervisory and agency status is disputed, is either a foreman or leadman in the Suisun City facility. Kelly Bankston (Bankston) is human resources manager and safety coordinator for both facilities. Respondent admits that she is a supervisor within the meaning of Section 2(11) of the Act but denies that she is an agent within the meaning of Section 2(13) of the Act.

Apart from Gilfillan and Alvarez, the Suisun City workforce consists of directly-employed full-time mill workers, contract or temporary full-time mill workers, a truck driver, and a salesman. Patrick O’Leary is the truck driver and he is employed by SLC Transportation, which is owned by Respondent. Bill Wilkie is the northern California salesman. He uses the outer office for paperwork for sales calls. The temporary full-time mill workers are employed by temporary agencies such as Workers.Com and Labor Ready.

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<sup>6</sup> All further dates are in 2015 unless otherwise referenced.

<sup>7</sup> The terms “directly employed” and “direct employees” refers to mill workers on Respondent’s payroll. As will be fully discussed later, other mill workers were supplied by temporary agencies.

<sup>8</sup> Sec. 2(11) of the Act, 29 U.S.C. §152(11), provides, “The term ‘supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.”

<sup>9</sup> Sec. 2(13) of the Act, 29 U.S.C. §152(13), provides that “In determining whether any person is acting as an ‘agent’ of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.”

Respondent's Suisun City property is in a mixed farming and industrial area.<sup>10</sup> There are three buildings on Respondent's property. Two are pole barns with roofing on the top but open on the sides. These are used to store lumber. The third building is enclosed and contains a shop with an inner and outer office. Both the inner office, which is Gilfillan's, and the outer office, which is used by the salesman and by Bankston when she visits Suisun City, are air conditioned. The outer office has a bathroom with hot and cold running water. There are windows in both the inner and outer office so that those inside can see the shop and those outside can see inside the offices. In mid-September, the windows to the outer office were tinted so that those outside the office could not see into the office.

Much of the work in the shop consists of building customer-specified panels to make concrete forms used in construction of buildings and bridges. Respondent's property is enclosed by a chain link fence. The main gate rolls open and closed and is locked after hours with a chain and padlock. The mill workers generally work in the shop and use an outdoor portable toilet and an outdoor sink with cold water. The shop is not air conditioned. A lunch area for the shop employees consisting of tables and chairs is also in the shop area.

Mill workers clock in and out by using a keypad by the office door. Each employee has a separate PIN to enter at 7 a.m., the beginning of the work day, at 11:30 a.m., the beginning of lunch, at noon, the end of lunch, and at the end of the work day at 3:30 p.m. Employees do not clock in and out for their 9 a.m. morning break or their 2 p.m. afternoon break. Alvarez usually stands by the time clock to watch the employees clock in and out. Additionally, there are 40 surveillance cameras on the property including one camera which monitors the time clock area.

Respondent's Suisun City mill workers are initially obtained from temp agencies such as Workers.Com. or Labor Ready. From a pool of temporary employees hired throughout the spring, three employees were eventually selected for direct hire by Respondent. These employees, Francisco Martinez (Martinez), Louie Morabito (Morabito), and Bobby Saephan (Saephan) were hired from mid-July through mid-August. The number of temporary employees at any one time has varied. During July through October, the numbers ranged from three to seven temporary employees.

Contract mill worker Shayne Phillips (Phillips) explained that he completed an application with Workers.Com in the spring and received a call from the temp agency on a Friday in August<sup>11</sup> saying that Respondent liked his application. Phillips reported to Workers.Com on the following work day, a Monday, and completed paperwork for them. The next day, he reported to Gilfillan shortly before 7 a.m. Gilfillan showed him around and at 7 a.m. Phillips began working.

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<sup>10</sup> For instance, there is open farm land as well as a concrete batch plant, a metal form construction plant, a power plant, and an unspecified construction manufacturer nearby.

<sup>11</sup> Phillips initially testified that he was hired in July. On cross-examination, Phillips agreed that his actual dates of employment could have been August 11 to September 15, as shown in Respondent's records.

All employees, whether temporary or permanent, work from 7 a.m. to 3:30 p.m. All employees take breaks and lunch at the same time. Temporary employees are often teamed with direct employees and work side by side. Thus, there is interaction and communication between temporary and direct employees throughout the work day. According to Saephan the work is similar but not identical in that the direct employees perform more complex tasks. Respondent's records indicate that temporary employees, excluding those who became permanent, averaged around 18 days of work, exclusive of weekends.

## 2. Supervisory and/or Agency Status of Alvarez

According to Gilfillan, Alvarez is a lead worker in fabrication. During the day he works with the crew building panels, instructs workers on how to perform tasks such as building panel fabrication, changes saw blades, fixes small machinery such as nail guns, and drives a forklift. He creates "cut lists" for production, makes the production log, bands lumber, and instructs on safety. According to Gilfillan, Alvarez had no "role" in hiring, terminating, disciplining, or suspending employees. He did not recommend or change pay rates, or approve time off or overtime. Nor did he give employees warning notices.

According to Bankston, since June 2015, when Alvarez transferred to Suisun City, he was a salaried employee and treated as an exempt employee. He did not clock in or out. On January 1, 2016, he was converted to an hourly employee at \$18 an hour and treated as non-exempt. According to Bankston, Gilfillan approves sick leave, vacation, or any type of leave. Gilfillan has input into disciplinary matters with Chris and Kyle Paxson making the decisions.

When millworker Martinez began working at Suisun City as a temporary employee, Gilfillan introduced himself as the general manager and told Martinez that Mauricio Pliego Vargas (Vargas) was the supervisor and all employees were to report to him. Vargas gave Martinez his assignments each day for the first three weeks of Martinez' employment. After three weeks, Alvarez was introduced to employees to take Vargas's place. Alvarez told Martinez that he was a leadman in Colton and had been offered a supervisor position in Suisun City. Alvarez gives employees their assignments each day. Throughout Martinez' temporary employment, both Alvarez and Gilfillan told him that they wanted to hire him as a direct employee, which happened on July 14. In late August, after Martinez became a direct-hire, there was discussion between Gilfillan and Martinez as well as between Alvarez and Martinez about making Martinez Alvarez' assistant and filling in for Alvarez while he was on vacation.

Soon after Saephan started working as a temporary millworker, Alvarez joined the Suisun City facility. Alvarez told Saephan that he had been leadman at the Colton facility and, "that he got offered the position to stay up here [in Suisun City] as the supervisor and foreman." On August 12, Saephan was made a direct employee of Respondent. Alvarez spoke on several occasions to Saephan telling him that Respondent was going to bring him onto their payroll and explained that Saephan's date for going on the payroll would be at the beginning of a payroll period. On the day before he was hired directly by Respondent, Alvarez escorted Saephan into Gilfillan's office and told him he would get a \$1 per hour increase, that is, from \$12 to \$13 per hour.

Final decisions on wage rates are set by Chris and Kyle Paxson. Kyle Paxson testified that in northern California only Gilfillan can make recommendations regarding wage rates. Kyle Paxson has known Alvarez for 5 or 6 years and speaks to him every day about order specifications. When employees went on strike, Kyle Paxson texted with Alvarez to understand what was happening.

After temporary employee Phillips worked about two to three weeks, both Gilfillan and Alvarez told him on multiple occasions that they really liked his work and would keep him on after he worked out his three-month temporary contract. Phillips worked mainly building concrete column forms. Alvarez gave Phillips his instructions and identified himself as the foreman. Alvarez explained that Phillips was to report to him and ultimately to Gilfillan. Alvarez also told Phillips that if he was going to be late, he should call him (Alvarez) to let him know. Both Alvarez and Gilfillan had keys to the facility. The mill workers, whether contract or directly employed, did not have keys to the facility.

Each morning, Alvarez led the mill workers in stretching exercises and then assigned them their work for the day. Alvarez routinely checked the quality of each employee's work. Breaks were taken inside the warehouse at break/lunch tables just outside the office. Alvarez and Gilfillan took breaks in the office. Alvarez also completed paper work in the outer office. Gilfillan's office was separated from the larger outer office by a door.

For the first few weeks, Alvarez worked alongside Phillips working on column forms, hands-on, and often went around checking on the work of other employees, and checking progress of the work. Alvarez also operated the forklift. As more employees were hired, Alvarez spent less time with Phillips. Phillips also observed Alvarez completing paperwork in the outer office area.

According to Saephan, Alvarez gave everyone their assignments and sent them to stations to perform the work. Alvarez handled customized orders which were more difficult than standard work which consisted of making concrete panels and prefabricating. When Saephan became a direct employee of Respondent, he received a letter dated July 27, stating, inter alia, "You will report directly [to] Caleb Alvarez, Mill Foreman." Alvarez typically assigned employees to work overtime.

Alvarez let employees know when it was break time or lunch time by shouting or honking the horn on the forklift. Just prior to leaving Respondent, Phillips asked Alvarez about getting hired as a permanent employee. Alvarez responded that he used to be able to hire and fire but that ability had been taken away from him. This was in early September shortly after Phillips noticed the three permanent mill workers were wearing red union shirts. He spoke to Saephan and Martinez at lunch and they said they were trying to better themselves and so they petitioned with the union.

In late August, direct employee Morabito received a second warning and a final warning. The "managers" listed on both of these documents were "John Gilfillan/Caleb Alvarez."

At a meeting on September 18, Gilfillan told employees that Alvarez was no longer a

supervisor. Gilfillan said Alvarez was going to be a leadman and employees should come to Gilfillan – not Alvarez – if they had any problems on the job. Gilfillan asked Alvarez for his keys and told him he would not have access to the office. Alvarez told Gilfillan he wanted to call yard manager Vargas first. About 45 minutes later, Gilfillan spoke to employees at their work stations. Martinez recalled that Gilfillan told employees that Alvarez’ position had not changed after all. After this confusion, Alvarez told employees that he used to be able to recommend hiring and firing but he could no longer do so.

As noted above, Section 2(11) defines a supervisor, inter alia, as any individual with authority to do at least one of the following exercising independent judgment: hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or effectively recommend these actions. The burden is on the party asserting supervisory status to prove it.<sup>12</sup>

It is clear that Alvarez was completely in charge of the shop floor. Not only did he assign and direct the millworkers, he did so utilizing independent judgment. Gilfillan did not claim that he had anything to do with Alvarez’ assignment of work to the shop employees. Alvarez was completely in charge of the work and assignment of the work, conferring directly with the Paxsons only regarding the technical aspects of the work. Alvarez also assigned overtime, a further indicia of supervisory authority.

Finally, there is substantial secondary or circumstantial evidence supporting Alvarez’ supervisory status, including Respondent’s documentary references to Alvarez as a manager, and Gilfillan’s announcement (subsequently rescinded) that Alvarez was no longer a supervisor after learning of the employees’ union activity. Thus, it is concluded that Alvarez possessed supervisory authority within the meaning of Section 2(11) of the Act.

### 3. September 2 Notice of Support for the Union

Before work began on September 2, 2015,<sup>13</sup> Regional Council assistant director of organizing Tim Lipscomb (Lipscomb) along with direct-hire mill workers Martinez,<sup>14</sup> Morabito, and Saephan, accompanied by Regional Council videographer Fidel Chavez, arrived at Respondent’s Suisun City lumber yard. Shortly before 7 a.m., they entered Gilfillan’s office and presented a document signed and dated by Martinez (August 28), Morabito (August 28), and Saephan (August 31), stating,

We the undersigned employees of Squires Lumber Company Inc. hereby authorize the Northern California Carpenters Regional Council, and its affiliated Local Unions, to represent us in negotiations with our employer for higher wages,

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<sup>12</sup> *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001); *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006).

<sup>13</sup> All subsequent dates are in 2015 unless otherwise referenced.

<sup>14</sup> Not only is Martinez a mill worker for Respondent, he is also employed by the Regional Council as a field representative. Martinez sought employment with Respondent, at least in part, to seek to organize employees.

better health and pension benefits, safe work conditions, respect on the job, and all other terms and conditions of employment.

I have read and understand the above and I freely sign my name,

Name \_\_\_\_\_ Address \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_

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Lipscomb handed the petition to Gilfillan and demanded to bargain, stating that the Union would like to partner with Squires, “and try to, you know, help your market and help you grow and really be productive. That’s kind of what these guys -- what they want to do when they -- you know, bringing the Union in here to Squires Lumber for wage (phonetic) events and working conditions.” Further discussion ensued about allowing the millworkers to use the hot water in the office to wash up for lunch.

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Gilfillan spoke one-on-one to each temporary employee later that day. He read the following to them:

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We were informed this morning that a few of our employees have become involved with the Carpenters Union. We think it is important for everyone to know right away that Squires Lumber opposes unionization of our Suisun City facility, and we think more of our employees will want to have nothing to do with this union once they learn all of the facts. If you are contacted by the union, please do not feel forced into signing anything you don’t understand. We will be providing you with more information about this union and its problems soon. We do not think it makes sense to involve an outside third party like a union to get involved with our Suisun City employees.

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Thank you for your support.

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Later that day, Lipscomb wrote to Gilfillan thanking him for allowing the workers to use the office restroom facility to wash their hands and for agreeing to install vacuum devices on the power saws. Lipscomb also stated that he appreciated Respondent’s recognition of the Union as the bargaining agent of northern California employees and proposed dates for negotiation. There is, however, no allegation in the complaint that Respondent recognized the Union on September 2 and the parties agree that such alleged recognition of the Union is not at issue.<sup>15</sup>

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#### 4. September 2 Change in Gate Policy (Complaint paragraph 8(a)(v))

##### a. Facts

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Prior to September 2, the perimeter gate was opened before 7 a.m. and left open throughout the day to allow for deliveries in and out of the facility. Employees could go in and out of the gate on arriving for work in the morning, for lunch, and on leaving for the day without getting out of their car to open and close the gate. On September 2, at lunch time, Gilfillan announced that the gate had to stay closed due to trespassers or intruders. Gilfillan then went

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<sup>15</sup> An unfair labor practice charge alleging that Respondent unlawfully withdrew recognition and refused to bargain with the Union was withdrawn. No petition for recognition has been filed.

outside and closed the gate. It was not locked with the padlock but closed so that traffic could not come in or out without someone opening and closing the gate. If employees wanted to leave at lunch time, they had to open and close the gate.

5           b. Analysis

10           The complaint alleges that Respondent violated Section 8(a)(3) and (1) by maintaining closed external gates leading into its facility during business hours. Assuming that the complaint theory is that closing the gates imposed more onerous working conditions on the employees because of their Union activities, the allegation and other allegations of 8(a)(3) and (1) misconduct which follow will be analyzed pursuant to the burden shifting analysis of *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir 1981), cert. denied 455 U.S. 989 (1982). Under *Wright Line*, the General Counsel bears the initial burden of showing that the employee's protected activity was a motivating factor for the adverse action by demonstrating 15 (1) the employee's protected activity, (2) the employer's knowledge of that activity, and (3) the employer's anti-union animus. The burden then shifts to the employer to show that it would have taken the same action even in the absence of the protected activity.

20           The employer cannot meet its burden merely by showing that it had a legitimate reason for its action. Rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086-1087 (2011); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984).

25           The Board relies on both circumstantial and direct evidence in determining whether the conduct in question was unlawfully motivated. *Fluor Daniel, Inc.*, 311 NLRB 498 (1993). Improper motivation may be inferred from several factors, including the timing between an employee's protected activity and the discharge. *Temp Masters, Inc.*, 344 NLRB 1188, 1193 (2005).

30           Here, Respondent clearly had knowledge of its employees' union activity based upon the petition that morning. With respect to animus, at this point in time, the Respondent's contemporaneous animus is evidenced by Gilfillan's statement to employees later the same day regarding Respondent's position against unionization and the timing of the gate closure, about 5 hours after the union petition was presented. As discussed below, there is also significant 35 evidence of animus post-dating the closing of the gate, including multiple warnings, requiring a drug test, suspending, and discharging pro-Union employee Saephan.<sup>16</sup> This evidence satisfies

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<sup>16</sup> In *Davey Roofing, Inc.*, 341 NLRB 222, 223 (2004), the Board approved reliance on evidence of animus post-dating layoff of pro-union employees: "While this conversation took place after the January 24 layoffs, it is evidence that Respondent harbored animus toward the recent union activity of its employees and was striving to ensure that its employees rejected the Union." See also, *R.J. Corman R.R. Constr., L.L.C.*, 349 NLRB 987, 989 (2007) (reliance on post-refusal-to-hire statements supplies animus for refusals to hire); cf., *Ironton Publications, Inc.*, 321 NLRB 1048, 1049-50 (1996) (although much of the evidence of animus postdates the unlawful layoff and failure to recall and would not establish animus, when considered in light of prior ongoing violations, continuing display of hostility sufficiently establishes animus).

the General Counsel’s initial burden.

5 However, Respondent has shown that it would have taken the same action in the absence of the protected conduct. Gilfillan told employees that the purpose of closing the gate was to prevent trespassers or intruders. There is no evidence that the Suisun City facility is open to the public or that it routinely tolerated trespassers or intruders in the past.<sup>17</sup> Moreover, absent special circumstances, an employer may bar nonemployee union supporters from its property. *Lechmere Inc. v. NLRB*, 502 U.S. 527 (1992); *NLRB v. Babcock & Wilcox*, 351 U.S. 105 (1956). Thus, Respondent was entitled to close its gate on September 2 in order to control access to its premises and prevent further trespass or intrusion.<sup>18</sup> Accordingly, Respondent did not violate Section 8(a)(3) and (1) of the Act.

15 5. Change in Hand Washing Facility Availability (Complaint paragraph 8(a)(iii)) and Locking Office (Complaint paragraph 8(a)(iv))

15 a. Facts

20 Prior to September 2, employees were sometimes given permission to use the indoor sink with hot and cold running water. In fact, sometime employees used it without asking for permission. At an unidentified point in time, Martinez and Saephan were both told they could not use the indoor sink and they quit asking to use it. However, on September 2, when Lipscomb, Martinez, Morabito, and Saephan asked if employees could use the indoor sink with hot and cold water, Gilfillan said it should not be a problem.

25 After the meeting on September 2, Martinez recalled using the indoor sink on two occasions that day after asking permission. Gilfillan also told Martinez that if he wanted to use hot water, he should have talked to him and not to “those guys.” Nevertheless, on September 3, when Martinez asked to use the indoor sink, Gilfillan told him he had been instructed by corporate that no one could go inside the office.

30 Prior to September 2, the outer office door was usually closed but unlocked during the work day. Employees could collect equipment from the office by knocking and then opening the door. On September 3, Respondent began locking the office door and it had to be unlocked for employees to get in and out to collect tools.

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<sup>17</sup> Although Kyle Paxson testified that Respondent was a full service lumber yard selling framing packages, custom homes, windows, doors, and was an Ace Hardware serving whoever walked in off the street including a customer remodeling his basement or adding an addition to his house, customers who wanted to remodel, there is an absolute lack of evidence that this type of trade occurred in Suisun City. Accordingly, this testimony is found applicable only to the Colton facility.

<sup>18</sup> See, e.g., *Hoschton Garment Co.*, 279 NLRB 565 (1991) (Company had lawful right to evict trespassory picketers and did not engage in unlawful surveillance by monitoring trespassory picketing); *National Biscuit Co.*, 346 NLRB 1175 (2006) (Company did not violate Act by erecting 10 no trespassing signs and video surveillance signs. Video surveillance had been in effect long before the union activity and there was no evidence that trespassing had been allowed prior to union activity).

b. Analysis

5 The complaint alleges that Respondent violated Section 8(a)(3) and (1) by refusing, since  
 10 September 3, to allow its employees to use the indoor sink to wash their hands before meal and  
 rest breaks and by locking its office door during business hours. As in the prior analysis  
 regarding the gate policy, there is ample evidence of Union activity and knowledge of that  
 activity. Indeed, at the morning meeting with Gilfillan on September 2, the Union specifically  
 asked Gilfillan to allow employees to use the indoor sink with hot and cold running water and  
 15 Gilfillan agreed to this request. However, on the following day, employees were not allowed to  
 use the indoor sink and Martinez was told that “corporate” had closed the area to employees.  
 Further, there is substantial evidence of animus, as set forth in Section 4.b above. Animus is also  
 again demonstrated by the timing of the action just a day after the meeting, as well as Gilfillan’s  
 statement to Martinez that if he wanted to use the indoor sink, he should have talked to him and  
 20 not to “those guys,” an obvious reference to the Union. Thus, the General Counsel satisfied the  
 initial burden under *Wright Line*.

Respondent has failed to show that it would have taken the same action in the absence of  
 its employees’ Union activity. Thus, Respondent presented no reasons for locking the office door  
 25 and precluding employees from using the office sink except that the direction came from  
 corporate. These allegations are not addressed in Respondent’s brief.

According, I find that it violated Section 8(a)(3) and (1) by refusing to allow its  
 employees to use the indoor sink to wash their hands before meal and rest breaks and by locking  
 30 its outer office door during business hours. Assuming that a security concern was raised due to  
 non-employee Union representatives walking into Gilfillan’s office on September 2, the closed  
 gate would appear to remedy this issue.

6. September 8 Union Petition (no unfair labor practice alleged)

30 On September 8, Martinez, Morabito, and Saephan signed a document demanding hot  
 and cold running water and health and safety instruction/training and handouts on the hazards  
 associated with wood dust and the OSHA permissible exposure limit for nuisance dust. They  
 attempted to present it to Gilfillan but he stated that he couldn’t talk to them and closed the door.  
 35 During lunch that day, Gilfillan told Martinez, Morabito, and Saephan that he could not receive  
 any information from them. Instead they would have to give it to the company lawyer. Martinez  
 tried to give Gilfillan the petition from that morning but Gilfillan refused to accept it. After  
 lunch, Martinez slipped the petition under the office door.

7. September 10 Change in Policy Regarding Removal of Hard Hat and Personal Protective  
 Equipment (Complaint paragraph 8(a)(i))

a. Facts

45 Respondent requires that its direct employees sign a “Safety Equipment and Protective  
 Gear” acknowledgement. It states in part,

Wearing appropriate personal protective gear will greatly lessen your chance of injury on the job and therefore, at all times while in the lumber yard, hard hats, safety boots, safety goggles and orange safety vests must be worn AT ALL TIMES. There is NO EXCEPTION!! Any employee observed in the lumber yard without all of their safety equipment will be subject to disciplinary action up to and including termination.

Despite the above safety rule, Martinez, who began working on June 5, has always seen employees remove their hard hats and personal protective equipment (PPE) such as earplugs, safety glasses, and dust masks as soon as break or lunch is called. Employees did this while at their work stations, left their hats and gear at their work stations, and then walked through the shop to their break or lunch location either inside the shop or outside in their cars. Phillips, who began working in August, explained, “as soon as break time hit, everyone would take off their hard hats and their PPE and set it right where they’re working and go off [to break].”

Saephan testified,

A When we got on break, I usually take off my hat and leave it at the station and I take my break, whether it's in the car or on the break table.

Q And why would you take off your hardhat and when you started --

A Usually it gets hot when we're working at a fast pace, so I believe when we take a break, you know, it's just refreshing to take of the hat and leave it at the station.

Q And again, prior to the September 2nd, did you observe your coworkers doing the same?

A Everybody did the same, temps and full-time workers.

Based on the above uncontroverted testimony, I find that a practice has been in effect since about June 5 in which as soon as break or lunch is called, employees immediately take off their hard hat and PPE and walk through the shop to their break/lunch area inside the shop or walk through the shop and exit to the parking area.

Vargas has been employed at Respondent’s Colton facility for about 11 years beginning as a fabricator and for the last 5 years as yard manager. His yard manager duties require about 70 percent of his time to be spent in the office doing paperwork, bids, and quotes. He checks production and quality throughout the day. Between April and June, he worked in Suisun City. He returned to Suisun City on or about September 10 to attend a meeting with temporary employees and labor consultant Ricardo Pasalagua.<sup>19</sup> According to Vargas, when he completed his service at Suisun City in June, employees were fully complying with the requirement to wear hard hats while in the shop including when walking to the break area. When he returned in September with Pasalagua, he noticed that employees were removing their hard hats as soon as break was called and walking to the break area without them. Vargas instructed Alvarez to

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<sup>19</sup> Respondent amended its answer to the complaint to admit that Pasalagua, an independent third-party consultant, was an agent of Respondent within the meaning of Sec. 2(13) of the Act.

communicate to employees that they had to wear their hardhat at all times. Vargas estimated it would take 10 to 15 seconds to walk from the back of the warehouse to the break tables.

5 Around September 10, the practice of removing hard hats and PPE was changed and employees were required to walk to their break or lunch location without removing their hard hats or PPE. Once at their break or lunch location, their hard hats and PPE could be removed. Martinez recalled that Vargas and Alvarez announced the policy after employees had clocked out on September 10. Saephan recalled that Gilfillan announced the change and stated that anyone who failed to adhere to the new policy would be given a safety violation. Martinez estimated that  
10 it took him approximately 30 to 40 seconds to walk from work station to break table.

b. Analysis

15 The complaint alleges that Respondent violated Section 8(a)(3) and (1) of the Act by prohibiting its employees from removing their hard hats when on break unless they were sitting at the break table or in their vehicles. Another practice had been in effect since at least June. Respondent defends its action because the practice prior to June was merely reinstated when the yard manager who had instituted the prior practice returned from Colton City to Suisun City for a meeting and observed that the rule he instituted prior to June was no longer being observed.  
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Of course, the General Counsel has shown that employees were openly engaged in Union activity and that Respondent was fully aware of this activity. As set out in sections 4.b and 5.b above, substantial animus has been shown as well. Thus I find that the General Counsel has satisfied the initial burden of proof .  
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Respondent failed to show that it would have taken the same action in any event. Respondent asserts that it was merely returning to the status quo, but Respondent failed to establish that it strictly enforced the rule during breaks in the past. Based on lack of evidence that this was a mere return to status quo and the timing of the change in policy, I find that Respondent  
30 violated Section 8(a)(3) and (1) of the Act by prohibiting its employees from removing their hard hats when on break unless they were sitting at the break table or in their vehicles.

8. Pasalagua Meeting with Temporary Employees (Complaint paragraph 6(a))

35 a. Facts

It is undisputed that in mid-September, all temporary employees were called to the office to meet with labor consultant Pasalagua, Respondent's admitted agent. Vargas, who attended the meeting of all temporary employees, recalled only one thing that Pasalagua told employees: that  
40 unions sometimes promise too much and they do not deliver on their promises. However, temporary employee Phillips had much better recall. He testified that he was asked to attend the meeting in the office with all of the other temporary mill workers, about eight total, including Ryan, Milton, and Cleveland (last names unknown). Pasalagua introduced himself as a representative of Respondent. Pasalagua read from some papers that he said were Google  
45 printouts of information on the union. Phillips recalled that Pasalagua told the temporary workers that unions were bad and could lie to employees without repercussion. Pasalagua explained that

the three permanent mill workers had signed a petition to bring in the union and the company was not for unions. The three employees did not have a leg to stand on. Pasalagua said the company would get rid of them if it had to. Phillips asked if temporary employees could still be hired on as permanent employees and Pasalagua stated that there would be a 2-year waiting period.

In separate conversations with Saephan after the meeting, both Phillips and Cleveland repeated to Saephan that Pasalagua told employees that there would be a 2-year period before a temporary employee could be hired by Respondent and the job was non-union. The union supporters “didn’t have any feet to stand on.” Similarly, Phillips reported to Martinez on Thursday, September 25, that Pasalagua said not to sign anything from the Union and the company would fire the three guys that were trying to bring the Union into the company because “we had no point to get the Union in there.”

Pasalagua did not contradict any of the foregoing testimony. He was not called by Respondent to testify in this proceeding.

b. Analysis

The complaint alleges that Respondent violated Section 8(a)(1) of the Act by threatening employees with job loss for supporting a union. The determination of whether an employer statement violates the Act turns on whether the statement reasonably tends to interfere with the free exercise of employee rights under the Act. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969); see also, *Engelhard Corp.*, 342 NLRB 46, 60-61 (2004) enfd. 437 F.3d 374 (3d Cir. 2006) (test for coercion under Sec. 8(a)(1) is “whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act”).

I credit Phillips about the meeting. He was an outstanding witness. Although he readily admitted he did not recall dates very well, he exhibited detailed, forthright testimony and certainty as to what was said. The statement Phillips recalled, that three employees did not have a leg to stand on and the company would get rid of them if it had to, is consistent with the anti-union text of Pasalagua’s speech. Further, from Respondent’s failure to call Pasalagua as its witness, I draw an adverse inference that he would not have contradicted Phillips.

The plain language of Pasalagua’s statement that the company was not in favor of unions and, if it had to, it would get rid of the union supporters who signed the petition, constitutes a threat of discharge for Union activity. See, e.g., *Publix Super Markets, Inc.*, 347 NLRB 1434, 1435 (2006) (supervisor's threats to discipline or discharge employees for concerted activity violated Section 8(a)(1)); *Braswell Motor Freight Lines*, 156 NLRB 671, 674-675 (1966) (supervisor's statement that “you can see the trouble signing cards has caused” was an unlawful threat of discharge in the context of a discussion about another employee's termination.<sup>20</sup> Thus, I find that Respondent violated Section 8(a)(1) of the Act.

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<sup>20</sup> See also, *NLRB v. Jamaica Towing Co.*, 632 F.2d 208, 212 (2d Cir. 1980) (threats of job loss for union support may justify *Gissel* bargaining order), relied upon by the General Counsel.

9. September 11 and 22 Employee/Union Health & Safety Requests (no unfair labor practice alleged)

5 On September 11, the employees submitted a signed, dated document demanding pre-shift meeting on heat stress prevention and access to the air conditioned space in the office to take breaks and eat lunch free of dust, heat, and flies. “Health & Safety – Priority One, Carpenters Local 2236” was printed at the bottom of the request. When they knocked on Gilfillan’s door to present it, there was no answer so they slipped it under the door.

10 On September 22, the three employees demanded in writing the servicing of the outside portable toilets twice a week.<sup>21</sup> At the bottom of the request, the statement said, “Health & Safety = Respect, Carpenters Local 2236.” They slipped this petition under the office door. They could not tell whether anyone was in the office because over the weekend, Saturday and Sunday, 15 September 19 and 20, the windows of the office had been tinted and they could not see into the office.

10. September 23 Change of Position of Portable Toilet (complaint paragraph 8(a)(ii))

20 a. Facts

25 When employees reported to work on September 23, the portable toilet had been moved from outside the warehouse to inside the warehouse in the vicinity of the lunch tables. Gilfillan testified that at the direction of Kyle Paxson he moved it the night before to a spot close to the northwest corner of the shop about 30 feet from employee break tables. Paxson gave Gilfillan no reason for this request. According to employees, the door to the portable toilet was left open and the wind blowing from the outer door, carried the aroma of the toilet to the employee work stations. Martinez complained to Alvarez who said he would speak to Gilfillan about it. Alvarez reported back to Martinez that Gilfillan would have to check with corporate because it was their 30 idea to move the portable toilet from outside to inside the shop. On the following day, the portable toilet was once again outside the shop.

b. Analysis

35 The complaint alleges that the portable toilet was moved inside the shop in response to union activity, specifically union activity on September 22 when employees requested that the outdoor portable toilet be serviced twice a week rather than once a week. As has been repeated in the above analyses, the General Counsel has shown that Martinez and Saephan participated in union activity by delivering the September 2 request for recognition as well as the September 22 40 request for cleaning the toilet more frequently. The instances of Respondent’s reaction to various actions of the union fully proves animus. (See repetition in 4.b, 5.b, and 7.b) Thus, it devolves upon Respondent to show that it would have taken the same action in any event.

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<sup>21</sup> At a point after September 22, Morabito lost his employment with Respondent. Although an unfair labor practice charge was filed alleging that his loss of employment violated the Act, the charge was later withdrawn. Morabito’s loss of employment is not alleged as unlawful in this proceeding.

No reason was advanced for the appearance of the outdoor toilet inside the shop on the day after employees requested that it be more frequently cleaned. The action of moving the toilet inside was a telling example of Respondent’s attitude toward the union efforts of employees.

5 Fortunately, the outdoor portable toilet was moved outside again before work began the following day. Gilfillan’s testimony that he did not smell anything can be believed only if one assumes he was in his air-conditioned office for the entire day. It is not a difficult intellectual exercise to determine that the outdoor portable toilet was moved indoors on September 23 in reaction to employee union activity. Respondent makes no effort to defend this action. Thus, it is  
10 determined that by temporarily moving its portable toilet from outdoors to inside the building near its employees’ break and work area, Respondent violated Section 8(a)(3) and (1) of the Act.

#### 11. October 1 Meeting with Chris and Kyle Paxson (no unfair labor practices alleged)

15 No unfair labor practice allegations are involved in this meeting. On this date, Kyle Paxson addressed all of the direct and temporary employees. Paxson said he would read his remarks from a paper that had been reviewed by their attorney. That document indicates that Paxson reviewed the company’s history of hard work, growth, and care for its employees. Regarding the Union, Paxson stated that the Union had attempted to organize employees over the  
20 years but its employees were too smart to believe the lies that the Union told. Paxson agreed that the company would bargain with the Union if a majority of its employees voted in favor of the Union in a secret-ballot election. He said the law requires good-faith bargaining and the company would comply with that requirement but warned that bargaining does not guarantee a contract. Both Saephan and Martinez, who attended the meeting, recalled many of these remarks.  
25 Kyle Paxson testified that he did not deviate from the text and did not say anything not written in the text. This is consistent with all other testimony regarding the meeting and I so find.

#### 12. October 14 Discipline of Saephan and Martinez for Refusal to Work Overtime (Complaint paragraph 8(b))

30 a. Facts

As mentioned before, Saephan initially worked for workers.com as a temporary employee assigned to Respondent’s Suisun City facility. After approximately 3 months as a  
35 temporary employee, Saephan was hired directly by Respondent on August 12. At that time, he received a new employee packet including an employee handbook as revised March 23, 2009. One of the provisions in the handbook stated, “Employees may be required to work overtime as necessary. . . . Squires Lumber will attempt to distribute overtime evenly and accommodate individual schedules.”  
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In addition, one of the instances of “Prohibited Conduct – *Immediate Grounds for Termination*” in the 2009 handbook stated, “Working overtime without authorization or refusing to work assigned overtime.”

45 Martinez started working at the Suisun City facility in June through Workers.Com. Martinez was hired directly by Respondent on July 14. He filled out an application for

employment with Respondent at that time. One of the questions asked on the application was, “Overtime is a required duty. Are you willing to work overtime as required?” Martinez checked the “yes” box. He was given a hiring packet which included an employee handbook revised as of March 23, 2009.

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Toward the end of the work day on October 13, Alvarez approached Saephan while he was at a work station by the vertical saw. Alvarez asked Saephan to work overtime. Saephan told him that he had some things to do that day, bills he had to go pay that day. Alvarez responded, okay. According to Saephan, he had refused overtime on other occasions both when he was a temporary employee for workers.com and when he worked directly for Respondent. It was Alvarez who asked him to work overtime on these prior occasions and Alvarez’ response had been okay on those occasions as well. No disciplinary action had been taken on those prior occasions. Saephan had also agreed to work overtime on many occasions.

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Nevertheless, on October 14, Saephan received an employee warning notice with “written verbal warning” checked as the type of warning. Other types of warning were listed as “second warning” and “final warning.” In “description of infraction,” the notice stated, “Mr. Saephan, on Tuesday, October 13, 2015 you were asked to work overtime and refused to work the mandatory overtime asked of you.” It was signed by Gilfillan.

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The notice was given to Saephan on October 14 in a meeting with Gilfillan and Bankston. Saephan and Bankston agree that Saephan protested that he had been asked if he could work overtime and no one had ever said it was mandatory. Bankston said it was mandatory by company policy and California state law. Saephan protested that employees have always been asked and not told before. This was the first discipline that Saephan had received.

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Similarly, on October 13, around 2 p.m. Martinez was asked by Alvarez if he could work overtime. He replied that he could not because he already had plans for the day. Alvarez replied, okay, no problem. Martinez offered to attempt to rearrange his plans and Alvarez said, “No. Don’t worry. It’s all right. It’s okay.” Martinez received an employee warning notice with “written verbal warning” checked. As Saephan walked out of Gilfillan’s office with his warning notice, Martinez was ushered in. Martinez protested because he had never been told that overtime was mandatory and he told her that when he told Alvarez he could not work overtime, Alvarez had responded, okay, no problem. Bankston said Alvarez was just being nice but he should have told Martinez that overtime was mandatory. She told Martinez he should know this because it is in the employee handbook and is also state law. Bankston recalled telling Martinez that overtime was mandatory.

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#### b. Analysis

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The complaint alleges that these written warning to Martinez and Saephan violated Section 8(a)(3) and (1) of the Act. Respondent’s handbook lists various levels of discipline from undocumented verbal warning, written verbal warning, first warning, second warning, suspension without pay, and termination. Bankston said the discipline was not strictly progressive. Each instance of misconduct is evaluated to determine what discipline is appropriate. Respondent’s files contain warnings to Morabito due to attendance issues ultimately

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leading to his termination. Van Loo has also received warning for attendance issues.

5 In analyzing whether Martinez' and Saehan's union activity was a motivator of these warnings, it must be concluded that the General Counsel has met the initial burden of showing that Martinez and Saephan were engaged in union activity with Respondent's full knowledge and Respondent harbored animosity toward their union activities as evidenced by their statements to employees that they did not want a union, their threat to employees that union supporters would be terminated if necessary, their immediate reaction to union efforts by closing the gate, locking the office, precluding use of the indoor sink, moving the portable toilet onto the shop floor, and requiring that hard hats and protective gear be worn except at the lunch table or in a car.

10 Shifting the burden to Respondent to show that it would have taken the same action regardless of Union activity, it must be concluded that Respondent failed to carry its burden. Contrary to Respondent's claim that all employees were aware of their obligation to work overtime when requested,<sup>22</sup> it appears that the opposite is true. Respondent's handbook states , "Employees may be required to work overtime as necessary . . . Squires Lumber will attempt to accommodate individual schedules." This language cannot be construed as mandatory.<sup>23</sup>

15 Moreover, language aside, Respondent's practice was to accommodate employee schedules. Thus, the unrebutted evidence indicates that employees had refused to work overtime in the past without repercussion. This deviation from past practice is unexplained. Finally, I note that there is no evidence of any investigation or a discussion between Alvarez and Bankston prior to the decision to issue the warnings. Rather, it appears the decision to issue the warnings was made in a vacuum at corporate offices without regard to the Suisun City practices. Thus, the conclusion reached is that Respondent violated Section 8(a)(3) and (1) of the Act by issuing written warning to Martinez and Saephan for refusing to work overtime on October 13.

### 13. Work Stoppage, Friday, October 16 (complaint paragraph 6(b))

#### 30 a. Facts

At about 6:30 or 6:35 a.m., when Gilfillan arrived at the entry gate on Friday, October 16, Pock, Martinez, and Saephan were waiting outside their cars which were parked by the gate.<sup>24</sup> Three other strikers, Fidel Chavez, Chris Moyer, and Kurt (last name unknown), remained in two

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<sup>22</sup> Respondent asserts that Martinez certainly had knowledge because he had previously been warned verbally for failing to work mandatory overtime. No citation to the transcript is provided. A search of the transcript failed to reveal such evidence.

<sup>23</sup> A handbook distributed in 2016 and dated December 2015, provides, "Refusal to work mandatory overtime will result in disciplinary actions, up to and including, termination. Squires Lumber Company, Inc. will attempt to distribute overtime evenly and accommodate individual schedules." This language was not in effect at the time of these warnings. No evidence was presented that overtime is required by state law.

<sup>24</sup> Waiting in their cars across the street from the gate were Fidel Chavez, Chris Meyer, and Dean Steever from the Union. They were present to take part in the work stoppage. All together there were four vehicles and six individuals waiting to begin the work stoppage. Morabito was discharged prior to the work stoppage. His discharge is not at issue in this proceeding.

cars parked away from the gate. Gilfillan pulled up to the gate and Pock attempted to hand Gilfillan a notice of work stoppage through Gilfillan's open car window. Gilfillan avoided taking the notice, rolled his window up, and drove away. It was dark at this time. Saephan left around 7 a.m. to report for his 7:30 a.m. drug test.

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Although Gilfillan recognized Martinez as one of the individuals at the gate, he did not recognize the other individuals. He drove about a quarter mile away from the facility and stopped at a power plant. He called Chris Paxson who told him to call the police. Gilfillan did so. Police records show that his call was received at 6:33 a.m. According to Gilfillan, he reported to the police that there was a group of people in front of the gates of the facility and he felt unsafe driving into the facility. According to the police report: "GRP of 15 MEN BELONGING TO A UNION ARE GATHERING AROUND THE ENTRANCE TO THE BUILDING AND NOT LETTING RP IN. RP WAITING ON PGE STATION ON LAMBIE IN A WHI HONDA ACCORD." In any event, the dispatcher said there was a shift change but an officer would be sent as soon as possible.

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Gilfillan was parked at the only road leading toward the facility so he flagged down employees who were arriving for work and stopped them from proceeding to the facility. While the group was waiting, Chris Paxson called Gilfillan and told him he wanted everyone to get to work. Gilfillan did not want to be the first one to arrive so he handed his gate keys to Alvarez and told him and the employees to proceed to the facility. Alvarez led the procession and Gilfillan followed. The picketers left a "big space" for the group to drive through the gate and into the facility.

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In the meantime, as the picketers waited, no one arrived by the 7 a.m. starting time. Union Representative Fidel Chavez drove to the nearest intersection and observed the workforce and Gilfillan. When he reported this to Pock, Pock and Martinez drove to the site to deliver the work stoppage notice. As Pock approached Gilfillan with the notice, Gilfillan got in his car and left. Pock spoke to Alvarez, who remained in the area. Alvarez told Pock that Gilfillan had called the police and had instructed the workers to remain offsite until the police arrived. After relaying this to Pock, Alvarez took a phone call and then instructed the workers to go to work. Martinez and Pock followed.

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Although Pock was unsuccessful in delivering the work stoppage notice to Gilfillan in person, as soon as Pock and Martinez returned to the facility area, Martinez put on his safety vest and hard hat and went into the outer office and slid it under Gilfillan's office door. It notified Respondent in writing that on that date Martinez and Saephan would be engaging in a 1-day work stoppage to protest Respondent's unfair labor practices. Martinez and Saephan unconditionally offered to return to work on Monday, October 19, at their regular start time. The written strike notice was also faxed by the Union to Respondent's offices in Colton at 8:21 a.m. on Friday, October 16, and to Suisun City at 8:22 a.m. Gilfillan did not recognize the fax shown to him at hearing. He said his practice regarding anything to do with the Union was to scan it to counsel and send a hard copy to Colton corporate offices. That is what he thinks he did with the strike notice.

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Outside at the gate, the strikers walked back and forth in front of the gate chanting with a

bullhorn and carrying picket signs that said, “Squires Lumber Company on strike for unfair labor practices.” All of the strikers had on orange Union T-shirts and safety vests. Saephan came back from the drug test facility and reported to Pock that the facility was closed. Saephan joined the picketing for the rest of the day.

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Just as Martinez returned from the office where he had slid the strike notice under the door, he observed two Solano County sheriff’s officers. One of them was inside the gate and spoke to Gilfillan about 10–15 yards inside the gate. Gilfillan testified that he made no request that the picketers be removed, he made no allegation that they were trespassing, and he did not request that they be arrested. Police records indicate dispatch occurred at 7:51 and that officers were on the scene from 8:04 a.m. to 8:27 a.m. While the first officer was speaking to Gilfillan, the second officer remained outside the gate and according to Pock, told him, “You’re on private property; they don’t want you here; can we work it out to move across the street.”

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The officer who had gone inside the gate came out and approached Pock and the striking employees. Pock asked what the problem was and one of the officers responded, “they want you removed.” Pock asked what was meant by “removed” and the officer responded, “well, you’re trespassing and they want you arrested.” Pock responded that he and the employees were engaged in lawful labor union activity and had a right to be on private property. Pock asked if the officer was familiar with California Penal Code 602(o) and he stated that he was not. Pock asserted that this code provision allowed a picket line on private property. The officer said he would look it up and went back to his car. I credit this testimony of Pock’s. Pock was a thorough witness whose recall was exacting and straight forward. Pock was also quite conversant with California law and the rights of unions to engage in peaceful picketing. Thus, I find that the officer told Pock that “they want you arrested.” I further find that the purpose of calling the police was to have the picketers removed and arrested.<sup>25</sup>

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While this officer was in his car, the other officer asked the strikers to move across the street rather than standing in front of the gate. The first officer came back and said that the penal code did allow the strikers to be on private property. The officer said he would let Gilfillan know and went inside the gate to speak to him. Gilfillan spoke to this officer who told him that the people outside were union organizers and they were on public property with a right to be there as long as they did not interfere with access to the facility. At around this time, Gilfillan noticed that Saephan was on the picket line. Gilfillan thought this was around 8:30 a.m. Before leaving, the officers and Pock also discussed not blocking entry to the gate. Pock assured the deputies that they would not block ingress or egress and he instructed the picketers accordingly.

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California Penal Code 602 provides in pertinent part:

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<sup>25</sup> Gilfillan’s contrary testimony is not credited. For instance, Gilfillan testified that when he called the police, he stated that there was a group of people in front of the gates and he did not know who they were and he felt unsafe driving into his place of business. The police report, however, refers to the initial report as identifying a group of 15 men belonging to the union not letting him into his work. Gilfillan denied discussing removal, arrest, or trespass with the police officer when he arrived. I credit Pock over Gilfillan that this matter was discussed with police.

[E]very person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor: (o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. . . . However, this subdivision does not apply to persons engaged in lawful labor union activities which are permitted to be carried out on the property by . . . the federal National Labor Relations Act.

The police report concluded, “PEACEFUL PROTEST–NOT IMPEDING TRAFFIC.”

b. Analysis

The complaint alleges that Respondent violated Section 8(a)(1) by threatening to cause the arrest of its employees and non-employees for engaging in a strike and/or picketing at its Suisun City facility where Respondent had no legitimate property interest. An employer violates Section 8(a)(1) of the Act by causing the arrest of a person engaged in protected activity, in a location where the person and the activity are allowed. *Indio Grocery Outlet*, 323 NLRB 1138, 1139 (1997); *Schear's Food Center*, 318 NLRB 261, 262-63 (1995); *K-Mart Corp.*, 313 NLRB 50, 53 (1993).

In *The Greenbrier*, 340 NLRB 819 (2003), enfd. denied, 377 F.3d 394 (4th Cir. 2004), the Board stated, It is well settled that “an employer’s exclusion of union representatives from public property violates Section 8(a)(1), so long as the union representatives are engaged in activity protected by Section 7 of the Act.” citing *Bristol Farms*, 311 NLRB 437 (1993). The Board found that an employer who called police to seek the removal or arrest of picketers violated the Act. *The Greenbrier*, supra, 340 NLRB 819-820.

In *Indio Grocery Outlet*, supra, 323 NLRB at 1141, the Board held that state law controls the nature and extent of a property interest. The Board found that under California law, neither a shopping center nor its individual tenants have a right to prohibit individuals from picketing on shopping center premises. *Id.* Thus, a store owner in a shopping center violated Section 8(a)(1) by threatening to have union representatives arrested if they did not cease picketing in the shopping center parking lot and public sidewalks, by requesting police officers to arrest the picketers, and by attempting to cause police officers to arrest a union representative because he would not cease picketing. 323 NLRB at 1142.

Picketers here were standing outside the perimeter gate on a verge between the perimeter fence or gate and the road. The record does not reflect whether this verge is private or public property but, at least in California, even if the verge is owned or leased by Respondent, the picketers were exempted from trespass law. California law, which controls, specifically exempts persons engaged in lawful labor union activities from the state trespass laws on land belonging or occupied by others and not open to the general public. Thus I find that the picketers were

engaged in lawful activity in a place where the picketers and the picketing was allowed. By calling the police and threatening to cause the arrest of the peaceful picketers who were lawfully picketing on the verge outside Respondent’s gates, Respondent violated Section 8(a)(1) of the Act.

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14. October 15 order to Saephan to take drug test; October 19 and 20 Suspension and Discharge of Saephan for Failure to Take Drug Test (Complaint paragraphs 8(c), (d), and (e))

10 a. Facts

Bankston, who was in Suisun City on October 15 for a voluntary OSHA inspection, received a report from Alvarez that an employee had seen Saephan smoking marijuana on break and that Saephan smelled of marijuana. Bankston conferred by phone with Kyle and Chris Paxson who agreed with her suggestion to send Saephan for a drug test. Bankston contacted North Bay Occupational Health at Fairfield at 1200 B. Gale Wilson Blvd (the Fairfield facility). She understood being told that the Fairfield facility was closed and the North Bay Vaca Valley Hospital at 1000 Nut Tree Road in Vacaville (the Vacaville facility) was where she should send Saephan. Bankston testified that she called the Vacaville facility and told them that she was sending an employee for a reasonable suspicion drug test and the facility responded that they would wait for him. Bankston went to Saephan’s vehicle, where he was taking his break, and asked him to step out. She gave him a drug screen and physical authorization with directions to the Vacaville facility.

Saephan received the drug screen and physical authorization document from Bankston on Thursday, October 15, around 2 p.m. while he was at his car on break time. Bankston told him she had reasonable suspicion that he was under the influence and he was to report immediately for a drug screen. Bankston included directions to the facility where he would be tested: Northbay Vaca Valley Hospital, 1000 Nut Tree Road, Vacaville, California.<sup>26</sup> Saephan asked Bankston what her reasonable suspicion was. She replied that she had reasonable suspicion. Saephan told Bankston there was a closer testing facility in Fairfield but she told him she wanted him to go to the one in Vacaville because it had more sensitive testing. Saephan asked if he should clock out and Bankston replied that she would do that for him. Bankston did not smell marijuana when she spoke to Saephan. She was about 2 feet away from him.

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As he was leaving to take the drug screen, Saephan told Martinez that he had been ordered to report for a drug test. Saephan called Pock while he was driving to the drug test location. Pock asked him to come to the union hall afterwards so Pock could make a copy of the drug screen request.

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Around 3 p.m., Saephan arrived at the NorthBay Vaca Valley Hospital at 1000 Nut Tree Road and handed his drug screen authorization to the front desk personnel. The woman at the front desk told Saephan that the facility had no occupational health component and could not

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<sup>26</sup> No one was assigned to drive Saephan to the test site nor was any suggestion made that he might not be fit to drive himself.

perform a drug screen. She suggested he go to the Fairfield facility. Saephan called Gilfillan and he told Saephan to hang on. He would call him back. This call is shown on Saephan’s phone record as occurring at 3:24 p.m.<sup>27</sup>

5 Saephan suspected he was going to be sent to Fairfield so he began driving in that direction. As he was driving, at 3:42 p.m. Gilfillan called and told Saephan to report to the Fairfield facility at 1101 B. Gale Wilson Boulevard, Suite 203. When Saephan arrived, he found a sign on the door of suite 203 stating that the facility had closed at noon that day and would be closed all of the following day as well. The sign stated that the facility would reopen at a new location on Monday, October 19. Saephan called Gilfillan at 4:04 p.m., and told him that the Fairfield facility was closed. Gilfillan said he would call back. Saephan took a picture of the sign on the door and texted it to Gilfillan. Gilfillan received the image at 4:26.<sup>28</sup> Saephan received a text from Gilfillan at 5:07 p.m. stating, “Bobby go to 1101 B gale Wilson Blvd suite 203 at 7:30 to take your test its across from north bay medical center.” Of course, this direction made no sense as Saephan had just texted Gilfillan that the Fairfield facility was closed and would remain closed the following day. Nevertheless, Saephan responded OK.

Later on Thursday evening, October 15, Saephan and Pock spoke at Carpenters Local 180 in Vallejo. Saephan showed Pock the order for a drug screen signed by Bankston to be collected at North Bay Vaca Valley Hospital, 1000 Nut Tree Road, Vacaville, California. Pock made a copy of the drug screen request. Attached were directions from Respondent’s facility to 1000 Nut Tree Road which Bankston had also provided to Saephan. While at the hall, Saephan signed a strike notice for a strike planned for the following day, Friday, October 16.

25 Saephan was present at Respondent’s Suisun City facility when Gilfillan arrived around 6:30 a.m. on Friday, October 16. He, Martinez, and Pock attempted to give Gilfillan the strike notice when Gilfillan drove up to the gate. Gilfillan left without entering the gate or taking the strike notice.

30 Saephan left the gate at Respondent’s facility around 7 a.m. and drove to the Fairfield drug screen facility as instructed by Gilfillan the prior evening. The facility remained closed just as it was the day before. At 7:29 a.m. he texted Gilfillan, “Hey john im here again at the northbay occupational health like it explained to you over the phone yesterday the’re closed.” In a window underneath the message quoted above, the message continues at 7:30 a.m.: “They closed yesterday @ 12pm and all day today and are moving and will reopen monday at a new address.” A third window also at 7:30 a.m., states: “I dont know what you want me to do.” The fourth window under these three text windows, timed at 7:31 a.m., is a picture of the door with the number 203 on the wall beside it. Four flyers are present on the door. A close up of the flyers, also timed at 7:31 a.m., is included. Two of flyers mention that the facility will be closed from Thursday, October 15, from noon to five, all day on Friday, October 16, and will reopen on Monday, October 19, at a new location. Gilfillan responded, “Hang tight let me call corporate.”

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<sup>27</sup> Saephan’s phone indicates he tried to call at 3:19 as well but did not reach Gilfillan.

<sup>28</sup> Saephan’s phone reflects that the image did not reach Gilfillan although he sent it while he was in Fairfield and received a message that it had not been transmitted. He kept trying to transmit the picture and finally received a message that it had been delivered at 5:44 p.m.

Saephan responded, “OK.”

5 After this exchange, Saephan called Pock who instructed him to come back to Respondent’s facility because we were going on strike. Saephan returned to Respondent’s Suisun City facility and joined the strike around 8 a.m. Gilfillan noticed Saephan on the picket line at around 8:30 a.m. Thus Respondent’s claim that “Gilfillan had no knowledge that Saephan would be participating in the picketing activities that day” is in error. The fax announcing that Saephan was on strike was sent from the Union to Colton corporate offices at 8:21 a.m. The fax confirmation report indicates that it was received at 8:21 a.m. Additionally, Gilfillan believes he scanned the strike notice by email to Respondent’s counsel at around this time.

10 Meantime, Bankston had returned to southern California. Around 7:45 a.m., she received a call from Chris Paxson while she was driving to work stating that the Vacaville facility that Saephan had been sent to at 7 a.m. that morning could not perform a drug screen. When Bankston arrived at work, she found an alternate provider, Solano Occupational Services (the Solano facility). She called the Solano facility and ordered the testing. Around 8:40, she texted Saephan to report for testing at the Solano facility. Saephan did not respond to the text. Around 9:30 or 10 a.m., via email Bankston learned that Saephan was picketing.

20 Saephan agreed that while he was picketing, he received a request from Bankston to report to a different drug testing facility. The text was received on his phone at 8:40 a.m. Saephan did not look at his phone until about 9 and that is when he saw the message. It stated, “Bobby – this is Kelly Bankston, HR Manager. I need you to go now for your reasonable suspicion drug testing to Solano Occupational Services. They are located at 418 Davis Street, Vacaville. Please leave work now. The clinic is expecting you. Thank you.” Saephan asked Pock what he should do and, after consulting counsel, Pock advised Saephan that he was on strike, not working, and could take the test on the following work day, Monday, October 19. Saephan took this advice. He did not respond to Bankston’s text. The picketing continued until 1 to 2 p.m. That afternoon, Bankston met with Chris and Kyle Paxson and the decision was made to suspend Saephan for failure to comply with the drug test request. At the time they made this decision, all of them had notice that Saephan was on strike at the time he had been requested to take the Solano facility drug test. There is no evidence that Respondent consulted any of their testing agencies to determine whether further testing on Sunday, Monday, or Tuesday would be timely for detecting marijuana.

35 When Saephan arrived for work on Monday, October 19, John Gilfillan met him and took him into his office. Gilfillan called Bankston and put her on speakerphone. Bankston told Saephan that due to his failing to comply with company policy by failing to take the drug test for a reasonable suspicion, he was suspended without pay. Gilfillan handed Saephan a disciplinary suspension without pay with instructions to report back on the following day. The stated reason for suspension was “Failure/Refusal to Follow Instructions for Drug Screen.” Saephan read the notice of suspension and told Bankston he disagreed because he did comply. Bankston told Saephan he could reply to the charges by 4 p.m. Gilfillan escorted Saephan out of the building and to his car. While Saephan was driving home, he got a call from the Union stating they were going to picket again that day so he turned around and went back to picket at the Suisun City facility. When the picketing was concluded for the day, Saephan went to the Union hall and

prepared his response to the suspension and emailed it to Bankston. Saephan stated:

5 I followed your directions to take the Test twice, and both times the Testing facility was closed. As you know I was on Strike to protest your Unfair Labor Practices on Friday, October 16<sup>th</sup>, 2015. In no way did I avoid the taking of the Test, as I followed your instructions two times. I believe the threat of possibly terminating me is another attack on my rights and is direct retaliation for my support of the Union.

10 Saephan was discharged on Tuesday, October 20, for failure to take the Solano facility drug test on October 16. Bankston was present by speakerphone in Gilfillan's office when Gilfillan gave Saephan the discharge notice. Bankston asked Gilfillan to escort Saephan from the premises. His termination notice stated:

15 Having reviewed the information regarding your conduct on 10/15/15 and 10/16/15, and having considered the explanation you offered, the Company has determined that you (i) failed and/or refused to remain at the drug testing site at 7:31 a.m. on 10/16/15 after explicitly agreeing to do so in your text message to John Gilfillan, Operations Manager, (ii) failed and/or refused to respond to Kelly's text message of 8:45 a.m. on 10/16/15, (iii) failed and/or refused to proceed to the alternative drug testing site as instructed on 10/16/15, and (iv) demonstrated reasonable suspicion of being under the influence of drugs on 10/15/16. No one – including you – had advised the company that you allegedly were "on strike" at 7:31 a.m. on 10/16/15. By your actions, you clearly and intentionally sabotaged the Company's legitimate right to obtain a timely and accurate drug screen. Accordingly, the Company has made the decision to terminate your employment, effective 10/20/15.

30 Saephan is currently employed by the Charging Party as a hand biller.

b. Analysis

35 The complaint alleges that Respondent violated Section 8(a)(3) and (1) of the Act by ordering Saephan to take a drug test, and then suspending, and discharging him for failure to take the test in a timely manner. Asking Saephan to take a drug test based on an anonymous tip that he smelled like marijuana and had been seen smoking marijuana was an obvious pretextual reason for ridding itself of a union supporter. No further identification of where or when this happened was forthcoming. Bankston did not smell marijuana when she gave Saephan the drug screen. Saephan's failure to get tested in a timely manner was largely due to Respondent's sending him to several facilities that were not open or that did not perform drug screens.

45 It is clear that Saephan's union activity was a motivating factor in the decision to terminate Saephan. As previously mentioned, Respondent had ample knowledge of his union activity and swiftly responded to this activity with statements of animus toward the union including a statement in violation of the Act (threat to fire Union advocates) and imposing more onerous working conditions (locking office, restricting use of indoor sink, requiring hard hats to

be worn unless at break table or in car, and placing portable toilet on shop floor after union employees asked that it be serviced more frequently).

5 Moreover, Respondent has failed to prove that it would have taken the same action absent  
 Saephan’s Union activity. It defends its action basically asserting that Saephan should not have  
 left the testing center after agreeing to “hang tight” after Saephan’s third attempt to comply with  
 the directive to take a drug test failed through no fault of his own. Had Saephan stayed put, he  
 would have been waiting from roughly 7:30 a.m. to 8:40 a.m. before receiving further  
 10 instructions. It strains credulity to argue that an employee should be expected to remain in limbo  
 for over 1 hour while Respondent determined where to send him. He had already followed  
 instructions to go to two other facilities and both were “wild goose chases” so to speak. The  
 facilities he had been sent to were either not conducting drug screens or closed.

15 In any event, when the 8:40 a.m. instructions were sent, Respondent already knew that  
 Saephan was on the picket line at their Suisun City facility. All of the decision makers knew that  
 Saephan was on strike at the time he was ordered to go to the third facility. Under these  
 circumstances, Saephan was for all intents and purposes fired for refusal to leave the strike.

20 Thus, it must be concluded that Respondent violated Section 8(a)(3) and (1) by  
 discharging Saephan for refusal to leave a strike line and take a drug test.

15. Refusal to fill two of its three direct millworker employee positions (Complaint  
 paragraph 8(f))

25 a. Facts

Respondent’s Suisun City facility opened for business in the spring with temporary or  
 contract millworkers from workers.com. Respondent’s temporary agency arrangement covers the  
 first 520 hours, i.e., thirteen 40-hour weeks. After that time, if Respondent hires the temporary  
 30 worker, there is no penalty or fee to the agency.

There have been four temporary to direct-hire conversions. On July 13, Martinez was  
 made a direct hire of Respondent’s.<sup>29</sup> On July 29, temporary worker Morabito became a direct  
 hire followed by temporary worker Saephan on August 10. Morabito’s employment ended on  
 35 September 30. Soon thereafter, on October 1, Labor Ready temporary employee Van Loo was  
 hired directly onto Respondent’s payroll.<sup>30</sup> Saephan was discharge on October 20. Since that  
 date, Respondent has utilized only Martinez and Van Loo as direct employees.

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<sup>29</sup> Because Respondent referred Martinez to the temporary agency, they were not charged a fee or  
 penalty when he was converted from temporary to direct hire in fewer than 520 hours.

<sup>30</sup> Respondent paid the penalty for hiring Van Loo as a direct hire prior to his 520 hours temporary  
 contract provision. Respondent believed he was an exceptional employee and decided to pay the penalty.

b. Analysis

5 The complaint alleges that Respondent has violated Section 8(a)(3) and (1) of the Act by refusing to fill two of its three regular, full-time millworker employee positions. As it turns out, one of the vacancies has been filled. Further, the General Counsel did not brief this issue or withdraw the allegation. Accordingly, it is dismissed.

10 16. Picketing of October 19 (no allegation of unfair labor practice)

15 After he was suspended on Monday, October 19, Saephan began driving home but received a call from Lipscomb asking him to come back and picket. Saephan returned and picketed with Lipscomb, Fidel, Dean, and Chris from the Union. The police also showed up on this date and spoke at one point to Fidel and told him there were complaints about the pickets' noise so we could not use the bullhorns. The officer said, "They wanted to get us out of there, but they know that there's penal codes that will – basically, gives us our rights to be there."

20 17. Further Discipline of Martinez, October 22 (Complaint paragraph 8(g))

a. Facts

25 On the Wednesday prior to payday, Gilfillan shows each direct employee his 2-week time card. According to Martinez, sometimes there are time clock failures and on those occasions, the correct time is handwritten and Gilfillan initials the handwritten correction. Around 8:30 on the morning of October 21, Bankston examined the Suisun City timecards and noticed that Martinez' card showed two blanks indicating that, at least in her view, he had failed to clock out on those two occasions. She called Gilfillan who told her he had no reports of time clock malfunction. Bankston told Gilfillan to distribute the timecards to employees.

30 Around 10 a.m. on October 21, Gilfillan and Martinez reviewed his time card for the period October 7 through 20. Two clock out times, one for lunch on October 7 and the other for quitting time October 14, were missing. Martinez recalled that Gilfillan wrote in the correct times and initialed the handwritten correction. Respondent's timecards verify the handwritten times and the initials "JG" on both dates with a notation, "missed punch." A timecard for the period October 21 to November 3 shows similar handwritten corrections. A timecard for the period December 15 to 28 also shows similar handwritten, initialed corrections.

35 Bankston received the initialed timecards for the Suisun City employees sometime between 10 and 11 a.m. that morning. She noted the handwritten clock times for Martinez on October 7 and 14. Bankston ordered payment to Martinez in accord with the handwritten notations. Bankston stated this was not the first time that Martinez had missed a punch.<sup>31</sup> Bankston checked a sample of other timecards and concluded that none of the other employees

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<sup>31</sup> According to Bankston, on an earlier occasion when Martinez missed a punch, Bankston instructed Gilfillan to remind Martinez of the importance clocking in and out all four times during the day. There is no evidence that Gilfillan conveyed this message to Martinez.

whose cards she checked had been unable to clock in and out correctly. She then conferred with Chris and Kyle Paxson and a decision was made to give Martinez a written warning.

5 On October 21, Martinez received a first warning for failure to clock out on October 7  
and 14. In fact, the version of Martinez’ time card attached to the warning indicates no clock out  
for those dates even though Bankston acknowledged the timecard with handwritten corrections  
was received and used for payment of wages. According to Martinez, he told Bankston that he  
and Gilfillan had discussed this very fact earlier that date and straightened this out. He told  
10 Bankston this and also told her to speak to Alvarez, who watches employees clock out, and also  
asked her to watch the surveillance tapes so she could see that he attempted to clock out on both  
dates. According to Martinez, Bankston stated that she had all the evidence that she needed right  
in front of her. Martinez cited other instances to Bankston of time clock failure and told her that  
Gilfillan just wrote in the correct time and he and Gilfillan initialed these errors.

15 According to Gilfillan, if a time clock fails to record a time in or out, the employee is  
supposed to report this to Gilfillan. Gilfillan makes a note of the missed punch and then when he  
reviews the timecards prior to sending it to payroll, he writes in the time and initials it. Gilfillan  
testified that Martinez told him about the missed punch on October 7 at the time it happened and  
20 “the same thing on the 14th.” Later, however, Gilfillan said he was confused and actually he –  
not Martinez -- noticed the missed punches he and asked Martinez about them on both the 7<sup>th</sup> and  
14<sup>th</sup>. I credit Gilfillan’s original explanation which was thorough and appeared accurate. His  
recanted version appeared to be from a recollection during the trial.

25 b. Analysis

The complaint alleges that issuance of the written warning to Martinez violated Section  
8(a)(3) and (1) of the Act. As with prior analyses, the General Counsel has satisfied the initial  
burden of proving that Martinez’ union activity was a motivating factor in the decision to issue  
this warning. Respondent was aware of Martinez’ union activity and manifested substantial  
30 animus, as fully set forth above, toward the union activity. Respondent cannot show that it would  
have issued a warning absent Martinez’ union activity. Gilfillan’s original testimony was that  
Martinez followed company policy by calling the missed punches to Gilfillan’s attention. In any  
event, whether Martinez brought the time clock missed punches to Gilfillan’s attention or not,  
there is no evidence that any employee has ever been disciplined for missed punches. Rather,  
35 company policy, uniformly administered, is that Gilfillan and the employee handwrite any  
missed punches prior to sending the information to Bankston for payroll fulfillment. Thus,  
Respondent violated Section 8(a)(3) and (1) by issuing a written warning to Martinez for missing  
punches on his timecard.

40 18. Videotape of Picketing on November 25: (complaint paragraph 6(c))

a. Facts

45 After the picketing of October 16, Martinez recalled participating in 2 more days of  
picketing on his lunch time. On one of these occasions, November 25, he saw Gilfillan set up a  
tripod with a video camera on it pointed toward the picketing. Gilfillan agreed that he set up this

video camera at the request of Chris Paxson. When he called Paxson back, he was told to take it down.

After watching the video, Martinez identified picketers Moses Villeda, a Union field representative; Bobby Saephan; himself; Kurt Ferreira, a Union field representative; and Fidel Chavez, Union field representative. Martinez recalled that Pock was also present although not in the video.

b. Analysis

The complaint alleges that Respondent violated Section 8(a)(1) of the Act by engaging in surveillance or the impression of surveillance of the picketing by setting up a video camera near the picketing. The facts are not in dispute. Although the Board does not typically find unlawful surveillance when passive observation of employee picketing is consistent with protection of legitimate interests in order and productivity,<sup>32</sup> an employer who installs video equipment in order to spy on its employees union activities violates the Act.<sup>33</sup> In this instance, the videotaping of employees constituted a violation of Section 8(a)(1) of the Act. The Board has long held that absent proper justification, the photographing of employees engaged in protected concerted activities violates the Act because it has a tendency to intimidate. *Waco, Inc.*, 273 NLRB 746, 747 (1984). Here the record provides no basis for the Respondent reasonably to have anticipated misconduct by those hand billing, and there is no evidence that misconduct actually occurred. In fact, Respondent does not contend otherwise. Be that as it may, Respondent violated Section 8(a)(1) of the Act by videotaping the peaceful picketing outside its gate on November 25.

19. Final Warning of Martinez, December 10 (Paragraph 6(a) in consolidated complaint in Case 20-CA-167530)

a. Facts

Martinez received permission to leave work at 9 a.m. on December 10 because he was feeling sick. Gilfillan asked Martinez to wait for a minute before leaving and then asked Martinez to come into his office where Bankston was on speakerphone. Martinez received a final written warning on December 10, first for “reason to believe” he had disclosed proprietary information<sup>34</sup> by surreptitiously removing a drawing and, second, for taking excessive restroom and other breaks. The warning stated that further violation would result in termination. Martinez

<sup>32</sup> See, e.g., *Roadway Package System*, 302 NLRB 961(1991) (no violation in passive observation of activities openly conducted by union at plant entrance).

<sup>33</sup> *Trailmobile Trailer, LLC*, 343 NLRB 95 (2004) (employer created an impression of surveillance by installing video surveillance cameras in the employee parking lot and employer was unable to provide evidence that the cameras were installed for security purposes because the vandalism problems in the parking lot happened eight months before the cameras were installed).

<sup>34</sup> On July 21, Martinez signed a confidentiality agreement agreeing not to divulge confidential information such as sales and marketing information, business plans or strategies, concepts, processes, methods or systems, research and development. He signed another confidentiality agreement on January 15, 2016, superseding the prior agreement.

asked Bankston where she received this information and Bankston replied that management told her about this behavior. Bankston also told Martinez the information about disclosure of proprietary information was reported by Alvarez to Gilfillan 2 months prior to the warning notice. Martinez said, so Gilfillan told you? And Bankston said, no, management told me.  
5 Martinez received the same answers to his questions about restroom and other breaks.

10 Gilfillan recalled observing Martinez take excessive bathroom breaks – perhaps as many as 15 per day. This occurred according to Gilfillan whenever a lumber truck arrived or left the yard. Gilfillan stated that the information about the drawing came from Alvarez.

15 Bankston testified that both infractions were reported to her. In other words, she did not have personal knowledge of them. As to the confidential or proprietary information, Bankston was told that 2 or 3 weeks before, Martinez had been seen folding a piece of paper containing a blueprint or schematic and putting it in his pocket. At the disciplinary meeting, Gilfillan recalled that Martinez said he might have picked up a loose paper blowing in the wind and put it in his pocket. Gilfillan also adamantly denied visiting the bathroom more than once or twice a day, reminding Gilfillan and Bankston of his many requests to have the outdoor bathroom serviced.

20 As Martinez left with his copy of the final warning, Alvarez asked him what was going on and Martinez explained the final warning. When he told Alvarez of the suspicion of disclosure of proprietary information by stealing a drawing being reported by Alvarez, Alvarez protested that he did not say that. Martinez responded, “Don’t tell me. Tell them.” When Martinez returned to work, he and Alvarez brainstormed and recalled an occasion about 2 to 3 months before when they could not find the proper clipboard for a particular handmade drawing. Martinez recalled folding it and putting it in his vest pocket. Several hours later, they found the proper clipboard and Martinez took the folded drawing from his pocket and smoothed it out and placed it on the clipboard. This was the only event they could recall that fit the description of what was alleged in the final notice.

30 Of course, Martinez and Alvarez were conjecturing. Respondent’s brief asserts that Martinez admitted removing a confidential drawing. Martinez’ testimony about the clipboard incident does not constitute such an admission. Martinez did not admit “removing” the drawing but placing it in his pocket until he could find the correct clipboard to place it on. When he found that clipboard, he put the drawing on it. Further, Martinez recollected that the drawing was quite simple and the kind that he sees routinely in his work. Martinez was a highly credible witness. He remained forthright and attentive to detail throughout his testimony and I credit his testimony fully. Once again, Alvarez was not called to testify. An adverse inference is warranted that he would have corroborated Martinez’ testimony regarding the clipboard incident and would have denied reporting any theft of proprietary information by Martinez.

40 b. Analysis

45 The complaint alleges that on December 10, Respondent issued a final warning to Martinez because Martinez and other employees authorized the union to represent them and because Martinez joined or assisted the union. As in prior analyses, the General Counsel has sustained the initial burden of proving union activity, knowledge of union activity, and

substantial animus of Union activity. Respondent’s defense fails. I find that Alvarez made no allegation to Respondent that Martinez stole proprietary information. I also find no proof of excessive bathroom breaks. Gilfillan did not attempt to explain how he reached this conclusion or over what period of time his alleged observation of Martinez’ bathroom usage occurred. Thus the allegations of misconduct are pure pretext. The actual reason for the warning was Martinez’ union activity and sympathy. Thus, the written warning of December 10 violates Section 8(a)(3) and (1) of the Act.

20. Employee Handbook (complaint paragraph 7)

a. Facts

Employees who work directly for Respondent receive a copy of Respondent’s Employee Handbook, revised March 23, 2009 (the handbook).<sup>35</sup> The General Counsel alleges that certain provisions of the handbook violate Section 8(a)(1) of the Act. There is no contention that these rules were promulgated in response to Union activity. The following provisions are at issue:<sup>36</sup>

Complaint paragraph 7(a): A requirement that employees do their jobs pleasantly, cooperate with management, and report any problems or questions to management. The handbook provides:

WHAT SQUIRES EXPECTS OF YOU

Your first responsibility is to know your own duties and how to do them promptly, correctly, and pleasantly. Secondly, you are expected to cooperate with management and your fellow employees and maintain a good team attitude. How you interact with fellow employees and those whom Squires Lumber Company, Inc. serves, and how you accept direction can affect the success of your department. In turn, the performance of one department can impact the entire service offered by Squires Lumber Company, Inc. Consequently, whatever your position, you have an important assignment: perform every task to the very best of your ability. The result will be better performance for the company overall, and personal satisfaction for you. You are encouraged to grasp opportunities for personal development that are offered to you.

Complaint Paragraph 7(b): A restriction against “discussing or sharing information regarding Squires Lumber’s business with the media (print, radio, or television) except by the President and CEO.” (Page 10: Code of Ethics). The specific provision of the handbook is as follows:

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<sup>35</sup> In January 2016, Respondent began issuing another handbook dated December 2015. Respondent contends it has remedied any violation in its revisions of December 2015. The General Counsel concedes that many of the defects in the 2009 handbook have been remedied. The revision of the handbook is important only for remedial purposes, that is, only so far as whether the handbook should be rescinded or revised.

<sup>36</sup> Complete text of these rules is set forth in Appendix B.

**Confidential Information:** It should be understood that, in order to learn and do your job, you will have access to and the need to use confidential information and trade secrets developed by Squires Lumber, including but not limited to customer lists, pricing information, profit margins, supply sources, operating methods and procedures, or credit methods and procedures. To protect trade secrets and confidential information, all employees are not to provide or release such information to competitors, customers, other employees. In addition, discussing or sharing information regarding Squires Lumber's business with the media (print, radio, or television) is restricted except by the President and CEO.

Complaint paragraph 7(c): Prohibitions against unauthorized disclosure of company information, verbal abuse, unauthorized use of company property, falsification of company records, provoking a fight, using abusive language, removing company property, and recording the time of another employee (Pages 29-30: Prohibited Conduct)

### **Prohibited Conduct**

The following conduct is prohibited and will not be tolerated by Squires Lumber. This list of prohibited conduct is illustrative only; other types of conduct that threaten security, personal safety, employee welfare and Company operations also may be prohibited.

This list is an example of actions which will normally subject an employee to *immediate termination* on the first occurrence. Again, this list is not intended to identify all possible violations.<sup>37</sup>

- Unauthorized disclosure of Company information.
- Verbal or physical abuse or other abusive behavior toward employees, customers, or other persons on Company property.
- Unauthorized use of Company property.
- Falsification of Company records
- Provoking a fight or fighting during working hours or on Company property;
- Using abusive language at any time on Company premises;
- Recording the work time of another employee or allowing any other employee to record your work time, or falsifying any time card, either your own or another employee's;
- Provoking a fight or fighting during working hours or on Company property;

Complaint paragraph 7(d): Prohibitions against disclosing information about Respondent, its owner/proprietor, its suppliers, its customers, “or perhaps even fellow employees,” and states that any breach will not be tolerated and legal action may be taken by the company (Page 35:

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<sup>37</sup> This is only a partial list of Prohibited Conduct. The complete rule may be viewed in Appendix B.

Confidentiality).

### Confidentiality

5 Each employee is responsible for safeguarding the confidential information  
obtained during employment.

10 In the course of your work, you may have access to confidential information  
regarding Squires Lumber Company, Inc., its owner/proprietor, its suppliers,  
its customers, or perhaps even fellow employees. You have a responsibility  
to prevent revealing or divulging any such information unless it is necessary  
for you to do so in the performance of your duties. Access to confidential  
information should be on a "need-to-know" basis and must be authorized by  
your supervisor. Any breach of this policy will not be tolerated and legal  
15 action may be taken by the Company.

#### b. Analysis

20 In general, if a work rule would reasonably tend to chill employees in the exercise of  
their Section 7 rights, it will violate Section 8(a)(1) of the Act. *Hyundai America Shipping  
Agency*, 357 NLRB 860, 861 (2011); *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd.  
203 F.3d 52 (D.C. Cir. 1999). A violation may occur merely by maintenance of such a rule --  
even in the absence of enforcement. *Lafayette Park Hotel*, supra; see also, *Cintas Corp.*, 344  
NLRB 943 (2005), enfd.482 F.3d 463 (D.C. Cir. 2007); see also *Blommer Chocolate Co. of CA*,  
25 2016 WL 683222 (Feb. 27, 2016 unpublished)(setting aside election due to three unenforced,  
overly broad rules).

30 A rule which explicitly restricts Section 7 rights is unlawful. *Lutheran Heritage Village-  
Livonia*, 343 NLRB 646 (2004). In the absence of explicit restriction, a violation will  
nevertheless be found if (1) employees would reasonably construe the language to prohibit  
Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has  
been applied to restrict Section 7 rights. *Id.* at 646-647. There is no allegation that any of these  
rules were promulgated in response to union activity or to restrict Section 7 rights. Thus, the sole  
inquiry here is whether employees would reasonably construe the language to prohibit Section 7  
35 activity. In determining whether a challenged rule is unlawful, the rule must be given a  
reasonable reading and particular phrases may not be read in isolation. *Lafayette Park*, supra,  
326 NLRB at 825, 827. In other words, there is no presumption of improper interference with  
employee rights. *Id.*

40 Respondent's confidentiality rules broadly prohibit employees from discussing with a  
union and/or the media, all matters regarding the "business," including "profit margins" and  
"operating methods and procedures." Thus, the rules would reasonably be construed to  
encompass the costs of doing business, which of course includes the employees' wages and  
benefits, as well as the employees' hours and working conditions. See *Flex Frac Logistics, LLC v.*  
45 *NLRB*, 746 F.3d 205, 209 (5th Cir. 2014).

The right to discuss such matters with a union and the public to seek their support lies at the core of Section 7, which protects concerted activity for mutual aid and protection. See, e.g., *Professional Janitorial Service of Houston*, 363 NLRB No. 35, fn. 3 (2015); *Rocky Mountain Eye Center, P.C.*, 363 NLRB No. 34, fn. 1 (2015); *Hyundai America Shipping*, 357 NLRB 860, 861 (2011), enfd. in relevant part, \_\_\_ F.3d \_\_\_ (D.C. Cir. 2015); *Double Eagle Hotel & Casino*, 341 NLRB 112, 115 (2004), enfd 414 F.3d 1249 (10th Cir. 2005). Thus, I find that by maintaining the Confidentiality section of the handbook as well as the confidentiality provision in the code of ethics, Respondent violated Section 8(a)(1) of the Act.

The complaint alleges that the handbook section “What Squires Expects of You” would be reasonably construed by employees to restrict their Section 7 rights in that it requires employees to do their jobs pleasantly, cooperate with management, and report any problems or questions to management. The provision does not contain a requirement that employees report any problems to management. The actual language from paragraph two of “What Squires Expects From You” states, “We are dedicated to making Squires Lumber Company, Inc. a company where you can approach your manager, or any member of management, to discuss any problem or question.” It is followed by these sentences: “We expect you to voice your opinions and contribute your suggestions to improve the quality of Squires Lumber Company, Inc. We're all human, so please communicate with each other and with management.” Were there a provision requiring that employees report any problems to management, such a rule might be construed to require employees to report on each other’s protected activity. But the actual language, in context, is focused on management’s endeavor to promote open discussion between management and employees.

Similarly, as to the requirement that employees do their jobs pleasantly and cooperate with management, in context, this provision does not appear susceptible of interfering with Section 7 rights. Thus, the third paragraph of “What Squires Expects of You” states,

Remember, you help create the healthy, pleasant and safe work conditions Squires Lumber Company, Inc, intends for you. Your dignity and that of fellow employees, as well as that of our customers, is important. We tell the truth to each other, our customers, and our suppliers. We tell the cold, hard, unvarnished, uncomfortable kind of truth, and the whole story, not just part of it. We don't stretch it, bend it, or avoid it. If someone raises heck about the truth, let them. Just say it like it is. Squires Lumber Company, Inc. needs your help in making each working day [enjoyable and] rewarding.

Thus, read in context, employees would not reasonably construe Respondent’s provision “What Squires Expects of You, “to impede Section 7 rights.

Finally, the complaint alleges that some of the prohibited conduct, which might cause discipline up to and including discharge, is susceptible of being understood to prohibit Section 7 activity. The prohibition on disclosure of company information is unlawful for the same reason the confidentiality rules are unlawful. The prohibition on the unauthorized use of company

property is also overbroad and therefore unlawful.<sup>38</sup> However, although alleged to be unlawful, the rules prohibiting verbal abuse,<sup>39</sup> using abusive language,<sup>40</sup> falsification of company records,<sup>41</sup> provoking a fight,<sup>42</sup> removing company property,<sup>43</sup> and recording time for another employee<sup>44</sup> do not run afoul of Section 7.<sup>45</sup>

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Respondent defends the handbook by noting that employees did not read it and were unaware of these provision. This is irrelevant as mere maintenance of the rules may violate the Act. Further Respondent notes that the handbook policies were not intended to chill employees' Section 7 rights. However, Respondent's subjective understanding of the rules or its intent in adopting the rules is not at issue. Finally, Respondent claims that it has remedied any faults in the rules. This was accomplished in a December 2015 Handbook which was distributed beginning January 2016. Thus, the new handbook, although it may be relevant to the remedy, is irrelevant in determining whether the handbook in effect in 2015 contained rules chilling employee Section 7 activity. See *New Passages Behavioral Health and Rehabilitation*, 362 NLRB No. 55 (2015).

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## 21. Request for a Gissel Bargaining Order

Respondent has committed serious unfair labor practices including discrimination against the main union organizers Martinez and Saephan through written warnings to Martinez and Saephan because of their union activity, ordering Saephan to take a drug test due to his union activity, and suspension and discharge of Saephan for his union activity. These actions were taken from corporate offices away from the scene of the action, without investigation or discussion with Alvarez, the manager in Suisun City.

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Further, Respondent took action against all employees by prohibiting them from removing their hard hats when on break unless they were sitting at the break table or in their vehicles, temporarily moving the outdoor portable toilet to inside the building near the employee break and work areas, refusing to allow employees to use the indoor sink to wash their hands

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<sup>38</sup> The rule is overbroad. See, e.g., *Avon Convalescent Center, Inc.*, 200 NLRB 702, 705 (1972); *Groendyke Transport, Inc.*, 211 NLRB 921 (1974).

<sup>39</sup> See, *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) (rule prohibiting abusive and profane language, "harassment," and "verbal, mental and physical abuse" were lawful. As they were intended to maintain order in the workplace and did not explicitly or implicitly prohibit Section 7 activity.)

<sup>40</sup> *Lutheran Heritage Village-Livonia*, supra.

<sup>41</sup> No support is cited and none can be found for a violation.

<sup>42</sup> A rule against provoking a fight would appear to be a reasonable security measure. In the context of this rule, which enumerates grounds for discharge, it would not be reasonable to construe the term "fight" as an oral disagreement involving protected, concerted or union activity. No citation to any authority in support of finding a violation is set forth and none can be found.

<sup>43</sup> No authority is provided for finding that this rule, reasonably read, interferes with Section 7 rights. A reasonable interpretation of the rule is that it requires employees not to take company property.

<sup>44</sup> No authority is provided for finding that this rule, reasonably read, interferes with Section 7 rights. Moreover, the rule appears to support a legitimate management right to control its workforce and payroll.

<sup>45</sup> Cf., *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) (rule prohibiting abusive and profane language, "harassment," and "verbal, mental and physical abuse" were lawful as they were intended to maintain order in the workplace and did not explicitly or implicitly prohibit Section 7 activity.)

before meal and break time, and locking the office doors during business hours. On top of those violations, Respondent also threatened discharge, threatened arrest, surveilled picketing and maintained rules which restricted employee Section 7 rights. These violations were quite serious.

5           Moreover, these unfair labor practices were committed swiftly and by president Paxson, operations manager Gilfillan, and human resources manager Bankston, some of Respondent’s highest ranking officials.

10           Respondent argues that traditional remedies are sufficient in this case because the likelihood of recurring misconduct is low. Respondent cites the fact that on January 5, 2016, it posted a standard NLRB Employee Rights statement (Statement) and a Notice to Employees (Notice) signed by Chris Paxson and dated January 5, 2016. The Notice to Employees contained an explanation of Section 7 rights and further stated certain undertakings of Respondent utilizing “WE WILL” and “WE WILL NOT” language. The Notice stated:

15           WE WILL issue a revised Employee Handbook. No part of the Employee Handbook will be construed to interfere with employees’ rights under Section 7 of the National Labor Relations Act.

20           WE WILL NOT requires employees to wear hard hats except in work areas for safety reasons.

25           WE WILL NOT move or maintain any portable toilet into employees’ work or break areas.

30           WE WILL NOT threaten employees with job loss for supporting the Carpenters Union.

35           WE WILL NOT threaten to cause the arrest of employees and/or nonemployees for engaging in union activities.

40           WE WILL NOT discipline, terminate or retaliate against employees because of their union activities.

45           WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.

Respondent contends that this notice cured any unfair labor practices or at a minimum has erased any effect of unfair labor practices on the findings of this case. However, this Notice does not encompass a global statement of undertakings necessary to repudiate prior actions and does not erase any effects of the unfair labor practices. Under *Passavant Memorial Area Hospital*, 237 NLRB 138, 138-139 (1978), an effective repudiation must be timely, unambiguous, specific, and free from other illegal conduct and must be accompanied by adequate assurances that it will not interfere with employee rights in the future. Respondent does not contend that the *Passsavant* requirements have been met.

Based on the swiftness of Respondent’s reaction to the union activity and the seriousness of the unfair labor practices, it must be concluded that the possibility of erasing the effects of Respondent’s unfair labor practices and ensuring a fair election by traditional means is slight.<sup>46</sup> These serious unfair labor practices interfere with the Board’s election process and preclude the holding of a fair election.<sup>47</sup> Thus, the interests of the employees who signed the petition for representation would be better protected by a bargaining order.<sup>48</sup>

Accordingly, Respondent must bargain with the Union based upon the authorization petition<sup>49</sup> signed on August 28 by Morabito and Martinez and on August 31 by Saephan, 100 percent of the bargaining unit employees at the time the petition was presented on September 2. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 603 (1969).

As the Charging Party and General Counsel aver, the unit, “all full-time directly-employed millworker employees employed by Respondent at its Suisun City, California facility”<sup>50</sup> is an appropriate unit. It need not be the most appropriate unit. *International Bedding Co.*, 356 NLRB 1336 (2011), citing *Morand Bros Beverage*, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir. 1951); *Overnite Transportation*, 322 NLRB 723 (1966). And as the Charging Party emphasizes, the requested unit may qualify as a traditional craft unit under the criteria of *Mallinckrodt Chemical Works*, 62 NLRB 387 (1962), in that the unit consists of distinct journeypersons, the employees have established a separate community of interest typical of collective-bargaining patterns in the industry, the unit has a specific integration in the production process, and the Union seeks to represent these employees.<sup>51</sup>

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<sup>46</sup> See, e.g., *River West Development*, 311 NLRB 592 fn. 1 (1993) (After-the-fact reinstatement with backpay of the wrongfully discharged employee insufficient to dissipate union animus where manager who fired employee is still in control of labor relations).

<sup>47</sup> As the General Counsel points out, the coercive effect of unfair labor practices is increased when violations begin as soon as the employer has knowledge of the union campaign. *Bakers of Paris*, 288 NLRB 991, 992 (1988), enfd. 929 F.2d 1427 (9th Cir. 1991); see also *Cassis Management Corp.*, 323 NLRB 456, 459 (1997)(coercive impact of discharges increased by their precipitate and reflexive nature), also cited by the General Counsel.

<sup>48</sup> It is immaterial that two of the three employees who signed the petition are no longer employed by Respondent. *River West Development*, 311 NLRB 591 fn.1 (1993) (bargaining order appropriate where the union had signed authorization cards from two of three employees in the unit, even though neither of these employees was a member of the unit when the order was issued.).

<sup>49</sup> The authorization petition clearly designates the Northern California Carpenters Regional Council, and its affiliated Local Unions to represent the employees in negotiations with Respondent. The record reflects that the Charging Party, Carpenters Local 2236, United Brotherhood of Carpenters and Joiners of America is one of the affiliated local unions.

<sup>50</sup> The words “directly-employed” did not appear in the Complaint. I have added them for the sake of clarity. Temporary employees might also qualify as “regular full-time millworker employees,” the original language. The record as a whole reveals that the Charging Party meant to include only “directly-hired” – not temporary employees.

<sup>51</sup> Respondent argues that the unit should include its temporary employees. On September 2, Respondent had 6 temporary employees working in the shop employed by both Workers.Com and Labor Ready. In agreement with the General Counsel, this argument must be rejected. First, the unit referred to in the petition is an appropriate unit. Second, although the temporary employees share many of the same working conditions, their terms and conditions of employment are different (no handbook, no 401(k), no

Continued

As indicated above, the Respondent’s bargaining obligation attached as of September 2, 2015. The General Counsel alleges that Respondent has violated Section 8(a)(5) and (1) of the Act by failure to bargain with the Union since that date regarding some of the material, substantial, and significant changes which have been found in violation of Section 8(a)(3) and (1) of the Act.<sup>52</sup>

As found above, Respondent violated Section 8(a)(3) and (1) of the Act by prohibiting employees from removing their hard hats when on break unless they were sitting at the break table or in their vehicles. The hard hat rule change involved a mandatory term and condition of employment.<sup>53</sup> There is no dispute that Respondent did not bargain about this decision. Thus, Respondent violated Section 8(a)(5) and (1) of the Act in making this change without first affording the Union notice and opportunity to bargain.

### REMEDY

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

The Respondent, having discriminatorily discharged its employee Bobby Saephan, it must offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of his discharge. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, Respondent must compensate Bobby Saephan for the adverse tax consequences, if any, of receiving a lump-sum backpay award and Respondent shall file a report with the Regional Director for Region 20, within 21 days of the date backpay is fixed, either by agreement or Board order, a report allocating the backpay to the appropriate calendar years. *AdoServ of New Jersey*, 363 NLRB No. 143 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

In light of the serious and pervasive nature of the unfair labor practices committed by the Respondent, a broad cease and desist order is appropriate. *Evergreen America Corp.*, 348 NLRB

health insurance, not subject to discipline) and thus there is no overwhelming community of interest. More importantly, there is no evidence that Respondent is a joint employer with Workers.Com and Labor Ready and no evidence that these temporary agencies consent to bargaining with Respondent in such a combined unit.

<sup>52</sup> The General Counsel cites *Road Sprinkler Fitters Local 699 v. NLRB*, 681 F.2d 11, 24-25 (D.C. Cir. 1982), and other cases for this proposition.

<sup>53</sup> As mentioned before, failure to fill two of the three full-time direct-hire vacancies was alleged as an 8(a)(3) and (1) violation but it was not briefed. The evidence reveals that one of the two vacancies has been filled. The allegation was dismissed as abandoned and will not be included in the remedy to bargain.

178, 264 (2006), enfd. 531 F.3d 321 (4th Cir. 2008); *Michael's Painting, Inc.*, 337 NLRB 860 fn. 3 (2001), enfd. 85 Fed. Appx. 614 (9th Cir. 2004); and *Hickmott Foods*, 242 NLRB 1357 (1979).

5           The General Counsel also seeks an order requiring that the Respondent reimburse  
 Saephan for search-for-work and work-related expenses regardless of whether Saephan receives  
 interim earnings for a particular quarter. The General Counsel asserts that these expenses should  
 be calculated separately from taxable net backpay and should be paid separately, in the payroll  
 period when incurred, with daily compounded interest charged on these amounts as prescribed in  
 10 *Kentucky River Medical Center*, supra. The General Counsel concedes, however, that, at present,  
 Board law considers such expenses as an offset to discriminatees' interim earnings rather than  
 calculating them separately. *West Texas Utilities Co.* 109 NLRB 936, 939 fn. 3 (1954). At this  
 time, of course, existing Board precedent must be followed in resolving the issues present in a  
 case. *Pathmark Stores, Inc.*, 342 NLRB 378, 378 fn. 1 (2004); *Waco, Inc.*, 273 NLRB 746, 749  
 15 fn. 14 (1984). Accordingly, the General Counsel's request for this additional remedy is denied.

          Finally, the General Counsel requests that a responsible management official read the  
 notice to assembled employees or, at the Respondent's option, that a Board agent read the notice  
 in the presence of a responsible management official. The Board has held that in determining  
 20 whether additional remedies are necessary to fully dissipate the coercive effect of unlawful  
 discharges and other unfair labor practices it has broad discretion to fashion a remedy to fit the  
 circumstances of each case. *Casino San Pablo*, 361 NLRB No. 148, slip op. at 6-7 (2014); *Excel  
 Case Ready* 334 NLRB 4, 4-5, (2001). In this regard, the Board has held that a public reading of  
 the notice is an "effective but moderate way to let in a warming wind of information, and more  
 25 important, reassurance." *Federated Logistics & Operations* 340 NLRB 255, 256 (2003) citing *J.  
 P. Stevens & Co. v. NLRB*, 417 F.2d 533, 539-540 (5th Cir. 1969).

          In this case, the unfair labor practices of Respondent justify the additional remedy of a  
 notice reading. Respondent responded to the Union's organizing campaign with extensive and  
 30 serious unfair labor practices. In the first instance, as described above Respondent engaged in  
 numerous violations of Section 8(a)(1) of the Act. In addition, Respondent discharged Saephan,  
 one of the primary employee supporters of the Union, in violation of Section 8(a)(3) and (1) of  
 the Act. Further, in quick succession, Respondent issued three warnings to another employee  
 supporter, Martinez, in violation of Section 8(a)(3) and (1) of the Act. The Board has noted that  
 35 unlawful discharges of union supporters are highly coercive. *Excel Case Ready*, supra at 5. Thus,  
 a public reading of the remedial notice is appropriate here. Respondent's violations of the Act are  
 sufficiently serious and widespread such that a reading of the notice is necessary to dissipate as  
 much as possible any lingering effects of Respondent's unfair labor practices. Accordingly, the  
 attached notice must be read publicly by Respondent's representative or by a Board agent in the  
 40 presence of Respondent's representative.

          Due to the widespread, flagrant violations and some evidence of centralized control of  
 labor relations, the Charging Party requests that notices be posted in both Suisun City and at the  
 main facility in Colton, California. Indeed, the president and vice president from Colton  
 45 California as well as Bankston of human resources, were present from time to time in Suisun  
 City and made all decisions regarding warnings, suspensions, and discharge. The corporate

office was also responsible for the rules, locking the office, and pulling the outdoor portable toilet into the shop area. The Charging Party relies on *Beverly California Corp. v. NLRB*, 227 F.3d 817 (7th Cir. 2000); and *Miller Group*, 310 NLRB 1235 (1993). These cases are distinguishable in that those companies were recidivists with clear patterns of misconduct.

5 Although the corporate officers and personnel made the decisions, none of the effects were felt by employees in Colton City. There is no evidence that their decisions were corporate-wide in nature.<sup>54</sup> Thus, a system-wide posting is not warranted here.

10 The Charging Party further requests that posting include the temporary employment agencies utilized by Squires in order that temporary employees be fully apprised. In my view, a posting at the Suisun City facility is sufficient to apprise both temporary and direct-hire employees. Accordingly, this request is denied. Finally the Charging Party requests publication in a newspaper or circular of broad release twice a week for a period of 8 weeks as in *Pacific Beach Hotel*, 361 NLRB No. 65 (2014); and *Fieldcrest Cannon*, 318 NLRB 470, 473 (1994),  
 15 enfd in relevant part 97 F.3d 65 (4th Cir. 1966). These cases deal with repeated flagrant violations and are designed to neutralize the frustrating effects of persistent illegal activity. Such is not the case here and I decline to order these remedies.

#### CONCLUSIONS OF LAW

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1. By threatening employees with job loss for supporting a union by telling its temporary employees that if it had to, Respondent would fire the full-time employees who were supporting the Regional Council, Respondent violated Section 8(a)(1) of the Act.
- 25 2. By threatening to cause the arrest of its employees and non-employees for engaging in a strike and/or picketing at its Suisun City facility where Respondent had no legitimate property interest, Respondent violated Section 8(a)(1) of the Act.
3. By setting up a video camera near the picketing activity on November 25, Respondent engaged in surveillance or the impressions of surveillance in violations of Section 8(a)(1) of the Act.
- 30 4. By maintaining a rule which restricts “discussing or sharing information regarding Squires Lumber’s business with the media (print, radio, or television) except by the President or CEO; a rule which prohibits unauthorized disclosure of company information; a rule which prohibits unauthorized use of company property; and a rule prohibiting disclosing information about Respondent, its owner/proprietor, its suppliers, its customers, “or perhaps even fellow employees,” and states that any breach will not be  
 35 tolerated and legal action may be taken by the company, Respondent violated Section 8(a)(1) of the Act.
5. By changing its employees working conditions and imposing more onerous and rigorous terms and conditions of employment by prohibiting its employees from removing their  
 40 hard hats when on break unless sitting at the break table or in their vehicles; by temporarily moving a portable toilet from outdoors to inside the building near its employees’ break and work areas; by refusing to allow its employees to use the indoor sink to wash their hands before meal and rest breaks; and by locking its office door

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<sup>54</sup> Thus, the Charging Party’s reliance on *Fresh & Easy Neighborhood Market*, 356 NLRB 546 (2001), enfd 468 F.Appx 1 (DC Cir 2012) (violative behavior was corporate wide) is misplaced.

during business hours, Respondent violated Section 8(a)(3) and (1) of the Act.

6. By issuing written warnings to its employees Francisco Martinez and Bobby Saephan because they and a coworker signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities, Respondent violated Section 8(a)(3) and (1) of the Act.
7. By ordering its employee Bobby Saephan to take a drug test because he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities, Respondent violated Section 8(a)(3) and (1) of the Act.
8. By suspending its employee Bobby Saephan because of he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities, Respondent violated Section 8(a)(3) and (1) of the Act.
9. By firing its employee Bobby Saephan because of he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities, Respondent violated Section 8(a)(3) and (1) of the Act.
10. By issuing written warnings to its employee Francisco Martinez on October 21 and December 10, 2015 because of he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities, Respondent violated Section 8(a)(3) and (1) of the Act.
11. Due to the serious and substantial unfair labor practice conduct as set forth above, there is only a slight possibility of traditional remedies erasing their effects and of conducting a fair secret ballot election. However, the employees' sentiments regarding representation have been expressed through a petition signed by 100 percent of the directly-hired, full-time millworker employees authorizing the Regional Council to serve as their exclusive representative for purposes of collective-bargaining with Respondent. Thus, it is appropriate that Respondent be ordered to bargain in good faith with the Regional Council.
12. By failing and refusing to recognize and bargain in good faith with the Northern California Carpenters Regional Council about changing employees working conditions by prohibiting employees from removing their hard hats when on break unless they were sitting at the break table or in their vehicles, Respondent violated 8(a)(5) and (1) of the Act.
13. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:<sup>55</sup>

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### ORDER

Respondent, Squires Lumber Company, Inc., Suisun City, California, its officers, agents, successors, and assigns, shall

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1. Cease and desist from

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(a) Threatening employees with job loss for supporting a union by telling Respondent's temporary employees that if it had to, Respondent would fire the directly-hired employees who were supporting Northern California Carpenters Regional Council.

(b) Threatening to cause the arrest of its employees and non-employees for engaging in a strike and/or picketing at its Suisun City, California facility where Respondent had no legitimate property interest.

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(c) Engaging in surveillance or the impression of surveillance by setting up a video camera near picketing activity.

(d) Maintaining a rule which restricts "discussing or sharing information regarding Squires Lumber's business with the media (print, radio, or television) except by the President or CEO."

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(e) Maintaining a rule which prohibits unauthorized disclosure of company information and unauthorized use of company property.

(f) Maintaining a rule prohibiting disclosing information about Respondent, its owner/proprietor, its suppliers, its customers, "or perhaps even fellow employees," and states that any breach will not be tolerated and legal action may be taken by the company.

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(g) Changing its employees working conditions and imposing more onerous and rigorous terms and conditions of employment

- by prohibiting its employees from removing their hard hats when on break unless sitting at the break table or in their vehicles;
- by temporarily moving a portable toilet from outdoors to inside the building near its employees' break and work areas;
- by refusing to allow its employees to use the indoor sink to wash their hands before meal and rest breaks;
- by locking its office door during business hours;

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(h) Issuing written warnings to its employees Francisco Martinez and Bobby Saephan because they and a coworker signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted

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<sup>55</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order, as provided in Sec. 102.48 of the Rules, shall be adopted by the Board and all objections to them shall be deemed waived for all purposes.

the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.

- 5 (i) Ordering its employee Bobby Saephan to take a drug test because of he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.
- 10 (j) Suspending its employee Bobby Saephan because he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.
- 15 (k) Firing its employee Bobby Saephan because he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.
- 20 (l) Issuing written warnings to its employee Francisco Martinez on October 21 and December 10, 2015 because he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.
- 25 (m) Failing and refusing to recognize and bargain in good faith with the Northern California Carpenters Regional Council in general and specifically about changing employees working conditions by prohibiting employees from removing their hard hats when on break unless they were sitting at the break table or in their vehicles.
- 30 (n) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.
- 35 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request bargain with the Northern California Carpenters Regional Council in the appropriate unit of all regular full-time millworkers employees directly employed by Respondent at its Suisun City, California facility.
- 40 (b) Within 14 days from the date of this Order, offer Bobby Saephan 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 or privileges previously enjoyed and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the Remedy section of this decision.
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- 5 (c) Within 14 days from the date of this Order, remove from its files any reference to the October 14 written verbal warnings of its employees Fernando Martinez and Bobby Saephan, the October 15 order to Saephan to take a drug test, the October 19 suspension of Saephan, the October 20 termination of Saephan, the first written warning to Martinez of October 21, and the final written warning to Martinez of December 10 and within 3 days thereafter, notify them in writing that this has been done.
- 10 (d) Compensate Bobby Saephan for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Regional Director for Region 20, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.
- 15 (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide a reasonable place designated by the Board or its agents, all payroll records, social security payments records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- 20 (f) Rescind or revise the March 23, 2009 Employee Handbook if it is still in use or the December 2015 Employee Handbook sections as follows:
- (i) Code of Ethics to delete or revise the restriction on “discussing or sharing information regarding Squires Lumber’s business with media (print, radio, or television) except by the President or CEO;”
- 25 (ii) Prohibited Conduct to delete or revise the prohibition against unauthorized disclosure of company information and unauthorized use of company property;
- (iii) Confidentiality to delete or revise prohibitions against disclosing information about Respondent, its owner/proprietor, its suppliers, its customers, “or perhaps even fellow employees,” and the statement that any breach will not be tolerated and legal action may be taken by the company.
- 30 (g) Within 14 days after service by the Region, post at its Suisun City, California facility copies of the attached notice marked “Appendix A.”<sup>56</sup> Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places,
- 35 including places where notices are customarily posted. In addition to physical posting or 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
- 40 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

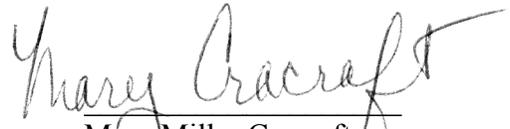
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<sup>56</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix A" to all current employees and former employees employed by the Respondent at any time since August 2, 2015.

- 5 (h) Within 14 days of the date of this order, hold a meeting or meetings, scheduled to ensure the widest possible attendance, to fully communicate with employees, at which the attached notice marked "Appendix A" will be publicly read by a responsible corporate executive in the presence of a Board agent or, at the Respondent's option, by a Board agent in the presence of a responsible corporate executive.
- 10 (i) Within 21 days after service by the Region, file with the Regional Director for Region 20 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.

15 Dated, Washington, D.C. April 8, 2016

20   
Mary Miller Cracraft  
Administrative Law Judge

## APPENDIX A

### 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

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

**WE WILL NOT** threaten employees with job loss for supporting a union by telling its temporary employees that if it had to, Respondent would fire the full-time employees who were supporting the Regional Council.

**WE WILL NOT** threaten to cause the arrest of its employees and non-employees for engaging in a strike and/or picketing at its Suisun City facility where Respondent had no legitimate property interest.

**WE WILL NOT** video picketing activity near our property.

**WE WILL NOT** maintain a rule which restricts “discussing or sharing information regarding Squires Lumber’s business with the media (print, radio, or television) except by the President or CEO; a rule which prohibits unauthorized disclosure of company information and unauthorized use of company property; and a rule prohibiting disclosing information about Respondent, its owner/proprietor, its suppliers, its customers, “or perhaps even fellow employees,” and states that any breach will not be tolerated and legal action may be taken by the company.

**WE WILL NOT** change your working conditions and imposing more onerous and rigorous terms and conditions of employment on you by prohibiting you from removing your hard hats when on break unless sitting at the break table or in your vehicles; by temporarily moving a portable toilet from outdoors to inside the building near your break and work areas; by refusing to allow you to use the indoor sink to wash your hands before meal and rest breaks; and by locking our office door during business hours

**WE WILL NOT** issue written warnings to you, order you to take a drug test, suspend or terminate you because employees signed and presented us with a petition authorizing the

Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.

**WE WILL NOT**, due to these serious and substantial unfair labor practice conduct as set forth above, refuse to recognize the Regional Council to serve as the exclusive representative for purposes of collective-bargaining for all regular full-time millworker employees employed by us at our Suisun City, California facility.

**WE WILL NOT** alter your terms and conditions of employment without first affording the Regional Council notice and opportunity to bargain.

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

**WE WILL** recognize the Northern California Carpenters' Regional Council as the exclusive bargaining representative of our regular full-time direct-hire millworker employees and, on request, **WE WILL** bargain in good faith with them regarding our employees' wages, hours, and other terms and conditions of employment and if agreement is reached, embody the understanding in a signed agreement..

**WE WILL** within 14 days from the date of the Board's Order, offer Bobby Saephan 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 or privileges previously enjoyed.

**WE WILL** compensate Bobby Saephan for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings plus interest.

**WE WILL** compensate Bobby Saephan for any adverse income tax consequences of receiving a lump-sum backpay award and **WE WILL** file with the Regional Director for Region 20, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

**WE WILL** within 14 days from the date of the Board's Order, remove from our files any reference to the October 14 written verbal warnings of employees Fernando Martinez and Bobby Saephan, the, October 15 order to Saephan to take a drug test, the October 19 suspension of Saephan, and October 20 termination of Saephan, the first written warning to Martinez of October 21, and the final written warning to Martinez of December 10, and **WE WILL** within 3 days thereafter, notify them in writing that this has been done and this discipline and discharge will not be against them in any way.

**WE WILL** to the extent we have not already done so, and within 14 days from the date of the Board's Order, rescind or revise the March 23, 2009 Handbook Confidentiality provision, the Code of Ethics confidentiality provision, and our Prohibited Conduct sections on unauthorized disclosure of company information and unauthorized use of company property.

**WE WILL** furnish all current employees with written notice that the unlawful provisions have been rescinded or we will furnish them with revised provisions that provided lawfully worded rules.

**SQUIRES LUMBER COMPANY, INC.**

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

901 Market Street, Suite 400  
San Francisco, California 94103-1735  
Hours: 8:30 a.m. to 5 p.m.  
415-356-5130



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 415-356-5139.

## **APPENDIX B**

This Appendix contains the full content of each rule that is alleged to violate the Act.

### **What Squires Lumber Company, Inc. Expects From You**

March 23, 2009 version

[December 2015 Handbook differs in that bracketed items have been deleted]

Your first responsibility is to know your own duties and how to do them promptly, correctly, and pleasantly. Secondly, you are expected to cooperate with management and your fellow employees [and maintain a good team attitude]. How you interact with fellow employees and those whom Squires Lumber Company, Inc. serves, and how you accept direction can affect the success of your department. In turn, the performance of one department can impact the entire service offered by Squires Lumber Company, Inc. Consequently, whatever your position, you have an important assignment: perform every task to the very best of your ability. The result will be better performance for the company overall, and personal satisfaction for you. You are encouraged to grasp opportunities for personal development that are offered to you.

We strongly believe that you should have the right to make your own choices in matters that concern and control your life. We believe in direct access to management. We are dedicated to making Squires Lumber Company, Inc. a company where you can approach your manager, or any member of management, to discuss any problem or question. We expect you to voice your opinions and contribute your suggestions to improve the quality of Squires Lumber Company, Inc. We're all human, so please communicate with each other and with management.

Remember, you help create the healthy, pleasant and safe work conditions Squires Lumber Company, Inc., intends for you. Your dignity and that of fellow employees, as well as that of our customers, is important. We tell the truth to each other, our customers, and our suppliers. We tell the cold, hard, unvarnished, uncomfortable kind of truth, and the whole story, not just part of it. We don't stretch it, bend it, or avoid it. If someone raises heck about the truth, let them. Just say it like it is. Squires Lumber Company, Inc. needs your help in making each working day [enjoyable and] rewarding.

### **Code of Ethics**

Squires Lumber Company has a solid reputation for honesty, social responsibility, and ethical dealings. Every employee, including every officer and director, shares an obligation to protect and strengthen that good reputation. The Code of Ethics provides practical guidelines regarding business conduct and personal attitude expected from every employee and pertains to all relationships with customers, employees, suppliers, competitors, and governmental agencies. As an employee, your adherence to the regulations is expected.

**Financial integrity:** Any action that negatively affects the accuracy, integrity, or propriety of Squires Lumber's books and records is a violation of company policy. Violations in these areas, or a failure to report any known violation in areas, is considered grounds for disciplinary actions up to and including termination. If you become aware of these activities or have observed them in the past, you are required to report them to the Company owner.

**Compliance with Laws and Regulations:** Every employee shall comply with all applicable laws and regulations. The Company will fully cooperate with all law enforcement authorities in investigating and prosecuting illegal activities.

**Conflicts of Interest:** Squires Lumber expects all employees to be honest and act in good faith. Avoiding conflicts of interest is an obligation of all employees in order to protect and strengthen Squires Lumber's reputation for honesty and ethical business practices in all relationships with customers, suppliers, and other employees. Although not inclusive, the following are examples of activities that may be conflicts of interest:

- Being actively engaged in personal financial or business relationships with suppliers, customers, or employees

- Actively soliciting personal loans between employees, customer, suppliers, etc.

- Accepting or giving unauthorized discounts on merchandise

**Confidential Information:** It should be understood that, in order to learn and do your job, you will have access to and the need to use confidential information and trade secrets developed by Squires Lumber, including but not limited to customer lists, pricing information, profit margins, supply sources, operating methods and procedures, or credit methods and procedures. To protect trade secrets and confidential information, all employees are not to provide or release such information to competitors, customers, other employees. In addition, discussing or sharing information regarding Squires Lumber's business with the media (print, radio, or television) is restricted except by the President and CEO.

**Personal Investments:** Squires Lumber's reputation rests in part on intelligent management of its business and expects all employees to manage their own finances in an intelligent and prudent way.

**Government Officials and Agencies:** Any Squires Lumber's transaction with the government will be for a legitimate business purpose, following applicable laws and customs, and in compliance with Squires Lumber's policies and procedures.

**Employee Relations:** Squires Lumber has a moral and legal obligation to follow non-discrimination policies regarding sex, race, color, religion, national origin, age, or disability or any other basis protected by applicable laws.

**Personal Conduct:** Gambling in any form on company property is forbidden. The performance of your assigned duties will involve business relationships with individuals both inside and outside of Squires Lumber and with other companies or organizations. You should always act in accordance with the law, with full consideration of Squires Lumber's rights, too protect your own good reputation and that of Squires Lumber, and to avoid any transactions or situations in which your interests conflict or could be viewed as conflicting with those of Squires Lumber's.

As relevant here, the December 2015 handbook omits certain portions of the March 23, 2009 Code of Ethics. Under the subtopic ***Financial Integrity***, “financial information” is deleted. In ***Conflicts of Interest***, the phrase “the best interests of the Company” has been deleted. Moreover, the entire ***Confidential Information*** subtopic was deleted from the Code of Ethics.

### **Prohibited Conduct**

The following conduct is prohibited and will not be tolerated by Squires Lumber. This list of prohibited conduct is illustrative only; other types of conduct that threaten security, personal safety, employee welfare and Company operations also may be prohibited.

This list is an example of actions which will normally subject an employee to *immediate termination* on the first occurrence. Again, this list is not intended to identify all possible violations.

- Dishonesty of any type.
- Unauthorized disclosure of Company information.
- Possession of explosives, firearms, knives, or other dangerous weapons on Company property including vehicles, trucks, forklifts, etc.
- Verbal or physical abuse or other abusive behavior toward employees, customers, or other persons on Company property.
- Use, sale, distribution or possession of illegal drugs while on Company business or premises during work hours, including lunch or breaks.
- Possession or use of alcoholic beverages while on Company business or premises during work hours, including lunch or breaks.
- Theft, deliberate or careless destruction or damage of Company property or the property of employees, visitors or any other person on Company premises, parking lots or grounds or in Company vehicles.
- Unauthorized use of Company property
- Unauthorized possession of Company property
- Falsification of Company records
- Insubordination, including but not limited to failure or refusal to obey the orders or instructions of a supervisor or member of management, or the use of abusive or threatening language toward a supervisor or member of management;
- Violations of Company Code of Ethics which requires compliance with all local, state, and federal laws
- "No Call, No Show" for one scheduled shift
- Working "off the clock" or directing another employee to work "off the clock"
- Refusal to take a drug or alcohol test or other violations of Company drug or alcohol policies

- Refusal to cooperate fully in investigation of loss, injury, or policy violation
- Removing or attempting to remove from Company property, without proper authorization, any Company property or record, or property or record of any customer, visitor, employee or any other person at the Company's facility.
- Misrepresentation on an application for employment, physical examination (CDL truck drivers only) or other Company report including but not limited to omission of prior employers or past medical history or the falsification of any documents submitted to the Company during the employment process regardless of when the misrepresentation of falsification actually occurred.
- Violation of Company's equal opportunity policy or No Harassment policy. Committing of or involvement in any act of unlawful harassment of another individual.
- Recording the work time of another employee or allowing any other employee to record your work time, or falsifying any time card, either your own or another employee's;
- Provoking a fight or fighting during working hours or on Company property;
- Participating in horseplay or practical jokes on Company time or on Company premises;
- Engaging in criminal conduct whether or not related to job performance;
- Causing, creating, or participating in a disruption of any kind during working hours on Company property;
- Using abusive language at any time on Company premises;
- Failing to notify a supervisor when unable to report to work;
- Failing to obtain permission to leave work for any reason during normal working hours;
- Failing to observe working schedules, including rest and lunch periods;
- Failing to provide a physician's certificate when requested or required to do so;
- Sleeping or malingering on the job;
- Making or accepting personal telephone calls, including cell phone calls, of more than three minutes in duration during working hours, except in cases of emergency;
- Working overtime without authorization or refusing to work assigned overtime;
- Violating any safety, health, security or Company policy, rule, or procedure;
- Committing a fraudulent act or a breach of trust under any circumstances; and
- Committing of or involvement in any act of unlawful harassment of another individual

The December 2015 handbook deletes that fourth item, “Verbal or physical abuse or other abusive behavior toward employees, customers, or other persons on Company property.” It also deletes the ninth item, “Unauthorized use of Company property.” The twelfth item, Insubordination, has been revised. The prohibited conduct of “Causing, creating, or participating in a disruption of any kind during working hours on Company property” has been deleted. “Working Overtime without authorization or refusing to work assigned overtime” has also been deleted.

The 2009 Handbook Confidentiality provision is as follows:

### **Confidentiality**

Each employee is responsible for safeguarding the confidential information obtained during employment.

In the course of your work, you may have access to confidential information regarding Squires Lumber Company, Inc., its owner/proprietor, its suppliers, its customers, or perhaps even fellow employees. You have a responsibility to prevent revealing or divulging any such information unless it is necessary for you to do so in the performance of your duties. Access to confidential information should be on a "need-to-know" basis and must be authorized by your supervisor. Any breach of this policy will not be tolerated and legal action may be taken by the Company.

The December 2015 expands this provision as follows:

### **Confidentiality**

Each employee is responsible for safeguarding confidential information obtained during employment. It should be understood that, in order to learn and do your job and in the course of your work, you may have access to confidential information and trade secrets developed by Squires Lumber Company, Inc., its owner/proprietor, its suppliers, its customers, or perhaps even private information of fellow employees. You will also have access to including, but not limited to customer lists, pricing information, profit margins, supply sources, operating methods and procedures, or credit methods and procedures. To protect trade secrets and confidential information, all employees are not to provide or release such information to competitors, customers, other employees. In addition, discussing or sharing information regarding Squires Lumber Company, Inc.'s business with the media (print, radio, or television) is prohibited, except by the President and CEO.

You have a responsibility to prevent revealing or divulging any such information unless it is necessary for you to do so in the performance of your duties. Access to confidential information should be on a "need-to-know" basis and must be

authorized by your supervisor. Any breach of this policy will not be tolerated and legal action may be taken by the Company.

Note: information that is publicly available, or which can be located or viewed publicly, is not confidential. Employees are also free to discuss their own wages, hours and working conditions to third parties unrelated to the company if they wish. And among the Company's employees, information regarding wages, hours and working conditions is not considered confidential. All employees of Squires Lumber Company, Inc. are required to sign a separate "Confidentiality Agreement" upon hire.