

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

BRISTOL INDUSTRIAL CORPORATION AND C.O.
SABINO CORPORATION (Single and Joint
Employers)

and

Cases 04-CA-148573 and
04-CA-153165

METROPOLITAN REGIONAL COUNCIL OF
CARPENTERS, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
SOUTHEASTERN PENNSYLVANIA, STATE OF
DELAWARE AND EASTERN SHORE OF
MARYLAND

**COUNSEL FOR THE GENERAL COUNSEL'S ANSWERING BRIEF IN RESPONSE
TO RESPONDENTS' EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
DECISION**

Dated: January 26, 2017



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I. STATEMENT OF THE CASE

This case involves two employees, Brian Dougherty and Thomas Boroughs, and the swift and unlawful retaliation taken against them by Respondents, two companies acting as one, after Dougherty and Boroughs tried to unionize their workplace.

The Regional Director issued an Order Consolidating Cases, Complaint and Notice of Hearing on August 4, 2015, (GCX 1(i)),¹ a copy of which was served the same day on Respondents Bristol Industrial Corporation (Bristol) and C.O. Sabino Corporation (Sabino). (GCX-1(j)) Respondents jointly filed an Answer to the Complaint on August 18, 2015. (GCX-1(k)) On January 27, 2016 the Acting Regional Director issued an Amended Consolidated Complaint (GCX 1(p)), a copy of which was served the same day on Respondents. (GCX-1(q)) Respondents jointly filed an Answer to the Amended Complaint on February 11, 2016. (GCX-1(r))

A hearing was held in this matter before Administrative Law Judge Susan Flynn (the ALJ) on February 16 and 17, 2016. At the hearing, Respondents stipulated to commerce. (T. 8-9) Counsel for the General Counsel made a Motion to Further Amend Consolidated Complaint (herein, the Motion). (GXC 2) Respondents admitted all allegations in the Motion.² (T. 106)

The ALJ issued her decision in this matter on December 2, 2016. This Answering brief is filed in response to Respondents' Exceptions to the Administrative Law Judge's Decision.

¹ Throughout this brief, abbreviated references are employed as follows: "ALJD" followed by page and line numbers to designate the ALJ's Decision; "T" followed by page number to designate Transcript pages; "GCX" followed by exhibit number to designate General Counsel's Exhibits; and "RX" followed by exhibit number to designate Respondent's Exhibits.

² By admitting the allegations in the Motion, Respondents effectively amended their Answer to admit previously denied allegations, including, inter alia, that the full-time and regular part-time carpenters of BRISTOL and Sabino, (herein, the Unit) have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, and that since on or about February 3, 2016 and at all material times, based on Section 9(a) of the Act, the Northeast Region Council of Carpenters, United Brotherhood of Carpenters and Joiners of America has been the exclusive collective-bargaining representative of the Unit.

II. STATEMENT OF FACTS

A. Respondent's Businesses

Bristol is a Delaware Corporation engaged in the construction industry. It was founded in 2004 by Felicia Enuha, who at all times has owned 100% of the company and been the President and sole officer. While Bristol began as a supply provision entity, in 2009 it branched out into the construction industry.³ (T. 18 GCX-1(i),(k)) Since 2013, Bristol has maintained an office at 1010 River Road, New Castle, Delaware. Since 2013, this has also served as Enuha's personal residence. (T. 20, 59)

Sabino is also a Delaware corporation engaged in the construction industry. (T. 73) It was founded in 2007 by Valentine Verissimo, who has always owned 100 percent of the company and always served as its President and sole officer. (T. 73; GCX 1(i),(k)) Sabino maintains an office in Philadelphia, PA. Verissimo also maintains an office at Bristol's building at 1010 River Road, Newark, DE. According to the credited testimony of discriminatee Brian Dougherty, Verissimo told him he had an office in the Bristol facility. (T. 173) Union official San Noel testified that Verissimo told him he works for Bristol. (T. 110) Sabino does not have a website nor does it advertise for work. (T. 75) During the time period June 1, 2014 until December 31, 2015, all of Sabino's work came from work it performed for Bristol. (T. 74-75)

Although Enuha and Verissimo were never married, they had a longstanding personal relationship going back to the 1980s. Until 2013, they lived together and had five children together. (T. 19, 21, 49, 73-74) Despite no longer living together permanently, both Enuha and Verissimo testified that they are still "very good friends." (T. 50, 74) Both used nearly the identical phrase to describe their prior relationship when they lived together permanently as they

³ Bristol still maintains a supply provision department, but it is not involved in this case.

used to describe their current relationship. Enuha testified that she still sometimes spends nights at the Silver Fox Road house. (T. 35)

Enuha admitted that in 2014, Bristol began "loaning" employees to Sabino. (T. 57) At no time was there a written agreement between Bristol and Sabino concerning the "loaning" of employees. (T. 58, 93) It is undisputed that during the relevant time period Verissimo drove the Bristol work vehicles. (T. 34, 78) As with the "loaning" of employees, there was no written agreement between Bristol and Sabino about the use of the Bristol vehicles. (T. 34, 78-79) The gas, repairs and insurance for these vehicles were paid for exclusively by Bristol. (T. 34, 79) It is also undisputed that Enuha and Verissimo both drove some of the same personal vehicles, including a "suntan" colored Lexus and a RAV4. (T. 35, 79) Interestingly, Enuha and Verissimo each claimed they owned the same Lexus. (T. 35, 79-80)

On February 26, 2014, Bristol entered into a subcontract with Sabino providing that Sabino would serve as Project Manager for certain work Bristol had been hired to perform at the Cooke Elementary School, (herein, the Cooke site) part of the Red Clay Consolidated School District in Wilmington, DE. (GCX 3) Enuha testified that she selected Sabino to receive the subcontract for the work based on the recommendation of her senior project manager and estimator at the time, Tom Berrian. (T. 28) Sabino did not submit a written bid for the work. Instead, according to Enuha, Berrian told her that the best price to pay for the work involved would be \$5,000 a month and she and Berrian made a presentation to Sabino. Sabino then accepted their offer. (T. 29, 76-77) Furthermore, Verissimo admitted that although such bids were requested pursuant to subpoena, he failed to provide any. (GCX 12, GCX 13).

The subcontract covering the Cooke site includes the following as duties for Project Manager:

As project manager, Sabino will attend the project manager's meeting on a Bi-weekly basis or as needed by the Construction Manager. Sabino will be responsible for determine how and when the work will be performed, develop deliverables schedules to provide a road map that the Superintendent/Foreman must stick to during the installation of the framing of the metal studs and drywall. Review the project in depth and work hand in hand with Bristol's superintendent on site, senior project manager, construction manager for the project and or Bristol's owner if and when needed. Sabina's job is to make sure this project is managed on time and within budget. (GCX 3, p. 1)

Verissimo never developed a deliverables schedule, despite this being a key function of his position. (T. 31,77) When asked how frequently Verissimo provided her with an updated schedule of deliverables for the Cooke job, Enuha responded "That wasn't part of his job." (T. 31) She drove the point home by adding, "we don't have schedules of deliverables. We don't." (T. 32) Likewise, when asked if Verissimo ever provided Bristol with a schedule of performance for the Cooke job, she replied "No. He wasn't responsible for that." (T. 32) Verissimo did not attend a key meeting about the progress of the Bristol work at the Cooke site. (T. 151) At Bristol's request it was the Bristol foreman, not Sabino, who communicated with the General Contractor about the progress of work. (T. 152, 155, GCX 23, GCX 24, GCX 25, GCX 26)

Bristol also entered into two subcontracts with Sabino to perform certain work at the Wilmington Housing Authority (herein, WHA site). One was executed on September 2, 2014 and the other on January 19, 2015. (GCX 4, GCX 5) As with the Cooke site, Sabino did not submit a written bid for the work. (T. 65, 76) The two subcontracts between Bristol and Sabino for work at the WHA site are nearly identical, the only differences being the dates

of performance, the specific WHA units covered, and a slight difference in the payment amount. (GCX 4, GCX 5) Since all other terms are identical, they can be considered together for the purposes of this brief. The Description of Services section in each reads as follows:

Sabino will provide the following services and/or materials (collectively, the "Services"): Provide labor, materials and supervision needed to renovate, demo framing, drywall, (sic) sparkle, and finish, the installation of VCT flooring, installation of ceramic tiles, kitchen cabinets (Provided by WHA), microwave oven (Provided by WHA), installation of stair treads, painting, cleaning and washing of floors. (GCX 4 p. 1, GCX 5 p. 1)

Enuha admitted that it was Bristol, not Sabino, which purchased all the materials for the WHA job, despite clear contract language requiring the opposite. (T. 30) On top of that, Bristol also provided, at no cost to Sabino, its construction vehicles to facilitate material delivery. (T. 34) Although the price paid for Sabino's services at the WHA site purportedly covered the cost of materials and their delivery, Bristol actually absorbed all these costs. (T. 30, 34) Sabino did not supervise the WHA site, Ralph Shelby, the Bristol superintendent performed this function. (T. 50, 144)

In May 2014, Union Council Representative Sam Noel went to Bristol's office. It is undisputed that when Noel arrived at the Bristol office Verissimo was there and he told Noel he worked for Bristol. (T. 110)

B. The Hiring of Brian Dougherty and Thomas Boroughs

In December 2014, Enuha met with Brian Dougherty, an experienced carpenter, to discuss hiring him some upcoming work she had. (T. 39-40, 141) Dougherty and Enuha had been recommended to one another by Ralph Shelby, then Bristol's superintendent at the WHA worksite. (T. 24, 40, 141; GCX-4) Dougherty stopped by Bristol's office one evening on the way home from work in order to meet with Enuha. Shelby was present as well. (T. 40, 141) Enuha

told Dougherty that he was being interviewed to work as a carpenter I installer for Bristol. She also told Dougherty he was hired and agreed to pay him \$20 per hour at the WHA site.⁴ (T. 40, 142-143) Part way through this meeting, a friend and co-worker of Dougherty's, Thomas Boroughs, joined the meeting. Enuha asked Boroughs to fill out an interview packet as well, telling him she would call him if she decided to hire him. (T. 212-231) Both Dougherty and Boroughs filled out tax forms and an application for Bristol (T. 142, 213)

During the week of December 13, 2014, Dougherty began working at the WHA work site. (GCX 15) Shelby, the Bristol superintendent, was Dougherty's direct supervisor. (T. 144, 147, GCX 27) Shelby coordinated the work assignments and materials and spoke directly to Dougherty. (T. 144) When Dougherty first started working at WHA, he and Shelby were the only full-time employees. (T. 144) About ten days later, Boroughs also began working full-time at the WHA site after being contacted by Shelby, who told him he was hired. His pay rate was \$18.75 an hour.⁵ (T. 145, 213-214; GCX 14) Dougherty reported his work hours at the WHA site to Enuha directly via phone, until sometime in March when he was asked to report his WHA hours to Shelby. (T. 172)

When Dougherty and Boroughs received their first paycheck, instead of being from Bristol, it was from Sabino. (T 147, 219, GCX 14, 15) Dougherty and Boroughs never filled out an employment application or tax forms for Sabino. Rather, Enuha gave Dougherty and Borough's tax forms to Verissimo for his use with Sabino. (T. 41-42, 82, 83, 142, 213-214) Upon receiving the Sabino check, Dougherty asked Verissimo why he was receiving a check from Sabino. Verissimo told him that it's just the way it is, that when he works at the WHA site he

⁴ Although not explicitly discussed by the ALJ, the ALJ correctly rejected Enuha's testimony that she did not set the wage rate for Dougherty at the WHA site and Verissimo's testimony that he set the wage rate. (ALJD 8:16-25)

⁵ Payroll records show definitively that both Dougherty and Boroughs began working first at WHA, not Cooke. (GCX 10, GCX 11, GCX 14, GCX 15)

will receive a check from Sabino, but when he works at the Cooke site, he will receive a check from Bristol. (T. 147) Within the first two weeks of starting at WHA, Boroughs had a similar discussion with Verissimo, who told him that at WHA Boroughs would get a check from Sabino, and at the Cooke site he would get a check from the company that was working at that site. Verissimo told Boroughs that WHA was his site. (T. 218-219)

At some point approximately four other full-time employees joined Dougherty and Boroughs at the WHA worksite, including Chip, who performed plumbing and HVAC work, Tyronne and Glenn, who were laborers, and Reggie, a finisher. (T. 145, 215) There were also a number of sporadic part-time employees, some of whom were painters. (T. 145, 215) None of the other full-time or part-time employees performed carpentry work. (T. 145)

While working at the WHA site Dougherty and Boroughs used power tools marked with the name "Bristol" on them. They were kept in a locked box, called a "gang box" which Shelby had the key to. (T. 167, 178-179, 205, 274) Dougherty, who does not own a drywall gun (also called screw gun), always used "Bristol" labeled drywall guns at WHA. (T. 167, 205-206, 244) Enuha admitted she did not even know if Sabino kept tools for employee use at the WHA site. (T. 275) Verissimo admitted driving the Bristol cargo van and pick-up truck at the WHA site. (T. 78) Verissimo's role at the WHA site was limited to dropping off materials, making material lists for the next day and according to Boroughs, discussing timelines. (T. 146. 218)

During the week of December 14, 2014, Dougherty also began working at the Cooke work site. He was joined during the week of January 4 by Boroughs. (GCX-3; GCX-10, GCX-11) Both began installing framing material as well as drywall. (T. 148, 219) The site was governed by the prevailing wage rates. When they performed carpentry work Dougherty and Boroughs were paid \$50.60 an hour and when performing finishing work they earned \$40.02 an

hour. (T. 263 264, GCX 10, GCX 11) As at the WHA site, Dougherty and Boroughs used power tools marked "Bristol," which were kept in a locked gang box for which Dougherty kept the key. (T. 275, 279)

Dougherty and Boroughs alternated seamlessly back and forth between the WHA and Cooke sites, sometimes working at both during the same day. On days when they began their work day at Cooke, but ended it at WHA, they stopped working at 3:30 p.m., a full hour earlier than the others at the WHA site per Enuha's instructions, so that they did not earn overtime. (T. 149-150) Dougherty and Boroughs nevertheless received two paychecks, one from Sabino for the hours worked at WHA and one from Bristol for the hours worked at Cooke, (T. 178, GCX 10, GXC 11, GXC 14, GCX 15) Paychecks at WHA were distributed in person by Verissimo or Shelby and at Cooke by Verissimo, Enuha or Dougherty (T. 147, 217-218). Whoever was distributing the paychecks distributed checks for both Bristol and Sabino at the same time. (T. 147, 217-218)

Dougherty was quickly promoted at the Cooke sit, becoming foreman his second or third day on the job after the existing foreman walked off the job following a screaming argument with Enuha. (T. 148) As foreman Dougherty organized materials coming out to the job, organized man power, and made sure tasks were completed in an orderly fashion. (T. 14) At the time Dougherty" was promoted to foreman, the General Contractor, Whiting-Turner, was in the process of throwing Bristol off the job. (T. 150) One of Dougherty's first duties as foreman was to attend a status meeting about Bristol with Whiting-Turner. At this meeting Bristol was represented by Dougherty, Enuha, and Berrian, the Bristol estimator. (T. 151) Verissimo did not attend this meeting, despite Sabino' s subcontract with Bristol to serve as a "project manager," a position *above* that of foreman. (T. 151, 157) Enuha relied upon Dougherty to complete the

Bristol work at the Cooke site, using him as the company go-between with Whiting-Turner. (GXC 23, 24, 25, 26) As at the WHA site, Verissimo's role at the Cooke site was limited. At Cooke, Dougherty primarily dealt with Verissimo only about materials. Dougherty described Verissimo as lacking knowledge of what was going at the Cooke site, being unfamiliar with the contracted work, being unfamiliar with reading blueprints and therefore unable to diagnose what a particular person was contracted to do. (T. 156) (T. 157) Boroughs echoed Dougherty's assessment of Verissimo's limited role at the Cooke site, testifying he discussed timelines for completing the work at the Cooke site with Dougherty, not Verissimo (T. 220)

Enuha expressed her satisfaction with Dougherty's work in a number of ways. Dougherty testified, and Enuha did not deny, that sometime in the mid to end of February time period during conversations which took place at the WHA site, she told him she considered him like a son and that he was an "angel" sent to save her company. (T. 170-171) She hoped her real son could "shadow" Dougherty and he could serve as her son's mentor, teaching him the carpentry trade. (T. 171) Concerned that her inability to obtain work was due to her being black, she told Dougherty she wanted him to work in her office and be the "white face" of BIC. (T. 171)

C. Dougherty and Boroughs are Unlawfully Laid Off

In mid-February Dougherty became interested in joining the Union. (T. 158) Dougherty spoke with Union Council Representative Sam Noel on the phone to see what his options were in terms of joining the Union.⁶ (T. 158) Boroughs, in turn, spoke with Dougherty about joining the Union because he knew Dougherty had gotten a business card with Noel's name on it. (T. 222-223) Thereafter, on February 25, Dougherty went to the Local 626 Union Hall. Boroughs and

⁶ At all material times up until February 2, 2016 Noel's assigned Local was Local 626, and its geographic territory was the State of Delaware and Kent County, Maryland (T. 101 - 102, GCX 17) On or about February 2, 2016 Local 626 was merged into Local 173 and the geographic area expanded to include additional territory. (GCX 17)

Shelby went as well, each driving his own vehicle. Dougherty and Boroughs each signed two Union authorization cards dated February 25, 2015. One card was for Union representation at Bristol, and the other was for Union representation at Sabino.⁷ (T. 159-160, GCX 18, GCX 19)

On March 10, 2015 the Union filed a Petition with the NLRB to represent a bargaining unit at Bristol consisting of "all full time and regular part time carpenters." (GCX 7) A copy of this Petition was received via fax by the Bristol office at 9:59 a.m. on March 11. (GCX 9) Enuha testified and the ALJ credited her testimony that around March 9, 2015 Shelby told her that he, Dougherty and Boroughs had gone to the Union and that he had signed a union card. (ALJD 4:33-35; T. 261, 269-270)

The ALJ correctly credited Boroughs' testimony that on March 11, 2015, shortly after Bristol received the Petition, he was standing outside a unit at the WHA site in the late morning when Verissimo asked him whether Boroughs had signed a union card. (ALJD 4:43-48, 5:1-3; T. 225- 226) Although not mentioned specifically by the ALJ, Verissimo also asked Burroughs who had been talking to the Union. Boroughs responded that he did not know what Verissimo was talking about. (T. 225) Later that morning, Verissimo told Boroughs five to six times "I don't want no fucking union on my job site" and "I don't want a union here" while waving his hands in frustration. (T. 225) The ALJ correctly did not credit Verissimo's denials of not being aware of the Union finding it likely "that Enuha would have advised Verissimo of Shelby's confession as well as her receipt of the petition." (ALJD 5:1-3)

On March 13, 2015, Dougherty and Boroughs were working in one of the units at the WHA site after lunch when Enuha approached them. (T. 161, 187, 226) The ALJ credited Enuha that she came to the jobsite because she had concerns about Dougherty's behavior and asked

⁷ They signed two cards because neither they, nor the Union, were certain who their actual employer was. (T. 160, 239, 119)

Dougherty if he was behaving as he was because he had signed something with the Union, and that he had to stop his behavior with Andrew Johnson, the owner of the WHA site, as it was making her look bad and she needed the work. (ALJD 5:14-16) Enuha also testified that he denied signing a card. (T. 257, 268) The ALJ correctly credited Dougherty and Boroughs, that Enuha gave her opinion that the Union would not be helpful to the employees although Enuha did not testify to this.⁸ (ALJD 5:31, 5:34, 5:44-45)

The Judge credited Enuha that on March 17, 2015, she received a call from Lee Cherry, the Whiting-Turner superintendent at Cooke, about some mistakes that he wanted Dougherty to look at. As a result, Enuha asked Verissimo to take Dougherty out to Cooke. (ALJD 6:1-3) The Judge further credited Enuha that the next day, on March 18, 2015, Verissimo told her that Dougherty said he would do only framing, but no finishing or drywall. She then called Dougherty and they discussed the fact that it would take two days to complete the work. She then asked about his comments to Verissimo, and he repeated that he wouldn't do finishing or drywall. Enuha told him she would come to the site to talk to him about this later. (ALJD 6:8-11) Later in the day Enuha came to the WHA site at about 3:35 p.m., looking for Dougherty, but Boroughs told her he had already left because his workday had ended. (T. 227, 260) The next day she returned to the WHA site and handed him an envelope. When he opened it, Dougherty found a termination letter which stated that he was being discharged for insubordination. (T. 163, 228, GCX 27) He also noticed that the enclosed paycheck was incorrect and approached Verissimo about it. (T. 163) Although he had been fired by Bristol, Verissimo told him still worked for Sabino, so Dougherty worked the remainder of the day at the WHA site. (T. 164)

⁸ Specifically, Dougherty testified that Enuha made it clear that she did not have a high opinion of unions. She told them that there was “no benefit to joining the Union because sometimes people work and sometimes they don't, and the Union picks who gets to work and who doesn't.” (T. 162) Boroughs testified similarly that she told them the Union did not have anything to offer them. (T. 226)

That evening Dougherty received a call from Verissimo saying he was being laid-off from Sabino for lack of work and that his paycheck would be at the WHA site between 8:00 a.m. and 9:00 a.m. the following morning. (T. 164, 204) Boroughs received no such call. He went to work as normal on March 20, only to be told by Shelby, a Bristol employee, that he was laid-off for lack of work. (T. 229) There was no evidence that Verissimo ever notified Boroughs that he was laid-off from Sabino. Shelby's lay-off apparently covered both Respondents.

While Dougherty and Boroughs were at the WHA site on the morning of March 20, Dougherty went looking for his jacket in one of the units. (T. 165) For reasons that were never fully explained by Enuha or Verissimo, Shelby became upset and called Verissimo, who instructed him to call the police. (T. 165, 228) When they arrived, the police asked Dougherty and Boroughs to leave the WHA premises and wait around the corner for their paychecks, which they did. (T. 164) No charges were brought against Dougherty or Boroughs. (T. 202, 240)

As the Judge correctly found, at the time Dougherty and Boroughs were laid-off by Sabino and Bristol without warning, ostensibly for lack of work, much work remained to be completed at the WHA site. (ALJD 6:34-36, 11:2-3) According to Dougherty about 80 percent of the work he and Boroughs had been performing remained to be completed when they were told there was no work. (T. 165 - 166) This included drywall work, trim work, doors, hardware, cabinetry and finishing. (T. 166) Tons of work remained to be done, according to Boroughs. This included additional housing units they had not started, plus insulation, finishing, framing drywall, flooring, bathroom work and some demolition work on the units they had started. (T. 229) All of this work was work Dougherty and Boroughs had performed, and constituted about six to eight weeks of work for two to three carpenters. (T. 165 - 166, 230 - 231)

On March 24, 2015 Noel went to the Cooke site, having heard from a member that Bristol was working there (T. 125) After receiving permission from Whiting-Turner to enter the site, Noel entered the school and observed to men using tools to repair a soffit. (T. 136, 126) To Noel it looked like they were about to start performing drywall work. The two workers told Noel they had been hired the previous day by Bristol. They also told Noel that there were two more guys down the hall performing dry wall work. (T. 126) Noel approached these two additional workers, who told him they were working for one of the first workers Noel had just encountered, and did not know if they were working for Bristol. (T. 126) All of the work Noel observed these workers performing was carpentry work. (T. 128-129)

On March 20, 2015, the Union filed the first unfair labor practice charge in this case, which was served on the Bristol the same day. (GCX 1 (a), GCX 1 (b)) Just days later, Verissimo contacted Dougherty and Boroughs and directed them to return to work at the WHA site, which they did on March 30. (T. 166, 230 - 231) The basic facts about what transpired next are not in dispute. Verissimo and Shelby arrived about ten minutes after Dougherty and Boroughs. Verissimo told them that they would be dry walling the ceiling of one of the units. (T. 166) At this point Verissimo demanded to know where their power tools were, and why they were just standing there. (T. 166-167, 196, 230-232) Dougherty testified he told Verissimo that the company had always provided the power tools for his work, and he did not know why Verissimo was asking him about power tools. (T. 167) Boroughs testified that when he told Verissimo he did not have power tools with him, Verissimo "proceeded to freak out." (T. 231) The Judge correctly credited Dougherty and Boroughs testimony that throughout their tenure with BIC and Sabino both Dougherty and Boroughs used power tools at the WHA site with "Bristol" marked on them and that neither Enuha or Verissimo had ever told Dougherty and Boroughs that they

needed to provide their own power tools when they worked at the WHA site. (ALJD 7:20-22; T. 167, 205-206, 208, 232-233) Dougherty had no reason to believe that those power tools were not at the site. (T. 208) The Judge also credited Enuha's testimony that there were power tools supplied by Bristol available at both the WHA and Cooke site for use by Sabino and Bristol employees. (T. 274-275)

As the Judge correctly found, Verissimo fired both employees for failing to bring their power tools to the site.⁹ (ALJD 7:10-12) The Judge further found that Dougherty became upset and used profanity so Verissimo called the police, who arrived at the scene and asked Dougherty and Boroughs to leave the site, which they did. No citations were filed. (ALJD 7:12-14; T. 198)

III. ARGUMENT

A. The Administrative Law Judge Correctly Found that Respondents Are a Single Employer.

When the Board finds two or more nominally separate entities to be a single employer for purposes of the Act, all are jointly and severally liable for remedying unfair labor practices committed by any of them. See *Emsing's Supermarket, Inc.*, 284 NLRB 302, 304 (1987), *enfd.*, 872 F.2d 1279, 1288-87 (7th Cir. 1989). In determining whether single-employer status exists, the Board considers four factors: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) and common ownership. *Lederach Electric Inc.*, 362 NLRB No. 14, slip op. at 1 (2015), *enfd.* in unpublished decision 637 F. App'x 682 (3d Cir. 2016); *Bolivar-Tees, Inc.*, 349 NLRB 720 (2007), *enfd.* 551 F.3d 722 (8th Cir. 2008) citing *Central Mack Sales*, 273 NLRB 1268, 1271-1272 (1984). No single factor is controlling and not

⁹ Dougherty and Boroughs both had their standard hand tools with them, including measuring devices, scribing devices, screw drivers, different levelers and similar items that do not require power. (T. 196, 204-205, 242)

all of the factors need to be present before the Board can find single-employer status. *Bolivar-Tees*, supra. The hallmark of a single employer is absence of an arm's-length relationship among seemingly independent companies. *RBE Electronics of S.D.*, 320 NLRB 80 (1995); Accord *Bolivar-Tees*, supra, at 720. The Board continues to hold that the ultimate determination turns on the totality of the evidence in a given case. *Lederach Electric*, supra; *Bolivar-Tees*, supra, citing *Dow Chemical Co.*, 326 NLRB 288 (1998); *Richmond Convalescent Hospital*, 313 NLRB 1247, 1249 (1994). It has also described the relevant inquiry more broadly, stating in several cases that "the fundamental inquiry is whether there exists overall control of critical matters at the policy level." *Viking Industrial Security*, 327 NLRB 146 (1988), enf. denied, 225 F.3d 131 (2nd Cir. 2000); *Emsing's Supermarket*, 284 NLRB 302 (1987), enfd., 873 F.2d 1279 (7th Cir. 1989).

The Judge correctly found and the record evidence firmly establishes that Respondent Bristol and Respondent Sabino are a single employer for the purposes of the Act. (ALJD 9:1-2) Contrary to Respondent's exceptions, the Judge correctly found that there is considerable evidence that Bristol and Sabino have extensive interrelations of operations. (ALJD 8:13-28) Although not relied on by the Judge, the record shows that all of Sabino's revenue between January 1, 2014 and December 13, 2015 came from Bristol. (T. 74-75) It would appear Sabino had no other method of obtaining work other than Bristol. Sabino did not advertise its services or have a website. (T. 75) It is telling that Verissimo did not deny telling Noel he worked for Bristol or telling Dougherty that he had an office in the Bristol office facility. (T. 110, 173) The Judge correctly relied on the fact that Bristol supplied materials and tools to Sabino, without charge, regardless of the subcontract terms. (ALJD 8:14-15; T. 34, 167, 178-179) In fact, Enuha testified that she did not even know if at the WHA site Sabino had its own tools, evidencing a complete acceptance that Sabino would simply use Bristol tools. (T. 275) The Judge also correctly relied

on the fact that it was Bristol which hired Brian Dougherty and Thomas Boroughs, not Sabino, although they both worked for Bristol and Sabino. Indeed, they were loaned to Sabino to work at the WHA site by Enuha without their knowledge and without having been interviewed or selected by Verissimo.¹⁰ (ALJD 8:15-17) The Judge further correctly relied on the fact that Dougherty reported initially to WHA even though Enuha testified that she hired Dougherty for Cooke as WHA had already been subcontracted out. (ALJD 8:18-19)

Although the Judge found that Bristol awarded subcontracts to Sabino at the WHA and Cooke sites without any competitive bidding, the Judge did not rely on this evidence finding that Bristol did the same for entities other than Sabino. (ALJD 8:14-16) However, the Judge ignored the fact that Enuha failed to provide a single specific example of such an entity, other than Enuha. (T. 25-26) A request for this information was set forth in the subpoena duces tecum issued to Bristol, and Enuha's failure to provide it can only lead to the conclusion that either it did not exist or would not support her testimony. (GCX 6, par. 48) Verissimo's testimony regarding how he came to be working for BIC at the WHA and Cooke sites supports a finding of interrelation of operations between the two entities. According to Verissimo, for the Cooke site he arranged the price of his services with the BIC estimator, while at the WHA site he just spoke with the estimator and Enuha and got the job. (T. 76-77), Sabino and Verissimo's failure to follow the terms of the subcontracts, further supports a finding of interrelation of operations between the two entities. Sabino performed none of tasks for which Bristol paid him as project manager. As the Judge correctly recognized, there is no credible evidence of any action taken by

¹⁰ Contrary to Respondent's exceptions, the Judge correctly found that Verissimo did not interview Dougherty or Boroughs before he began paying them to work at the WHA site. (ALJD 8:17) Verissimo's testimony, that he interviewed the two at the WHA site and then decided to hire them was inconsistent with prior testimony given under oath, and simply makes no sense. (T. 280-281) The record evidence shows that Dougherty and Boroughs were already hired by Bristol when Verissimo came upon them at the WHA site.

Verissimo with regard to staffing or supervising either the WHA or Cooke jobs. (ALJD 8:23-25) Nor did Verissimo develop a deliverables schedule or a schedule of performance for either job. Indeed, Enuha did not expect Sabino to follow the terms of the subcontract. (T. 31-32, 77) As the ALJ correctly found, it was Dougherty, not Verissimo, who dealt with Enuha and Lee Cherry, superintendent for the general contractor, Whiting-Turner to ascertain how various tasks at the Cooke site would be completed. (ALJD 8:25-28; GCX 23, 24, 25, 26; T. 152.) Verissimo's actual duties consisted of little more than delivering materials to the site. (T. 157, 220) Despite the language and formality of the subcontract documents, Verissimo functioned as a Bristol employee, delivering material paid for by Bristol in vehicles paid for by Bristol to worksites supervised by Bristol.

The Judge also correctly relied on the following evidence to support the interrelationship of the two entities: that Dougherty and Boroughs reported their time on both sites to Enuha or Shelby; that paychecks were distributed by Enuha, Verissimo, or Shelby on behalf of both Bristol and Sabino at the WHA site and at the Cooke site; and that it was Enuha who instructed Dougherty and Boroughs to stop work before the normal quitting time at WHA, so that they would not work more than 8 hours a day, when working at both Cooke and WHA on the same day. (ALJD 8:19-23) From an operational perspective, Sabino functioned as a fully integrated part of Bristol.

With regard to common management, contrary to Respondent's exceptions, the Judge correctly found that it was Enuha who effectively ran both Bristol and Sabino. (ALJD 8:30-33) As discussed above, although Sabino had the subcontracts, Verissimo did not supervise the WHA site. Enuha discussed the specifics of the WHA work with Dougherty, even though he ostensibly worked for Sabino. (T. 256-257) As discussed above, it was to Enuha whom

Dougherty reported his hours each week for both job sites. Later when that changed, he was directed to report his WHA hours to Shelby, the Bristol superintendent, not Verissimo. (T. 172) Shelby also hired Boroughs and set his wage rate for the WHA site. (T. 213-314) When Boroughs was laid-off from Sabino on March 20, it was Shelby who informed him, not Verissimo. (T. 229) Moreover, it was Enuha who terminated Dougherty for conduct he allegedly engaged in while working for Sabino. (GCX 27) Enuha delivered Dougherty's discharge letter to him at the WHA site, a location at which he supposedly did not work for her. (T. 227-228) Thus, the record evidence clearly demonstrates common management between Respondent Bristol and Respondent Sabino.

Contrary to Respondent's exceptions, the Judge also correctly found that there was centralized control of labor relations between Bristol and Sabino. (ALJD 8:35-40) It was Bristol which hired Dougherty and Boroughs, not Sabino, although they both worked for Bristol and Sabino. Although Dougherty and Boroughs only filled out applications and tax forms for Bristol, Enuha provided Sabino with Dougherty's and Borough's tax forms for payroll. (T. 40, 42, 295-296). Indeed, they were loaned to Sabino to work at the WHA site by Enuha without their knowledge and without having been interviewed or selected by Verissimo. Moreover, it was Bristol which set their wage rates for both job sites. Moreover, centralized control of labor relations between Bristol and Sabino is demonstrated by the way in which Dougherty and Boroughs accounted for their work hours and were paid. Dougherty reported his hours to Enuha for both sites, until he was asked to report his WHA hours to Shelby instead. Either way, he reported his Sabino hours to Bristol. Finally, as correctly found by the Judge, it was Enuha who terminated Dougherty for conduct he allegedly engaged in while at Cooke and WHA. (ALJD

8:38; GCX 27) Thus, the record evidence clearly demonstrates common labor relations between Respondent Bristol and Respondent Sabino.

Lastly, the Judge correctly found it unnecessary to find common ownership here because of the lack of arm's-length dealings between the two companies. (ALJD 8:42-47) The Board has found that the first three factors, interrelation of operations, common management, and centralized control of labor relations are more critical than common ownership in establishing single employer status. *RBE Electronics of S.D.*, 320 NLRB at 80. Not all four factors need be present to find single employer status. *Bolivar-Tees, Inc.*, 349 NLRB at 720; *Three Sisters Sportswear*, 312 NLRB 853, 861 (1993), enfd. 55 F.3d 684 (D.C. Cir. 1995). The Board has specifically identified centralized control of labor relations to be of "particular importance because it tends to demonstrate "operational integration." *RBE*, supra. In this case, the record evidence is especially strong as to the existence of centralized control of labor relations between Bristol and Sabino. As set forth above in greater detail, Bristol hired and set the wage rates for Sabino employees Dougherty and Boroughs, provided tax information to Sabino for payroll purposes, had its superintendent Shelby supervise Dougherty and Boroughs, and had Shelby lay-off Boroughs on March 20 and discharge Dougherty on March 30. Bristol owner Enuha discussed Sabino work assignments with Dougherty, and she adjusted Dougherty's and Boroughs' work hours when they worked for Sabino so she would not have to pay them any overtime. Enuha, on behalf of Bristol, was thus able to alter the hours of Dougherty and Boroughs while they supposedly worked for Sabino.

Finally, in determining the existence of single employer status, the Board has held that single employer status is characterized by a lack of arm's-length relationship found among unintegrated companies. *Hydrolines, Inc.*, 305 NLRB 416 (1995). A lack of arm's-length

relationship perfectly encapsulates the relationship between Bristol and Sabino. The two entities hire and fire one another's employees. By Enuha's own admission Bristol "loaned" employees to Sabino. There is no written agreement regarding these "loans." The entities enter into subcontracts which may make it appear as though they are separate, but the subcontracts are a sham: neither entity follows their terms. Sabino used Bristol's work vehicles, for which Bristol bore all costs, and for which there was no written agreement. Considering the totality of the circumstances in this matter, a lack of arm's-length relationship perfectly describes the relationship between BIC and Sabino. Thus, the record evidence clearly demonstrates that Bristol and Sabino constitute a single employer under the Act. Accordingly, it is urged that the Board affirm the ALJ's findings and conclusions that Respondent Bristol and Respondent Sabino are a single employer.

B. The Administrative Law Judge correctly found that Respondent violated Section 8(a)(1) and (3) of the Act by laying off Dougherty and Boroughs on March 20, 2015 because of their Union activity.

Under *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982) the General Counsel has the burden of establishing that an employee's protected activity was a motivating factor for the adverse employment action taken against the employee. In order to meet this burden, the General Counsel must show by a preponderance of the evidence that the employee engaged in protected activity, that the employer knew of such activity, and that the Employer's harbored animus toward the employees' activity on behalf of the Union. The burden of persuasion then shifts to the employer to prove that it would have taken the same adverse employment action notwithstanding the employee's protected activity. See, e.g. *Encino Hospital Medical Center*, 359 NLRB No. 78 (2013); *Lee Builders, Inc.*,

345 NLRB 348, 349 (2005); *Williamette Industries, Inc.*, 341 NLRB 560, 562, 563 (2004); *Donaldson Bros. Ready Mix Inc.*, 341 NLRB 958, 961 (2004).

Applying this standard to the current case, the Judge correctly found that the evidence establishes that the protected Union activity of Dougherty and Boroughs was a motivating factor in their layoffs on March 20. Dougherty and Boroughs engaged in protected activity when they signed a Union authorization card at the Union Hall on February 25, 2015. As the Judge correctly found, Enuha learned of their Union activity shortly after it occurred, in early March, when Shelby told Enuha he had gone to the Union hall with Dougherty and Boroughs and signed a Union card. (ALJD 10:13-16; T. 270) Furthermore, the Judge correctly found that Enuha informed Verissimo of the Union activity. (ALJD 11:18-20) Enuha was also undeniably aware of the Union activity taking place at her work sites because after Shelby spoke with her, the Union filed a Petition on March 10, a copy of which was faxed to Bristol's office in the morning of March 11. (GCX 7, GCX 8, GCX 9) Enuha wasted no time in connecting the Petition to Dougherty, by her own admission asking him within just a day or two after receiving it, "Did you sign a Union card?" The Judge properly credited Dougherty and Boroughs, finding that Enuha had anti-union animus when she gave her opinion that the Union would not be helpful to the employees.¹¹ (ALJD 5:33-34; 9:34; T. 161-162, 226, 257). Likewise, Verissimo showed his anti-union animus just hours after the Petition was received by Bristol, when Verissimo interrogated Boroughs about his Union activity and stated "I don't want no fucking Union on my job site."

On March 19, Enuha discharged Dougherty ostensibly for insubordination. Although he had been fired by Bristol, Verissimo told him still worked for Sabino, so Dougherty worked the

¹¹ Specifically, Dougherty testified that Enuha made it clear that she did not have a high opinion of unions. She told them that there was "no benefit to joining the Union because sometimes people work and sometimes they don't, and the Union picks who gets to work and who doesn't." (T. 162) Boroughs testified similarly that she told them the Union did not have anything to offer them. (T. 226)

remainder of the day at the WHA site. (T. 164) That night, hours after Enuha discharged him, Dougherty received a call from Verissimo telling him he was laid off from Sabino for lack of work, and that he should come to the WHA site the following morning to pick up his paycheck.

On March 20, Dougherty and Boroughs showed up at the WHA work site. Dougherty was there to collect his paycheck. Boroughs was there to work. Shelby informed Boroughs that he was laid-off for lack of work. The timing of Boroughs' discharge shows Respondents unlawful motivation. Thus, the Judge properly found that the General Counsel met his burden of showing that Dougherty and Boroughs engaged in protected activity, that Respondent's knew of such activity, and that the Respondent's harbored animus toward the employees' activity on behalf of the Union. (ALJD 10:26-27)

Faced with a strong prima facie case establishing that Respondents laid off Dougherty and Boroughs on March 20 in retaliation for their Union activity, Respondents have the burden under *Wright Line* to show they would have laid them off even in the absence of their protected activity. *Encino Hospital Medical Center*, supra. Respondents failed to meet this burden. The record evidence shows and the Judge properly credited Dougherty and Boroughs that there was extensive work left to be completed at the WHA site at the time they were told there was a lack of work. (ALJD 6:34-36, 11:2-3, 11:5-7) According to Dougherty about 80 percent of the work he and Boroughs had been performing remained to be completed as of March 20. (T. 165-166) This included drywall work, trim work, doors, hardware, cabinetry and finishing. (T. 166) Tons of work remained to be done, according to Borough, including additional housing units they had not started, plus insulation, finishing, framing drywall, flooring, bathroom work and some demolition work on the units they had started. (T. 229) All of this work constituted about six to eight weeks of work for two to three carpenters. (T. 230-231) The evidence also shows that

within a few days of laying off Dougherty and Boroughs for lack of work, Respondents had hired four new employees to perform the work Dougherty and Boroughs were performing. (T. 126) Clearly there was no lack of work. Given the pretextual nature of the reason given for Dougherty's layoff the night of March 19 by Verissimo and Boroughs' layoff on March 20 by Shelby, the Judge properly found that Respondents did not meet their burden that they would have laid off Dougherty or Boroughs absent their protected activity. (ALJD 10:46-47) Accordingly, it is urged that the Board affirm the ALJ's findings and conclusions that Respondent Bristol and Respondent Sabino unlawfully laid off Dougherty and Boroughs in violation of Section 8(a)(1) and (3) of the Act.

C. The Administrative Law Judge correctly found that Respondents violated Section 8(a)(1) and (3) of the Act by discharging Dougherty and Boroughs and calling the police on March 30, 2015 because of their Union activity.

The Judge properly found that on March 30, 2015, after calling Dougherty and Boroughs back to work, Respondents discharged Dougherty and Boroughs in violation of Section 8(a)(1) and (3) of the Act. (ALJD 11:39-41) On March 27, Verissimo asked both Dougherty and Boroughs to return to work. Verissimo never really explained why he called Dougherty and Boroughs back to work so quickly after claiming there had been no work for them. Verissimo's general testimony supports a finding that there was no shortage of work in the first place and the March 20 layoff actions described above were unlawfully motivated. In any event, Verissimo called Dougherty and Boroughs back to work, and they returned to the WHA site in the morning on March 30. The record clearly establishes and the Judge properly found that shortly after Dougherty and Boroughs returned to work, Verissimo discharged them for failing to bring their

power tools to work. (ALJD 11:26-27) Verissimo then called the police, who arrived at the scene and asked Dougherty and Boroughs to leave the site, which they did. (T. 198)

As the Judge properly found Verissimo was aware of Dougherty and Boroughs' Union activity. (ALJD 11:18-20) The Judge also properly found that Verissimo had expressed anti-union animus to Boroughs on March 11 when he learned of the Union's petition. (ALJD 4:43-47, 5:1-3; 11:22) The Judge also properly credited Dougherty and Boroughs that the company had always provided the power tools for their work. (ALJD 7:16-24, 11:28-31) Providing personal power tools was not a condition of employment for either Bristol or Sabino. (T. 167, 232-233) To the contrary, as the Judge found, Bristol admitted it maintained power tools at the WHA site for the use by Bristol and Sabino employees. (ALJD 7:17-22; T. 275, 279) The timing of Respondents actions of March 30, as well as the pre-textual nature of the reason provided for the action, proves by a preponderance of the evidence that these discharges were unlawfully motivated.

Faced with a strong prima facie case establishing that Respondents discharged Dougherty and Boroughs on and summoned the police on March 30 in retaliation for their Union activity, Respondents have the burden under *Wright Line* to show they would have terminated Dougherty and Boroughs and summoned the police even in the absence of their protected activity. *Encino Hospital Medical Center*, supra. As the Judge properly found, Respondents failed to meet this burden as their claim that they discharged Dougherty and Boroughs on March 30 because the men did not bring their own power tools to the WHA site was pretextual. (ALJD 11:31-32) Respondent discharged these two employees to make sure Bristol and Sabino were once again rid of two known Union supporters and to "nip in the bud" the newly formed union organizing campaign. Moreover, as the Judge properly found, Respondent's action of calling the police right

afterwards was also clearly unlawfully motivated, designed to further intimidate two known Union supporters in the exercise of their Section 7 rights. (ALJD 11:36-37) Accordingly, it is urged that the Board affirm the ALJ's findings and conclusions that Respondent Bristol and Respondent Sabino unlawfully discharged Dougherty and Boroughs and called the police on them on March 30, 2015 in violation of Section 8(a)(1) and (3) of the Act

D. The Administrative Law Judge correctly found that a Gissel bargaining order was appropriate here.

To remedy the unlawful actions by Respondents, the Judge properly determined that a Gissel bargaining order was appropriate and provided for it in her Order. (ALJD 12-13, 14) In making that determination, the Judge properly found that the Union's petitioned for unit of all full-time and regular part-time carpenters of Bristol and Sabino was an appropriate bargaining unit. (ALJD 12:17) The Unit consists solely of carpenters, and as such is "craft unit." The Board has long held that a "craft unit" consists of a distinct and homogeneous group of skilled journeymen craftsmen who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. *Mirage Casino- Hotel*, 338 NLRB 529, 532 (2002) citing *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994).

There are five factors the Board considers in determining whether a craft unit is an appropriate Unit: (1) whether the employees take part in a formal training or apprenticeship program; (2) whether the work is functionally integrated with the work of the excluded employees; (3) whether the duties of the employees in the craft unit overlap with the duties of the excluded employees; (4) whether the employer assigns work according to need rather than on craft or jurisdictional lines; (5) and whether the employees in the craft unit share common interests with other employees.

Id.

Applying this five factor test to the Unit, the record evidence supports a finding that the Unit is an appropriate Unit. As the Judge properly found, and the record shows, Dougherty and Boroughs were both accepted into the Union, at the time they signed union authorization cards, based on Noel's assessment that they had the requisite skills and training to work as carpenters. Their years of work substituted for a formal training program. (ALJD 12:19-20; T. 246-247) The work performed by Dougherty and Boroughs was not functionally integrated with the work of the excluded employees, nor did their duties overlap with those of the excluded employees. As the Judge correctly found, Dougherty and Boroughs were the only employees of Bristol and Sabino who performed carpentry work as of March 10, 2015. (ALJD 12:21-22) The other full-time employees were a finisher, an HVAC I plumber, and several laborers. None of these excluded employees performed carpentry work. Likewise, Dougherty and Boroughs did not perform the same duties as those other employees did. Work was assigned at the WHA site and the Cooke site along jurisdictional line: Dougherty and Boroughs were only assigned carpentry work. They only worked with one another, and not with any excluded employees. Finally, Dougherty and Boroughs, as carpenters, had little common interest with the other employees: they performed different tasks, used different tools, and had different skills. Thus, the Unit is an appropriate unit. *Burns & Roe Services*, supra. See also *Bartlett Collins Co.*, 334 NLRB 484, 486 (2001) (Board finds a unit of both mold-repair employees and mold-cleaning employees an appropriate unit because they are a readily identifiable group with common interests distinct from other employees).

The purpose of a remedial bargaining order is "to remedy past election damage [and] deter future misconduct." *NLRB v. Gissel Packing Co.*, 395 US 575, 612 (1969). The Supreme

Court has sanctioned the issuance of such a bargaining order "where an employer has committed independent unfair labor practices which have made the holding of a fair election unlikely or which have in fact undermined the union's majority." Id. at 610.

The Board will issue a remedial bargaining order, absent an election, in two categories of cases. Category I cases are "'exceptional" cases, marked by "outrageous and "pervasive" unfair labor practices the coercive effects of which cannot be erased by traditional remedies, thus rendering a fair and reliable election impossible. Id. at 613-614. In category I cases, the bargaining order is appropriate "without need of inquiry into [the union'] majority status on the basis of cards or otherwise." Id. Category II cases are less extraordinary cases marked by a lesser showing of employer misconduct, but which still have the tendency to undermine majority strength and impede the election process. Id. at 614. In category II cases, a bargaining order is appropriate where there is a showing that at one point the union had a majority but in light of the unfair labor practices the possibility of erasing the effects of the unfair labor practices and ensuring a fair election by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order. Id. at 614 - 615.

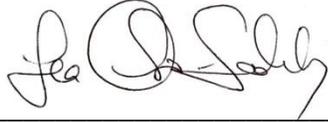
As the Judge found, the record evidence demonstrates quite clearly that as of March 11, 2015, the Union had majority status within the Unit. (ALD 12:30-32) This is established by the Union authorization cards signed by Dougherty and Boroughs who together constituted the entire unit at the time they signed their respective cards. (GCX 18, GCX 19) The language on these cards meets the Board standard for establishing an employee's presumptive support for representation under the standards articulated in *Cumberland Shoe*, 144 NLRB 1268 (1963), *enfd.* 351 F.2d 917 (6th Cir. 1965), and approved by the Supreme Court in *Gissel*, 395 U.S. at

606-608. Further, the Judge properly found that the unfair labor practices here were as serious as they can get—the discharge of the entire unit—warranting the issuance of a bargaining order. (ALJD 13:4-5) The WHA and Cooke worksite both had a relatively small number of employees employed by Respondents, and all employees worked should to shoulder with the two-member bargaining unit. Employees at these worksites will have heard about the layoff and discharges of Dougherty and Boroughs and be chilled in the exercise of their Section 7 rights. As the Judge noted, the unfair labor practices at issue in this matter were committed by the owners of the Respondents, Enuha and Verissimo. (ALJD 13:5-6) The unlawful conduct comes from the very top of each entity, making it clear to employees the extent of Respondents' animus toward the Union. Given Respondents' conduct, the ALJ correctly determined that a cease and desist order and reinstatement will not be sufficient to remedy the unfair labor practice allegations. (ALJD 13:11-13) On balance, a bargaining order requiring Respondents to bargain with the Union as the exclusive bargaining representative of all full time and regular part time carpenters of Bristol and Sabino is the 'best way to protect the representational rights of employees. Respondents in their exceptions have not presented any argument to find otherwise. Accordingly, it is urged that the Board affirm the Judge's Remedy and Order requiring Respondents to bargain with the Union as the exclusive bargaining representative of all its full time and regular part time carpenters.

IV. CONCLUSION

Based on the foregoing, General Counsel submits that the ALJ's decision is supported by the record and legal precedent. Accordingly, it is urged that the Board reject Respondent's exceptions to the ALJ's decision, adopt the ALJ's rulings, findings, and conclusions, and Order, and grant any additional remedial relief the Board deems appropriate.

Respectfully submitted,



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