JD–38–07
Bridgeport, OH

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

WHEELING BRAKE BLOCK MANUFACTURING COMPANY
AND WHEELING BRAKE BAND & FRICTION MANUFACTURING COMPANY,[1]

and Cases 8–CA–34764
8–CA–35543

RETAIL, WHOLESALE, AND DEPARTMENT STORE UNION, LOCAL NO. 379, AND THE UNITED FOOD AND COMMERCIAL WORKERS UNION, AFL-CIO

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

DAVID I. GOLDMAN, Administrative Law Judge. This case was the subject of a Bench Decision, Certification, and recommended Order issued December 9, 2005. Therein I found that the Respondent, Wheeling Brake Block Manufacturing Company (Wheeling Brake Block), engaged in numerous unfair labor practices and I recommended commensurate remedies. The matter was transferred to the National Labor Relations Board (Board) and in the absence of exceptions the Board adopted the Bench Decision and recommended Order on February 1, 2006. However, on April 4, 2006, expressing concern that its orders had not been properly served on the Respondent, the Board caused its Order adopting the Bench Decision and recommended Order to be vacated and set May 2, 2006, for receipt of exceptions. By letter dated May 1, 2006, the Board received correspondence, treated by the Board as a motion to reopen the record, from Attorney Michael Morelly who purported to represent Wheeling Brake Block and Bernard Lee Burgess (Lee Burgess) the president of Wheeling Brake Block. Attorney Morelly asserted that Wheeling Brake Block was not a proper party in interest in this matter. In his letter, Attorney Morelly asserted that Wheeling Brake Block "has been an[ ] idle company since 1998" and that "[t]he corporation who is the real party in interest in this cause is Wheeling Brake Band & Friction Mfg., Inc," a company owned and operated by Robert Burgess, the son of Lee Burgess. According to Morelly, Robert Burgess had "usurped the identify of Wheeling Brake Block by carrying on the business of manufacturing industrial brake parts under both names as the situation suited his needs best." Attorney Morelly's correspondence characterized the answer to the complaint previously filed by Attorney Gerald P. Duff on behalf of Wheeling Brake Block as part of a "fraud that has been perpetrated upon the National Labor Relations Board."[2]

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[1]I have amended the caption in this matter to reflect the motion to amend the complaint offered by the Government and granted by me at the March 16, 2007 hearing.

[2]In that answer Wheeling Brake Block admitted its identity, its operation of the industrial brake facility at 56100 Berkley Avenue, in Bridgeport, Ohio, its sale and shipping of goods in excess of $50,000 directly to points outside of Ohio, and its collective-bargaining relationship with the Charging Party Union. The answer also admitted that Robert Burgess was Wheeling Brake Block's general manager and vice president and an agent and supervisor of the Respondent within the meaning of the Act. See also GC Exh. 28 at p.3.

On November 21, 2006, the Board issued an order remanding this matter to me to reopen the record and resume the hearing for the purpose of taking evidence pertaining to the issue of the proper identity of the Respondent. The Board's remand order instructed that upon the close of the hearing I should issue a supplemental decision and recommended Order.

The hearing was reconvened before me in Steubenville, Ohio on March 14, 2007. In addition to the counsel for the General Counsel, Rick Marshall entered an appearance for the Charging Party Union. Attorney Morelly entered an appearance as counsel for Lee Burgess.[3] At the hearing, the Government moved to amend the complaint to add Wheeling Brake Band & Friction Manufacturing, Inc. (Wheeling Brake Band & Friction) as a respondent, contending that Wheeling Brake Band & Friction was an alter ego of Wheeling Brake Block and/or that the two enterprises constituted a single employer and/or joint employers. Alternatively, the General Counsel contended in his motion that Wheeling Brake Band & Friction was a successor to Wheeling Brake Block. I granted this motion, which was unopposed at the hearing.[4]

After submission of evidence the hearing was recessed on the afternoon of March 14, 2007, and the record held open until March 28, 2007, while the parties reviewed certain documents and evidence. On May 16, 2007, counsel for the General Counsel filed his brief in support of his position. Attorney Morelly did not file a brief. In addition, although it had not appeared at the hearing and had ignored multiple subpoenas directed to it, Wheeling Brake Band & Friction submitted a brief filed by none other than former counsel for Wheeling Brake

[3]Although no appearance for Wheeling Brake Block was entered, Lee Burgess is the founder and president of Wheeling Brake Block. His essential claim in this litigation is that Wheeling Brake Block ceased operations long before the unfair labor practices found in these cases and should not be liable for any misconduct occurring at the 56100 Berkley Avenue facility in 2003. The record demonstrates, and I find, that Lee Burgess was an agent of Wheeling Brake Block within the meaning of Sec. 2(13) of the Act during all periods material to this decision. Yet the record also demonstrates that at the time of the hearing Lee Burgess had little or no influence over (or even access to) the operations at 56100 Berkley that, notwithstanding his legal contentions, continue in the name of Wheeling Brake Block. I do not believe he can be held responsible for the failure of Robert Burgess, Wheeling Brake Block and Wheeling Brake Band & Friction to comply with the subpoenas directed to them in this litigation.

[4]The motion to amend offered by the General Counsel was consistent with the notification of intention to amend the complaint submitted by the General Counsel to the parties, including Wheeling Brake Band & Friction, by letter dated March 6, 2007. (GC Exh. 1(tt)) In particular, the letter was sent to the attention of Robert Burgess, once in his capacity as manager of Wheeling Brake Block and a second time in his capacity as manager of Wheeling Brake Band & Friction. The letter was sent to Burgess in this fashion at the Bridgeport, Ohio facility at which the unfair labor practices at issue occurred, *and* at the Glendale West Virginia facility that he also manages. Thus, Burgess was sent four copies of this letter, two to each of the facilities he indisputably operates under the names Wheeling Brake Block and Wheeling Brake Band & Friction. Notwithstanding this, Wheeling Brake Band & Friction did not appear at the hearing. It did, however, file a posthearing brief. In it, Wheeling Brake Band & Friction acknowledges the General Counsel's March 6, 2007 letter and notice of intent to amend the complaint. Wheeling Brake Band & Friction does not contend that it was unaware of the hearing, or of the General Counsel's intention to amend the complaint at the hearing. It offers no excuse for its failure to attend the hearing (or for its failure to comply with the numerous subpoenas directed to its personnel). Rather, its brief is devoted to arguing that the General Counsel's motion to amend should be denied because the allegations against Wheeling Brake Band & Friction lack merit.

Block, Gerald P. Duff. On the entire record, including my observation of the demeanor of the witnesses and other indicia of credibility, and after considering the briefs filed by the parties, I make the following supplemental findings of fact, conclusions of law, and recommendations.

SUMMARY

Lee Burgess owns an array of industrial brake operations around the country, including Wheeling Brake Block, which was incorporated in the 1960s and has operated from the site currently known as 56100 Berkley Avenue since approximately 1968.[5] His family members are intimately involved in the operation of some of these facilities. One of his sons, Robert Burgess, has managed Wheeling Brake Block since late 1993 and holds the title of general manager and vice president of Wheeling Brake Block. The record reveals that Robert Burgess managed the Company with some oversight from and in consultation with his father who lived elsewhere and traveled the country visiting his various holdings. Eventually, the father and son's relationship deteriorated to the point that in 2005 the father's attorney was receiving letters from the son's attorney stating that Lee Burgess should not come on the property or contact employees of the facility. In 2005, the landowner of 56100 Berkley Avenue (a firm controlled by the father) filed suit to evict Wheeling Brake Band & Friction in the Court of Common Pleas for Belmont County, Ohio. That litigation was pending at the time of the supplemental hearing in this matter.

Although the failure of Robert Burgess to honor the subpoenas directing him to appear at trial leaves unclear the full scope of the machinations involved in these interrelated businesses, the record does permit some fairly straightforward conclusions as to the matters most relevant to the instant litigation. In short, Lee Burgess' contention that Wheeling Brake Block should not be liable for the Board's order is without force. No evidence supports any of the key contentions in Attorney Morelly's original submission to the Board. There is no evidence that Robert Burgess "usurped" the identity of Wheeling Brake Block, "pos[ed] as an agent of Wheeling Brake Block," used its name without permission, or executed labor agreements with the Union "without the authority" of Wheeling Brake Block. Wheeling Brake Block was and is a proper respondent. There is no evidence whatsoever that the answer filed on its behalf was fraudulent. Indeed, record evidence corroborates the admissions in the answer, particularly the continued (and authorized) operation of Wheeling Brake Block by Robert Burgess. At the same time, Lee Burgess' intervention in these proceedings alerted the General Counsel to the possibility of extending the complaint to seek to impose joint and several liability on Wheeling Brake Band & Friction, a company owned by the son (and perhaps his wife), and which, as discussed herein, the record demonstrates to be a single employer with Wheeling Brake Block. The General Counsel's motion to amend the complaint falls squarely within the ambit of the Board's remand Order as it concerns the issue of the proper identity of the Respondent. As discussed herein, the General Counsel's effort to hold Wheeling Brake Band & Friction liable as a respondent is fully warranted.

[5]Wheeling Brake Block operates a second facility in Glendale, West Virginia. The employees of that facility have never been represented by the Union and the bargaining unit covered by this case is limited to the Bridgeport, Ohio facility. An additional, union-represented Wheeling Brake Block facility in Wheeling, West Virginia closed by 1993. Union Representative Randy Belliel testified that when he serviced Wheeling Brake Block in the mid-1990s he retained references to the Wheeling facility in the collective-bargaining agreement to ensure that there would be no challenge to the Union's representational status should the facility restart operations. All of the labor agreements through the last one, effective through 2004, continue to reference and purport to cover both the Bridgeport and Wheeling facilities but by all evidence the Wheeling facility has remained inoperative since before 1993.

FINDINGS OF FACT

The record demonstrates and I find the following:[6] As referenced supra, Wheeling Brake Block has operated from, among other locations, the site currently known as 56100 Berkley Avenue in Bridgeport, Ohio since approximately 1968. In the latter part of 1993, Robert Burgess, who had been working at another family business in New Orleans, was assigned by his father to take over the operation of Wheeling Brake Block.[7] In June 1994, after Robert Burgess assumed management of the operation, a second company, Wheeling Brake Band & Friction was created by Lee Burgess. (See, GC Exh. 56.) According to Robert Burgess, ownership of Wheeling Brake Band & Friction was assigned to Robert Burgess and his wife as a means to protect Wheeling Brake Block from IRS tax liens placed on the property. Wheeling Brake Band & Friction's role was to sell the industrial brake products produced by Wheeling Brake Block. According to Robert Burgess, there was a surreptitious purpose to the arrangement: "You got to be careful. Wheeling Brake block sold the stuff to Brake Band and Brake Band was the sales company and it sold it out other door . . . so that Brake Block would not have an income." According to Robert Burgess the point of this was "to deceive and avoid the internal revenue service . . . that was our operation." Burgess made clear that by "we" and "our" he meant "[m]e and my father." According to Burgess, "[w]e owed them $300,000 we

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[6]My findings rely in significant part on the October 31, 2006 deposition testimony of Robert Burgess provided in the Ohio State court suit brought by Lee Burgess' real estate holding company against Wheeling Brake Band & Friction. At the hearing, when Robert Burgess failed to appear pursuant to subpoena the General Counsel moved to introduce the deposition transcript. There was no objection, rather, Lee Burgess' counsel "stipulated" to admission of the deposition transcript. I accepted the transcript into evidence under Federal Rule of Evidence 801(d)(2). I note that I also admit this evidence as a response to Robert Burgess, Wheeling Brake Brand & Friction, and Wheeling Brake Block's failure to comply with or file a petition to revoke the numerous subpoenas served upon them by the General Counsel. *Bannon Mills, Inc.*, 146 NLRB 611, fn. 4, 633-634 (1964) ("If the best evidence which could have been offered on this issue is not before us, responsibility therefore rests with Respondent who refused to honor a subpoena by the General Counsel for its production").

[7]Although I generally credit employee Greg Brawdy's testimony, I believe he was mistaken when he testified that Rob Burgess began managing Wheeling Brake Block just 5 to 6 years before the July 2003 discriminatory layoff (discussed in the original Bench Decision). The weight of the testimony and record evidence suggests that it was prior to that, and that Brawdy's recollection was simply a best estimation offered many years after the fact without benefit of any documents or other references. *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950) ("nothing is more common in all kinds of judicial decisions than to believe some and not all, of a witness' testimony"), vacated on other grounds, 340 U.S. 474 (1951). Randy Belliel, the International union representative who serviced Wheeling Brake Block from approximately 1993 to 1997 testified that Burgess was present, and had only recently arrived at the facility when he began servicing the facility in the latter part of 1993. Belliel seemed sure of the year he arrived, and he would have known if Burgess were there when he arrived. I credit his testimony on this point over Brawdy's, and over Rob Burgess' statements in his deposition testimony that he was assigned by his father to manage the Bridgeport facility in March 1994.

didn't want to pay, so we made it look like . . . [Wheeling Brake Block was] not showing any profit. They're selling the stuff to Brake Band for a dollar a pound or some crazy [price]."[8] According to Burgess, Wheeling Brake Band & Friction's profit, earned from selling the product of Wheeling Brake Block, was then siphoned off into payments made for the benefit of Lee Burgess and his companies. These payments continued until 2003.

Wheeling Brake Band & Friction operated from 56100 Berkley Avenue in Bridgeport as did Wheeling Brake Block. In 1994 it paid the property taxes and arrears for a number of Lee Burgess' companies, including the Berkley Avenue facility. In June 1995, working with an accountant, Robert Burgess began denoting these tax payments as "rent," or more precisely, payments in lieu of rent, in order to allow Wheeling Brake Band & Friction to take tax deductions. Robert Burgess referred to this arrangement as a means of "defrauding the tax return" and his testimony suggests that the payments were not actually in lieu of rent.[9]

Over the years, Burgess also used Wheeling Brake Band & Friction profit to pay for machinery and improvements to machinery used to produce product. Part of the motivation for this was the hope that Wheeling Brake Band & Friction's interest in the machinery would prevent the Internal Revenue Service from confiscating machinery in order to satisfy judgments.

According to Robert Burgess, he and his father "changed over" the payroll of Wheeling Brake Block to Wheeling Brake Band & Friction in 1999. At some point, after 1996 and by 1999, the evidence suggests that the paychecks received by employees began to indicate that the payor was Wheeling Brake Band & Friction instead of Wheeling Brake Block. By 2000, unemployment compensation records indicate that the employer was named Wheeling Brake Band & Friction. According to Palmer, at some point, Wheeling Brake Band & Friction "just showed up" on the employees' paychecks.

From the employees' and Union's perspective, this change to Wheeling Brake Band & Friction's payroll was a nonevent. Employee Greg Brawdy testified that one day, approximately a year before the unlawful July 2003 layoff (described in the original decision in this matter), Rob Burgess told Brawdy that he was changing the name of the facility to Wheeling Brake Band

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[8] I note that Rob Burgess' admissions in this regard confirm the remarkably accurate suspicions voiced by longtime employee Robert Palmer about the purpose behind the establishment of Wheeling Brake Band & Friction. Asked why Robert Burgess "used the name Band & Friction," Palmer, explained:

> A. I think he was [a]voiding his creditors.
> Q. And what do you base that on?
> A. At times he would be changing banks and when we questioned him about it, which we knew he'd been doing it we'd question him about it, and he said, "Well, it just make a better thing", but when it come back around it -- something other than what he said took place.
> Q. Can you explain that -- what do you mean by that? When you asked him about it he said what?
> A. Uh -- I guess he was under a couple suits, law suits. And to me -- to my opinion only that he was avoiding the law suits.
> Q. By using the name Band & Friction?
> A. Yeah.

[9] I need not and do not reach any judgment on this practice except to note that it further illustrates the less than arm's-length relationship between these companies.

& Friction. The employees continued performing the same work—making brake shoes—at the same location—the tin building located at 56100 Berkley Avenue. There was no division between Wheeling Brake Band & Friction employees and Wheeling Brake Block employees: there was one workforce performing the same work as always. Management did not change. The sign outside the facility continued to say "Wheeling Brake Block." There was no notice of a shutdown or termination of Wheeling Brake Block provided to employees. As Brawdy put it, "[n]othing changed." According to former employee and local union representative, Richard Palmer, he was not aware of any difference between Wheeling Brake Block and Wheeling Brake Band & Friction. No notice of a closure or shutdown of Wheeling Brake was ever provided to the Union. To this day, Wheeling Brake Band & Friction has never operated separately from Wheeling Brake Block. As Brawdy explained, products continued to be shipped out under the name "Wheeling Brake Block" as well as under the name "Wheeling Brake Band & Friction." There was no apparent difference or basis of distinction between when products were shipped using the Wheeling Brake Block name and the Wheeling Brake Band & Friction name. Both names were used, but the products shipped under the names were identical. The former corporate secretary of Wheeling Brake Block, D. Davis-Sparbanie (who resigned from Wheeling Brake Block in 1993), testified that she now works at a company in Mars, Pennsylvania, that occasionally purchases industrial linings from the Bridgeport facility. Davis-Sparbanie testified that the products are shipped in boxes that say Wheeling Brake Block Manufacturing Company on the box and the packing slip will also say Wheeling Brake Block. However, her understanding is that these Wheeling Brake Block products are "invoiced" to Wheeling Brake Band & Friction for payment. To this day, Wheeling Brake Block as well as Wheeling Brake Band & Friction continues to buy supplies (see, GC Exh. 30 at responses to item 4(c)) which show bills to Wheeling Brake Band & Friction and bills to Wheeling Brake Block. Wheeling Brake Block maintains an extensive website (GC Exh. 59), where it lists Wheeling Brake Block and Wheeling Brake Band & Friction at the same phone number, address, website, and does not distinguish between the companies. The website attributes to Wheeling Brake Block all the products that the record suggests are made at the facility, including friction materials and bands. As the website notes, "Wheeling Brake Block is still a family owned and operated manufacturer." Robert Burgess continues to participate on the Board of an industry trade association as the representative of Wheeling Brake Block. (See website of the Friction Materials Standards Institute at http://www.fmsi.org/ FMSI/ bod/ bod.asp listing Burgess and listing Wheeling Brake Block as an "active member" of the organization.) Wheeling Brake Block continues to advertise on a number of internet industrial indexes, including Kellysearch (GC Exh. 55), ThomasNet (GC Exh. 54) and with MacRae's Blue Book, which contains, in addition to the telephone, fax, address of Wheeling Brake Block, a map showing how to get to the facility. (GC Exh. 52.) Wheeling Brake Block also advertises on ThomasNet, an internet site providing similar services. (GC Exh. 54.)

As discussed supra, the "change" to Wheeling Brake Band & Friction changed nothing in terms of the work, operations, or Wheeling Brake Block's presence in the marketplace. The employees also continued to receive the wages and benefits set forth in the labor agreement, negotiated by Burgess on behalf of Wheeling Brake Block. Collective bargaining continued as always. As it had done in a series of collective-bargaining agreements stretching back to at least 1985, Wheeling Brake Block continued to enter into collective-bargaining agreements with the Union covering the Bridgeport employees, the last being an agreement effective October 1, 2001, to at least September 30, 2004, that was unlawfully repudiated in July 2003. Lee Burgess's name and signature is on the contract on behalf of Wheeling Brake Block for the 1985-1988 and 1990-1993 contracts. In subsequent years, beginning with the 1995 contract, and continuing through and including the 2001 contract, Rob Burgess signed for Wheeling Brake Block. He also negotiated the contracts, although Randy Belliel, the union representative who negotiated the 1995 agreement, credibly testified that Rob Burgess indicated that

measures he agreed to had to be accepted by his father in order for any agreement to move beyond a tentative agreement. According to Palmer, who served on the Union negotiating committee for the 1995 and 2001 labor agreements, during negotiations for both agreements Rob Burgess would consult with his father after negotiating sessions. Palmer testified that although he only saw Lee Burgess at the plant three-four times over the years, Rob Burgess would tell employees that "on quite a few things that he wanted to change [h]e'd check with Lee and see if he could change them." Palmer specifically recalled this happening in the year 2000, when the Union demanded that a sander being added to the operation be part of the bargaining unit's work. According to Rob Burgess, Lee Burgess advised him to shut down the sander. Generally, Palmer recalled that after a shift "usually" he could walk into Rob Burgess' office and find him in conversation with Lee Burgess.[10]

In his capacity as vice president and general manager of Wheeling Brake Block, Burgess continued to respond to grievances (GC Exh. 21), enter into pension agreements (GC Exh. 20(b) at p. 12 of Agreement and Declaration of Trust; see also GC Exh. 20(c)(2)), and communicate with the Union with fax cover sheets and letterhead (GC Exh. 17, 24) indicating that the correspondence was from Wheeling Brake Block Mfg. Co. His e-mail address was displayed as "wheeling Brake Block Mfg. Co. – General Manager" at the address whgbb@worldnlet.XXXX. The fax marking on documents sent by Burgess reflect that they come from "Wheeling Brake Block" (See GC Exh. 13 dated September 17, 2003). In 2004, Burgess personally signed acknowledgements as the vice president of Wheeling Brake Block Manufacturing Company verifying statements the Company's counsel made on behalf of the Respondent in this case. In addition, Rob Burgess signed a questionnaire from the NLRB in 2004 in which he indicated that Wheeling Brake Block employed 13 individuals at the Berkley Avenue site. (GC Exh. 48).[11]

In the face of the active and open continued operation of Wheeling Brake Block by Rob Burgess, the record is devoid of any evidence that at any time Lee Burgess, as president of Wheeling Brake Block (or in any other capacity) took any steps at all to prevent Rob Burgess from acting on behalf of Wheeling Brake Block. To the contrary, Wheeling Brake Block continued to operate under Rob Burgess' direction, with no evidence of any objections from Lee Burgess, or anyone else acting on behalf of Wheeling Brake Block.

I accept, as Lee Burgess contends, that his influence over Wheeling Brake Block waned over time as Rob Burgess arrogated to himself more and more of the decisionmaking relating to the operation of the Berkley Avenue facility. Whether Rob Burgess "stole" the facility from him,

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[10]Counsel for Lee Burgess objected to this testimony on grounds of hearsay. However, Rob Burgess' statements to Palmer are admissions of a party opponent. Specific statements Rob Burgess attributed to Lee Burgess require another level of hearsay analysis, but Lee Burgess was and is the president of Wheeling Brake Block, and at that time, certainly, an agent of the company, and therefore the statements attributed to him are admissions of a party opponent. In any event, the fact of Lee Burgess' consultation with Rob Burgess on matters of labor relations is the important point, and it is established by Palmer's credited testimony of his conversations with Rob Burgess.

[11]The only employment-policy document in the record under the name of Wheeling Brake Band & Friction is the first page of a "Drug Free Workplace Policy" memo that, by its terms, was to become effective July 1, 2002. That policy, which Brawdy testified was "something new" that Burgess started, involved employees attending monthly meetings on the subject. It was applicable to all employees at the facility.

as he contends, is not a question I need resolve. For present purposes, it is enough to recognize that Lee Burgess' declining role developed over time and that he was barred by his son from the property only as of 2005, well after the commission of the unfair labor practices at issue in this case. The evidence shows that Rob Burgess was in regular consultation with him before that, and Lee Burgess (or one of his companies) has continued to pay bills and taxes. As Lee Burgess stated, "I've even paid his taxes four or five times because the girls in my office didn't know the difference between Wheeling Brake Block and Wheeling Brake Band & Friction, they just saw it was mine so I paid them—property taxes." Burgess also admitted that his various companies, including Wheeling Brake Block make products for each other:

> Well, we make brake blocks for each other, yeah. Occasionally.
> Q. Okay?
> A. I guess that's what you call an association. He has presses. You have to have molds for these things, hundreds of them at all different sizes.
> Like I said, that one brake block we make is 30 inches wide, 35 inches long, 200 inches in diameter, weighs 176 pounds, which is more than you weigh, one brake block. He has molds for different stuff.
> Everybody has a different mold, thousands of molds. So if you have a mold in Mobile, you make it in Mobile, if you have it in Ohio, you make it in Ohio. We do exchange back and forth.

I reject and do not credit the assertions of Lee Burgess—mostly offered in the form of endorsements of the leading suggestions of his counsel—that Wheeling Brake Block "shut down so to speak" or "stop[ped] doing business" in 1999. The evidence suggests that when Burgess says "we shut it down" he means only that the decision was made to transfer the employee payroll and, for tax purposes, the assets of the company to Wheeling Brake Band & Friction. At some point the name Wheeling Brake Band & Friction began to appear on some products some of the time, but in no sense did Wheeling Brake Block close or shut down. There was no sale or arm's-length transfer of the assets or liabilities of the Company.

Analysis and Discussion

A. Wheeling Brake Block is Properly a Respondent

Before turning to the General Counsel's amendments, I consider Lee Burgess' claim—the one that prompted the Board's remand—that Wheeling Brake Block is not a proper party in interest in this case. The claim is based on the contention that Wheeling Brake Block "shut down" or went out of business in approximately 1999, leaving Wheeling Brake Band & Friction as the sole surviving employing entity. Lee Burgess contends that Wheeling Brake Band & Friction is a successor to Wheeling Brake Block, and as such the only proper respondent for the unfair labor practices that began in 2003.

This claim is without substance. There was no shutdown of Wheeling Brake Block in 1999. This is manifest from its continued engagement in collective bargaining, its advertising, its continued production under the name Wheeling Brake Block, the maintenance of its management and employee structure that continued without change. Lee Burgess, the president and owner of Wheeling Brake Block continued to advise and consult with Rob Burgess about the operations long after 1999, including during subsequent bargaining with the Union. I don't doubt for a second that the current bad blood between Lee and Rob Burgess is real. But Lee Burgess does not point to a single phone call, letter, or conversation, much less any legal action, demonstrating that at any time there was an effort to stop Rob Burgess from

using the name Wheeling Brake Block, or from operating as Wheeling Brake Block. The claim in Attorney Morelly's original submission to the Board that Robert Burgess "usurped" the identify of Wheeling Brake Block, "pos[ed] as an agent of Wheeling Brake Block," used its name without permission, or executed labor agreements with the Union "without the authority" of Wheeling Brake Block is a claim backed by nothing. Assuming a corporate struggle between family members internal to Wheeling Brake Block (the son/vice president of the company taking control from the father/president), it is not relevant to Wheeling Brake Block's obligations under the Act.

The evidence marshaled in support of the claim that Wheeling Brake Block exited the industrial brake lining business in 1999 is the changeover of employee payroll to Wheeling Brake Band & Friction along with tax returns showing diminished earnings and expenditures after 1999. Given the nonarm's-length relationship between Wheeling Brake Band & Friction and Wheeling Brake Block, this transfer of payroll and tax obligations to Wheeling Brake Band & Friction does not support the claim that Wheeling Brake Block went out of business. Notably, the transfer of assets to Wheeling Brake Band & Friction (for the purpose of sheltering them) began long before 1999, as evidenced by the admissions of Rob Burgess in his deposition. None of this evidence was contradicted by Lee Burgess in his testimony. Moreover, although the record does not allow more detailed findings, the bulk of the payroll was transferred to Wheeling Brake Band & Friction before 1999, at a time when even Lee Burgess concedes that Wheeling Brake Block was the employing entity. This is clear, as the 1998 1120 tax forms placed into the record show that only $18,795 was attributed to salaries and wages, none for employee benefit programs, and $220 attributed to pension costs. These figures are a pittance of the amount of wages and benefits that must have been paid out to or contributed on behalf of approximately ten employees that year. Clearly, the payment of employee wages and benefits by some entity other than Wheeling Brake Block precedes May 1, 1998 (the earliest period covered by 1999 1120 forms). Yet it is solely this sharing of the employee wage burden that Lee Burgess relies upon to argue that Wheeling Brake Block ceased being an employer in 1999.[12]

Under these circumstances, the effort to remove Wheeling Brake Block as a party in interest in these proceedings is not well taken. In short, Rob Burgess did not perpetrate a fraud on the Board when, he and Attorney Duff, on behalf of Wheeling Brake Block, admitted that Wheeling Brake Block was the employing entity and that Rob Burgess was its agent. He was and is, and his father's unhappiness with the direction his son has taken Wheeling Brake Block cannot be solved by appeal to the Board to eliminate Wheeling Brake Block as a respondent in this case.

B. Wheeling Brake Band & Friction's Status as a Respondent

The Government contends that Wheeling Brake Block and Wheeling Brake Band & Friction are joint and severally liable for the unfair labor practices. The contention that these entities constitute a single employer for purposes of the Act is compelling.

A single-employer analysis is appropriate where two ongoing businesses are coordinated by a common master. See *APF Carting, Inc.*, 336 NLRB 73 fn. 4 (2001) (citing *NYP Acquisition Corp.*, 332 NLRB 1041 fn. 1 (2000), enfd. 261 F.3d 291 (2d Cir. 2001)).

[12]I note that the Respondent's tax returns are limited to the first page filed for 1998–2002. Attached statements, schedules, etc. are not in the record. Without them, their use, quite apart from the issue I note in the text, is necessarily limited.

"Stated otherwise, the fundamental inquiry is whether there exists overall control of critical matters at the policy level." *Emsing's Supermarket, Inc.*, 284 NLRB 302 (1987), enfd. 872 F.2d 1279 (7th Cir. 1989) (footnotes omitted). In *Flat Dog Productions Inc.*, 347 NLRB No. 104, slip op. at 2–3 (2006), the Board explained:

> In determining whether two entities constitute a single employer, the Board considers four factors: common control over labor relations, common management, common ownership, and interrelation of operations. *Emsing's Supermarket, Inc.*, 284 NLRB 302 (1987), enfd. 872 F.2d 1279 (7th Cir. 1989).

The Board has held that the factors of common control over labor relations, common management and interrelation of operations are "more critical" than the factor of common ownership or financial control, and that "centralized control of labor relations is of particular importance because it tends to demonstrate 'operational integration.'" *RBE Electronics of S.D.*, 320 NLRB 80 (1995). However, "[n]o single factor in the single-employer inquiry is deemed controlling, nor do all of the factors need to be present in order to support a finding of single-employer status." *Flat Dog Productions Inc.*, supra; *Bolivar-Tees, Inc.*, 349 NLRB No. 70, slip op. at 3 (2007). *RBE Electronics*, supra. "Rather, single-employer status depends on all the circumstances, and is characterized by the absence of the arm's-length relationship found between unintegrated entities." *Dow Chemical Co.*, 326 NLRB 288 (1998). Indeed, the Board has recently explained that "[t]he hallmark of a single employer is the absence of an arm's-length relationship among seemingly independent companies." *Bolivar-Tees, Inc.*, supra, slip op. at 1 (2007).[13]

In this case the single employer status can certainly be found by reference to the Board's four traditional single-employer factors. At all material times, Rob Burgess, sometimes in consultation with his father, controlled labor relations whether for Wheeling Brake Block or Wheeling Brake Band & Friction. There is one management structure for both companies. The operations are entirely interrelated, indeed, commingled is a better description than interrelated.[14] Ownership is nominally separate. Wheeling Brake Block is owned by Lee Burgess and Rob Burgess has refused to grant him an interest in Wheeling Brake Band & Friction, although its profits are dependent on the less than arm's-length relationship of the two companies and the profits of Wheeling Brake Band & Friction have been siphoned off to Lee Burgess and his corporate holdings. In such situations where family members dominate the ownership and management of each company "the Board often treats ownership by other family members as personal ownership." *Centurion Auto Transport, Inc.*, 329 NLRB 394, 397 (1999); *Alexander Bisnitzky*, 323 NLRB 524, 524–525 (1997) ("It is apparent that the companies' relationship is a close family one rather than one between independent companies dealing at 'arm's length.' In these circumstances the Board often treats ownership by other family

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[13]See also *Overton Markets Inc.*, 142 NLRB 615 (1963) (10 stores in 7 separate companies owned and controlled by members of the same family operated at less than arm's length are single integrated enterprise for purposes of the Act). I note that the Board has also recognized that the absence of an arm's-length relationship between two enterprises is sometimes considered "essentially synonymous" with single employer status. *Lebanonite Corp.*, 346 NLRB No. 72 fn. 5 (2006). However, in other cases, the Board has treated the absence of an arm's-length relationship as bearing on the factor of interrelation of operation. Id.

[14]See, *Bolivar-Tees, Inc.*, supra, slip op. at 2 ("The presence of 'non-arm's length transactions at reduced prices or without payment entirely is . . . probative of interrelation of operations.'" (Quoting *Lebanite Corp.*, 346 NLRB No. 72, slip op. at 1 fn. 5 (2006)).

members as personal ownership") (footnote omitted). Based on the Board's four factor test, these two allegedly distinct companies constitute a single employer under the Act.

Quite apart from the Board's four factor test, the circumstances in this case bear out the appropriateness of the Board's recognition that the absence of an arm's-length relationship between unintegrated entities is the "hallmark" of a single employer relationship. *Bolivar-Tees, Inc.*, supra. Here, there is a sense in which application of the four factors misses the greater point: Wheeling Brake Band & Friction was established by the Burgess' as a means of removing and protecting the profits of Wheeling Brake Block so that they could be enjoyed by the Burgess' without regard for Wheeling Brake Block's government lien holders. Wheeling Brake Block's products were provided to Wheeling Brake Band & Friction for "a dollar a pound or some crazy [price]" and the profits used for all manner of expenses benefiting Lee Burgess, his other companies, and Wheeling Brake Block. Wheeling Brake Band & Friction operated as a safe deposit box for Wheeling Brake Block, separately incorporated as a means of protecting Burgess and Wheeling Brake Block.

According to the admissions of Robert Burgess, this was the practice from the inception of Wheeling Brake Band & Friction in 1994. In this context the decision in 1999 to transfer the employee payroll from Wheeling Brake Block to Wheeling Brake Band & Friction did not affect Wheeling Brake Block's obligations under federal labor law. It was not attendant to any type of arm's-length sale, transfer of assets or change of control. Production did not stop or change in anyway. Wheeling Brake Block continued to advertise, hold itself out to the public, and continued to negotiate, sign, and abide by collective-bargaining agreements with the employees' bargaining representative. The sign out front continued to say Wheeling Brake Block. There has never been the slightest operational separation between Wheeling Brake Block and Wheeling Brake Band & Friction. The latter sold the products provided to it ("for a dollar a pound or some crazy [price]") by the former. They had the same employees, same management, same control. They are truly a single employer. Moreover, it is well settled that "[w]hen two entities are found to be a single employer, one entity's collective-bargaining agreement covers the other entity as well, provided that the two entities' employees constitute a single appropriate bargaining unit." *Stardyne Inc. v. NLRB*, 41 F.3d 141, 144–145 (3d Cir. 1994). Here, there is no distinctions among employees between work they do for Wheeling Brake Band & Friction and the work performed for Wheeling Brake Block. They constitute a single appropriate bargaining unit.[15]

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[15]Because Wheeling Brake Band & Friction is liable as a single employer it is unnecessary to pass on whether it may be liable on an alter ego theory. See *Flat Dog Productions*, 347 NLRB No. 104, slip op. at 1 (2006). I note that the alter ego theory is more readily applicable where a new enterprise is the disguised continuance of part or all of a prior enterprise that has ostensibly ceased operations. See, *NLRB v. Hospital San Rafael*, 42 F.3d 45, 50 (1st Cir. 1994), cert. denied 516 U.S. 927 (1995). Here, I do not believe that Wheeling Brake Block ever even purported to cease doing business and the single-employer theory more accurately describes the situation in this case. However, were there merit to the position that Wheeling Brake Block ostensibly discontinued operations, then I would find that Wheeling Brake Band & Friction operated as a disguised continuance of Wheeling Brake Block. Once the assumption that Wheeling Brake Block ostensibly ceased operations is indulged, Wheeling Brake Band & Friction fits easily within the Board's definition of an alter ego. See e.g. *Vallery Electric, Inc.*, 336 NLRB 1272 (2001), enfd. 337 F.3d 446 (5th Cir. 2003). In reasoning adopted by the Board in *Vallery Electric*, the ALJ explained that "the elements necessary to prove alter ego and/or single employer status are much the same. . . . The key elements in establishing an alter ego are 'substantial identity of management, business property, operation, equipment, customers,

Continued

CONCLUSIONS OF LAW

Based on the foregoing Supplemental Decision, as well as the December 9, 2005 Bench Decision and Certification issued in this matter, I make the following conclusions of law:

1. Wheeling Brake Block Manufacturing Company and Wheeling Brake Band & Friction Manufacturing Company (an integrated enterprise and single employer hereinafter referred to collectively as the Respondent) are engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union, at all material times has been the exclusive collective bargaining representative, based on Section 9(a) of the Act, of an appropriate unit for such purposes as defined by Section 9(b) of the Act, of the Respondent's employees at its Bridgeport, Ohio facility composed of:

   all production and maintenance employees employed by the Respondent at its Bridgeport, Ohio facility, excluding all office clerical employees and all professional employees, guards, and supervisors as defined by the Act.

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supervision and ownership.' *NLRB v. Al Bryant, Inc.*, 711 F.2d 543, 553–554 (3d Cir. 1983) [cert. denied 464 U.S. 1039 (1984)]." It is also significant in determining alter ego status whether the purpose in creating the new entity was to evade collective-bargaining obligations (see, *Fugazy Continental Corp.*, 265 NLRB 1301–1302 (1982), enfd. 725 F.2d. 1416 (D.C. Cir. 1984)), however such a finding is not required. *Stardyne Inc. v. NLRB*, 41 F.3d at 146–151. As is evident from the discussion in the text, the companies here operate with substantially identical management, business property, operation, equipment, customers, and supervision. Ownership is formally separate, but given the familial relations and lack of arm's-length transaction, this is no impediment to a finding of alter-ego status. As the Board stated in *Kenmore Contracting Co.*, 289 NLRB 336, 337 (1988) ("a finding of common ownership may be made where, although the same individuals are not shown to be owners of each corporation, the corporations are solely owned by members of the same family"), enfd. 888 F.2d 125 (2d Cir. 1989). Family ownership by members of the same family does not compel a finding of substantially identical ownership. "However, it 'militates in favor of an alter ego finding' where, as here, other relevant factors are shown." *Midwest Precision Heating & Cooling*, 341 NLRB 435 (2004) (quoting *Cofab, Inc.* 322 NLRB 162, 163 (1996)), enfd. 408 F.3d 450 (8th Cir. 2005). They have been shown here. As noted, the lack of evidence establishing that Wheeling Brake Band & Friction was established to evade responsibilities under the Act—the evidence suggests other illicit motives—does not undermine an alter-ego finding.

Finally, given my findings I also do not reach the General Counsel's contention that the two companies are joint employers, although I note that the designation does not seem applicable. "[A] finding that companies are 'joint employers' assumes in the first instance that companies are 'what they appear to be' -- independent legal entities that have merely 'historically chosen to handle jointly . . . important aspects of their employer-employee relationship.'" *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1122 (3d Cir. 1982) (quoting *NLRB v. Checker Cab. Co.*, 367 F.2d 692, 698 (6th Cir. 1966), cert. denied 385 U.S. 1008 (1967)). That assumption is not warranted in this case.

4. The Union and the Respondent were parties to a collective-bargaining agreement governing the unit employees' terms and conditions of employment that was effective by its terms from October 1, 2001, through September 30, 2004.

5. By informing an employee that the Respondent was going to get rid of the Union and replace it with a Union controlled by the Respondent, by soliciting an employee to assist the Respondent in getting rid of the Union so that others would more readily accept the loss of the Union, by implicitly and explicitly promising the employee that for opposing the Union the employee would be recalled from layoff, and by maintaining and enforcing an overly broad prohibition on union activity on its premises, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

6. By laying off of employees Robert Maxwell, Timothy Colley, Ronald McKenzie, John Cumberlidge, Richard Palmer, and Greg Brawdy, on July 14, 2003, and by failing to recall employees Greg Brawdy and Richard Palmer thereafter, the Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of employees, to discourage membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

7. By laying off and recalling employees without regard to the seniority provisions of the parties' collective-bargaining agreement as of July 14, 2003, by withdrawing from the Union-Industry pension fund as of July 10, 2003, and thereafter failing and refusing to make contractually-mandated contributions to the fund, by failing and refusing to deduct and transmit dues deductions pursuant to the parties' collective-bargaining agreement from July 11, 2003, to September 30, 2004, by repudiating the parties' collective-bargaining agreement as of July 11, 2003, and by failing and refusing the Union's request to recognize and bargain with the Union for the purpose of negotiating a successor collective-bargaining agreement, the Respondent has failed and refused to bargain collectively with the representative of its employees and is in violation of Section 8(a)(1), (5), and (d) of the Act.

8. The unfair labor practices set out in paragraphs 5, 6, and 7, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Based on the foregoing, as well as the December 9, 2005 Bench Decision and Certification, I recommend the following remedy. Having found that Wheeling Brake Block Manufacturing Company and Wheeling Brake Band & Friction Manufacturing Company (an integrated enterprise and single employer, referred to collectively herein as the Respondent) have engaged in certain unfair labor practices, I find that they are joint and severally liable for remedying the unfair labor practices and must be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully laid off employees Robert Maxwell, Timothy Colley, Ronald McKenzie, and John Cumberlidge, on July 14, 2003, must make each employee laid off whole for any loss of earnings and other benefits they may have suffered in the manner prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition to making them whole in accordance with the preceding, as to the two employees the Respondent has, to date, failed to

reinstate, Greg Brawdy and Richard Palmer, it must offer each of them reinstatement to the position they occupied prior to the layoff, or to an equivalent position should their prior position not exist, without prejudice to their seniority or any other rights or privileges previously enjoyed.

The Respondent shall rescind the unlawful rule prohibiting union activity on its premises, advise employees it has done so, and that they may engage in union activity on the premises of the Respondent during nonworking time and in nonworking areas, and in other areas and other times on such terms as other nonwork-related activity is permitted, without retribution.

Having found that the Respondent violated Section 8(a)(1) and (5) by repudiating the parties' collective-bargaining agreement as of July 11, 2003, and by failing and refusing to make contractually required payments into the Union-Industry pension plan, from July 10, 2003, the Respondent shall make the unit employees whole, with interest, for any loss of pay or benefits they may have suffered as a result, in the manner prescribed by *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971). The Respondent shall make all contractually required contributions to the Union-Industry pension plan that have not been made since July 10, 2003, including any additional amounts due the plan, in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).[16] The Respondent shall also reimburse unit employees, with interest, for expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981). Such amounts are to be computed in the manner set forth in *Ogle Protection Service*, supra. The Respondent shall reimburse the Union, with interest, for lost dues that should have been paid contractually but were not paid to the Union because of the employer's repudiation of the labor agreement including the dues checkoff provision, for the term of the agreement, which ran until September 30, 2004, in the manner set forth in *Ogle Protection Service*, supra. All interest due and owing in accordance with this paragraph shall be computed as prescribed in *New Horizons for the Retarded,* supra.

The Respondent shall, upon demand of the Union, meet and confer with the Union for the purpose of bargaining a successor collective-bargaining agreement.

The Respondent shall further be ordered to refrain from in any like or related manner abridging any of the rights guaranteed to employees by Section 7 of the Act.

The Respondent shall post an appropriate informational notice, as described in the attached Appendix. This notice shall be posted in the Employer's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. When the notice is issued to the Employer, it shall sign it or otherwise notify the Region what action it will take with respect to this decision.

[16]To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

On these findings of fact and conclusions of law and on the entire record, including the December 9, 2005 Bench Decision and Certification, I issue the following recommended[17]

ORDER

The Respondent, Wheeling Brake Block Manufacturing Company and Wheeling Brake Band & Friction Manufacturing Company (an integrated enterprise and single employer) Bridgeport, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Informing employees that the Respondent is going to get rid of the Union and replace it with a Union controlled by the Respondent, soliciting employees to assist the Respondent in getting rid of the Union so that other employees would more readily accept the loss of the Union, implicitly and explicitly promising employees that by opposing the Union employees would be recalled from layoff.

(b) Maintaining and enforcing an overly broad prohibition on union activity on its premises.

(c) Laying off and failing to recall employees to rid itself of the Union and union supporters.

(d) Failing and refusing to abide by and repudiating the collective-bargaining agreement, including the seniority, pension contribution, and dues checkoff provisions of the collective-bargaining agreement.

(e) Upon request, failing and refusing to recognize and bargain a successor collective-bargaining agreement with the Union.

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

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

(a) Within 14 days of the date of this Order offer full reinstatement to employees Greg Brawdy and Richard Palmer to their former jobs or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make employees Robert Maxwell, Timothy Colley, Ronald McKenzie, John Cumberlidge, Greg Brawdy and Richard Palmer, whole with interest, in the manner set forth in the remedy section of this Decision and Order for any loss of earnings or other benefits resulting from the layoff described in this Decision and Order.

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

(c) Make all affected employees whole, with interest, in the manner set forth in the remedy section of this Decision and Order, for any loss of earnings or benefits resulting from the repudiation of the collective-bargaining agreement, including the repudiation of the provisions of the collective bargaining agreement regarding seniority and pension.

(d) Reimburse the Union, with interest, for dues the Respondent was required but failed to withhold and transmit under the collective-bargaining agreement, in the manner described in the remedy section of this Decision and Order, resulting from the Respondent's repudiation of the dues checkoff provision of the collective-bargaining agreement.

(e) Make all contractually required contributions to the Union-Industry pension plan that were not made, including any additional amounts due the plan, in the manner described in the remedy section of this Decision and Order.

(f) Reimburse unit employees, with interest, for expenses ensuing from its failure to make required contributions to the Union-Industry pension plan, in the manner described in the remedy section of this Decision and Order.

(g) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit described in the Decision and Order concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in signed agreements.

(h) Rescind the rule prohibiting union activity on the premises of the Respondent and advise employees that it has done so, and that they are free to engage in union activity at the Respondent's facility during nonworking time and in nonworking areas, and in any other areas and other times on such terms as other nonwork-related activity is permitted, without retribution.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment 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.

(j) Within 14 days after service by the Region, post at its facility in Bridgeport, Ohio, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices

[18] 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."

are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 10, 2003.

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

Dated, Washington, D.C. May 31, 2007.

_____
David I. Goldman
U.S. Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT layoff, fail to recall, or otherwise discriminate against you for supporting the Retail, Wholesale and Department Store Union, Local 379 and the United Food and Commercial Workers Union, AFL-CIO, or any other union.

WE WILL NOT tell employees that we are going to get rid of the Union and replace it with a Union that we control.

WE WILL NOT solicit employees to assist us in getting rid of the Union so that other employees will more readily accept the loss of the Union.

WE WILL NOT implicitly or explicitly promise any employee that by opposing the Union the employee will be recalled from layoff.

WE WILL NOT repudiate the collective-bargaining agreement, including the seniority, pension contribution, and dues checkoff provisions of the collective-bargaining agreement.

WE WILL NOT refuse to recognize and bargain a successor collective-bargaining agreement with the Union.

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

WE WILL, within 14 days from the date of this Order, offer Greg Brawdy and Richard Palmer full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Robert Maxwell, Timothy Colley, Ronald McKenzie, John Cumberlidge, Greg Brawdy and Richard Palmer whole, with interest, for any loss of earnings and other benefits resulting from their layoff.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees employed by us at our Bridgeport, Ohio facility, excluding all office clerical employees and all professional employees, guards, and supervisors as defined by the Act.

WE WILL make all affected employees whole, with interest, for any loss of earnings or benefits resulting from the repudiation of the expired collective-bargaining agreement, including the repudiation of the seniority and pension provisions of the collective-bargaining agreement.

WE WILL reimburse the Union, with interest, for dues we were required to withhold and transmit under the collective-bargaining agreement.

WE WILL make all contributions to the Union-Industry pension plan that we were required to make under the collective bargaining agreement, including any additional amounts due the plan on account of our failure to make these contributions at the time they were owed.

WE WILL reimburse unit employees, with interest, for any expenses they have incurred because of our failure to make required contributions to the Union-Industry pension plan.

WE WILL rescind the rule in the expired collective-bargaining agreement prohibiting union activity on our premises and WE WILL advise you that this has been done and that you are free to engage in union activity at our facility during nonworking time and in nonworking areas, and in any other areas and other times on such terms as other nonwork-related activity is permitted, without retribution.

WHEELING BRAKE BLOCK MANUFACTURING COMPANY AND WHEELING BRAKE BAND & FRICTION MANUFACTURING COMPANY

(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.nlrb.gov.

1240 East 9th Street, Federal Building, Room 1695
Cleveland, Ohio 44199-2086
Hours: 8:15 a.m. to 4:45 p.m.
216-522-3716.

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, 216-522-3723.