United Scrap Metal, Incorporated *and* Teamsters Local Union No. 731, AFL–CIO and L.A. Trucking Company, Incorporated and Metro Haul and Tri-Air Transport. Cases 13–CA–41743 and 13–CA–41842

March 31, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The single issue presented in this proceeding is whether the judge correctly concluded that Teamsters Local Union No. 731, AFL–CIO (the Union) had achieved majority status among the bargaining unit employees employed by United Scrap Metal, Incorporated (the Respondent). We have carefully scrutinized the record evidence as a whole, and find that substantial evidence supports the judge's majority status conclusion.[1]

As fully set forth in his decision, the judge found that the Respondent committed numerous unfair labor practices in response to its employees' organizing efforts, including, inter alia, threats, coercive interrogation, creating the impression of surveillance, discharge of the entire bargaining unit, and the subcontracting of all the bargaining unit work. The Respondent has not excepted to any of the judge's unfair labor practice findings. The judge further found that these serious unfair labor practices rendered traditional remedies inadequate to ensure a fair representation election, and that the employee sentiment here expressed by authorization cards would be better protected by a bargaining order pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The judge accordingly recommended that a *Gissel* bargaining order be issued.

The Respondent has not excepted to the propriety of the *Gissel* bargaining order in this case, save for a single contention: that the General Counsel failed to prove that the Union attained majority status because he has not shown that a majority of the bargaining unit drivers had executed authorization cards. We have carefully reviewed the entire record and find no merit to the Respondent's contention.

It is long-settled that pursuant to *NLRB v. Gissel Packing Co.,* supra, the Board may order an employer to bargain with a union that had secured authorization cards from a majority of a bargaining unit's employees, where, as here, the employer has committed serious unfair labor practices that tend to undermine majority strength and impede the election process. 395 U.S. at 614. If the General Counsel seeks a bargaining order remedy predicated on the union's majority status, it is his burden to demonstrate that status. As part of that burden, the General Counsel must establish the number and identity of the employees in the appropriate unit on the date on which the General Counsel asserts the union attained majority status.

The judge found, inter alia, that the record showed that the Union achieved majority status among the unit of 18 drivers[2] based upon the General Counsel's presentation into evidence of 14 signed and dated authorization cards. The Respondent does not contest the authenticity of the cards. Instead, it argues in its exceptions that the General Counsel failed to establish (1) that the 14 card signers are in fact unit employees and (2) that the unit is comprised of 18 employees.

The record, however, supports the judge's findings regarding bargaining unit size and composition. We particularly rely on General Counsel's Exhibit 24: the Respondent's position statement, prepared by its counsel and submitted to the NLRB Regional Office, in response to the unfair labor practice charges filed against it by the Union. In its position statement, the Respondent states that on February 18, 2004, it "conducted a drivers meeting with *all the drivers*" and adds: "see list of drivers." (Emphasis supplied.) The list of drivers attached to the position statement includes each of the 14 authorization card signers.[3] Further, the list sets forth a total of 18 drivers, consistent with the judge's finding.[4] Under settled precedent, the Respondent's position statement constitutes an admission by it as to the size of the unit—18 drivers—as well as the identity of the unit drivers as of February 18, 2004.[5] In light of the 14 authenticated

[1] On October 12, 2004, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.

[2] The parties stipulated that the following bargaining unit is appropriate: "All regular full-time drivers employed at the facility located at 1545 South Cicero Avenue in Cicero, Illinois; but excluding all yard workers, mechanics, dispatchers, management employees, all other employees, office clerical employees, supervisors, and guards as defined in the Act."

[3] They are: (1) Ken Kolff; (2) Dave Miller; (3) Cantrell Lacey; (4) Robert Korda; (5) Chris Wojtaszek; (6) Dave Schnobelen; (7) Lorenso Rios; (8) Ezra Tillman; (9) Alex Martinez; (10) Jim McGhee; (11) Artee Love; (12) Hector Roman; (13) Kurt Powell; and (14) Mike Athern.

[4] The four additional drivers listed are: (1) Greg Raegel; (2) Isadore Fiumefreddo; (3) Tony Tillman; and (4) Jesse McCraney.

[5] See, e.g., *Navigator Communications Systems*, 331 NLRB 1056, 1058 fn. 10 (2000); *McKenzie Engineering Co*., 326 NLRB 473, 485

signed and dated authorization cards in the unit of 18 drivers,[6] the General Counsel has shown that the Union attained majority status by at least February 18, 2004.

We are mindful, of course, of our duty to take into account any countervailing evidence which might detract from our conclusion that the Union attained majority status. *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487–488 (1951). We have found nothing in the record, however, indicating that the bargaining unit's size and composition differs from that set forth in the Respondent's own list of its drivers. Further, the Respondent failed to present any evidence or argument indicating that the card signers were not in fact unit members or that the unit was not comprised of 18 employees. Instead, the Respondent merely quibbles over the nature of the General Counsel's evidence—not its correctness. Once the General Counsel introduced competent evidence showing the size and composition of the bargaining unit, it became incumbent upon the Respondent to present some specific evidence or argument supporting a contrary conclusion. See *Abbey's Transportation Services*, 284 NLRB 698, 703 (1987) ("The Respondent did not merely point out the inadequacy of the payroll list as proof of the number of unit employees. It went on to identify individuals, not on the weekly payroll list, who it contends were in the unit."), enfd. 837 F.2d 575 (2d Cir. 1988.

This proceeding stands entirely distinct from cases in which the record included evidence calling into question the accuracy of the bargaining unit complement asserted by the General Counsel, thus precluding a finding of majority status. Compare *Be-Lo Stores v. NLRB*, 126 F.3d 268, 277 (4th Cir. 1997) (accuracy of the voter list relied on by the General Counsel "repeatedly challenged" by the respondent, which proffered supporting evidence); *Abbey's Transportation Services*, supra ("[r]ecord evidence corroborate[d]" the respondent's claim that certain individuals should be added to the number of unit employees asserted by the General Counsel).[7] We accordingly conclude that the record before us fully supports the judge's finding that the Union attained majority status.

ORDER[8]

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, United Scrap Metal, Incorporated, Cicero, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about the Union.

(b) Instructing employees to convince other employees not to engage in union activities.

(c) Threatening employees with discharge, with job loss, and with unspecified reprisals because of their union activities.

(d) Creating the impression among employees that their union activities were under surveillance.

(e) Coercively soliciting employees to sign affidavits stating that they had not heard any threats from the Respondent.

(f) Promising to and granting an employee a day off work for signing such affidavit.

(g) Threatening to sell its trucks and replace its employees with brokers if they continued their union activities, and informing employees that it was selling its trucks, because of their union support.

(h) Threatening employees that selecting the Union as their bargaining representative would be futile.

(i) Announcing the subcontracting of its unit work to brokers, discharging its unit employees, and subcontracting its unit work to brokers because of the employees' union activities.

fn. 6 (1998), enfd. 182 F.3d 622 (8th Cir. 1999); *Hogan Masonry*, 314 NLRB 332, 333 fn. 1 (1994).

The position statement was prepared by Fred Hayes, who the Respondent describes as its former counsel. The record indicates, however, that he never withdrew as the Respondent's counsel. In any event, the rule that a party's position statement is admissible as an admission is applicable to those submitted by the employer's former counsel. See *Optica Lee Borinquen*, 307 NLRB 705 fn. 6 (1992), enfd. 991 F.2d 786 (1st Cir. 1993) (Table).

[6] The authorization cards are dated between January 21 and 28, 2004.

[7] In the instant case, there is nothing in the record to show or even suggest, and no party contends, that any changes in the bargaining unit occurred during the relevant time period.

[8] We have modified the judge's recommended Order in accordance with *Ferguson Electric Co.*, 335 NLRB 142 (2001), to correct inadvertent errors, and to include a broad cease-and-desist order. See, e.g., *America's Best Quality Coatings Corp.*, 313 NLRB 470, 473 (1993) (broad cease-and-desist order provided because of serious nature of violations and egregious misconduct demonstrating a general disregard for employees' fundamental rights), enfd. 44 F.3d 516 (7th Cir. 1995), cert. denied 515 U.S. 1158 (1995). Accord: *NLRB v. Blake Construction Co.,* 663 F.2d 272, 285 (D.C. Cir. 1981) (upholding broad cease-and-desist order in light of egregious unfair labor practices). We have substituted a new notice to comport with these modifications.

In light of the Supreme Court's admonitions to the Board concerning the use of broad cease and desist orders, see *NLRB v. Express Publishing Corp.*, 312 U.S. 426 (1941), the specificity requirements of Fed. R. Civ. P. 65(d) that render such orders exceedingly difficult to enforce, and the fact that we are already issuing an affirmative bargaining order, Member Schaumber believes that traditional remedies, including a "narrow" cease and desist order restraining "any like or related" violations of Sec. 8(a)(1) and (3), are appropriate and sufficient to address the violations in the instant case. He, therefore, dissents from the issuance of a broad order restraining "any" violations of the Act.

(j) Constructively discharging its employees because of their union activities.

(k) In any other manner interfering with, restraining, or coercing its 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) Recognize, and on request, bargain with Teamsters Local Union No. 731, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All regular full-time drivers employed at the facility located at 1545 South Cicero Avenue in Cicero, Illinois; but excluding all yard workers, mechanics, dispatchers, management employees, all other employees, office clerical employees, supervisors, and guards as defined in the Act.

(b) Within 14 days from the date of this Order, offer Michael Athern full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Make Michael Athern whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of the judge's decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Michael Athern, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

(e) 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.

(f) Within 14 days after service by the Region, post at its facility in Cicero, Illinois, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, it 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 February 18, 2004.

(g) 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.

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

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively interrogate you about the Union.

WE WILL NOT instruct our employees to convince other employees not to engage in union activities.

WE WILL NOT threaten you with discharge, with job loss, or with unspecified reprisals, because of your union activities.

WE WILL NOT create the impression among our employees that your union activities were under surveillance.

WE WILL NOT coercively solicit you to sign affidavits stating that you have not heard any threats from the Company.

WE WILL NOT promise to and grant you a day off work for signing such affidavit.

WE WILL NOT threaten to sell our trucks and replace you with brokers if you continued your union activities, and WE WILL NOT inform you that the Company is selling its trucks because of your union support.

WE WILL NOT threaten you that selecting the Union as your representative would be futile.

WE WILL NOT announce that we will subcontract the unit work to brokers, discharge unit employees, and subcontract the unit work to brokers, because of your union activities.

WE WILL NOT constructively discharge you because of your union activities.

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

WE WILL recognize, and on request, bargain with Teamsters Local Union No. 731, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All regular full-time drivers employed at the facility located at 1545 South Cicero Avenue in Cicero, Illinois; but excluding all yard workers, mechanics, dispatchers, management employees, all other employees, office clerical employees, supervisors, and guards as defined in the Act.

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

WE WILL make Michael Athern whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful discharge of Michael Athern, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

UNITED SCRAP METAL, INC.

Vivian Robles, Esq. and *Kevin McCormick, Esq.,* for the General Counsel.

Daniel B. Pasternak and *Thomas Dugard, Esqs. (Matkov, Salzman, Madoff & Gunn),* of Chicago, Illinois, for the Respondent.

Robert Cervone, Esq. (Dowd, Bloch & Bennett), of Chicago, Illinois, for the Petitioner.

John D. Jeske, Esq., of Des Plaines, Illinois, for the Party in Interest.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried on May 25 and 26, 2004, in Chicago, Illinois. The charge was filed on March 4, 2004, in Case 13–CA–41743, as amended, and on April 6, 2004, in Case 13–CA–41842 by the Teamsters Local Union No. 731, AFL–CIO. The second amended consolidated complaint issued on May 11, 2004, against United Scrap Metal, Inc.

The complaint charges the Respondent with violations of Section 8(a)(1) of the National Labor Relations Act (the Act), specifically that the Respondent, United Scrap Metal, Inc., unlawfully,

(1) interrogated employees as to their union activities, and instructed employees to convince other employees not to engage in union activities,

(2) threatened employees with unspecified reprisals, with discharge and with job loss, because of their union activities,

(3) created the impression among employees that their union activities were under surveillance,

(4) coercively solicited employees to sign affidavits stating that they had not heard any threats from the Respondent, and promised to and granted an employee a day off if he signed such an affidavit,

(5) threatened to sell its trucks and replace its employees with brokers, if they continued their union activities, and informed employees that it was selling its trucks because of their union activities, and

(6) threatened employees that selecting the Union as their bargaining representative would be futile.

The complaint also alleges violations of Section 8 (a)(3) and (1) of the Act, that the Respondent,

(1) announced that it was subcontracting all of its unit work to brokers effective May 15, 2005,

(2) discharged all of its unit employees effective May 15, 2004,

(3) subcontracted all of its unit work to brokers effective May 15, 2004,

(4) accelerated the effective date of its subcontracting from May 15, 2004 to May 3, 2004, and

(5) constructively caused the termination of its employee Michael Athern.

The Respondent filed timely answers in which the jurisdictional allegations were admitted, and in which it denied any violations of the Act.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, and the Respondent,[2] I make the following

FINDINGS OF FACTS

I. JURISDICTION

United Scrap Metal, Inc., is engaged in the business of recycling scrap metals in Cicero, Illinois. During the past 12 months, in conducting its operation described above, the Respondent purchased and received at its facility goods and materials valued in excess of $50,000 directly from points outside the State of Illinois. Admittedly, the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union, Teamsters Local Union No. 731, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

United Scrap Metal, Inc., employs slightly more than 100 employees, in its business of collecting, processing, and distributing scrap metal. Owner and chief executive officer is Marsha Serlin who started the business in 1978 in Cicero, Illinois. The corporate hierarchy includes John Gillmeister, vice president and chief financial officer, Dennis Rook, vice president of operations, Brian Chrzanowski, transportation manager, and Rita Zajak, human resources or personnel director. A part of Respondent's operation is the transportation department with its own fleet of trucks and roughly 800 containers that are used in the collection and transportation of scrap metal. The department's main responsibility is to pick up scrap metal from certain customers and to deliver these materials to the Company's facility and to other customers. The transportation department includes 18 full-time drivers. The Respondent has also used the services of contractors (brokers) to supplement the work of its drivers.

The Union, the International Brotherhood of Teamsters, Local 731, had attempted to organize the drivers in 2003, but failed. In January 2004, Dave Miller, one of the drivers in the transportation department, contacted William (Bill) Miller, a union organizer, to tell him that the drivers were interested again in organizing. The Union held a meeting on January 21, 2004, with about five drivers in attendance. They signed union authorization cards. At the next meeting, held on January 28, 2004, additional drivers signed authorization cards (GC Exhs. 2, 4–13,17–19). In the meantime, the Respondent learned of the unionization efforts and questioned employees, threatened them and made other statements to them with the effect of interfering with their Section 7 rights. Having achieved majority status with 14 signed authorization cards, the Union filed a representation petition on February 18, 2004, with Region 13 of the National Labor Relations Board to represent all 18 drivers in the transportation department (GC Exh. 23). On February 19, the Company received the representation petition filed by the Union (in Case 13–RC–321166). A representation hearing was held on March 3, 2004 (GC Exh. 14). Pursuant to a stipulation, the appropriate bargaining unit was defined as follows (GC Exh. 23):

> All regular full-time drivers employed at the facility located at 1545 South Cicero Avenue in Cicero, Illinois; but excluding all yard workers, mechanics, dispatchers, management employees, all other employees, office clerical employees, supervisors, and guards as defined in the Act.

At the hearing, the Employer revealed for the first time the decision to subcontract to brokers the entire transportation work of its drivers. On the same date, March 3, 2004, Respondent's owner, Marsha Serlin held a meeting with the employees in the transportation department to announce the Company's decision to eliminate the department and to subcontract the trucking work. The decision was, according to her testimony at that hearing, final and irrevocable, and would be implemented no later than May 15, 2004. The primary reasons for the decision, according to her testimony, were economic factors and high costs. Serlin told the employees that they could become independent contractors with their own companies, and assured them of help in that regard or that she would recommend some of the drivers to the brokers to whom she would be outsourcing the work.

On March 16, 2004, the Decision and Direction of Election issued, directing an election among the employees in the Unit. On March 24, 2004, the Respondent signed agreements with three companies as subcontractors to provide transportation services effective May 3, 2004. The contracts with L.A. Trucking, Managed Transportation, and Metro Haul, provided for $55 or $60 per hour depending on their equipment (GC Exhs. 20–22).

By letter of April 2 2004, Gregory [Raegel] Rangel, one of the drivers, sent a letter to the Union after he had collected 13 signatures from the drivers who had expressed their antiunion sentiment (GC Exhs.15, 16). Rangel testified that he had solicited the signatures in the hope of saving the drivers' jobs.

Two weeks later the Respondent changed course and rescinded the contracts, because the Board had instituted injunction proceedings against the Company. By letters of April 9, 2004, the Respondent notified the three brokers of the decision to rescind the broker service agreements (R. Exhs.13–15). In the meantime several employees decided to look for work. Michael Athern found a job and left the Company on April 9, 2004. He did not return to this Employer even after it decided to continue the transportation unit.

The General Counsel submits that the Respondent violated the Act with an "outrageous and unlawful campaign," using "interrogations, threats, promises and granting of benefits, subcontracting of unit work, and the wholesale termination of the bargaining unit to subjugate the prounion sympathies the employees once had." Accordingly, so argues the General Counsel, "only a *Gissel* bargaining order can possibly bring back the status quo to the terrified drivers." The Respondent on the

[1] The Respondent's unopposed motion to correct transcript is hereby granted.

[2] The Respondent's motion to take administrative notice is denied.

other hand argues that the "General Counsel failed to prove that any substantial unfair labor practices occurred, but even had he done so, he also failed to show that any such violations would warrant the imposition of a bargaining order." According to the Respondent, the General Counsel failed to show that the Union had achieved majority status among the employees, because there was no evidence showing the size of the unit, nor the identity of the unit employees. The Respondent also argues that the decision to subcontract was economically justified and that any inference based on the timing of the announcement is unjustified.

Analysis

The record in this case clearly supports a finding, that this Employer committed a series of Section 8(a)(1) and 8(a)(3) violations in reaction to the employees' lawful pursuit of their union activities, and that a bargaining order is justified under the present circumstances.

The 8(a)(1) Allegations

The complaint alleges that the owner and admitted supervisor, Serlin, unlawfully interrogated an employee, threatened him with unspecified reprisals, and gave the impression that she was surveiling the employees' union activities. The testimony of Ken Kolff, employed as a truckdriver until April 16, 2004, shows that on February 18, 2004, Serlin approached him in front of the truck scale, when the following conversation occurred (Tr. 34):

> Well, Marsha came up to me and asked me if I heard anything about the Union coming in. And I told her no as I was working nights. I really haven't had a chance to talk to too many drivers. Then she told me that somebody around there was lying because 14 to 15 drivers signed authorization cards. . . She said she was pretty hot that day. And she says it's fucking bull shit. No union will tell her how to run her company.

Serlin denied having engaged in such a conversation, stating that she was in Miami that day and did not return until February 19. I find Kolff's testimony credible, he was no longer in the Respondent's employ and would have no reason to testify either for or against his former employer's interest. Moreover, I found his demeanor to be forthright, direct, and responsive. Serlin, on the other hand, appeared protective of the Company's interest. She founded the business. Her testimony appeared self-serving and at times unconvincing. She did not provide any receipts, tickets, or other documentary evidence to support her testimony that she was elsewhere that day. In any case, it is also possible that the conversation may have occurred on the following day, February 19, when she admitted receiving the representation petition from the NLRB.

In *Rossmore House v. NLRB*, 760 F.2d 1006 (9th Cir. 1985), the court found that the Board was within its authority to rely on the "all the circumstances" test as its adjudicative criteria for determining whether an interrogation was coercive. The prohibition on interrogating is balanced against the employer's free speech protection, enunciated in Section 8(c) of the Act that, "if such expression contains no threat of reprisal or force or promise of benefit," then the speech is protected. Serlin's statements may not have contained threats, but she did reveal her opinion that she considered the union activity to be "fucking bullshit," that no union will tell her how to run her company, and that she knew about the signed union cards. Kolff described her demeanor as "pretty hot." Considering all the circumstances, in particular Serlin's conduct in her role as chief executive, and whether her actions would reasonably tend to restrain, coerce, or interfere with the employees' exercise of their Section 7 rights,[3] I find that the Respondent coercively interrogated the employee and that she created the impression that the employees' union activities were under surveillance, in violation of Section 8(a)(1). Serlin may be correct that she actually never spied on the employees' union activities, but her statement that she was aware of the signed union cards implied that she did. *Flexsteel Industries*, 311 NLRB 257 (1993).

Serlin also had a conversation on February 18 with David Miller, employed as a driver. Miller testified as follows about his conversation at about noon as Serlin approached him in the yard (Tr.87):

> I said, hi, Marsha. How are you doing? She said don't smile at me. I just got another petition for that fucking union again. She wanted to know—she she told me that if I knew who had made the call, I should try to convince them that it's not the way to go and that we had till midnight to make it go away. And if not, she'd have to do what she had to do. I didn't respond to it and she told me, she says, you know, get back to work.

Again, Serlin denied the substance of the conversation or that it occurred on February 18, but she admitted that she spoke to Miller on February 19, and that she felt outraged upon receiving the union petition. Miller was a credible witness. He was the primary contact for the Union among the drivers. Currently employed at Respondent's facility, he testified contrary to his Employer's interest. He gave a clear and detailed account of his observations in an honest and credible manner. Serlin not only coercively interrogated also this employee under circumstances similar to those with Kolff, but this time, she threatened to do what she had to do, unless Miller would dissuade the employees from supporting the Union. Such conduct amounted to threats of unspecified reprisals, in violation of Section 8(a)(1), as well as instructions to an employee not to engage in union activities, in violation of the Act. *Caribe Staple Co*. 313 NLRB 877 (1994); *Hoffman Fuel Co*., 309 NLRB 327 (1992).

The complaint alleges that Dennis Rook, vice president of operations, threatened employees with discharge if they continued their union activities and threatened to sell the Company's trucks and replace the employees with brokers if the employees continued their union activities. The record shows that David Miller and Alex Martinez, employed as drivers for the Respondent, had a conversation on February 19, 2004, with Dennis Rook, admittedly a supervisor within the meaning of the Act. According to Miller, Rock said to them, that "sometimes change is bad especially when people trying to organize . . . . it's not exactly a good idea . . . . that Marsha was going to fire

[3] *Southdown Care Center*, 313 NLRB 1114 (1994).

us off and either sell off or lease off the trucks" (Tr. 88). When Miller replied that it was just a bluff, Rock insisted that it would happen, and added, "you guys aren't married to the company . . . . if you don't like it here, get the fuck out." Martinez' testimony corroborated Miller, and added that Rook also said, that "Marsha is sick of this shit," that she feels someone is "stabbing her in the heart," and that, "if you don't like it, get the hell out of here and find another job." He also recalled Rook saying that Marsha doesn't care how much it will cost, she'll "fire all of you guys, sell the trucks and go with brokers" (Tr. 140).

Rook testified that he had a conversation about the Union with the two employees on February 18, suggesting that they apply for a job at another company if they were unhappy with their pay scale, but Rook denied telling them that Serlin would fire them or sell the trucks. I credit the consistent and plausible testimony of the employees, particularly under the circumstances where Rook admitted a conversation with the employees about the Union. I found nothing in the demeanor of the employee witnesses to suggest that they were not telling the truth. Rook, on the other hand, tried to put a positive spin on his version of the conversation, conceding only the most benign statements he had made to the employees and denying making any threats.

Using coarse words and threatening employees with loss of employment, interferes with the employees' Section 7 rights and would tend to undermine employees' support for the Union. By Rook's own testimony, he suggested to the employees that they should work elsewhere rather than trying to join a union (Tr. 277). Yet the Respondent contends that a supervisor may, during a bull session, tell employees to get jobs elsewhere, citing *Danzansky-Goldberg Memorial Chapels*, 264 NLRB 840, 854 (1982). In that case, however, the Board specifically stated that it would have been a violation if the supervisor's comments were made because the discriminatees were union supporters. "For present purposes it can be assumed that Respondent would have violated Section 8(a)(1) had [the employer] told [the discriminatees] that they, as union supporters, should find jobs elsewhere." According to *Danzansky-Goldberg Memorial Chapels,* his comments were not acceptable bull session comments, but violations of Section 8(a)(1).

The complaint alleges that comments made by Rook to employee Kolff on March 17, violated the Act. Kolff testified that he wanted a day off for a job interview and went to the shipping and receiving office to get permission. Seated there were Rook and Scott Pawlowski, operations manager. They asked what he was doing there so early. Kolff told them that he needed the day off to go for a job interview. During the ensuing conversation with Rook, Kolff recalled that Rook made the following statements (Tr. 43–44): "And Dennis Rook looked at me and he said if you fucking assholes wouldn't try bringing the Union in you would never have to go to a job interview . . . . he said well Marsha never intended on selling the trucks until the union decided they wanted to come back in."

Pawlowski testified that he did not recall Rook saying anything to Kolff about wanting to take a day off, or making any statements about the Union. Rook denied making any of the statements attributed to him by Kolff. Kolff's appearance at the office that day to obtain permission to take leave for a job interview is corroborated by Brian Chrzanowski, Respondent's transportation manager. I generally credit Kolff's testimony for the reasons stated above. I found his testimony more credible and plausible than that of the two supervisors who simply remembered nothing about that conversation. Clearly, the statements conveyed the message that the Respondent was selling the trucks and that the employee was forced to find another job, because of the employees' union support. I accordingly find these coercive statements to be violations of the Act. *Coronet Foods*, 305 NLRB 70 (1991).

Several allegations of Section 8(a)(1) involve the conduct of Brian Chrzanowski, transportation manager, and Rita Zajac, personnel director, when they solicited employees to sign exculpatory affidavits without assurances that no reprisals would be taken against them. In its brief, the Respondent has challenged the supervisory status of Zajac. However, the record shows that the Respondent clearly admitted the status of the two managers as supervisors within the meaning of the Act, first in the answer to the complaint and again in the Respondent's response to unfair labor practice charge (GC Exhs. 1(i), 24). I therefore find that Zajac and Chrzanowski are statutory supervisors. The record shows that on March 16, 2004, Ken Kolff reported for work at 7 p.m. for the night shift. He could not find his dispatch sheet on the board and called his supervisor, Chrzanowski, about the missing dispatch sheet. Chrzanowski told him that there was a yellow envelope in his desk and that he needed to sign it. Chrzanowski then told him where to find the dispatch sheet. During that conversation Kolff requested the following day off work to go for a job interview in Wisconsin. Early in the morning of the following day, March 17, 2004, Kolff informed Chrzanowski again that he needed the day off for a job interview. Chrzanowski stated that he would give his permission, if Kolff signed the affidavit. Kolff replied that he could not sign the affidavit, because he could not agree to certain statements in the affidavit. Chrzanowski assured him that he would make the necessary corrections in the affidavit. In a subsequent conversation in the dispatch office in the morning of the same day, Chrzanowski stated again that Kolff had to sign the affidavit to get his permission for the day off work. Kolff finally agreed and signed the revised affidavit (GC Exhs. 3, 24). In his testimony, Chrzanowski generally agreed with this scenario, but he denied that he told the employee that he had to sign the statement to get the day off. I credit Kolff who generally impressed me as a truthful witness. Moreover, the record is clear that Chrzanowski solicited the employee to sign an affidavit which states, inter alia, "I never heard Brian tell the drivers that if a union got in everyone in the transportation department would be fired" (GC Exh. 3). The record clearly shows that Chrzanowski promised and granted the employee to take a day off work for signing the affidavit. I find that conduct to be coercive. The Respondent also violated the Act by soliciting the employee to sign the affidavit without making the required assurances, such as that no reprisals would be taken against the employee and that his participation would be voluntary. *Johnnie's Poultry*, 146 NLRB 770 (1964).

Respondent's personnel director, Rita Zajac, also solicited the signatures of many employees to sign prepared affidavits which stated in substance that no one in management had threatened to close down the transportation department because of the Union (GC Exh. 24). In this regard the record contains the consistent testimony of drivers Alex Martinez, Hector Roman, and Michael Athern. On various dates, following the March 3 meeting, they were directed by Chrzanowski to report to Zajac. When they went to see her, she asked them to sign the prepared affidavits. But she did not inform them of the purpose for their signatures, nor clearly assure them that their signatures were voluntary and that no reprisals would be taken against them if they refused. Acting in conjunction with Chrzanowski and, in her role as the Respondent's personnel director, Zajac had the appearance of authority and certainly conveyed the impression that upper management sanctioned her actions. Martinez, Roman, and Athern testified that they refused to sign the statement, because they disagreed with it. Martinez poignantly testified, "because that statement is false" (Tr. 145). The employees' testimony was uncontradicted. Zajac was not called to testify. The conduct of an admitted supervisor to solicit employees to sign affidavits dealing with union issues and expecting them to take a position about the Union under oath without advising the employees of their *Johnny Poultry* safeguards violated Section 8(a)(1).

Respondent cites *Allegheny Ludlum Corp*., 333 NLRB 734 (2000), for the proposition that an employer may have a valid reason to interrogate employees about their union membership to prepare a defense at trial. But the Respondent fails to show how these interrogations were in preparation of any trial defense. Moreover, even if Zajac, were not considered a supervisor under the Act, she clearly acted on behalf of the Respondent. The Board has stated: "Apparent authority will result from a manifestation by the employer to a third party, such as an employee, which creates a reasonable basis for the employee to believe that the employer authorized the action of the alleged agent. The determination is whether under the circumstances, the employee would reasonably believe that the alleged agent was acting on behalf of management when he took the action in question." *Quality Mechanical Insulation, Inc*., 340 NLRB 798; *Pan-Olston Co*., 336 NLRB 305 (2001). Zajac manifested her apparent authority and acted in an administrative capacity for the Respondent in processing its hiring, firing, and vacation decisions. Under these circumstances, it is reasonable for the employees to believe that such directive was coming from management and that Zajac was an agent. She provided no valid reason for soliciting their signatures, nor were the employees assured that there would be no reprisals against them. She clearly interfered with the employees' protected Section 7 activity.

Further supporting these findings is the incredible timing of the announcement to close the plant, occurring on March 3, the day of the hearing. While the Respondent asserts that timing is not independently sufficient to establish a violation, I find this timing to be highly probative of the Respondent's intent to intimidate the employees.

The 8(a)(3) Allegations

The complaint charges the Respondent with five violations of the Act. In substance, these violations arise out of the same set of circumstances. In its brief the Respondent states: "There is no dispute that on March 3, [Respondent] announced to its employees that, effective May 15, it intended to permanently subcontract out all transportation department work" (R. Br. 36). On that day, following the preelection hearing, company lawyer, Fred Hayes, appeared alongside Marsha Serlin before the assembled employees in the transportation department and announced that a decision had been made to subcontract the entire transportation department and that the decision was final. According to her testimony, she explained that the costs of running the department had increased and were very high. She also told them that she would try to help them become entrepreneurs and find employment. The timing of the announcement could not be more suspect. Consideration of the action in the context of the Respondent's antiunion animus, in particular the threats by Serlin and Rook to the employees that their union support would have the following consequences, the sale of the trucks, the loss of their jobs and the subcontracting of their work, points to only one motive. It was not coincidental that the Respondent held a management meeting to discuss the discontinuation of the transportation operation on February 20, only 1 day after the Respondent received the union petition, that management made its decision 1 day before the May 3 hearing, and promptly announced its decision to the drivers immediately after the hearing on the same day. Yet the Respondent observes that timing is not alone sufficient to carry the General Counsel's prima facie burden. *St. Vincent Medical Center*, 338 NLRB 888 (2003). The Board there stated: "Thus, while not dispositive, clearly here the proximity in time between the filing of the petition herein and the act of subcontracting is sufficient to satisfy that element of the case in favor of the General Counsel." The employer's knowledge of the employees' union support and the unlawful threats by supervisors that Serlin would subcontract their work, because of their union support, was clearly established on this record. This, coupled with Respondent's unequivocal announcement, makes out the General Counsel's prima facie case of an 8(a)(3) violation. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The Respondent quarrels with the notion that Serlin's announcement would be construed as a discharge or the termination of employment of all the unit employees. Yet here the Respondent not only made the statement informing the drivers that their department would be eliminated as of a date certain, and that the decision was final, but Serlin also offered to work with them to find other employment or become independent contractors. This "would lead a prudent person to believe his tenure had been terminated." *Ridgeway Trucking Co*. 243 NLRB 1048 (1979); *Kolkka Tables & Finnish-American Saunas*, 335 NLRB 844, 846 (2001). Moreover, the Company effectuated that decision by entering into agreements with various subcontractors to perform that work. *Coronet Foods*, 305 NLRB 79, 89 (1991). In the mind of the employer and in the minds of the employees it was a done deal, a fait accompli. The Respondent subsequently cancelled the contracts for other reasons.

The Respondent tried to show that the termination of the transportation department was based upon economic considerations and not motivated by union concerns. Serlin testified that she made her decision on reports from her accounting department and its financial analysis. According to Serlin, the subcontracting cost in 2003 was between $55 and $60 per hour, while the Respondent's costs per driver came to $59.63 per hour, so that it did not make any sense to her at the time to subcontract the work. Serlin claimed that the revised figures for 2004 saw no significant cost increases in subcontracting expenses, but a significant increase in cost per hour for her own trucks to $67.37 per hour, making the decision to subcontract profitable. One reason for the increase, according to the Respondent, was that one of her drivers had a fatal accident that year, which raised the insurance payment. Other factors included rising gasoline prices, and the capacity of subcontractors to haul larger loads in a single trip.

The Respondent's analysis, however, fails to show convincingly that the decision to close its trucking division was based on cost saving measures. The cost analysis, purporting to show that the hourly cost of operation of the department had increased to $67.37, is not reliable as pointed out by the General Counsel. The expenses include such items as depreciation—building, real estate taxes, supervisory salaries and benefits, as well as overtime costs. Yet most of these expenses would not be saved by subcontracting the work. Of the three subcontractors, L.A. Trucking Co., Management Transportation, and Metro Haul, only L.A. Trucking, showing $58 and $65 per hour, appeared to be slightly lower than Respondent's figures for its own hourly costs. The record is not clear and Serlin was unable to explain that the other subcontractors were lower in hourly costs. With respect to Metro Haul, for example, she stated that payment was made per load, and that there was no hourly rate. Furthermore, the record shows that at the same time, the Respondent had subcontracted with Lombardi Trucking, Eno Inc., and KR Drenth Trucking who charged more than the Respondent's hourly rates (GC Exhs. 26–30). The Respondent argues that it used these companies on a limited basis and only for extra business. On balance, I find that the record fails to demonstrate that the Company's average cost through outsourcing would be financially beneficial, especially considering Serlin's testimony that she "won't give up our department" for a dollar or two, and her preference for her "own trucks and her "own name" on those trucks. *W. H. Froh, Inc*., 310 NLRB 384, 387 (1993). I accordingly find that the Respondent failed to show that it would have made the same decision even in the absence of any union considerations. *Wright Line*, supra. The Respondent's actions prevented and discouraged its employees from engaging in activities protected by Section 7 of the Act and discriminated against them in violation of Section 8(a)(3) and (1) of the Act.

The complaint alleges, and the General Counsel argues, that the Respondent unlawfully accelerated the effective date of its subcontracting decision by executing agreements with three brokers, providing for May 3, 2004, as the effective dates for their services. According to the General Counsel, the Respondent effectively changed the termination date of the transportation department to May 3, rather than the previously announced date of May 15, 2004. Each of the contracts with L.A. Trucking Co., Managed Transportation, and Metro Haul expressly provides that the "agreement will be effective May 3, 2003" (GC Exhs. 20–22). The parties executed the contracts on March 24, 2004, approximately a week after the issuance on March 16, 2004, of the Decision and Direction of Election to be held among the drivers (GC Exh. 23). According to the General Counsel, the Respondent accelerated the termination date intentionally in order to prevent the employees from exercising their Section 7 rights to vote in the representation election.

The record does not show why the Respondent agreed to the May 3 date with its brokers, or whether this date was communicated to the drivers, but it is clear that the Respondent cancelled the contracts on April 9, 2004. Moreover, it is not clear and the General Counsel has not shown how the accelerated date would have prevented an election among the drivers any more than the shutdown of the operation 2 weeks later. In either case, the argument remains whether any useful purpose would be served by an election in a unit, which is being abolished. While the record clearly shows the Respondent's unlawful motive in announcing the closure of the department on May 15, the record does not independently show any direct correlation between the accelerated date and the Respondent's motive to interfere with an election. I also agree with the Respondent that the contracts with the brokers did not necessarily or automatically obligate the Respondent to terminate the department on May 3 rather than on May 15, as planned. I accordingly dismiss this allegation.

The complaint alleges that the Respondent constructively caused the termination of its employee Michael Athern, because of his union support. The General Counsel's argument in support of that allegation is fully supported by the record. Athern was one of the drivers employed by the Respondent who was notified on May 3, 2004, by Serlin and her legal representative that his unit in the transportation department would be closed effective May 15, that the decision was final, and that management would help some of the affected employees to find employment. As already articulated, the Respondent's motivation was union related and unlawful. Athern testified that after the meeting on March 3, he immediately looked for another job, stating: "Because we had that meeting and everybody was fired. . . . we weren't going to have a job" (Tr. 247). He found employment with another company and left the Respondent's employ on April 9, 2004. He did not know that the Respondent had rescinded its subcontracting decision on the same day. I find that the Respondent constructively discharged this employee because of his union support. He was one the drivers who had attended union meetings and signed a union authorization card. But for the Respondent's announced closure of the entire department, he would not have looked for a job elsewhere. *Georgia Farm Bureau Mutual Insurance Co.*, 333 NLRB 850, 851 (2001). Gregory [Raegel] Rangel similarly testified that within a week or so after the announcement on March 3 he began to look for a job.

Finally, it is the General Counsel's position that the unfair labor practices are so serious, that traditional remedies such as offers of reinstatement and the posting of a notice are insufficient to remedy the violations and to guarantee a fair election.

This was an all-out assault on the employees' Section 7 rights, according to the General Counsel, where the Respondent's egregarious conduct, including termination of the entire driver unit, threats of terminations, the promise of benefits, coercive interrogations, merit a *Gissel* bargaining order. In certain instances, the Board has determined that a bargaining order is an appropriate remedy for the unfair labor practices of an employer. In *NLRB v. Gissel Packing Co.,* 395 U.S. 575 (1969), the Supreme Court held the duty to bargain can arise without a Board election where an employer undermines majority support for a union through unfair labor practices. While noting that previous Board precedent had already established that a bargaining order is appropriate in exceptional cases where there is pervasive and outrageous conduct, the Court announced it would, "approve the Board's use of the bargaining order in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." Id. The Court explained that in determining the appropriateness of issuing the bargaining order that:

> "such an order on a lesser showing of employer misconduct is appropriate, we should reemphasize, where there is also a showing that at one point the union had a majority . . . the Board can properly take into consideration the extensiveness of an employer's unfair practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future." Id.

Here, the union campaign began in early January 2004 and on January 28, 2004, 14 out of the 18 drivers had signed authorization cards (GC Exhs. 2, 4–13, 17–19). Although the Respondent quarrels with the evidence showing that the unit consisted of 18 employees, the Respondent admitted in its response to unfair labor practice charge, dated March 17, 2004, that currently "there were 18 employees for whom the Union petitioned" (GC Exh. 24). The Decision and Direction of Election, as well as Serlin's testimony during that hearing, corroborate that the unit consisted of 18 full-time drivers (GC Exh. 23). The Respondent has not contested that number, nor the validity of the 14 signed union cards. Indeed the Respondent subsequently referred to a counter petition signed by 13 individuals in the 18-member unit. The record clearly shows that the Union had achieved majority status among the employees in the bargaining unit. Under these circumstances, the test is whether the Respondent's unfair labor practices have a tendency to undermine the majority support for the Union and impede the election process.

The Respondent, citing *Abbey's Transportation Services,* 284 NLRB 698 (1987), argues that the General Counsel failed to rely on the payroll records as a means to demonstrate unit size. But that case stands for the proposition that the General Counsel *may* rather than *must*, use the payroll records. The Respondent's reliance on the scenario in *Be-Lo Stores v. NLRB*, 126 F.3d 268, 277 (4th Cir. 1997), is also misplaced, as the General Counsel has not relied upon information or an "Exelsior" list he knew to be incorrect. The Respondent argues that a Gissel bargaining order is an extreme remedy, "*Gissel* route is to be used only in circumstances where it is unlikely that the atmosphere can be cleansed by traditional remedies." *Aqua Cool*, 332 NLRB 95 (2000).

The Respondent's antiunion campaign began on February 18, as soon as the Union filed the petition. Serlin, the Company's owner and chief executive, immediately confronted the main union supporter, coercively interrogating him about the identity of the person who had called the Union and telling him to convince the particular employee to disavow the Union and get rid of it, or she had no choice but do what she had to do. In abusive language, she told another employee that she knew about the signed union cards and that no union will tell her how to run her business. Other high-ranking company officials employed similar coercive tactics and threats if the employees continued their union activities. In no uncertain terms employees were told that they would be fired, that the trucks would be sold, and brokers would do their work. Given the consistently crude and disparaging language used by the Respondent to express its distaste for the Union to its employees, the threats to shutdown the operation, the intimidation, and interference with the employees' Section 7 rights, and in particular the swift and all-out attack against the unit of employees by subcontracting its function and abolishing the entire unit, a *Gissel* bargaining order is appropriate. The discharge of an entire bargaining unit is a hallmark violation, as is the constructive discharge of an employee. Where hallmark violations exist, a bargaining order is an appropriate remedy to cleanse the long-term coercive effects. *Grass Valley Grocery Outlet*, 332 NLRB 1449 (2000); *Allied General Services*, 329 NLRB 568 (1999). In *Allied General Services*, the employer, similar to United Scrap Metal, discharged the entire bargaining unit because of their union activity.

The Respondent, relying on *Pyramid Management Group*, 318 NLRB 607 (1995), contends that discharges do not always require a *Gissel* bargaining order. There, unlike here the suspensions and discharges did not directly affect a significant portion of the 69-member unit. In *Phillips Industries,* 295 NLRB 717 (1989), the Board was willing to overlook two hallmark violations based upon the size of the unit. *Hospital Shared Services*, 330 NLRB 317 (1999), is a case where a bargaining order was not issued, because the threats were not the same as a plant closing threat made by the employer. In *Cardinal Home Products*, 338 NLRB 333 (2003), no bargaining order was issued despite two hallmark violations. In that case the Board found that the unfair labor practices did not occur on a unit-wide basis, stating: "Although the Respondent's unfair labor practices in this case were serious, the record shows that they did not impact a significant portion of the bargaining unit, and thus, they are not likely to have so lasting an effect that traditional remedies would be inadequate to ensure a fair rerun election." The Respondent also cites *Cassis Management Corp*., 323 NLRB 456 (1997), to illustrate that a *Gissel* order is an exceptional remedy. The Board stated: "Discharge of an entire bargaining unit is the ultimate retaliation for union activity, the final assault on the employment relationship." In *Highland Plastics, Inc.,* 256 NLRB 146 (1981), cited by the Respondent for the proposition that the announcement to close the plant is not enough, the Board held that a threat of loss of employment, discharge of union adherents, and the threat of plant

closure are likely to have a lasting inhibitive effect and are considered hallmark violations, which support the issuance of a bargaining order.

Respondent's series of unfair labor practices reflects a concentrated and persistent effort to undermine the employees' support for the Union. The damage to the free exercise of Section 7 rights resulting from such a pervasive series of unfair labor practices cannot be remedied by traditional remedies. Although Respondent has rescinded the mass discharge of employees, the coercive effect of the action is by no means eliminated. On March 26, Gregory [Raegel] Rangel a driver in the unit, began to solicit the other drivers to oppose the Union and was able to collect 13 signatures for his antiunion petition. Eight of the employees who signed the petition had earlier signed union authorization cards. This shows that they had changed their sentiment and proves that the Respondent's rescission of the contracts had no ameliorating effect among the drivers. The Respondent's reliance upon two recent cases where the respondents had recalled the laid-off employees, is misplaced. *Desert Aggregates*, 340 NLRB 289 (2003); *Master Form Tool Co.,* 327 NLRB 1071 (1999). Here it is clear that the Respondent's actions undermined majority strength, which would impede the election processes.

A more classic scenario—showing the most serious and typical hallmark violations to subdue a union campaign—in support of a bargaining order can hardly be imagined. I have no difficulty in finding that the Respondent violated Section 8(a)(1) and (3) of the Act and that an appropriate remedy include a bargaining order.

CONCLUSIONS OF LAW

1. The Respondent, United Scrap Metal, Inc., is an employer engaged in commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Teamsters Local Union No. 731, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3 The Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct.

(a) Coercively interrogating employees about the Union.

(b) Instructing employees to convince other employees not to engage in union activities.

(c) Threatening employees with discharge, with job loss, with unspecified reprisals, because of their union activities.

(d) Creating the impression among employees that their union activities were under surveillance.

(e) Coercively soliciting employees to sign affidavits stating that they had not heard any threats from the Respondent.

(f) Promising to and granting an employee a day off work for signing such affidavit.

(g) Threatening to sell its trucks and replace its employees with brokers if they continued their union activities, and informing employees that it was selling its trucks, because of their union support.

(h) Threatening employees that selecting the Union as their bargaining representative would be futile.

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

(a) Announcing that it was subcontracting all of its unit work to brokers effective May 15, 2004.

(b) Discharging all of its unit employees effective May 15, 2004.

(c) Subcontracting all its unit work to brokers effective May 15, 2004.

(d) Constructively discharging its employee Michael Athern.

5. A *Gissel* bargaining order is an appropriate and necessary remedy in this case.

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

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent caused the discharge of Michael Athern, the Respondent must be ordered to offer him immediate and full reinstatement to his former position of employment and make him whole for any loss of wages and other benefits he may have suffered by reason of Respondent's discrimination against him in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Having found that the Respondent announced the subcontracting of the unit work to brokers, subcontracted the work and discharged the unit employees, a cease and desist order is appropriate. A reinstatement order and make whole remedy is not warranted, because the Respondent rescinded its actions. Having found that a bargaining order is appropriate, the Respondent must be ordered to recognize the Union and, on request, bargain collectively with the Union as the exclusive bargaining representative of the employees in the Unit.

[Recommended Order omitted from publication.]