State College Electrical & Mechanical, Inc., d/b/a Allied Mechanical & Electrical Contractors, a subsidiary of S&A Custom Built Homes, Inc. and Berrena's Mechanical Services, LLC, a Single Employer *and* International Brotherhood of Electrical Workers, Local Union No. 5, AFL–CIO, CLC. Case 6–CA–34619

November 30, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On July 7, 2006, Administrative Law Judge John T. Clark issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The 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,[1] and conclusions as modified, and to adopt the recommended Order as modified below.

For the reasons stated by the judge, we find that the Respondent violated Section 8(a)(3) and (1) of the Act by failing and refusing to hire applicants David W. Good, Bruce J. Cogan, and Scott M. Sweeney. Contrary to the judge, however, we find that the record does not establish that the Respondent also unlawfully refused to consider Good, Cogan, and Sweeney for hire.

Under *FES*, 331 NLRB 9, 15 (2000), enfd. 301 F.3d 83 (3d Cir. 2002), in order to establish a refusal to consider violation, the General Counsel has the burden of proving that: (1) the respondent excluded the applicants from the hiring process; and (2) antiunion animus contributed to that decision. Once this is established, the burden shifts to the respondent to show that it would not have considered the applicants even in the absence of their union activity or affiliation. "[I]n determining whether an employer has excluded applicants from the hiring process, the Board considers all of the surrounding circumstances." *C&K Insulation, Inc.*, 347 NLRB No. 71, slip op. at 1 (2006).

Here, we find that the General Counsel failed to satisfy the initial prong of the *FES* burden by establishing that Cook, Cogan, and Sweeney were excluded from the hiring process. To the contrary, after each of the three submitted an application to the Respondent, he was contacted to schedule an interview. Thereafter, each discriminatee was interviewed at length by the Respondent, and each was administered a test to determine his electrician skills. Considering all of the circumstances, there is insufficient evidence to conclude that Good, Cogan, and Sweeney were excluded from the hiring process.[2]

To the extent that the judge found a refusal-to-consider violation based on language in the standard rejection letter that the Respondent mailed the discriminatees, we disagree. Nonselected applicants, including the discriminatees, were routinely sent letters by the Respondent stating that "I will keep your resume on file for one year and will contact you if an appropriate career opportunity becomes available." There is no record evidence as to what, if any, consideration such nonselected applicants received, nor evidence that the discriminatees were treated differently than other applicants sent a rejection letter.[3]

Accordingly, we reverse the judge and dismiss the refusal-to-consider allegation.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, State College Electrical & Mechanical, Inc., d/b/a Allied Mechanical & Electrical Contractors, a subsidiary of S&A Custom Built Homes, Inc., and Berrena's Mechanical Services, LLC, a single employer, State College, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

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

[2] Compare *C&K Insulation, Inc.*, supra, slip op. at 1–2 (finding a refusal-to-consider violation where the respondent accepted applications from overt union applicants but also stated it was nonunion, provided conflicting information on the availability of work, failed to interview the union applicants, made subsequent statements indicating that it had no intention of considering them and, finally, hired nonunion applicants after directing them to backdate their applications).

Our finding that the Respondent discriminatorily refused to hire Good, Cogan, and Sweeney does not require that we also find a refusal-to-consider violation. The two unfair labor practices are analytically distinct and lead to different remedies.

[3] Chairman Battista agrees with his colleagues' dismissal of the refusal-to-consider allegation and with the basis therefore. In addition, as to the judge's finding of a violation based on language in the rejection letter sent Good, Cogan, and Sweeney, the Chairman notes that this theory of violation was not litigated at the hearing and, indeed, was first argued by the General Counsel in his posthearing brief to the judge. In these circumstances, the Chairman finds that this theory of violation is not even properly before the Board.

"(a) Failing and refusing to hire job applicants on the basis of their union affiliation or other protected activity."

2. Substitute the following for paragraph 2(c).

"(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to hire David W. Good, Bruce J. Cogan, and Scott M. Sweeney, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful refusal to hire will not be used against them in any way."

3. Substitute the attached notice for that of the 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 fail or refuse to hire job applicants on the basis of their union affiliation or other protected activity.

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

WE WILL, within 14 days from the date of this Order, offer immediate employment to David W. Good, Bruce J. Cogan, and Scott M. Sweeney to the positions for which they applied or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges.

WE WILL make David W. Good, Bruce J. Cogan, and Scott M. Sweeney whole for any loss of earnings and other benefits suffered as a result of our unlawful failure and refusal to hire them, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful failure and refusal to hire David W. Good, Bruce J. Cogan, and Scott M. Sweeney and, WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the unlawful failure and refusal to hire them will not be used against them in any way.

STATE COLLEGE ELECTRICAL & MECHANICAL, INC., D/B/A ALLIED MECHANICAL & ELECTRICAL CONTRACTORS, A SUBSIDIARY OF S&A CUSTOM BUILT HOMES, INC. AND BERRENA'S MECHANICAL SERVICES, LLC, A SINGLE EMPLOYER

David L. Shepley, Esq., for the General Counsel.
Thomas R. Davies, Esq. (Harmon & Davies, P.C.), of Lancaster, Pennsylvania, for the Respondent.
Joshua M. Bloom, Esq. (Koerner, Colarusso and Bloom, PA), of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN T. CLARK, Administrative Law Judge. This case was tried in State College, Pennsylvania, on February 28 and March 1, 2006. The charge was filed April 11, and amended on May 27, 2005, by the International Brotherhood of Electrical Workers, Local Union No. 5, AFL–CIO, CLC (the Charging Party or Union). The complaint issued September 14, 2005. The complaint alleges that State College Electrical & Mechanical, Inc., d/b/a Allied Mechanical & Electrical Contractors, a subsidiary of S&A Custom Built Homes, Inc., and Berrena's Mechanical Services, LLC, a single employer (collectively called the Respondent), violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) when it refused to consider for hire and refused to hire several applicants for employment.

The Respondent admits that the business entities identified above are a single employer within the meaning of the Act. At the hearing the Respondent amended its answer to also admit that Sean Torongeau (his last name is spelled incorrectly in the complaint) is a supervisor and agent of Respondent Allied within the meaning of Section 2(11) and (13) of the Act. The parties stipulated that Respondent Allied's business is more accurately described as that of an "electrical and mechanical contractor," as set forth in the Respondent's answer, rather than the description contained in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, my credibility determinations based on the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole and, after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Allied, a Pennsylvania corporation, with an office and place of business in State College, Pennsylvania (Respondent Allied's facility), has been engaged in the construction business as an electrical and mechanical contractor.

At all material times, Respondent Berrena's, a Pennsylvania limited liability company, with an office and place of business in State College, Pennsylvania (Respondent Berrena's facility), has been engaged as a mechanical contractor in the nonretail

business of installing and servicing heating and air conditioning systems.

At all material times, Respondent Allied and Respondent Berrena's have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and sales to each other; have interchanged personnel with each other and have held themselves out to the public as a single-integrated business enterprise.

Based on its operations described above, Respondent Allied and Respondent Berrena's have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise.

Based on its operations described above, Respondent Allied and Respondent Berrena's constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

During the 12-month period ending March 31, 2005, Respondent Allied in conducting its business operations described above, purchased and received at its State College, Pennsylvania facility goods and materials valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania.

During the 12-month period ending March 31, 2005, Respondent Berrena's in conducting its business operations described above, purchased and received at its State College, Pennsylvania facility goods and materials valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania.

The Respondent admits and I find, that Respondent Allied is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Respondent Berrena's is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

Although the Respondent admits that State College Electrical & Mechanical, Inc., d/b/a Allied Mechanical & Electrical Contractors, a subsidiary of S&A Custom Built Homes, Inc., and Berrena's Mechanical Services, LLC, are a single employer within the meaning of the Act, the hiring practices and procedures of Berrena's are not in issue.

State College Electrical & Mechanical, Inc., d/b/a Allied Mechanical & Electrical Contractors, a subsidiary of S&A Custom Built Homes, Inc. (the Respondent), is an electrical, mechanical, and plumbing contractor with its headquarters in State College, Pennsylvania. The Respondent performs commercial and residential work within the Commonwealth of Pennsylvania. A substantial portion of its work is done pursuant to the prevailing wage laws of the Commonwealth.

Sean Torongeau, has been employed by the Respondent since about June 2002. From December 2004, through the time of the hearing, he was the Respondent's field operations manager. In that capacity he was responsible for conducting the initial applicant interview. He estimates that he has interviewed between 130 to 150 candidates for employment as electricians, plumbers, laborers, and pipefitters, during his tenure as field operations manager. Torongeau has the authority to reject applicants, which is what he did with David W. Good, Bruce J. Cogan, and Scott M. Sweeney, the alleged discriminatees.

Although Torongeau is not involved in soliciting employment applications, after he reviews the applications, he requests the human resources department to schedule the interviews. At the outset of the interview Torongeau may administer a written examination to test the applicant's job-related knowledge. Generally, the more experience the applicant claims, the more likely it is that Torongeau will administer the test. There is no minimal passing score and the test results, standing alone, do not determine an applicant's fate. When conducting the interview Torongeau does not use a written form containing the same questions for each applicant. Although he jots notes on the application form he neither records the applicant's answers, nor his thoughts and impressions regarding the applicant, in a narrative form. This interviewing technique may best be described as informal and nonstructured. Indeed, it appears that the Respondent's entire hiring process is informal. The record lacks any documentary evidence concerning the policies or procedures governing the hiring process. At the conclusion of the interview process Torongeau returns the rejected applications to the human resources department. Maryrose DeGroot, the department manager, mails the rejected applicant a pro forma rejection letter stating that their resume will remain on file for 1-year and that they will be contacted if an appropriate career opportunity becomes available.

The Respondent is a nonunion contractor. Neither Torongeau, DeGroot, nor Vice President Scott Good (no relation to alleged discriminatee David W. Good), all of whom testified, could attest that person associated with the International Brotherhood of Electrical Workers Local 5 (the Charging Party), was ever employed by the Respondent.

The alleged discriminatees are union members, and worked together at their last job. Discriminatee Good had been unemployed for 6 months in November 2004. Because there were no jobs available through the union hiring hall Good asked the union business agent if he could try to get work with nonunion employers. He received permission and was told the names of a few electrical contractors, including the Respondent, in the State College area who might be hiring. In late January 2005, Good saw Cogan while they were signing the out-of-work referral book at the hiring hall. Good told Cogan that the Respondent was hiring electricians. Cogan also applied for work with the Respondent after getting permission from the business agent. In February 2005, Sweeney had been laid off for almost a year. He also heard from Cogan that the Respondent was hiring and went to the Respondent's office to apply for work.

B. The Interviews

1. David W. Good

Good has over 20 years experience as an electrician. He has been in supervisory positions for a total of approximately 8 of those years. Good is experienced in commercial, industrial, and residential electrical work as well as electrical construction work.

Good mailed a job application and resume to the Respondent in November 2004. Neither document indicated he was a member of the Union. An interview with Torongeau was scheduled for December 14, at the Respondent's headquarters. On arrival Torongeau gave Good the electrician's test. Before he finished the test Torongeau asked Good to join him in his office for the interview. Torongeau graded the test in Good's presence and told him that he had three incorrect answers that were not a problem. Torongeau told Good that he was being interviewed for a permanent position.

Torongeau reviewed Good's application and resume. Torongeau asked Good the distance from his residence to State College. Good replied that Davidsville was about an hour and a half drive from State College. Torongeau noted "1.5" on Good's application and expressed concern that the distance might be an impediment to Good's timely arrival at work. Good assured Torongeau that he was use to "traveling a lot" and that he had always been punctual and that, if necessary, he would relocate, as he had also done in the past for work.

Good asked about wage rates and if the Respondent did prevailing wage work. Torongeau said that it did, but that there was also a shop wage rate based on qualifications. Torongeau inquired about the wage rates at Good's most recent jobs. Good explained that his most recent previous employers had paid contractually-negotiated union wage rates. Good indicated it was "Local 5" (the Charging Party) that had negotiated the rates. Torongeau noted "Local 5" and "rate Union" on the application. At that point, Good testified that he was uncertain exactly what Torongeau said, but that he left the room for approximately 10 or 15 minutes.

Torongeau returned and said that he could not locate the person he was seeking and asked Good if he had any additional questions. Good asked about career advancement opportunities with the Respondent. Torongeau responded that the Respondent promoted from within and he volunteered there were no foreman jobs available. Good asked one last question about the tool policy and after answering Torongeau said that he had to talk to somebody else and that they would get back to him. Good testified that before Torongeau left the room that they were having a "pretty good conversation" but that on his return "it seemed, it appeared that it was—it was over and, you know, if I had any questions, that was—that would be it for this interview." (Tr. 118.) The only contact that Good had with the Respondent thereafter was when he received his rejection letter dated December 30, 2004.

2. Bruce J. Cogan

Cogan filed a job application at the Respondent's office on January 31, 2005, and his interview was on February 22. Cogan, who has been a member of the Union since 1987, did not mention that fact on his application. Immediately on entering the office Cogan was given the electrician's test. After Cogan completed the test, Torongeau began the interview.

Torongeau reviewed Cogan's work history. Cogan explained that the reason he worked for a lot of contractors was because he had been referred to the jobs by the union hiring hall and the jobs were of a short duration. Torongeau claimed that he was unaware of how a union hiring hall worked and Cogan explained the process. Torongeau told Cogan that the Respondent was a nonunion contractor. Cogan responded that he had been unemployed for 9 months, his unemployment benefits were nearly exhausted, his children attended college, and he was exploring every opportunity. Although the timeline is unclear, I believe Cogan's testimony supports a finding that at this point in the interview Torongeau, without explanation, leaves the cubical. (Tr. 145–147.)

Torongeau returned in approximately 5 minutes and said that Cogan's score on the test was "minus 3," and with that score he could possibly be a candidate for prevailing rate work. He asked Cogan if he was willing to travel. Cogan said that he was and asked if the Respondent would pay expenses. Torongeau replied that it would not pay expenses on prevailing wage work. Torongeau asked if Cogan wanted to be a foreman. Cogan stated that he would accept any position. At the end of the interview Torongeau told Cogan that he had five more interviews that day and that he would be in touch. Cogan testified that the interview lasted approximately a half hour. Torongeau, in response to Cogan's phone call on March 10, said "they were getting close to ending their hiring." On March 31, Cogan received a rejection letter stating that his resume would be kept on file for a year, it was the last contact he had with the Respondent.

3. Scott M. Sweeney

Sweeney, an electrician and a member of the Union for 15 years, was unemployed since April 2004. On February 22, 2005, he applied for work at the Respondent's State College headquarters. While he was filling out the application Torongeau entered and asked if he was applying for an electrician position. Sweeney replied in the affirmative and Torongeau asked if he had time for the interview. Sweeney, who had arranged another interview for that day said he did not, but agreed to return the next morning.

Sweeney indicated on the application that he had been terminated by a previous employer because he "would not take on call pager every other week." Torongeau began the interview by reviewing Sweeney's employment history. He asked Sweeney about the termination. Sweeney indicated that the termination occurred around 1997 or 1998, and that he had worked for that employer since 1990 or 1991. The termination happened after he discovered that the collective-bargaining agreement did not require him to carry a pager and be on call every other weekend. When he told the employer that he was not being paid to be on call every other weekend because it interfered with his private life, he was terminated.

Torongeau asked Sweeney why his previous employment contained several jobs of short duration. Sweeney replied that those jobs were referrals from "Local 5, IBEW." After asking Sweeney to confirm that he had obtained jobs through the Un-

ion, he asked some additional questions about the referral system. Sweeney testified that after he mentioned the Union Torongeau "more or less seemed like he was short, and didn't want to proceed with the interview that much at all." Before leaving Sweeney asked when he could expect to hear anything and Torongeau replied that his application would be kept on file for a year. Sweeney stated that the interview lasted only about 5 minutes after he mentioned the Union and that the interview lasted a total of about 30 minutes. The only contact Sweeney had with the Respondent thereafter was when he received his rejection letter dated March 31, 2005.

4. Brett Hayes

Torongeau interviewed Hayes for an electrician position on January 17, 2005, over a month after Good's interview. There is no evidence that Hayes was ever affiliated with a labor organization. Counsel for the General Counsel subpoenaed Hayes in order to juxtapose his treatment as an applicant with the treatment received by the union members.

Hayes was also given the electrician's test before the interview. Before he finished the test, Torongeau summoned him to his office for the interview. Torongeau graded the incomplete test and told Hayes that his score was a minus 6. Hayes said that he was unfamiliar with "a lot of the questions that were on the test." Torongeau assured him that his test score was not an issue.

Torongeau testified that Hayes' application contained "$50,000 to $60,000" as the "desired salary rate." Notwithstanding this written declaration, Torongeau asked Hayes how much money he wanted. Hayes said he "would like $20 an hour." Torongeau demurred, claiming that the Respondent would not be able to pay him that amount to start. Hayes replied that "he wouldn't be able to afford to work for him." Torongeau said that the Respondent had "a lot of prevailing wage jobs, which would offset the cost." Torongeau then took him back "to where they had a board, and showed me all of their jobs that were prevailing wage work." Torongeau estimated that there was about 2 years of prevailing wage work in the State College area.

Torongeau asked Hayes how long it took to drive to State College from his home. Hayes said "an hour and 15 minutes." Torongeau asked if that would be a problem. Hayes replied in the negative, because for years he had been traveling long distances to work.

Hayes testified that towards the end of the 15–minute interview Torongeau left the room with Hayes' application and test. Hayes believes that Torongeau went to his boss "Eric." When he returned Torongeau offered Hayes a nonprevailing wage job at $15 an hour. Hayes refused, claiming that the money would not be worth the distance he would have to drive. Torongeau immediately offered him a prevailing wage job starting the next day. Hayes agreed, and worked as an electrician until he was discharged by Torongeau on April 14, for not being a "good fit." Hayes also testified that at no time during his employment with the Respondent was he asked to use, or share his expertise in automated temperature control—a factor that Torongeau claimed was "relevant" to his employment.

III. DISCUSSION

The test for an unlawful refusal-to-hire violation is articulated in *FES,* 331 NLRB 9, 12 (2000), enfd. 301 F.3d 83 (3d Cir. 2002). The General Counsel must prove: (1) the Respondent was hiring or had concrete plans to hire at the time of the alleged unlawful conduct; (2) the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire or that the requirements were applied as a pretext for discrimination; and (3) antiunion animus contributed to the decision not to hire the applicants. Once this is established, the burden shifts to the Respondent to show that it would not have hired the applicants even in the absence of their union affiliation.

The Respondent admits that it was hiring and that the alleged discriminatees had the experience or training relevant to the announced or generally known requirements of the positions for hire. The Respondent argues that there is "not even a hint of antiunion animus" contained in the record. I disagree and find that the record supports a finding that counsel for the General Counsel has met his burden of demonstrating that antiunion animus was a motive for the Respondent's actions.

"It is well established that a discriminatory motive may be inferred from circumstantial evidence and the record as a whole, and that direct evidence of union animus is not required." *Tubular Corp. of America,* 337 NLRB 99 (2001) (citations omitted). The Board has also found that writing "Union" on applications for employment supports a finding of union animus. *Americlean,* 335 NLRB 1052, 1058 (2001). Torongeau wrote on Good's application, "Local #5," "*Rate union*," "Rated work," and "3 year union" (within a circle). Cogan's application has "Local 5" above "87," the year Cogan joined the Union. Good and Sweeney testified that Torongeau's interest in their individual interviews waned when he learned that they were associated with the Union. Torongeau, who was present during the entire hearing, did not credibly refute their testimony.

The more favorable treatment accorded Hayes, who was not affiliated with the Union, compared with the treatment given to the alleged discriminatees also indicates animus. Although Hayes was discharged by the Respondent, I found him to be a credible witness, who did not appear to bear any ill will toward the Respondent. The Respondent does not challenge or even address Hayes' testimony. Hayes' interview occurred on January 17, 2005, between Good's interview on December 14, 2004, and Cogan's on February 22, 2005. Like the alleged discriminatees Hayes was interviewed for an electrician position, unlike the alleged discriminatees, he was hired as an electrician.

Hayes requested a salary between $50,000 and $60,000 a year on his application. This annual amount is similar to that which Good requested when he wrote "$25.00 ap[r]ox." on his application. Neither Cogan nor Sweeney listed a dollar amount. Immediately after telling Hayes that he got a "minus 6" on the test (a lower score than any of the alleged discriminatees), Torongeau assured Hayes that his score was not a problem, and asked him "what type of money [he] was looking for." Thus, Torongeau initiated the salary negotiations early in the interview. Discussing wages, at a point in the interview that

Torongeau determined was premature, was one of the numerous reasons he offered for refusing to hire the alleged discriminatees.

It is also apparent from his interview with Hayes that, when it suited him, Torongeau was not reluctant to negotiate with an applicant over wages. There is no explanation why Torongeau asked Hayes his salary requirements when they were clearly written on the application. In any case Hayes, in response to Torongeau's question, replies, $20 an hour. Torongeau claims that he cannot pay that much, and Hayes states that he probably would not be interested because he would not be able to afford to work for the Respondent. Torongeau replies that he has a lot of prevailing wage work and that work would "offset that cost." Torongeau takes Hayes to a back room and shows him evidence that the Respondent has prevailing wage rate jobs for years to come. Regarding Good, whose application listed the same approximate salary as Hayes, Torongeau stated that the "desired salary," which he variously described as either the first or second reason he did not hire Good, was too high, and therefore not addressed directly.

Cogan listed "prevailing rate" as his desired salary and Torongeau testified that was the reason that he did not make him an offer. Torongeau explained that he was concerned that Cogan would not be happy with a less than prevailing rate job and that he could not offer him a prevailing rate job when he had nonprevailing rate work. None of Torongeau's "thinking" was ever conveyed to Cogan. Thus, Torongeau's treatment with respect to Hayes' salary is inconsistent with that accorded applicants who he knew were affiliated with the Union.

I find, based on Hayes' undisputed credited testimony that he, and the alleged discriminatees, were similarly situated applicants. Although this issue is not raised by the Respondent in brief, there is testimony by Torongeau suggesting that Hayes was hired at the prevailing wage rate because of his expertise in automated temperature control work. It is undisputed that Hayes applied for a basic electrician position, just like the alleged discriminatees, received the same test as the alleged discriminatees, but unlike the alleged discriminatees, Hayes was hired by the Respondent as a basic electrician. Hayes credibly testified, both on direct and cross–examination, that he was only asked to perform basic electrical work and was never asked by the Respondent to apply, or share, his specialized knowledge.

Torongeau, who did not supervise Hayes, claims that he "showed up at the job" one day because he wanted to talk to Hayes for two reasons. The first was to ask Hayes when he was moving to State College (well after the interview, Hayes mentioned to Torongeau that he was considering moving to State College). The second was to tell Hayes that he had information that Hayes could not do the work he said he could and that his work was sloppy. Although the irony of Torongeau's alleged priorities, i.e., ensuring that Hayes—who he claims is incompetent—has a shorter commute, is not lost on me, I totally discredit Torongeau's testimony. I also specifically reject any implication that Hayes was discharged for his lack of special skills. Hayes testified without refutation that his termination notice, given to him by Torongeau, merely stated that he was not a "goof [sic] fit," and that he was never given a more specific reason for his discharge. Torongeau's testimony was not supported by documentation, or the testimony of other witnesses, such as Hayes' supervisor or coworkers. Accordingly, to the extent that the Respondent may be implying that Hayes' situation was not similar to that of the discriminatees I reject that implication. Moreover, I totally discredit Torongeau's testimony that Hayes' specialized skills were a factor in his decision to hire Hayes.

Hayes and Good both reside over an hour from State College. When Torongeau asked them if the commute would be a problem they both said "no" and gave the identical reason—that they were use to driving long distances to work. Good, unlike Hayes, also offered as how he would be willing to relocate to State College. Hayes was hired and Good was not. In the Respondent's position statement Torongeau identifies distance from State College as the sole reason Good was not hired (GC Exh. 2).

The Respondent offers no explanation for the different treatment accorded Hayes and the applicants who were known to be affiliated with the Union. "One indicium of unlawful motivation is treatment of union supporters differently than has been the treatment accorded ordinarily to other employees." *Clinton Electronics Corp.,* 332 NLRB 479, 491 (2000).

Notwithstanding that the sole reason advanced by the Respondent in its position statement for its failure to hire Good was the location of his residence, the first reason Torongeau stated at the hearing was that Good's previous job was not in a "fast pace construction environment" where people have to work "really hard and fast." When asked directly for the reason or reasons why he did not offer Good a job, he stated that the distance was "one of the first reasons." He saw that as "being a problem right off the bat," "something that I kind of watch." He then mentioned salary as the second reason. The next reason was, once again, the pace. Torongeau finally concluded that "the big thing would be the pay." The second day of the hearing, after his recollection had been refreshed and he was testifying on direct examination, he added Good's interested in promotional opportunities and that Good was "timid."

Additionally, I note that none of the reasons offered by Torongeau either originally, or as afterthoughts, are memorialized on the applications. Aside from the "1.5" on Good's application, there are no clear cut, specific, written statements reflecting the reason why Torongeau found these applicants unsuitable for employment—except for the notations indicating their union affiliation.

Torongeau indicated in the position statement that Cogan desired to be paid the "prevailing rate" and that he seemed in a hurry to end the interview. During the hearing Torongeau added that because Cogan had previously supervised 70 employees he would not be a "fast electrician." At the hearing Torongeau never mentioned "being in a hurry" with regard to Cogan. He did attribute that conduct, erroneously, to Sweeney.

On the second day of the hearing, after Torongeau had heard the alleged discriminatees testify, he provided additional reasons for his decision to reject them. Thus, he claimed that after hearing Sweeney testify that he (Torongeau) was "in a hurry" to end the interview, he felt that it was Sweeney who "was in a hurry to get out of there, with that interview, not me" (Tr. 212).

Sweeney never stated or implied that Torongeau was "in a hurry." He testified that after he (Sweeney) made known his affiliation with "Local 5, IBEW," Torongeau was "short, and didn't want to proceed with the interview that much at all." Short, used in this context, means rude or abrupt. Neither Sweeney nor Cogan said "hurry" in their testimony. Counsel for the General Counsel opines that Torongeau got the "script" mixed up and wrongly attributed the reason he gave for not hiring Cogan in the position statement, to Sweeney. Be that as it may, at the very least, such testimonial aberrations further detract from Torongeau's credibility.

Additionally, Torongeau failed to mention Sweeney's test score (minus 5) as a reason for his rejection—the second of only two reasons that he initially gave for failing to hire Sweeney (GC Exh. 2 at 2). On day 2 of the hearing Torongeau explained that the reason he believed that Sweeney was not interested in the job was because Sweeney immediately began talking about how much he wanted to be paid. Not only did Torongeau remember the topic, but he remembered the exact timeframe—the first couple of minutes—and the reason he remembered it was because it is "a rare thing." Although not, apparently, such a rare occurrence that it was worth noting on Sweeney's application, or mentioning in the Respondent's position statement, or offering as a reason when asked by the General Counsel and counsel for the Charging Party. Sweeney did not testify that anything was said about wages.

Significantly, it was only after the foregoing "detail," that Torongeau even made an oblique reference to the pager incident. He testified that it "wasn't so much that we are on call" but that "we hire people that, you know, will go the extra mile, things like that." That statement is in marked contrast to the statement contained in the Respondent's position statement—"Sweeney was not further considered because of his previous termination for refusing to be on call."

An employer may have more than one reason for its actions. When, however, it vacillates in offering rational and consistent accounts for those actions, the contention that its actions were undertaken for a purely lawful purpose is severely weakened. *Toma Metal Inc.,* 342 NLRB 787, 799 (2004). Certainly that is the case here.

Cogan stated that Torongeau spoke with him about working for the Respondent on projects in Maryland. Torongeau denies making that statement and claims that he was unaware that the Respondent had projects in Maryland. Torongeau's testimony was corroborated by Scott Good, the Respondent's vice president. I find that Cogan was confused and I credit Torongeau's denial, but only because of Scott Good's corroboration. Regarding all other incidents of conflicting testimony I find the testimony of the alleged discriminatees to be more trustworthy than that of Torongeau.

Torongeau was a reluctant witness, who was also in the unenviable position of trying to justify his actions as the decider, before both the Respondent's vice president, and its human resources manager, who were present for the entire hearing. Even so, Torongeau lacked the testimonial demeanor of a sincere and truthful person who was attempting to honestly answer all questions to the best of his ability. In addition to his demeanor, much of his testimony was evasive, obfuscatory, disingenuous, implausible and riddled with inconsistencies too numerous to mention.

At the very outset of his examination as an adverse witness, Torongeau refused to admit that the alleged discriminatees were qualified electricians. Notwithstanding the fact that the Respondent did not contend otherwise in its position statement, the substance of which was provided by Torongeau, and admits their obvious qualifications in its brief.

Torongeau testified that he had "interviewed people for years and years and years." When asked to acknowledge that the information contained in Cogan's application indicated, he was a qualified electrician he gave the following nonresponsive answer: "I wish it was that easy to hire people," "I can't say that that's the case," "it isn't easy to hire people." He then talked about comparing 20 applications and selecting the "best fit overall," "some that you like more than others," "I may have interviewed several other people." (Tr. 23–24.) Later, the Respondent presented the application of Daniel Dudurich (R. Exh. 1). Dudurich was interviewed on the same date as Cogan. Dudurich worked for another electrical company. Unlike Cogan there is no evidence that Dudurich was ever affiliated with any union. Dudurich, as well as three other employees from the same employer, began work for the Respondent on March 14. Torongeau testified that he remembered that each individual had an excellent interview. To further obfuscate Torongeau's actions the Respondent contends: "[w]ith respect to specific hiring decisions, Torongeau . . . did not necessarily compare one candidate versus the other; rather, he ultimately decided which of the number of candidates available at any given time." In apparent support of that statement Respondent notes that "both Cogan and Sweeney confirmed that Torongeau was interviewing five or six people on the same day that they spoke with him. (R. Br. 15.)

Sweeney testified that he was uncertain whether Torongeau said five or six people, and if Torongeau had said that he interviewed that number the day before (which would be the day of Cogan's interview) or had plans to interview them (Tr. 180). Cogan testified that Torongeau told him that he had five interviews remaining on the day of Cogan's interview. Torongeau did not testify regarding any remaining interviews. His comment may have been a meaningless statement, that he made to all applicants as he showed them the door. Although Torongeau stated, without having his recollection refreshed, that the four individuals who started work on March 14, all had excellent interviews, he apparently was unable to remember the dates when the interviews occurred. He knew the date of Dudurich's interview because it was on his application, which Torongeau had before him. The applications of the other three candidates are not in evidence. Thus, the dates of their interviews, assuming Torongeau's memory is correct and they were interviewed, are not in evidence. Even if Torongeau had other interviews on the same dates he interviewed Cogan and Sweeney, there is no evidence that the interviews were with applicants for electrician positions. Torongeau testified that he had interviewed between 130 and 150 applicants during the relevant time period, but those interviews were for plumbers, laborers, and pipefitters, as well as electricians. Additionally, the primary reasons advanced by the Torongeau for rejecting

Cogan—because he desired a wage that Torongeau "could not match" and Sweeney—because 7 years before, he was terminated for refusing to be on-call, are "absolute" reasons, and thus are useless for the purpose of comparative analysis.

Torongeau's testimony that "pay is pretty important" and that his inability to "pay people what they would need to be paid, in order to be happy," "causes a problem" for him, is laudable—it is also totally incredible. Torongeau testified that the Respondent's basic wage rate, the "shop rate" is $15 an hour. The very highest wage rates, however, are the "prevailing wage rates." Although the prevailing wage rates vary, the difference between the shop rate and any prevailing wage rate is "vast" (Tr. 51–52). When asked what is the highest wage the Respondent will pay, Torongeau replied, "I don't know that I can sum it up that easily." He then spoke about an individuals' experience, and such amorphic concepts as attitude and "fit" with the Company, only to return to the shop rate of $15 an hour (Tr. 70).

Attempting a different tact counsel for the General Counsel asked Torongeau if the amount an applicant wrote in the "desired salary range" section of the application "could rule people out." Notwithstanding the clarity of the question, Torongeau answered "Can it rule people out?" Having received an affirmative, he then empathically stated that "Not without a conversation. I always will talk about it." He explained that the need for discussion was necessary to ensure that the applicant was "adamant" about making that wage. (Tr. 71.) Torongeau's salary negotiation with Hayes, which is uncontradicted, is directly opposite to the discriminatees' experience. In their interviews there was, at most, only minimal discussion of wages and the record contains absolutely no testimony on which to base a conclusion that any discriminatee was adamant regarding their wage request.

Torongeau not only offered Hayes prevailing wage work, he saw that he got it. Except for one weekend, during the entire 6 months Hayes was employed he was paid a prevailing wage rate. And Hayes was not the only electrician being paid a prevailing wage rate. Counsel for the General Counsel provides the names of 18 other electricians who were paid a prevailing wage rate (GC Br. 21 fn. 15). They were obtained from the Respondent's payroll records (CP Exh. 9). The calculation for the basic hourly rate is set forth in the record (Tr. 234–236).

By way of example, page 28 of Charging Party's Exhibit 9 (the page number is located in the upper right-hand corner of the page) slightly below the middle of the page and to the extreme left is "2479," followed by "Jamie W. Wolfe." The name and employee number is verified by matching the payroll records with the list of employees hired from November 1, 2004 through June 20, 2005. The list was provided by the Respondent pursuant to a subpoena (GC Exh. 3). Directly below the name is the date of March 20, 2005, next is the figure 1,418.14. The headings at the very top of the page identify that number as the employee's gross pay for the week. Moving left is "40" under a heading entitled "Units" that is the number of "straight time" hours worked. The straight time hours worked divided into the gross pay equals the hourly wage. In this example $35.45 per hour. In addition to Wolfe I have verified the hourly rate for employees Keith, Dudurich, and Edmondson (CP Exhs. 9, 28–35). All earned over double the shop rate of $15 an hour. It is noted that although Dudurich and Cogan were interviewed on the same date, Torongeau testified that he was unable to offer Cogan prevailing wage rate work when he had nonprevailing wage work and that was the reason Cogan was not hired. The Respondent's payroll records show that Dudurich was earning prevailing rate wages from March 20, 2005, until at least January 1, 2006, the last date of the payroll records in evidence.

Not surprisingly the Respondent cites *Wireways, Inc.,* 309 NLRB 245 (1992), and its progeny as giving voice to Torongeau's concerns by recognizing that if an employer "offered an employee a job at less wages than the employee was accustomed to receiving, the employee would either be less productive or would leave for the first job paying more." The Respondent does not argue employee turnover as a reason for its failure to hire the discriminatees. Its primary contention relating to productivity, is what Torongeau describes, based on his own experience, as a "human tendency." This tendency is for employees who have been promoted to foreman to lose some of their ability to "just work." He also contends, without any supporting evidence, that there is an additional problem of taking orders from other foremen.

The favorable comments regarding supervisory potential under the "Expectations" section of the Respondent's "Employment Offer Form," for Edmondson (CP Exh. 4), and Young (CP Exh. 5), belie Torongeau's espoused belief. The favorable comment on Dudurich's form "very good foreman" (CP Exh. 6), is especially telling because Dudurich was hired directly from another electrical company where he had been employed as a commercial electrician foreman since 1997 (R. Exh. 1 at 3).

The crucial distinction between this case and those relied on by the Respondent, is my finding that all the reasons advanced by the Respondent are pretextual.

Christopher A. Walter, employee number 2471 also appears on the Respondent's payroll records as earning prevailing wage rates. Walter scored a minus 11 on the electrical test (GC Exh. 11). Although Sweeney was interviewed after Walter was hired, I still find it incredulous that the Respondent would offer as a reason for its failure to hire Sweeney his "low score," which was six points higher than Walter's. My incredulity is further supported by the fact that Torongeau admitted that the Respondent has no guidelines for what is, or is not, an acceptable score. Additionally, employees Rummel and Hayes were hired with scores lower than Sweeney's "low score." And it is undisputed that Torongeau went out of his way to hire Hayes, and pay him the prevailing wage rate, notwithstanding his score.

The Respondent's answer regarding Walter appears to be that he was so lacking in electrical knowledge that Torongeau should not have administered the test to him in the first place. In support of this argument the Respondent stresses that Walter's "Employment Offer Form" lists under "Expectations" "Electrian [sic] wants to go thru aprentship [sic]." This appears to be a prudent course for Walter to pursue in view of the inherent danger of working with electricity. It does nothing to establish the validity of Torongeau's refusal to hire Good,

which he did before hiring Walter. Torongeau admits that he hires employees with lesser qualifications in training, education, and experience because those people "would be happy with the pay that we would pay them." As an example he offers "apprentices or, you know, younger guys that can do a lot of work." Without passing on their validity, Torongeau's comments have no application to the Respondent's failure to hire Good. Walter was not hired as an apprentice, that was the position to which he aspired, he was hired as an electrician, and he was earning top dollar. A perusal of his earnings for the week of March 6, 2005, his first 40–hour workweek, shows gross pay of $1,222.62 or approximately $31 an hour (CP Exh. 9 at 25). Because Good only desired approximately $25 an hour, the Respondent could have employed an individual with 21 years of field experience, and 10 years of electrical schooling (GC Exh.12 at 2), at a savings of $6 an hour.

The Respondent has maintained since the beginning that Good was not hired because he lived over an hour away from State College. Based on DeGroot's statement, contained in the Respondent's position statement, had Good's application come to her, it would not have been forwarded to Torongeau for that reason. She also states that if she is unsure of the distance she performs a computer map search and obtains the mileage and the approximate travel time. DeGroot testified at the hearing that she oversaw the human relations function for the Respondent and its affiliates, a total of about 600 employees spread throughout the Commonwealth. She did not include herself in her description of the preinterview process. She testified that her assistant, Becky Miller, supports the Respondent in that process and "pushes the papers around and everything." In that regard it is the managers who give Miller the resumes or applications of the people they would like to interview, and she arranges the interviews based on the managers availability. It appears from the testimony that DeGroot's only direct involvement with the overall selection process is that she gets the rejected applications from the managers and thereafter mails the applicants her generic rejection letter.

Accordingly, I find that rarely does DeGroot have the opportunity to apply her draconian application of the Respondent's unwritten policy. Although Torongeau generally confirmed the policy, his language was far less harsh. For example, when discussing the policy he states: "That's something that I kind of watch, you know, trying to get people closer to work" (Tr. 20), "We usually like to stay within one hour of State College" (Tr. 37). Indeed, Torongeau's approach to the communing issue appears to be far less rigid. He admits that part of his job function is to "screen" the applicants. In performing that function he reviews the applications before giving them to Miller. He acknowledges that he does not know the distance of "every little town," from State College. He did not know the location of Davidsville, Good's residence. He testified that when he is unaware of a location he typically asks the applicant the distance, and may confirm the answer by a computer search (Tr. 60). Thus, it appears that if, indeed, the Respondent maintained an inflexible rule of exclusion based on distance, as DeGroot indicated, it would be far more practical and efficient for Torongeau to use DeGroot's approach and ascertain the distance before having Miller schedule the interview.

If the Respondent was adamant that no applicant would be hired if the applicant lived beyond an hour's drive from State College it would be foolish for Torongeau to continue with the interview once that fact was admitted by the applicant. But that is exactly what Torongeau did with Good and Hayes. It is undisputed that they both admitted living beyond an hour's distance from State College. Torongeau, obviously taking them at their word, proceeded with the interviews. Once again, the applicant who had no union affiliation was hired and the one with union affiliation rejected, based on the identical factor and without any explanation. I again note that Good credibly testified that he told Torongeau that he would consider relocating to State College. Hayes credibly testified that it was not until after he was employed by the Respondent that he decided to move to the State College area.

As additional evidence of disparate treatment, counsel for the General Counsel solicited testimony from Torongeau that he offered an electrician position to Brian Long, an applicant that lived in Three Springs, Pennsylvania. Torongeau testified that he thought Three Springs was 30 to 40 minutes from State College. After reviewing a map Torongeau readily changed his estimate to between 1 hour and 20 or 30 minutes. The Respondent suggests that the review of a more complete map of Pennsylvania will demonstrate that Davidsville appears more distant from State College than does Three Springs. The Respondent misstates the issue. There has been no credible evidence to support any contention that Good was rejected because he lived a greater distance away from State College than another applicant or applicants. Indeed, Torongeau admitted that was not the case (Tr. 62). Long's offer of employment is another example of inconsistent application of an alleged condition of employment.

On the last day of the hearing Torongeau stated, for the first time, that Good's timidity was also a reason for not hiring him. Timid means lacking in boldness or shrinking from public attention. I see no evidence of those characteristics in Good's resume or job application. To the contrary his resume describes an individual with the opposite characteristics. Good's previous positions include that of foreman, supervisor, and proprietor of an electrical business.

Other than claiming that he "couldn't really picture him in a fast paced construction site," Torongeau offered no explanation why he concluded that Good was timid. Respondent "notes that the record reflects the fact that Good was soft spoken because counsel for the General Counsel had to ask Good to repeat an answer because 'I couldn't hear you.'" (R. Br. 9) The record does establish that counsel for the General Counsel asked Good to repeat one answer (Tr. 108). Initially I observe that counsel for the General Counsel said "I'm sorry, I couldn't hear you." With apologies to the counsel for the General Counsel that admission alone indicates that the problem is more with the receiver than the transmitter. The hearing was held in a large banquet room. Counsel for the General Counsel was sitting second farthest from Good. Counsel for the Charging Party was sitting further away, and yet made no objection. Even absent the foregoing, unlike the Respondent, I would be reluctant to draw any conclusion from such a singular event.

I am not at all reluctant to conclude, based on the record as a whole, that counsel for the General Counsel has met his burden. I also find that all the reasons advanced by Torongeau for his refusal to hire Good, Cogan, and Sweeney are pretextual. Because they are pretextual—i.e., they either did not exist or were not actually relied on—they cannot form the basis for a valid rebuttal to the General Counsel's case. *Limestone Apparel Corp.,* 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). Accordingly, I find that the Respondent violated Section 8(a)(1) and (3) of the Act by failing and refusing to hire Good, Cogan, and Sweeney as electricians.

I also find persuasive counsel for the General Counsel's contention that because each discriminatee received a letter from the Respondent stating that their resumes would be kept on file for 1 year and that the Respondent would contact them "if an appropriate career opportunity becomes available" the Respondent has also "failed to consider" the discriminatees. There is no evidence on which to conclude that this commitment was false, or that the discriminatees had any to believe that it was. The Respondent does not address the relevance of the letters, contending only that because the discriminatees were given an interview, there "can clearly be no refusal to consider violation." I disagree and find, based on the Respondent's rejection letters that the Respondent has also violated Section 8(a)(1) and (3) of the Act by refusing to consider the discriminatees for hire as alleged in the complaint. 331 NLRB at 15.

CONCLUSIONS OF LAW

1. The Respondent, State College Electrical & Mechanical, Inc., d/b/a Allied Mechanical & Electrical Contractors, a subsidiary of S&A Custom Built Homes, Inc., and Berrena's Mechanical Services, LLC, a single employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent violated Section 8(a)(1) and (3) of the Act by failing and refusing to hire or consider for hire David W. Good, Bruce J. Cogan, and Scott M. Sweeney for electrician positions because of their union affiliation.

3. The foregoing 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 unlawfully refused to hire or consider for hire applicants David W. Good, Bruce J. Cogan, and Scott M. Sweeney, as electricians, the Respondent will be ordered to offer them positions as electricians and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, State College Electrical & Mechanical, Inc., d/b/a Allied Mechanical & Electrical Contractors, a subsidiary of S&A Custom Built Homes, Inc., and Berrena's Mechanical Services, LLC, a single employer, State College, Pennsylvania, its officers, agents, successors, and assigns, jointly and severally shall

1. Cease and desist from

(a) Failing and refusing to hire or consider for hire job applicants on the basis of their union affiliation or other protected activities.

(b) 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 from the date of this Order, offer immediate employment to David W. Good, Bruce J. Cogan, and Scott M. Sweeney without prejudice to their seniority or any other rights or privileges they would have enjoyed had the Respondent hired them when they applied. If the positions for which these discriminatees should have been hired no longer exist the Respondent shall offer them immediate employment in substantially equivalent positions without prejudice to their seniority or any other rights or privileges they would have enjoyed had the Respondent hired them when they applied.

(b) Make David W. Good, Bruce J. Cogan, and Scott M. Sweeney whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to hire or to consider for hire David W. Good, Bruce J. Cogan, and Scott M. Sweeney and within 3 days thereafter, notify them in writing that this has been done and that the unlawful refusal to hire or to consider for hire will not be used against them in any way.

(d) 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.

(e) Within 14 days after service by the Region, post at its facility in State College, Pennsylvania, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms

[1] 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.

[2] 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 Judg-

provided by the Regional Director for Region 6, 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 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 December 14, 2004.

(f) 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.

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ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."