UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

TRI-STATE METAL WORKS, INC.

and Case 22-CA-72415

SHEET METAL WORKERS LOCAL UNION 25

*Tara Levy, Esq.* of Newark, New Jersey for the General Counsel
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## DECISION

Statement of the Case

Steven Fish, Administrative Law Judge: Pursuant to charges and amended charges filed by Sheet Metal Workers Local Union 25 (the Union), the Director for Region 22 issued a complaint and notice of hearing on April 26, 2012,[1] alleging that Tri-State Metal Works, Inc. (the Respondent) violated Section 8(a)(1) and (3) of the Act by terminating the employment of its employee, Thomas Claridge (Claridge), because Claridge assisted the Union and engaged in concerted activities, and Section 8(a)(1) and 8(a)(4) of the Act by threatening Claridge with loss of future work opportunities because the Union filed unfair labor practice charges on behalf of Claridge, and Section 8(a)(1) of the Act by interrogating its employees about their union activities, telling employees that it would not recognize the Union, notwithstanding the results of an election, informing employees that it would be futile for them to select the Union as their bargaining representative.

The trial with respect to the issues raised in the above complaint was held in Newark, New Jersey on August 8, 2012. Briefs have been filed by General Counsel and Respondent and have been carefully considered.

Based upon the entire record, including my observation of the demeanor of the witnesses, I make the following:

[1] All dates, herein, referred to are in 2012 unless otherwise indicated.

# Finding of Fact

## I. Jurisdiction and Labor Organization

Respondent is a corporation engaged in sheet metal HVAC fabrication. During the 12-month period ending January 25, 2012, Respondent purchased and received at its Wayne, New Jersey facility goods and supplies valued in excess of $50,000 directly from suppliers located outside the State of New Jersey.

It is admitted, and I so find, that Respondent is and has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

It is also admitted, and I so find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. Facts

### A. Background and Respondent's Operations

Respondent's owner and chief executive is Eugene Bianchini. Respondent performs sheet metal work, including fabricating and installing air-conditioning ductwork and ventilating systems.

Bianchini was a union member, employed at several unionized companies in the 1980s. At some point, Bianchini opened up his own company, E & S Sheet Metal and signed a contract with the Union. Subsequently E & S Sheet Metal filed for bankruptcy and laid off all its employees.

In 2005, Bianchini and a partner, Phil Machion formed Respondent. They began to hire employees, some of whom had worked for Bianchini at E & S Sheet Metal, and who had been and still were members of the Union. Respondent's first hire was Bob Burton, Jr., a union member, who eventually became Respondent's shop foreman. Other employees hired at that time, who were also union members, were Marcos Castillo and Edgar Pilcose, who had both worked for Bianchini at E & S Sheet Metal.

Respondent first hired Thomas Claridge in September of 2009. Claridge had also worked for Bianchini at E & S Sheet Metal, so Bianchini knew that he was a union member when Respondent hired him at that time. Claridge worked for Respondent for about two months and was laid off for lack of work. Business slowed down considerably by the end of 2009, and Respondent laid off all its employees, including its office manager. Sometime in 2012, Bianchini bought out his partner Machion and became the sole owner of Respondent. Work began to pick up again in the spring of 2010, and Respondent rehired Burton, Jr., Pilcose, Castillo and David Manning, all of whom had been union members and/or had worked for Bianchini before. Respondent also hired back Michael Collins as a part-time mechanic, who also had worked for Respondent since 2006. Collins was not a union member and worked part-time for Respondent while attending college.

Subsequently, Respondent hired Matthew Yodice and Jerry Yodice, who also were union members, of which Bianchini was aware when he hired them.

On September 20, 2011, Respondent rehired Claridge. Bianchini told Claridge at that

time that Respondent had some welding work for Claridge. Claridge quit another job, where he was working at the time in order to work for Respondent.

Claridge worked primarily inside the shop as a welder. He also performed other work in the shop, such as fabricating and forming ductwork. Bob Burton, Jr., as noted, was the shop foreman and worked in the shop along with Claridge and Collins.

Respondent's other employees, Castillo, Manning, the Yodices and Pilcose worked primarily in the field installing ductwork. Respondent also employed Greg Dash as a truck driver.

Respondent had never recognized the Union as the representative of its employees although it had consistently hired union members, including Claridge.

Bianchini had several conversations with officials of the Union in 2010 and 2011 about signing up with the Union. He spoke with Jose Demarc, the union president, on the phone and James Harper, organizer and marketing director, in person. The union officials asked Bianchini to sign up with the Union. Bianchini replied that he had nothing against the Union, but it was not the right time to sign up. Bianchini added that he didn't have a heavy enough workload to support it right now but asked the Union to give him some time and he would "see where it goes." The union representatives responded that the Union would welcome him back,[2] and they were hopeful that things will work out and "we'd love to have you back." The union representatives said nothing to him about the fact that Respondent was employing union members. Bianchini as a union member was aware of the Union's constitution, which forbids union members from working in a non-union shop.

B. Claridge Meets with the Union on December 29, 2011

Sometime in 2011, Claridge had conversations with Marty Wymbs, business agent for the Union, about transferring his union membership to Ohio. His daughter lived in Ohio, and Claridge was contemplating moving to Ohio in order to be near her. In December, Wymbs called Claridge and asked to meet with him to discuss Claridge's request to transfer to the Ohio local. Wymbs had a list of names of people in Ohio that Claridge could see. A meeting was arranged at the Pop Queen Diner on Route 23 in Wayne, New Jersey for Thursday, December 29, 2011. On the same day or the day before, Claridge told Burton that he was meeting with Wymbs about helping Claridge transfer to Ohio.

At the December 29, 2011 meeting, which was also attended by Harper, the participants discussed Claridge's request to transfer to Ohio, and the union representatives asked Claridge if he would help organize Respondent's shop. Claridge agreed to help organize Respondent's employees. The union officials asked Claridge if there were other union members working there, and Claridge replied that Respondent employed seven union members, including himself, at that time. They asked Claridge to fill out a union authorization card, which he did and signed it, dated December 29, 2011. The union representatives instructed Claridge not to say anything at work about organizing until everything is in place and that the Union would be in touch with him. Claridge never told any employees of Respondent that he agreed to organize the shop.

[2] E & S Sheet Metal, Bianchini's former company, had, as noted, recognized and signed a contract with the Union before it went bankrupt.

C. Claridge is questioned about the Meeting by Burton and Bianchini.

On December 30, 2011, the morning after the meeting with the Union, Burton asked Claridge how the meeting had gone. Claridge replied that it went okay and that they had discussed Ohio. Burton asked, “Is that all you discussed?” Claridge replied that is all I’m going to talk about.

Burton, later on that morning, informed Bianchini that Claridge had met with representatives from the Union and that they discussed Claridge transferring to Ohio. Burton also informed Bianchini that he (Burton) thinks that there is more going on and that he believes that it was something about the Union with Respondent’s shop. Bianchini then telephoned Wymbs and left a message that if Wymbs wanted to know anything about Respondent’s shop to call him directly. Wymbs did not respond to Bianchini’s call.

Later on that day, Bianchini approached Claridge while Claridge was welding. Bianchini asked how did the meeting go with the Union. Claridge replied that it went all right. Bianchini asked what was said. Claridge answered that we discussed Ohio. Bianchini then inquired, “Is that all you talked about?” Claridge replied that’s all we talked about.

Subsequent to December 29, 2011 and through January 9, 2012, Burton would ask Claridge every day about the union meeting. Burton informed Claridge that he’s got to know what was said and that he (Burton) knows that there was more said. Claridge would reply that he and the union representatives spoke about Ohio and that is all that he is going to tell Burton. Claridge told Burton that he should “call the business agent and speak to him yourself.”

Sometime in early January of 2009, Bob Burton, Sr., Bob Burton, Jr.’s father, who is also a union member but not an employee of Respondent, came to the shop. Burton, Sr. asked Claridge what was said at the union meeting. Claridge answered, “Nothing, we spoke about Ohio, that’s all I’m going to talk about.” Claridge added, “If you guys want to know what was said, you can speak to the business agent yourself.”

D. The Termination of Claridge

On January 9, 2012, during a conversation between Burton and Claridge about work-related matters, Burton again brought up the subject of the Union. Burton told Claridge that he has two kids that he has to take care of and that he wanted to know what was happening with the Union. Claridge responded to Burton once again that he wasn’t going to tell Burton what’s going on and if he wants to know, he should speak to the business agent himself.

Later on during that morning, Bianchini testified that Burton had told him that Claridge was saying that “big things are going to happen” and that he (Burton) didn’t want to get caught working non-union because he was afraid that he could be expelled from the Union. Bianchini testified that he said to Burton that it’s your choice and that he (Burton) should “do what you’ve got to do.”

About a half-hour later, Bianchini approached Claridge. Bianchini asked Claridge “Who do you work for me or the Union?” Claridge replied, “I’m working for you.” Bianchini stated that if Claridge was working for him, he wanted to know what was said at the union meeting. Claridge replied that he couldn’t respond and would not tell Bianchini what was said at the meeting. Claridge told Bianchini that if he wanted to know what was said at the meeting, he should call up the business agent. Bianchini then informed Claridge that Burton was going to quit Respondent because he (Burton) was afraid that the Union is going to walk in. Bianchini then asked whether

the Union is coming down to the shop to catch guys that are working. Bianchini continued to press Claridge to tell him what happened at the Union meeting and whether the Union was coming to the shop. Claridge continued to refuse to answer Bianchini's inquiries about what was said at the union meeting and whether the Union was coming down to the shop. Bianchini then asked where is Claridge's loyalty to him or to the Union. Claridge repeated that he was not at liberty to say what happened at the meeting. Bianchini asked Claridge if the Union went to him and asked him to come to work would he leave. Claridge answered that he would leave. Bianchini then said since his loyalties lied with the Union and would not tell him what was said at the meeting, "I'm going to have to let you go." Claridge responded that Respondent was firing him over something that I have no control over.

Claridge explained that his comment about being fired over something which he had no control referred to his understanding that the Union's interest in organizing Respondent's employees resulted from an anonymous report to the International Union that the union members were working in a non-union shop.

During the conversation between Bianchini and Claridge, Burton, who was present, cleaned up his tools and left the shop.

After informing Claridge that he was being let go, Bianchini added that "This place will never be union," "I can't afford the Union," and "I don't care how many votes you have." Bianchini then informed Claridge that he was going to "talk to the field guys to see if they work for me or work for the Union." He added, "If they want to work for the Union, I'll fire them too." Claridge replied, "I'm sorry you feel that way," and asked Bianchini if he could finish his break. Bianchini said go ahead. After Claridge finished his sandwich and while he was packing his tools, Bianchini handed Claridge a piece of paper, listing the names and phone numbers of his co-workers. Bianchini said to Claridge, "At least you call your other union brothers and let them know what's going on." Claridge replied, "Whatever," and stuck the paper in his pocket. He threw away the paper when he got home because he had not wanted to keep a list of phone numbers.

Bianchini testified that he gave the list of employees' phone numbers to Claridge so that he could notify his "union brothers" that business agents could show up and the employees could get in trouble. Therefore, that they should "get off these jobs."

Later on that day, after the termination of Claridge, several of Respondent's employees walked off the jobsites that they were working on. According to Collins, Bianchini stated that he had called his employees and told them that the Union might be coming to the jobsite to catch them working. Bianchini denies calling his employees to inform them that the Union might be coming. Bianchini states that he believes that Burton called them and told the employees that the Union was coming to the jobsite.

In any event, whoever called them, there is no dispute that the employees did walk off the jobsites because they feared that the union business agents would be coming to the jobsite and catch them working on non-union jobs.

Bianchini took no action against the employees, who walked off the jobsites that day. Bianchini testified that he did speak to these other employees either that same evening or the next day. Bianchini asserts that he asked these employees if they were leaving to go work for the Union or if they were going to stay and continue working for Respondent. They all responded, according to Bianchini, that they would continue working for Respondent.

My findings, set forth above concerning the events of January 9, are based on a compilation of the credited portions of the testimony of Claridge, Bianchini and Collins, who was present during the conversation between Bianchini and Claridge during which Claridge was terminated. Much of the facts and statements are not in dispute with only minor deviations of the witnesses. I have credited Claridge's testimony that Bianchini told him after terminating him that "this place will never be union," "I can't afford the Union" and "I don't care how many votes you have," and that he would speak to the employees to see if they "work for me or for the Union, and if they want to work for the Union, I'll fire them." I note that Bianchini did not deny making any of these comments to Claridge. Collins's testimony was equivocal as to these comments. For instance, he was asked if he heard Bianchini say "I can't afford the Union." His response was "At that time, I don't believe he said that." Collins was also asked if he heard Bianchini say that "I'm going to fire the field guys if they vote for the Union." Collins responded no to that inquiry, but the question did not encompass the comment that I found Bianchini made. Thus, I found that he told Claridge, that if the employees told him that they would work for the Union, he would fire them. That is quite different than voting for the Union, which was the question asked, where Collins replied no. Thus, I find that Collins did not specifically deny hearing the statements made by Bianchini to Claridge that I have detailed above. I found Claridge to generally be a believable witness, who was consistent on direct and cross-examination and appeared to me to be attempting to truthfully recall the events as they occurred. I found him to be candid in testifying that he told no one about the discussion concerning organizing at the union meeting. If he were prone to making up testimony, it is likely that he would have testified that he told other employees and/or Bianchini about the intent of the Union to organize the shop. His failure to do that supports my belief that his testimony was credible and that Bianchini made the above statement to him on January 9.

E. Post-Discharge Events

Two days after his termination, Bianchini called and asked Claridge if he had gotten in touch with "the guys" and explained to them what was going on. Claridge replied no. Bianchini then asked if he had told the Union that Respondent had fired him. Claridge responded, "Not yet, Gene," testifying that he (Claridge) did not think it was Bianchini's business whether he told the Union anything.[3]

The next day, January 12, the Union filed the instant charge, alleging that Respondent interrogated employees about their support for the Union, threatened to terminate employees because of their support for the Union and terminated Claridge on January 9 because of his support for the Union.

On January 19, the Union called a meeting of all employees of Respondent, who were union members. The Union sent out a letter to each employee, telling them to come to a meeting to "discuss your employment at Tri-State Metal Works." Present at the meeting were Claridge, Manning, the two Yodices, Bob Burton, Sr., Bob Burton, Jr. and Paul Mastin. Wymbs and Harper conducted the meeting on behalf of the Union along with a representative from the International. Bob Burton, Sr. was dismissed from the meeting since he was not an employee of Respondent and apparently never had been. Paul Mastin stayed for the meeting since he had been employed by Respondent in 2009.

The international representative explained to the employees that they were in violation of the Union's constitution by working in a non-union shop and that the employees could be

[3] The above finding as to this is based on the undenied testimony of Claridge.

subject to fines and/or expulsion. The representative told the employees that there had been any anonymous complaint filed with the International that union members were working at Tri-State, a non-union company. The union representatives explained to the employees that to straighten this matter out and to save "everyone's butt," the employees could vote yes in an election. The union representatives distributed authorization cards to the employees at the meeting, other than Claridge, who had already signed his card on December 29, 2011. Manning, Matthew and Jerry Yodice, Bob Burton, Jr. and Paul Mastin all signed authorization cards at that time. On January 23, the Union filed a petition with Region 22 to represent Respondent's employees. On January 25, the day that Claridge came to the Region to give his affidavit in support of the Union's charges, Bianchini telephoned Claridge. He asked Claridge, "Did you file a false claim charge against me with the Labor Board?" Claridge replied that the Union filed a charge on his behalf. Bianchini said to Claridge, "You've got a lot of balls." I gave you a job at a time with a salary where work's hard to find." Bianchini then started to raise his voice and said that Claridge was "not a fucking man," that he was "taking money out of my family's pocket," and that Claridge "will never see a penny of that charge, never see a bit of money." Bianchini continued by repeating that Claridge was not a man and called him "two-faced piece of shit." His tirade continued by commenting, "I don't care whatever it takes, you'll never see anything on that. Don't even think about putting me down as a reference on your next job because you'll never work again if I have anything to do with it." Claridge told Bianchini that he was sorry that Bianchini felt that way and tried to talk to him. However, Bianchini continued to curse at him and hung up the phone.[4]

Pursuant to the petition filed by the Union, an election was scheduled for March 2. Shortly, before the election, sometime in late February, Bianchini telephoned Claridge again. Bianchini said to Claridge that he wants to apologize for the previous phone call. Bianchini continued, "I said a lot of bad things, you know, I said you were a piece of shit and a two-face and you weren't a man, you know, you're more of a man than I am. Here, I am cursing you out, and instead of cursing you out, I ought to be thanking you." Bianchini continued, "You quit a job to come work for me and instead of getting paid once a week, you were getting paid once a month and checks were bouncing. You would come to work every day and you would weld, you wouldn't mess up on the job on purpose. You wouldn't do anything to hurt the company." Claridge responded, "I wouldn't do anything to hurt anybody. I'm there to work, I figured that eventually you would catch up with the pay. At least, I was working, I quit a job to come to you. I couldn't go back to that job because I quit them."

Bianchini then thanked Claridge and "all the guys for doing this for me." He then said to Claridge, "I guess you're going to vote yes, right?" Claridge replied, "I believe in what's going on." Bianchini answered, "I don't blame you for voting yes, I know you're trying to get to Ohio and you're going to be dependent on the Union out there. I guess if I was in your shoes, I would be doing the same thing." Claridge said ok.

Bianchini then inquired, "If there is any way we can work this out?" Claridge responded that the Labor Board said that Respondent needed to give him his job back and backpay. Bianchini replied, "Well, nobody wants to work with you, they're all blaming you for the Union

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[4] My findings with respect to the January 25 conversation are based on the credible testimony of Claridge. Bianchini did not deny the conversation and, in fact, admitted that he was upset about the charge and that he had cursed at Claridge and accused him of talking food out of his mouth. Bianchini did deny that he threatened to see to it that Claridge never got another job or that he would fill out a resume and asserted that the subject of work did not come up. I credit Claridge for the reasons detailed above.

coming in and causing all this stuff, so I can't give you back your job, As far as backpay goes, I don't have any money." Claridge asked, "So what are we going to do?" Bianchini said, "You've got to admit to me one thing though." Claridge asked, "What's that?" Bianchini said, "You quit me to work for the Union." Claridge responded, "No, Gene you fired me because of the Union." Bianchini said, "Alright, whatever" and hung up.[5]

The election was held on March 2 as scheduled, and the Union lost. No objections were filed.

Sometime after the election, the Union brought charges against Manning, Burton, Jr. and Matthew and Jerry Yodice. After a trial, the Union fined all four of these employees for violating the constitution by working in a non-union shop. Charges were not brought against Claridge although he also worked at Respondent because, according to Harper, Claridge was complying with the constitution by organizing the unorganized.

On Easter Sunday in 2012, Bianchini telephoned Claridge again. He wished Claridge a "Happy Easter" and invited him to come to the shop the next day to discuss what's going on "man-to-man, face-to-face." Claridge replied that he didn't know and that he didn't feel good about that. Bianchini then offered to let him and his wife take Claridge and his wife out to dinner so that they can discuss it in public if it makes Claridge feel better. Claridge answered that he would talk to his wife about it and would let Bianchini know. Claridge decided not to accept Bianchini's offers to meet and to go to dinner and has not spoken to Bianchini since that conversation on Easter Sunday.

## III. Analysis

### A. Alleged Interrogations

Interrogation is not a per se violation of Section 8(a)(1) of the Act. *Rossmore House*, 269 NLRB 1176 (1984), affd sub nom *UNITE HERE, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In assessing whether or not a supervisor's or agent's questions to an employee about union or concerted activities constitutes an unlawful interrogation, the Board examines whether under all the circumstances, the questioning reasonably tends to interfere with, restrain or coerce employees in the exercise of their Section 7 rights. *Heartshare Houseman Service of New York*, 339 NLRB, 842, 843 (2003); *Rossmore*, supra.

Under the totality of circumstances approach, the Board examines factors such as the employer's background, the nature of the information sought, the pace and method of the interrogation, the identity of the questioner, whether the tone was hostile or threatening and the truthfulness of the reply. *Bourne v. NLRB*, 332 F.2d 47, 48 (2nd Cir. 1964). Another important, through not conclusive factor, considered by the Board is whether the interrogated employee is an open and active union supporter. *Camaco Lorain Mfg.*, 356 NLRB #143 slip op at 1 (2011); *Evergreen America*, 348 NLRB 178, 208 (2006); *Demco New York Corp.*, 337 NLRB 850, 851 (2002).

In assessing the legality of the numerous alleged interrogations here, I emphasize the importance of the latter factor, which, as noted above, the Board finds highly significant. Here, the evidence discloses that Claridge was a union member and that fact was known to Respondent, who hired him despite knowing that he was a union member. However, Claridge

[5] Based on the undenied testimony of Claridge.

was not an open or active union supporter or adherent. There was no evidence of any open union organizing campaign at Respondent's facility. To the contrary, while the Union had made several attempts to persuade Respondent to recognize and sign a contract with it, the Union had not pressed it to do so, apparently accepting Bianchini's explanations that Respondent was not quite ready to be able to afford a union contract, but would agree to sign with the Union in the future. I note that Bianchini had signed a contract with the Union at his prior company and had subsequently gone bankrupt. The local union, apparently in recognition of this fact, had been willing to give Respondent some slack and did not enforce its constitutional prohibition against its employees working at non-union shops.

However, when an anonymous tip to the International forced the local union to take some action, it decided to organize the shop and appointed Claridge as its chief organizer. However, this plan was not disclosed to Respondent by either the Union or Claridge, and Claridge can, therefore, be characterized as not an open or active union supporter as defined by Board precedent.

Thus, since Claridge was not an open or active union supporter, the questioning by Bianchini about the union meeting that he attended, what was said there and what the Union's actions were going to be is coercive. *Camaco Lorain*, supra, 356 NLRB #143 slip op at 2, supra; *Evergreen America*, supra, 348 NLRB at 208; *Gardner Engineering*, 313 NLRB 755 (1994), enfd. as modified on other grounds 115 F.3d 636 (9th Cir. 1997).

The first such instance of such unlawful interrogation occurred on December 30, 2011, the day after Claridge met with the Union and discussed organizing Respondent's employees. Bianchini approached Claridge and asked him, "How'd the meeting go with the Union?" Claridge replied, "Ok." Bianchini asked, "What was said?" Claridge replied that they had discussed Ohio. Bianchini persisted by asking, "Is that all?" And, Claridge replied that that was all they talked about. This interrogation by Bianchini is clearly coercive for a number of reasons. In addition to the fact that Claridge was not an open or active union supporter for the reasons detailed above, Claridge would not tell Bianchini what was discussed at the meeting other than Ohio, attempting to conceal the discussion about organizing. Such attempts by an employee to conceal union support or union organizing activities weigh in favor of finding an interrogation unlawful. *Camaco Lorain*, supra; *Sproule Construction Co.*, 350 NLRB 774, fn. 2 (2007); *Evergreen America*, supra, 348 NLRB at 208; *Grass Valley Grocery Outlet*, 338 NLRB 877, fn. 1 (2003); *E-Z Recycling*, 331 NLRB 950, 951, fn. 6 (2000).

Moreover, Bianchini persistently asked Claridge about what was said at the union meeting, apparently being skeptical of Claridge's explanation that only Ohio was discussed at the meeting. Such persistent questioning also demonstrates coerciveness. *Cumberland Farms*, 307 NLRB 1479 (1992) (repeated probing and focused nature of questioning indicated coerciveness, even when employees questioned were, unlike Claridge, open union adherents).

Claridge had the right to refrain from responding to his employer's questioning about the union meeting, and the questioning was coercive and violative of the Act. *Stevens Creek Chrysler Jeep Dodge*, 353 NLRB 1294, 1295 (2009) (questioning employees about attendance at union meetings unlawful interrogations); *Gupta Permold Corp.*, 289 NLRB 1238, 1244-1245 (1988) (questioning of employee about her attendance at union meeting); *NLRB v. Brookwood Furniture*, 701 F.2d 452, 462 (5th Cir. 1983) (why employee was attending a union meeting).

Moreover, Bianchini was the highest ranking supervisor at the employer, which is supportive of coerciveness of the questioning. *Stevens Creek Chrysler*, supra, 353 NLRB at 1295; *Parts Depot Inc.*, 332 NLRB 670, 673, 683 (2000); *Greenfield Dye & Mfg. Co.*, 327 NLRB

237 (1998).

I also note that the meeting was not publicized, and by Bianchini asking Claridge how the union meeting went, he disclosed that he was aware of such a meeting. Although not plead as a violation of the Act, Bianchini's comments to Claridge indicating his awareness of the union meeting would be unlawful, giving the impression of surveillance of employees' union activities by Respondent if it had been so alleged. *Camaco Lorain*, supra, NLRB slip op at 2-3 (question by supervisor to employees "how was the meeting?," indicates that employer knew about the meeting and demonstrates coerciveness since employees would assume from questions of supervisor that their attendance at union meetings had been placed under surveillance); *Connecticut Humane Society*, 358 NLRB #31 ALJD slip op at 33-34 (2012) (statement by supervisor that he was aware of employees' union meeting gives impression of surveillance since it does not identity where information came from; thus, employees would reasonably conclude that employer obtained information through employee monitoring). Accord, *Stevens Creek Corp.*, supra at 1295-1296.

Accordingly, based on the above analysis and precedent, I find that Bianchini's questioning of Claridge on December 30, 2011 to be coercive and violative of Section 8(a)(1) of the Act.

Similarly, Bianchini's interrogations of Claridge on January 9, 2012 were unlawful. On January 9, Bianchini asked Claridge," Who do you work for me or the Union?" And, after Claridge replied, "I'm working for you," Bianchini stated that if he (Claridge) was working for him, "I want to know what was said at the union meeting." Claridge replied that he could not and would not respond to Bianchini's inquiry and that if he wanted to know what was said at the union meeting, he should call the business agent and ask himself.

This response did not satisfy Bianchini, who continued to press for an answer about what was said at the union meeting and whether or not the Union was coming to the shop to catch guys working there. Claridge continued to refuse to answer Bianchini's persistent inquiries and after asking Claridge again if his loyalties were to him or to the Union terminated Claridge.

Bianchini followed up his termination of Claridge by stating that "this place will never be union," "I can't afford the Union, and "I don't care how many votes you have." Bianchini added that he was going to speak to other employees "to see if they work for me or work for the Union." He continued, "If they want to work for the Union, I'll fire them too."

I find that Bianchini's questioning of Claridge on January 9, as detailed above, to be clearly coercive under *Rossmore* standards for a number of reasons.

Once more, I note, as detailed above, in connection with the December 29, 2011 interrogation that Claridge was not an open or active union supporter, which is supportive of the coerciveness of the interrogations. *Camaco Lorain*, supra; *Evergreen America*, supra.

Additionally, as noted above, in connection with the December interrogation, Bianchini was the highest ranking supervisor at Respondent, *Stevens Creek Chrysler*, supra; *Parts Depot*, supra, the questioning by Bianchini was persistent and repeated, *Cumberland Farms*, and Claridge attempted to conceal the events of the meeting by refusing to tell Bianchini what had occurred at the meeting, *Camoco Lorain*, supra; *Sproule Construction*, supra; *Grass Valley Grocery*, supra.

Additionally, here, Bianchini equated Claridge's loyalty to the Union as being incompatible to his duty to the employer by asking him, "Where's your loyalty, is it to me or to the Union?" and stating, "If you are working for me, I want to know what was said at the meeting." Indeed, the Board has observed that "the statute's premise is at war with the idea that loyalty is incompatible with an employee's duty to the employer." The Board has repeatedly found similar questioning by employers coercive and violative of Section 8(a)(1) of the Act. In *Clock ElectricCompany*, 338 NLRB 806, 817 (2003) (asking an employee if he was going to stay working at employer or leave to work for a union contract); *Arlington Electric Co.*, 332 NLRB 845 (2000) (asking an employee how he could be working a non-union job as a union member); *M.J. Mechanical Services*, 324 NLRB 812, 812-813 (1997) (questioning interviewees whether they were afraid of being caught by the union for working at a non-union contractor).

Finally, Bianchini accompanied his interrogations of Claridge with additional comments that "this place will never be union. I can't afford the Union. I don't care how many votes you have." He then informed Claridge that he intended to similarly question other employees "to see if they work for me or work for the Union, and if they want to work for the Union, I'll fire them too." These statements of hostility towards the Union, which are also independent violations of 8(a)(1) of the Act, as will be detailed below, are also supportive of the coerciveness of the interrogations. *Evergreen America*, supra, 348 NLRB at 208; *Advance Waste Systems*, 306 NLRB 1020 (1992); *Cumberland Farms*, supra, 307 NLRB at 1479.

Accordingly, based on the above analysis and precedent, I find that Bianchini's January 9 interrogations were coercive and violative of Section 8(a)(1) of the Act. Two days after Respondent terminated Claridge on January 9,[6] Bianchini called Claridge and asked him if he had told the Union that he had been fired by Respondent. Particularly, in light of the previous unlawful interrogations and threats, I find this questioning to also be coercive and violative of Section 8(a)(1) of the Act. *Evergreen America*, supra, 348 NLRB at 209.

Finally, on March 1, the day before the election, scheduled for March 2, Bianchini again telephoned Claridge. He asked Claridge if he was going to vote yes in the election. While this questioning was not accompanied by any other unlawful conduct or hostility towards the Union, I find this interrogation to be coercive as well. Such questioning is on its face coercive, aiming to nullify the right of an employee to freely choose whether or not to engage in protected activity. *St. Francis Hospital*, 249 NLRB 108, 181, 193 (1980).

Further, the questioning must be evaluated in light of prior interrogations, which I have found above to be coercive and violative of the Act.

I, therefore, conclude that the March 1 interrogation of Claridge by Bianchini was coercive and violative of Section 8(a)(1) of the Act.

B. The Alleged Threat of Futility

I have found that Bianchini told Claridge that "this place will never be union. I can't afford the Union. I don't care how many votes you have." Such comments threaten employees with futility of selecting a bargaining representative. *Wellstream Corp.*, 313 NLRB 698, 706 (1994); *Ideal Elevator*, 295 NLRB 347, 351 (1989).

I, therefore, conclude that Respondent has further violated Section 8(a)(1) of the Act by

[6] The lawfulness of his discharge.

Bianchini's statements.

C. The Alleged Threat of Discharge

5 After terminating Claridge for his failure to respond to Bianchini's inquiries about the union meeting and his response to Bianchini that he (Claridge) would take a union job, Bianchini informed Claridge of this intent to speak to other employees "to see if they work for me or for the Union." He told Claridge that "if they work for the Union, I'll fire them too." These comments are clear threats to discharge employees because of their protected conduct and is also violative of 10 Section 8(a)(1) of the Act. I so find.

D. The Alleged Threat to Retaliate against Claridge because of the Instant Charge

On January 25, two weeks after the Union filed the instant charge, alleging Claridge's 15 discharge to be unlawful, Bianchini telephoned Claridge, berated him for becoming involved with the charges, cursed him out, accused him of "taking money out of my family's pocket," and added that Claridge "will never see a penny of that charge, never see a bit of money." Finally, Bianchini stated, "Don't even think about putting me down as a reference on your next job because you'll never work again if I have anything to do with it." These remarks by Bianchini 20 constitute clear threats of reprisal because of Claridge's conduct in being involved in an NLRB charge and are violative of Section 8(a)(1) and (4) of the Act. *T.C. Brome Construction*, 347 NLRB 656, 666 (2006) (threat to "blackball employees"); *Café La Salle*, 280 NLRB 379, 395 (1986) (refusal to give letter of recommendation to employee because union filed charge on her behalf, violative of Section 8(a)(1) and (4) of the Act).

25

E. The Termination of Claridge

Claridge's termination must be analyzed under the framework of *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982). Thus, General 30 Counsel must demonstrate that protected activity was a motivating factor in Respondent's decision to discharge Claridge. Once General Counsel meets that burden of proof, the burden then shifts to Respondent to establish that it would have terminated Claridge absent his protect conduct.

35 Here, there can be little question that General Counsel established a compelling *prima facie* case that Claridge's discharge was motivated by his protect conduct. Indeed, Bianchini's own testimony virtually admitted this fact. Thus, Bianchini admitted that he terminated Claridge because Claridge would not respond to his inquiries about what was said at the union meeting that he attended and/or the Union's intentions in enforcing its ban against employees working in 40 non-union shops.

Claridge was clearly engaged in protected union activity by his attendance at that meeting. He was not required to disclose to Respondent the contents of the meeting, and he had a protected right to refuse to respond to Bianchini's inquiries. *Bloomfield Health Care* 45 *Center*, 352 NLRB 252, 253 (2002).

Respondent makes much of the fact that there is no evidence that Respondent was aware that the Union and Claridge discussed organizing Respondent's shop at the meeting, and, in fact, Claridge admitted that he did not tell any employees or Respondent about such 50 discussions. However, this fact is inconsequential since, as I have noted above, his attendance at the meeting is protected conduct, and he has a protected right to keep confidential the discussions with the Union at the meeting.

Moreover, I would conclude that the evidence here is sufficient to establish that Bianchini at least suspected that the Union had discussed organizing his shop at the meeting and that he was concerned, at least in part, with the possibility. I note that immediately after terminating Claridge, Bianchini made numerous unlawful 8(a)(1) statements, such as threatening that "this place will never be union," "he couldn't afford the Union," and "I don't care how many votes you have." These comments by Bianchini suggest that he suspected that the Union might be intending to organize his shop. Further, Bianchini admitted that union officials had made prior demands that he sign a union contract but that they previously had accepted his protestations that he was not quite ready to be able to afford a union contract. Bianchini was also aware as a union member of the Union's constitutional prohibition against its members working in non-union shops.

It is reasonable to conclude, which I do, then, when Bianchini was told by Burton that he (Burton) believed that the Union might be coming down to the shop to enforce its constitutional provisions against its members working in non-union shops and that the Union might, as in fact it subsequently happened, decide to organize the shop and compel Respondent to recognize the Union as an accommodation for its members working in a non-union shop.

As noted above, however, even absent this conclusion, I would still find that Claridge was engaged in protected conduct by attending the Union meeting and that he had a protected right to refuse to disclose to Bianchini what the discussions were at the meeting or what the Union intended to do.

In this regard, Respondent argues that Claridge was not engaged in protected conduct by attending the union meeting because he attended the meeting during working hours without permission. *Quantum Electric*, 341 NLRB 1270, 1279 (2004); *Gulf Coast Oil Company*, 97 NLRB 1513 (1955); *Michigan Lumber Fabricators Inc.*, 111 NLRB 579 (1955). Respondent's argument in this regard is totally devoid of merit. First, contrary to Respondent's assertion that there is no dispute that Claridge met with the Union during working hours without permission, in fact, the record contains no evidence what time of day the meeting took place at the diner or any evidence that Claridge did not have permission to leave work. More importantly, there is no record evidence that Bianchini was aware that the meeting took place during working hours or that he had any concerns that Claridge missed work or left work without permission. To the contrary, it is clear that Bianchini was concerned solely with Claridge's failure to disclose to him the contents of his discussions with the Union and not with whether or not Claridge had left work without permission to attend the meeting.

Therefore, the cases cited by Respondent in connection with its argument, *Quantum Electric*, supra; *Gulf Coast*, supra and *Michigan Lumber*, supra, are all inapposite since in each of them it was clear that the conduct of the employees found to be unprotected was known to the employers, therein, and were the reasons for their termination. *Michigan Lumber*, supra (conduct involved was a work stoppage found to be in violation of the non-strike clause); G*ulf Oil*, supra (employees, who went to union hall when they were supposed to be at work, in violation of company's established rules, could legitimately be denied employment); *Quantum Electric*, supra at 1279-1280 (discharge of group of employees for leaving work without permission to attend union meeting lawful since under *Wright Line* employer would have terminated them for leaving work early without permission regardless of whether the fact that employees absent themselves to go to meeting; judge found that employer would have terminated employees for leaving work early if employees had absented themselves to engage in wholly unprotected activity, such as attending a sporting event).

Accordingly, Respondent's contention that Claridge's attending the union meeting in these circumstances was unprotected conduct is without merit.

Therefore, since Respondent terminated Claridge for failing to disclose to Bianchini what was said at the union meeting, General Counsel has made a strong *prima facie* showing that protected conduct was a motivating factor in its decision to discharge him. Therefore, the burden shifts to Respondent to establish that it would have terminated Claridge absent his protected conduct.

Respondent argues that it has met that burden of proof by virtue of Bianchini's testimony that he terminated Claridge because Claridge informed Bianchini that he would leave Respondent to work at a union job if the Union asked him to do so. Respondent asserts that this is a "legitimate non-discriminatory reason" for terminating Claridge. In this regard, Respondent asserts that it need only show that it acted on a reasonable belief that Claridge's committed misconduct warranted discharge. *Jordan March Stores*, 317 NLRB 460, 476 (1995); *Goldtex Inc.*, 309 NLRB 158, fn. 3 (1991); *Framan Mechanical Inc.*, 343 NLRB 408, 416 (2004).

While Respondent is correct as the cited cases establish, that it can meet is burden of proof by establishing it would have terminated Claridge based on a reasonable belief that he engaged in misconduct, these principles are not applicable here. Bianchini testified, as noted above, that he discharged Claridge, at least in part, because Claridge refused to disclose to him his discussion with the Union or his knowledge of the Union's intentions *vis a vis* enforcing its constitutional prohibition against working at non-union shops. As I have observed above, Claridge has a protected right to keep confidential his knowledge of protected conduct and he cannot be terminated for failing to disclose such knowledge to Respondent. While Bianchini might consider that refusal to disclose such information to be "disloyal," the statute prohibits equating protected conduct with disloyalty, which Respondent has done by penalizing Claridge for his exercise of protected activity.

In addition to that testimony, Bianchini also testified that he terminated Claridge because of his affirmative response to Bianchini's question of whether he would quit Respondent and accept a union job if offered. Thus, at best for Respondent, the record establishes that it terminated Claridge for two reasons. One for failing to disclose to Respondent his knowledge of the Union's intentions, clearly protected conduct, and because Claridge informed Respondent that he would leave Respondent if he obtained a job from the Union, which, according to Respondent, is a legitimate non-discriminatory reason for this discharge. However, where the evidence discloses two reasons for the discriminatory action, it is Respondent's burden to prove that it would have taken the same action, absent the protected conduct. In effect, it must establish that it would have terminated Claridge solely for his statements that he would leave Respondent for a union job. *St. Barnabas Hospital*, 334 NLRB 1000, 1015 (2001). I do not believe that it has so established that fact based on Bianchini's own testimony.

I conclude that it is unlikely that Bianchini would have terminated Claridge simply because he stated that he would if asked leave Respondent's employ for a union job. In fact, Claridge had not quit Respondent and had not been asked to do so by the Union. I find it unlikely that Respondent would fire him solely for that response to a question of an eventuality that had not happened. Rather, it appears to be that the focus of Bianchini's concerns was his fear that the Union might be coming to the shop to enforce its consitutional provision and that Claridge was being disloyal by not disclosing to him his knowledge of that possibility. However, that is protected conduct, as I have observed above, and Claridge cannot be compelled to disclose that information to Respondent.

Moreover, I also agree with General Counsel that Claridge's statement to Bianchini that he would leave Respondent to work for a union company is not a "legitimate non-discriminatory reason" for discharge, but rather constitutes protected union activity, The Supreme Court in *NLRB v. Town & Country Electric Co.*, 516 U.S. 85, 116 S.Ct. 450 (1995) rejected the assertion of the employer that it could discriminate against a paid union organizer because his union could compel him to leave his employer for a union job. The employer argued there that a paid organizer was not an employee because "he may stand ready to desert the company upon request by the union (emphasis supplied), in which case the Union, not the company, would have the right…to control the conduct of the servant." Id at 93. The Court found that the mere possibility that a paid organizer might quit is insufficient evidence of disloyalty or loss of the Act's protection. Id at 96. Further, the Board has in a number of contexts concluded that union activity is protected, even though as a result, employees may leave employment with a non-union employer for an opportunity of working at a union job for an otherwise more promising opportunity. *Clock Electric Company*, 338 NLRB 806, 807, 816-818 (2003) (employer engaged in protected concerted activity by listening to union's efforts to organize employer's employees, including offering to place employees in union jobs when work becomes available).

In *M.J. Mechanical Service*, 325 NLRB 1098, 1106-1107 (1998), the Board rejected the respondent employer's contention that it was entitled to discriminate against union applicants because their activities were in accord with an objective of depriving the employer of employees. The Board approved the following rationale in rejecting the respondent's defense:

> In trying to convince MJ employees to join Local 46, the salts were exercising rights granted to them by Section 7 of the Act. There is no suggestion that they coerced, interfered with, or restrained MJ employees in the exercise of their rights. The salts merely told MJ employees about the benefits of belonging to the Union and referred them to the union hall. One apparently decided that joining was in his best interests and the other reached the opposite conclusion.
>
> Local 46's objectives are no different from that of any union. Its members are engaging in concerted activity to protect their wage rates and benefits. Their objective is to prevent contractors such as Respondent from threatening these benefits by restricting the supply of labor it can obtain at rates below that set forth in its collective bargaining agreements. As Chief Justice Stone noted, "[a] combination of employees necessarily restrains competition among themselves in the sale of their services to the employer." *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 502 (1941). The National Labor Relations Act allows employees to collectively attempt to restrict the labor supply in such a manner. If the alleged discriminatees herein convince MJ employees to join the Union and to withhold their labor from MJ unless MJ pays union scale, they would be exercising rights explicitly granted by the Act.

The Board also rejected the contention of the employer, therein, that it was entitled to discriminate against union applicants because the union could at any time tell any of the salts to quit the employ of the employer at any time and they would be required to do so, citing the Supreme Court's *Town & Country* decision, cited above, 325 NLRB at 1107. *Arlington Electric*, supra, 332 NLRB at 849 (employee engaged in protected activity when he distributed flyers

informing employees of union rates and that an IBEW local needed their service for employment with union contractors); *Technicolor Government Services*, 276 NLRB 383, 387-390 (1985), enfd. 795 F.2d 916, 918 (11th Cir. 1986) (employee/shop steward was engaged in protect concerted activity that did not lose Act's protection by distributing applications for employment to employees for positions with competitor of employer during pay dispute, concluding that "the mere fact that concerted activity looks toward employment by another employer does not rob such activity of protection" Id at 388); *QIC Corp.*, 212 NLRB 63, 68 (1974) (Board adopts decision of ALJ that a group of employees filing application for employment with competitor during pay dispute with their employer did constitute "disloyalty" to make such conduct unprotected); *Boeing Airplane*, 110 NLRB 147 (1954), enfd. denied 238 F.2d 188 (9th Cir. 1956) (organizing a conference to match employees with prospective employers in order to leverage union's bargaining position, protected concerted activity, and discharge of employee for participating in such activity, violative of the Act).

I conclude, therefore, based on the above precedent that Claridge was engaged in protected concerted activity by informing Respondent that he would leave to go to work for a union employer, if asked, and that Respondent cannot lawfully discharge him for his response to Respondent's question in that regard.

Accordingly, I conclude that Respondent has failed to meet its burden of proof of establishing that it would have terminated Claridge absent his protected conduct. Therefore, his termination was violative of Section 8(a)(1) and (3) of the Act.

## Conclusions of Law

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

2. The Union, Sheet Metal Workers Local 25, is a labor organization within the meaning of Section 2(5) of the Act.

3. By coercively interrogating its employees concerning their activities on behalf of the Union, threatening its employees with discharge and the futility of their support for or the selection of the Union, Respondent has violated Section 8(a)(1) of the Act.

4. By discharging Thomas Claridge on January 9, 2012 because of his activities on behalf and support of the Union, Respondent has violated Section 8(a)(1) and (3) of the Act.

5. By threatening to retaliate against Claridge by telling him not to put Respondent down as a reference and that he would never work again because Claridge was the subject of an NLRB charge on his behalf, Respondent has violated Section 8(a)(1) and (4) of the Act.

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

## Remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent has discriminatorily discharged Thomas Claridge, I shall recommend that Respondent be ordered to immediately offer him immediate and full reinstatement to his former position of employment without prejudice to his

seniority and other rights and privileges previously enjoyed, discharging if necessary any employees hired to fill his position. Respondent shall be ordered to be make Claridge whole for any loss of earnings and other benefits that he has suffered due to the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010), enf. denied on other grounds sub.nom., *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The NLRB orders that the Respondent, Tri-State Metal Works, Inc., Wayne, New Jersey, its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Coercively interrogating its employees concerning their activities on behalf of or support for the Sheet Metal Workers Union Local 25 (the Union).

(b) Threatening its employees with discharge and the futility of their support for or selection of the Union.

(c) Threatening to retaliate against an employee by informing him that he should not put Respondent down as a reference and that the employee would never work again because the employee was the subject of an NLRB charge.

(d) Discharging and refusing to reinstate employees because of such employees' activities on behalf of or support for the Union.

(e) 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 Thomas Claridge 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.

(b) Make Thomas Claridge whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8

[7] 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.

(2010), enf. denied on other grounds sub.nom., *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

(c) Within 14 days from the date of the this Order, remove from its files any reference to the discharge of Thomas Claridge, and within 3 days thereafter notify Claridge in writing that this has been done and that the discharge will not be used against him 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 Wayne, New Jersey facility copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 22, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the 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 29, 2011.

(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.

Dated, Washington, D.C. November 20, 2012

______________________
Steven Fish
Administrative Law Judge

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[8] 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 concerning your activities on behalf of or support for the Sheet Metal Workers Union Local 25 (the Union).

WE WILL NOT threaten you with discharge or the futility of your support for or selection of the Union.

WE WILL NOT threaten to retaliate against you by informing you that you should not put us down as a reference or that you would never work again because you were the subject of an NLRB charge.

WE WILL NOT discharge and refuse to reinstate you because of your activities on behalf of or support for the Union or any other labor organization.

WE WILL within 14 days from the date of the Order, offer Thomas Claridge 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 Thomas Claridge whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

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

Tri-State Metal Works Inc.
_______________________________________
(Employer)

Dated ____________________ By _______________________________________
(Representative) (Title)

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

20 Washington Place, 5th Floor
Newark, New Jersey 07102-3110
Hours: 8:30 a.m. to 5 p.m.
973-645-2100.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-3784.