

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

DATWYLER RUBBER AND PLASTICS,
INC.

and

Case 11-CA-21185

MONONGA MOORE, an Individual

Jasper C. Brown, Esq., for the General
Counsel.

Daniel M. Shea, Esq., and *Michelle W.
Johnson, Esq.*, for the Respondent.

DECISION

Statement of the Case

LAWRENCE W. CULLEN, Administrative Law Judge: This case was heard before me on November 6 and 7, 2006, in Florence, South Carolina, pursuant to a complaint filed with the National Labor Relations Board (“the Board”). The complaint is based on an amended charge filed by Mononga Moore, an Individual, with the Board against Datwyler Rubber and Plastics, Inc., (“the Respondent” or “Datwyler”). The complaint alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (“the Act”). The complaint is joined by the answer filed by Respondent wherein it denies the commission of any violations of the Act.

Upon due consideration of the testimony and evidence received in the case and the positions of the parties at the hearing and the briefs filed by the parties, I issue the following Findings of Fact and Conclusions of Law:

Findings of Fact and Conclusions of Law

I. Jurisdiction

The complaint alleges, Respondent admits, and I find, that at all times material herein the Respondent has been a South Carolina Corporation with a facility located at Marion, South Carolina, where it is engaged in the production of automobile parts, that during the past 12 months, a representative period, Respondent sold and shipped from its South Carolina

facility, products valued in excess of \$50,000 directly to points outside the State of South Carolina and that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleges three areas of violations of the Act. Paragraph 6(a) of the complaint alleges that on January 5 and 6, 2006, Respondent's General Manager, Willie Ruefenacht threatened employees with termination for engaging in protected concerted activities. Paragraph 6(b) of the complaint alleges Respondent threatened employees with plant closure if they selected a labor organization as their collective bargaining representative. Paragraph 7 of the complaint alleges that Respondent terminated employee Mononga Moore on January 11, 2006, because of her engagement in protected concerted activities.

The following includes a composite of the credited testimony of the events of January 5, 6, and 11, 2006. These events began with a regular monthly meeting of the first shift employees on January 5, 2006, which had been called by Respondent Datwyler to discuss various work related items. Willie Ruefenacht is Datwyler's General Manager and the highest ranking official at Respondent's Marion, South Carolina plant. Although Datwyler is a South Carolina corporation, it is headquartered in Switzerland and Ruefenacht reports directly to the Switzerland headquarters. Present at the meeting on behalf of Respondent's management were Ruefenacht, Production Manager Mike Rogers, Human Resource Manager Richard Wysocki and Supervisor Tim Davis. The meeting was attended by all of the production employees on the first shift. The employees were on paid time and it was management's projection that the meeting would last about a half hour with another meeting scheduled for the second shift employees shortly after the first meeting was conducted. It was also anticipated that management would meet with the third shift. The meeting was opened by Rogers with Ruefenacht speaking first. There were about 65 shift employees present at the meeting. Ruefenacht greeted the employees and thanked them for a special effort they had made in responding to a customers' shortage of materials that had to be remedied. Respondent is a second tier manufacturer and must meet very tight time constraints for certain of its customers who must meet strict time constraints to their automotive manufacturing customers. Of particular concern at this time was Continental Teves, a large customer of Respondent that had recently moved from Ashville, North Carolina to Mexico and was experiencing substantial delays which could result in severe monetary penalties to Continental Teves and to Datwyler if they were unable to meet the automotive manufacturer's production schedule. Ruefenacht began to speak to the employees and said that they need to work very hard to meet the tight production requirements. At some point shortly after Ruefenacht began to speak, employee Carla Samuel spoke up and complained that she was being required to simultaneously operate two fast presses and one slow press at the same time making it difficult for her to meet her production requirements. She also complained that she had been told to follow the chain of command but said that nothing was being done by management to correct problems. At this point employee Mononga Moore spoke up and asked Ruefenacht when the Respondent was going to stop working seven days a week. Ruefenacht said he did not see this in the future. Moore complained that she was tired and that it was unfair. She also said that God created the world in six days and rested on the seventh day and that the

employees should also be permitted to rest on the seventh day. Ruefenacht told her that it did not matter as he was in charge at the plant. Samuel then spoke and said it did matter as, without God, none of them would be there. Ruefenacht also told Moore that he could not change this and that if she did not like it, she could turn in her badge to Rogers and could go flip burgers. Ruefenacht testified that at some point in this exchange, Moore called him a devil and said that Jesus Christ would punish him and the Company for working the seven day schedule. Moore asked Ruefenacht if she was being fired and when he did not answer her she asked again and he then said “No.” Moore also told Ruefenacht at this meeting that others might be intimidated by him but that she was not afraid of him. Moore and employees Cheryl Wilson, and Beverly Eaddy testified that Moore did not call Ruefenacht a devil. Rogers testified that Moore did call Ruefenacht a devil. It is undisputed that Moore did not use any profanity, or engage in any kind of threatening behavior. Rogers initially testified that Moore’s tone of voice was loud and later on redirect examination testified she was screaming. Rogers acknowledged that the seven day work week was a matter of concern to employees who had initially enjoyed the extra money but became tired mentally and physically. The group meeting lasted only a total of about fifteen minutes. Ruefenacht indicated to Rogers to end the meeting which he did. Ruefenacht testified that immediately after this meeting, he told Rogers that “the lady” (Moore) has got to go. Rogers agreed but suggested they cool down and speak to Human Resource Manager Wysocki first which they did.

Former employee Cheryl Wilson testified as follows:

The group meeting had started when Moore spoke and complained about being required to work seven days a week including Sundays. Wilson testified that Moore said that even the Lord took one day off to rest. Ruefenacht said that the Lord didn’t have anything to do with this. Employee Carla Samuel then said that the Lord had everything to do with this. Moore spoke up again and told Ruefenacht that everyone else might be intimidated by him but she was not. He then told her if she didn’t like what was going on, she could leave. She asked if she was being fired. He did not reply and she asked him again and he said “No.” Moore did not scream at the meeting. Nor did she use profanity. Moore sounded like she was trying to get her point across. She was not disruptive. At that time they had been working seven days a week for several months. The seven day work week was a matter of concern for some employees but some liked the extra money.

Employee Beverly Eaddy testified as follows:

The meeting began with Rufenacht speaking. He talked about sales and productivity and said what he wanted to say and then Carla Samuel spoke and asked how long they would be working seven days because that was too much. I do not credit Eaddy with regard to Samuel having made this comment concerning the seven day week. Moore spoke up and asked how long they would be working seven days. Moore also told Ruefenacht he never talked to us. Ruefenacht then said that if she didn’t want to work there, she could go somewhere else and “flip

burgers.” Moore then told him that God made heaven and earth in six days and rested on the seventh day. Rufenacht said God had nothing to do with it. He then said the meeting was over. Eaddy testified Moore never used profanity, did not scream at Rufenacht and did not call him a devil. Moore’s tone of voice was loud enough to hear but she was not screaming.

Employee Carla Samuel testified as follows:

Rufenacht spoke first about production problems in the plant. When he stopped talking she asked about who to go to if they have questions. Then Moore said that even God rested a day. Rufenacht told her, God had nothing to do with it. Samuel then said God’s got everything to do with it because if it weren’t for God, none of us would be here. Then Moore said to Rufenacht that she was not intimidated by him. Then Rufenacht said that if she didn’t like her job she could hand in her badge and also said something about flipping burgers. Moore than asked whether he was firing her. He said that he didn’t say that. Moore’s tone of voice was not loud and she did not scream or use any profanity.

Moore testified that at this regular monthly meeting, she asked Rufenacht when they were going to stop the seven day workweek and he said he didn’t see it anytime in the future. She said God created the world in six days and needed a rest on the seventh day and we were tired. Rufenacht said God didn’t have anything to do with it and he, (Rufenacht) had the last say and if she didn’t like it, she could flip burgers and turn in her badge to Rogers. She asked if she was fired and he did not reply so she asked again and he said, “No”. Moore testified that in the monthly meeting her tone of voice was the same as Rufenacht. It was normal. She did not scream. She did not call Rufenacht a devil. She was speaking for the majority of the employees and herself about the seven day workweek. On cross-examination Moore acknowledged that she did raise her voice in the group meeting.

Moore testified that in October of 2005, she had attended a meeting with Rogers and Supervisor Tim Davis and that she had told them that some of the employees wanted to go to church and were tired of the seven day work week and that Davis said he was tired also but there was nothing that could be done about it. I credit Moore’s testimony concerning this meeting which is unrebutted as Davis did not testify and Rogers said a number of employees had complained to him about the seven day work week but that he could not recall whether or not he was at this meeting.

Respondent called another meeting on January 6 to which Moore and Samuel were summoned. Rufenacht, Rogers and Davis were also in attendance. Rufenacht spoke first at the meeting and according to the testimony of Moore, said Samuel was a Judas Iscariot. Samuel did not testify to this. Rufenacht said to Moore that since she believed in God so much, she should pray to God find her another job. Rufenacht also said he had never been talked to in that manner before in his career at Datwyler as he had been in the group meeting. He then left the meeting. Moore and Samuel testified that he cut them off without giving them a chance to explain their position. Rufenacht testified that Moore did not want to reason. Subsequently on January 11, 2006, Moore was called into a meeting conducted by

Wysocki with Rogers present. Wysocki told Moore she was being terminated. Wysocki indicated on the unemployment form that she was laid off. Ruefenacht testified her termination had been reported as a layoff to enable her to collect unemployment benefits.

Following her termination Moore began meeting with Respondent's employees at her home and generated petitions listing grievances and complaints of the employees which were submitted to both Datwyler in Marion County, South Carolina and its headquarters in Switzerland. Datwyler received a petition in May. On about May 22, 2006, Ruefenacht directed Respondent's Finance Manager Barbara Driggers to meet with the employees who signed the petition and to report back to him, which she did. Barbara Driggers also has human resource responsibilities which were given to her after Human Resource Manager Wysocki was laid off. Pursuant to this directive Driggers held five separate meetings with the employees who had signed the petitions to discuss their grievances and complaints. Barbara Driggers and Sharon Driggers (who is not related to Barbara Driggers) met with Samuel and employee Jackie Taylor on May 23, 2006. Sharon Driggers was there as a witness and took some notes. Samuel testified that at this meeting Driggers asked what is this about a union and then said you know if you brought in a union, Switzerland would shut the Marion plant down. Taylor testified she could not remember any details of the meeting except that Driggers told them where the rules were located in the plant. Barbara Driggers denied threatening the plant would be shut down if a union came in. Rather she testified that she had made a list of six items that were on the petition rather than bring the petition to the meeting. On item (6) she wrote "Raises & Union - Mexico?" She testified she wrote this because they were talking about raises and she told them that Respondent had not made any money since its inception in 1996 and that Switzerland did not have any ties with Marion County and if they did not show a profit that it may decide to close the Marion facility and move it to Mexico but that this had nothing to do with unions. Sharon Driggers is a Human Resource and Payroll Clerk. She attended two of the meetings of Barbara Driggers with the employees who had signed the petition. She was there as a witness. The first meeting was with Carla Samuel and Jackie Taylor. These employees brought up issues of raises, working seven days and air conditioning in the plant. When the issue of raises came up, Barbara Driggers said that Datwyler had no ties in Marion County and could move if they could not make a profit. She testified that this had nothing to do with a union. Sharon Driggers took notes at the meetings. The employees were brought into the conference room and Barbara Driggers told them Respondent had received the petition and wanted to talk about their concerns. Barbara Driggers testified that she did not say anything to the effect that if a union came in, this would cause the plant to move to Mexico. Barbara Driggers conceded that she had mentioned a union in the meeting with employees Carla Samuel and Jackie Taylor, because it was listed on their petition. She asked them if they wanted to discuss a union and they did not respond. Barbara Driggers testified she sent reports back to Ruefenacht as to what occurred in the meetings with the employees.

I credit Samuel's testimony that Barbara Driggers threatened plant closure that if a union were brought in, Switzerland would shut the plant down. I find that Barbara Driggers was an agent of Respondent under Section 2(13) of the Act, when she met with the employees at Ruefenacht's direction and when she conducted the meetings with the other employees who had signed the petitions prepared by Moore and reported the information received from the

employees back to Ruefenacht. Driggers was vested with apparent authority and would have been perceived by the employees as an agent of Respondent by the threat issued by Driggers to employees Jackie Taylor and Carla Samuel that Switzerland would shut the Marion County plant down if the employees brought a union in. *G.T.A. Enterprises, Inc. d/b/a Restaurant Horikawa*, 260 NLRB 197, 203 (1982); Driggers issuance of the unlawful threat of plant closure was violative of Section 8(a)(1) of the Act. I find that even if Barbara Driggers' version were credited, her testimony that she threatened a shutdown of the plant by the Switzerland headquarters if issues of wages were brought up, establishes a violation of Section 8(a)(1) of the Act. I credit Samuel's testimony that Driggers did threaten plant closure if the employees brought a union in. I find it is unlikely that Samuel would have either intentionally or mistakenly made such a charge on her own as a current employee of Respondent.

III. Contentions of the Parties

In his brief the General Counsel contends as follows: Respondent threatened Moore with termination for engaging in protected concerted activities at the January monthly meeting and Respondent also threatened employees with plant closure if they selected a labor organization as their collective bargaining representative in the meeting held by Barbara Driggers in response to the petition filed by its employees listing a number of concerns and requests. Moore's conduct at the January 5 monthly meeting was protected concerted activity. An employee's questions and comments in a group meeting called by the employer concerning common conditions of employment constitute concerted activity protected by the Act, citing *Enterprise Products*, 264 NLRB 946 (1982); *Whittaker Corp.*, 289 NLRB 933 (1988). Other employees at a group meeting need not accept an individuals' invitation to group action in order for the invitation to be concerted. *El Gran Combo*, 284 NLRB 1115 (1987); *Mushroom Transportation Co.*, 142 NLRB 1150 (1963). The object of inducing group action need not be express. *Jeannette Corp.*, 207 NLRB 653 (1975). It is undisputed that Moore was discharged because of her conduct in the group meeting. Moore's request for relief from the seven day workweek was a matter of common concern for the employees and her comments were concerted activity. These comments were reinforced by Samuel who testified she told Ruefenacht that God had everything to do with it in reference to the seven day work week.

General Counsel contends further that Moore acknowledged she raised her voice at the meeting but not to the level of a shout or scream. Nor did she use any profanity or engage in any other disruptive behavior at the meeting. Moore specifically denied calling Ruefenacht a devil or stating that Jesus Christ would punish Ruefenacht and the Company for requiring the seven day workweek. Moore's testimony was corroborated by former employee Wilson and current employees Samuel and Eaddy. Each of these employees denied that Moore had screamed or engaged in any disruptive behavior in the January monthly meeting. Eaddy, a six year employee, testified that Moore did not call Ruefenacht a devil in the January monthly meeting.

Although Ruefenacht denied having threatened Moore with termination at the monthly meeting and in the follow-up meeting the next day, he did acknowledge however that he told

employees at the January monthly meeting that “if you cannot stand the manufacturing pressure here you’re always free to look for another job and leave the company.” Samuel, Eaddy and Wilson testified that Ruefenacht threatened Moore with termination in the January monthly meeting. Samuel testified that at the meeting the next day, Ruefenacht threatened Moore by stating, “if you believe in God so much, you can pray to God to find you another job.” Accordingly General Counsel contends that Ruefenacht unlawfully threatened Moore with termination in the January monthly meeting, and again in the meeting held the next day because of her engagement in protected concerted activities citing *Bill Scott Oldsmobile*, 282 NLRB 1073, 1073-1074 (1987).

General Counsel argues that Respondent presented the testimony of Production Manager Rogers and employee Sherry Stover to bolster the credibility of Ruefenacht’s testimony concerning the monthly meeting. Stover testified that when Ruefenacht made his introductory remarks, he was immediately interrupted by Moore, and that Moore stated she did not want to work seven days and that Moore tried to “over talk” Ruefenacht. However Production Manager Rogers testified that it was Carla Samuel who first addressed Ruefenacht in that meeting rather than Moore. Stover could only recall that Moore said Jesus Christ would punish Ruefenacht for making the employees work seven days a week and that Moore was not intimidated by him.

General Counsel also points to conflicting testimony on the part of Rogers. Rogers testified that Moore asked Ruefenacht if she was fired but did not recall what had prompted Moore to ask this question and could not recall what Moore said before she allegedly called Ruefenacht a devil. Rogers also vacillated as to the statement that God would punish the company and Ruefenacht. On direct examination and on cross-examination Rogers said Moore used the term “God” but on redirect exam, said Moore used the term “Jesus Christ” in this threat. On direct examination Rogers said Moore’s tone of voice at the January monthly meeting was loud. However, on redirect examination, he said she was screaming. General Counsel also contends that Ruefenacht’s testimony was similarly inconsistent. He initially testified that Moore interrupted him at the beginning of the January monthly meeting. However, Rogers testified it was Carla Samuel who interrupted him at the beginning of the meeting. Most significantly, Ruefenacht stated at the hearing that Moore screamed at him, called him a devil and threatened that Jesus Christ would punish him and the company for working seven days. However, in a memo to finance manager Barbara Driggers dated June 23, he stated his account of the January monthly meeting and did not mention any of the statements allegedly made by Moore at the hearing. He did not say Moore screamed at him, nor did he state she called him a devil or that she threatened that Jesus Christ would punish him and the Company for working seven days. His only comment concerning Moore in the June 23 memo was “Then came the ladies monologue,” in reference to Moore and Samuel.

General Counsel contends that Moore engaged in concerted activity with the other employees in the January monthly meeting and notes that the Board has found similar activity protected where two employees asked questions and made comments at a group meeting called by an employer, citing *Neff-Perkins, Co.*, 315 NLRB 1229, 1233 (1994). The “Then came the ladies monologue” comment in the June 23, memo shows that Respondent lumped Moore’s and Samuel’s actions together. Moore’s conduct thus clearly comes within the

definition of concerted activity under Board law, citing *United Enviro Systems, Inc.*, 301 NLRB 942, (1991). The evidence refutes Respondent's contentions that Moore was insubordinate. Moreover the Board has permitted employees engaged in such concerted activity a wide latitude in how they are required to conduct themselves including expressing themselves in a loud and angry manner and the use of profanity, provided they do not engage in flagrant misconduct so violent or of such character as to render the employees unfit for further service. *Postal Service*, 250 NLRB 4 (1980). In *United Enviro Systems, Inc.*, *supra* and *Neff-Perkins Co.*, *supra*, employees who engaged in concerted activity were found not to have lost the protection of the Act even though their conduct was rude, argumentative, and profane. In the instant case Moore's conduct did not exceed the bounds of permissible concerted activity. She did not engage in any threatening acts, nor did she threaten plant discipline. She did not use any profanity. In this case Moore's conduct was spontaneous but was a matter of common concern for all employees in the plant.

Respondent in brief contends as follows: It lawfully terminated Moore for insubordination because she verbally attacked its general manager, Ruefenacht, at a meeting of all first shift employees. Moore's outburst was neither protected nor concerted. Ruefenacht did not threaten any employees with termination on January 5 or 6. Ruefenacht's comments on these dates related to the production pressures at the plant and that he could not immediately change the work schedule. These statements could not reasonably be interpreted as a threat. Barbara Driggers never threatened to shut down the Marion plant if a union came in.

Respondent contends that Moore was terminated for legitimate non-discriminatory reasons and not because of any protected concerted activity. At the hearing Moore denied she had called Ruefenacht a devil or stated that Jesus Christ would punish him and Datwyler for requiring the seven day workweek. She admitted she was loud and told Ruefenacht that she was not afraid of him. On cross-examination, Moore was unresponsive to Datwyler's attorney's questions. See *Parc Fifty One Associates*, 306 NLRB 1002, 1007 (1992) rejecting testimony of an argumentative and evasive witness. Respondent also contends that other of General Counsel's witnesses were less than credible. Samuel admitted she was not sure about the order of various comments at the January 5 meeting. Wilson admitted she had been terminated from her job at Datwyler and told a supervisor that Ruefenacht had not seen the last of her as she was leaving the plant.

Respondent contends further that Moore shouted insults and religious slurs unrelated to any legitimate workplace concern. It is unlikely that Ruefenacht, Rogers and Stover would have all invented Moore's comment that "Jesus Christ" was going to punish Ruefenacht and Datwyler for requiring her to work on Sundays. Moore's "devil" comment was corroborated by Rogers. Respondent contends that Moore's insults and religious slurs did not relate to any term or condition of her employment and are similar to those held unprotected in *Media General Operations, Inc. v. NLRB*, 394 F.3d 207 (4th Cir. 2005), where one employee became agitated in a meeting of pressmen and called his supervisor a racist and stated that the newspaper was a racist place to work. Respondent contends that Moore did not communicate legitimate workplace concerns when she called Ruefenacht a devil. Respondent also cites *Boaz Spinning Co. v. NLRB*, 395 F.2d 512 (5th Cir. 1968), (conduct of employee who

interrupted meeting and accused plant manager of being no different than Castro held unprotected). Respondent contends further that Moore's personal attack on Ruefenacht was not concerted as she spoke only for herself citing *Meyers Industries*, 281 NLRB 882, 885 (1986). Moreover her subsequent conduct of religious slurs and insults was not concerted. *HCA Health Services of New Hampshire*, 316 NLRB 919, 929-30 (1995). The test for whether an employee's actions have lost the protection of the Act is set out in *Atlantic Steel Co.*, 245 NLRB 814 (1979). The four factors to be balanced are (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst and (4) whether it was provoked by an employer's unfair labor practice. Moore's tirade occurred in front of the entire first shift with dozens of people present and would reasonably tend to affect workplace discipline by undermining the authority of Ruefenacht. *Aluminum Co. of America*, 338 NLRB 20 No. 3 (2002); *Waste Mgmt of Arizona*, 345 NLRB No. 114, slip op. at 3 (2005). Moore's offensive comments were unrelated to her desire to work fewer hours.

IV. Analysis

The statement made by Ruefenacht in response to Moore's complaints about being required to work the seven day workweek, that she could turn in her badge to production manger Rogers and she could go flip burgers, constituted a threat of discharge issued to Moore in response to her complaints about the seven day workweek. I find that this threat was violative of Section 8(a)(1) of the Act. It is also clear that Moore's conduct at the regular monthly meeting was protected concerted activity concerning the employees' hours and terms and conditions of employment. I find that Moore was engaged in protected concerted activities on behalf of herself and her fellow employees when she spoke out at the meeting in opposition to the mandatory Sunday work. It is undisputed that the required Sunday work was a matter of concern to many of the employees. Production Manager Rogers testified that the employees were all tired from the mandatory Sunday work which had been required for a protracted period of time.

I also find that Ruefenacht's statement to Moore on the next day in the conference room was violative of Section 8(a)(1) of the Act. In this meeting Ruefenacht told Moore that since she believed in God so much, she should pray to God to find her another job. This was clearly a threat of discharge in response to Moore's engagement in protected concerted activity at the group meeting on the prior day.

Mononga Moore was discharged on January 11, 2006, for her conduct at the group meeting. It is undisputed that as Rogers testified, the sole reason for her discharge was her conduct at the meeting. Respondent defends its actions in discharging Moore as justified on the basis that she verbally attacked Ruefenacht and was insubordinate and thereby lost the protection of the Act.

I find that Moore made the statement attributed to her by Ruefenacht and Rogers, that Ruefenacht was a devil and that God would punish him and the Company for making the employees work seven days a week. In making this determination I have considered the testimony of the witnesses, their relationship to management as employees in the case of

Eaddy and Samuel and their respective interests in the outcome of this case particularly concerning Moore, Eaddy and Samuel, as well as the interest of the Respondent's management, Ruefenacht and Rogers, in responding to Moore's having spoken out. I am convinced that Moore did make the comment attributed to her. I found convincing Ruefenacht's open and steadfast testimony that Moore made the comment about the Devil. However I do not believe that it was so egregious as to warrant discipline against Moore. She basically spoke out at the Respondent's meeting concerning the work hours of the employees. However, she did not threaten or engage in any profanity or threatening or violent behavior. I do not find that Moore's spontaneous remarks constituted any serious threat sufficient to undermine discipline at the plant. I do not find that it was so egregious as to cause Moore the loss of the protection of the Act. Moore spoke out spontaneously at the meeting in protest on behalf of the employees, including herself, being required to work the seven day week. She said she was tired. At the hearing she testified that she told Ruefenacht "we" were tired. In either event I find that she was engaged in protected concerted activity about a matter of working conditions and hours of employment namely, being required to work a seven day week. There is no doubt that the seven day workweek was a matter of concern to many of the employees. Production Manager Rogers, testified that the employees were tired. Moore testified that Shift Supervisor Davis told her that he was tired also but there was nothing he could do about it. Davis did not testify and Moore's testimony is unrebutted in this regard. When Moore spoke out at the meeting she did not engage in profanity or threaten any violent behavior which would have made her further employment untenable. It is clear that Moore was pursuing a complaint in opposition to maintenance of a seven day workweek. This complaint concerned her fellow employees and was a complaint about "hours" and "terms of employment." While her comments in pursuit of this complaint may have been unpleasant for Respondent to hear, they were not so egregious as to cause the loss of the protection of the Act. *Postal Service, supra; United Enviro Systems, Inc.*, 301 NLRB 942 (1991); *Neff-Perkins Co., supra*.

Conclusions of Law

1. Respondent is an employer within the meaning of Sections 2(6) and (7) of the Act.
2. Respondent violated Section 8(a)(1) of the Act by:
 - (a) Threatening employees with termination for making statements at group meetings concerning terms and conditions of employment.
 - (b) Threatening its employees with plant closure because of their engagement in protected concerted activities.
 - (c) Its discharge of Mononga Moore.
3. The above unfair labor practices in conjunction with Respondent's status as an employer affect commerce within the meaning of Sections 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, it shall be ordered to cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes and policies of the Act.

It is recommended that Respondent offer immediate reinstatement to employee Mononga Moore to her former position or to a substantially equivalent one if her former position no longer exists. The above employee shall be made whole for all loss of backpay and benefits sustained by her as a result of Respondent's discharge of her and its failure to reinstate her. Respondent shall also remove from its files all references to the unlawful actions taken against her and advise her in writing that it has done so.

All backpay and benefits shall be computed in the manner prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950) with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987) at the "short term Federal Rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S. Code Section 6621.

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

ORDER

The Respondent, Datwyler Rubber and Plastics, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:
 - (a) Threatening its employees with termination for making statements at group meetings concerning terms and conditions of employment.
 - (b) Threatening its employees with plant closure because of their engagement in protected concerted activities.
 - (c) Discharging its employees because of their engagement in protected concerted activities.
2. Take the following affirmative actions to effectuate the policies of the Act:
 - (a) Offer Mononga Moore immediate and full reinstatement to her former position, or to a substantially equivalent position if her former position no longer exists.

¹ If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Make Mononga Moore whole, with interest, for any loss of earnings and benefits she may have sustained as a result of her termination.

(c) Preserve and, within 14 days of a request, provide at the office designated by the National Labor Relations Board or its agents, one copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

(d) Post at its facility if it still exists, copies of the notice “Appendix”² consistent with the terms of this Order immediately upon receipt thereof, and maintain them for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted and mail a copy of the notices to all employees who were employed at the facility during the period October 1, 2005 to May 31, 2006. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any material.

(e) Within 14 days from the date of this Order remove from its files any reference to the unlawful actions taken against Mononga Moore.

(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 at Washington, D.C., February 27, 2007.

Lawrence W. Cullen
Administrative Law Judge

² If this Order is enforced by a Judgment of the 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 the 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 threaten our employees with termination for making statements at meetings concerning terms and conditions of employment.

WE WILL NOT threaten our employees with plant closure because of their engagement in protected concerted activities.

WE WILL NOT discharge our employees because of their engagement in protected concerted activities under the Act.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

WE WILL within 14 days from the date of the Board’s Order rescind the unlawful discharge of Mononga Moore and offer her full reinstatement to her former position or if the position no longer exists, a substantially equivalent job, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Mononga Moore whole for any loss of earnings and other benefits as a result of the discrimination against her, with interest.

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

DATWYLER RUBBER AND PLASTICS, 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.nlr.gov.

4035 University Parkway, Suite 200, Winston-Salem, NC 27106-3325. Telephone: (336) 631-5201, Hours: 8:00 a.m. to 4:30 p.m.

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, (336) 631-5230