

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

KR DRENTH TRUCKING, INC.
d/b/a TK SERVICES, INC.

and

LOCAL UNION NO. 135, CHAUFFEURS,
TEAMSTERS, WAREHOUSEMEN AND
HELPERS, INDIANAPOLIS, INDIANA AND
AIRLINE EMPLOYEES IN THE STATE
OF INDIANA, a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Cases 25-CA-29863 Amended
25-CA-29864 Amended
25-CA-29921
25-CA-29922 Amended
25-CA-29930
25-CA-29974

Kimberly R. Sorg-Graves, Esq., for the
General Counsel.
Bruce F. Mills, Esq. (Wessels and Pautsch, P.C.),
of Indianapolis, Indiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

EARL E. SHAMWELL, JR., Administrative Law Judge. This case was heard by me on September 25-27, 2006, and April 17-18, 2007, in Indianapolis, Indiana, pursuant to an original charge filed by Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, Indianapolis, Indiana and Airline employees in the State of Indiana, a/w International Brotherhood of Teamsters (the Union) on February 8, 2006, against KR Drenth Trucking, Inc. d/b/a TK Services, Inc. (the Respondent) in Case 25-CA-29863; the Union amended charge on May 31, 2006.

On February 8, 2006, the Union filed an original charge against the Respondent in Case 25-CA-29864; this charge was amended by the Union on May 31, 2006. On April 6, 2006, the Union filed an original charge against the Respondent in Case 25-CA-29922 against the Respondent and filed a first amended charge in this case on May 31, 2006, and a second amended charge on June 8, 2006. On April 10, 2006, the Union filed an original charge in Case 25-CA-29930 against the Respondent. On May 31, 2006, the Union filed an original charge against the Respondent in Case 25-CA-29974.

On July 31, 2006, the (Acting) Regional Director for Region 25 of the National Labor Relations Board (the Board) issued a complaint against the Respondent alleging that the Respondent violated on numerous occasions Section 8(a)(1) and 8(a)(3) of the National Labor Relations Act (the Act).¹ On August 8, 2006, the Respondent timely filed its answer to the

¹ On September 26, 2006, the General Counsel made a motion to amend the complaint to
Continued

complaint essentially denying the commission of any unfair labor practices and asserting certain affirmative defenses.

At the hearing, the parties were represented by counsel and were afforded full opportunity to be heard, examine, and cross-examine witnesses, and introduce evidence. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following findings of fact, conclusions of law, and order.

I. JURISDICTION—THE BUSINESS OF THE RESPONDENT

The Respondent, in conducting its business, waste hauling, maintains offices and places of business in various cities in Indiana. The Respondent admits that during the past 12 months in conducting its business, it purchased and received, at its various facilities in Indiana, goods valued in excess of \$50,000 directly from points outside the state of Indiana. Accordingly, I would find and conclude that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

It is admitted by the parties, and I would so find and conclude, that at all material times herein, Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, Indianapolis, Indiana and Airline Employees in the State of Indiana, a/w International Brotherhood of Teamsters has been a labor organization within the meaning of Section 2(5) of the Act.

III. BACKGROUND MATTERS NOT IN DISPUTE OR CONTROVERSY

A. *The Respondent's Business Operations*

The Respondent, KR Drenth Trucking, Inc., which conducts its business under the trade name TK Services, Inc., engages in basically the garbage or refuse collection and hauling business.

include additional charges alleging violations by the Respondent of Sec. 8(a)(1) of the Act. At that time, I took the motion under advisement but was inclined to deny it on grounds of timeliness and due process, the proposed amendment's being made on the second day of the hearing and the General Counsel's not having adequately apprised the Respondent's counsel of her intentions. The Respondent opposed the amendment, citing generally his concerns for due process and prejudice to his client. On April 17, 2007, the General Counsel renewed her motion to amend the complaint. I will grant this motion consistent with the General Counsel's proposed amendments as contained in G.C. Exh. 1(xx) because my earlier concerns of timeliness and due process (fairness) have been obviated by the passage of an extensive period of time between the General Counsel's original motion in September 2006 and the resumption of the hearing in April 2007 as well as the Respondent's being placed on notice of the proposed amendment in September 2006. The Respondent, I note, again opposed the renewed amendment on April 17, but interposed a denial of the allegations associated with the amendments. The amended charges will be considered and resolved by me later herein in an appropriate section.

During all times material here, the Respondent was under contract with Republic Services, Inc. (Republic) to haul trash and garbage that Republic picked up at curbside from local businesses and residences and dumped at about ten transfer stations throughout central and southwestern Indiana. The refuse was then hauled for disposal to various landfills.

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The Respondent operated out of Republic's aforementioned transfer stations which were located at Kokomo, Anderson, Bloomington, Bedford, Green Castle, Washington, Vincennes, and Jasper, Indiana. The Respondent also operated two transfer stations in Indianapolis, namely 96th Street Station and Circle Center Recycling (CCR). The Respondent's semi/tractor-trailer trucks are loaded with refuse at the transfer stations and weighed by employees called loader/operators and then driven to either of two landfills, the Sycamore Ridge Landfill in Terre Haute, Indiana, or the Washbash, Indiana Landfill where the garbage is dumped; most of the Respondent's trucks haul to the Sycamore Ridge Landfill. The Respondent maintains mechanics shops and garages on Republic's property at CCR and at what is called the Old Victory Landfill in Terre Haute.

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During all material times, the Respondent employed about 47 drivers who haul refuse, 9-10 loader/operators, and 7-8 mechanics, all of whom are employed at the 10 transfer stations. All of the transfer stations, shops, offices, and the landfills out of which the Respondent operates are owned by Republic. The Respondent, per its contract with Republic, is allowed to use Republic's facilities to conduct its operations.

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The Respondent's Indiana operations are primarily conducted under the management of one person, Joe Bergeron,² who maintains an office at Circle City Recycling. Bergeron reported to the Respondent's head office in Chicago, Illinois, primarily to Kenneth Drenth who acts as the Respondent's secretary-treasurer.³

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B. The Union's Organizing Drive

The events making for this litigation began on or about January 10, 2006, when one of the Respondent's drivers contacted the Union about the possibility of organizing the Company's driver force.

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On or about January 20, 2006, union initiator Stacey Thomas, along with fellow drivers Dennis Conner and Jason Rankin, met with representatives of the Union at the union hall to discuss an organizing drive to represent the Respondent's drivers.⁴ During the period covering January 20-27, the Union conducted a low key organizing campaign among the Respondent's drivers. On January 27, the Union formally requested that the Respondent recognize it as the drivers' bargaining representative. On January 30, 2006, having received no reply to its request

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² Bergeron is an admitted supervisor. Bergeron testified at the hearing and stated that his position was manager of the ten facilities operated by the Respondent. His duties include the authority to hire, fire, discipline, assign, and transfer employees at the Respondent's facilities. I would find and conclude he meets the definition of supervisor under the Act.

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³ Kenneth Drenth testified at the hearing as did Joe Bergeron. The evidence of record supports a finding that Drenth's duties, responsibilities, and actions fall within the definition of agent under Sec. 2(11) of the Act.

⁴ The Union had evidently at an earlier date, sometime in 2004, attempted to organize the Respondent's drivers but was unsuccessful. This prior campaign was not the subject of the instant litigation and was discussed only as a background matter.

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from the Respondent, the Union filed a petition for certification of representative with the Board, a copy of which was faxed to the Respondent on that date.⁵

5 After the petition was filed, the Union's organizing campaign began in earnest, as did the Respondent's campaign in opposition to the Union.⁶

IV. THE UNFAIR LABOR PRACTICE ALLEGATIONS

10 The complaint, as amended, essentially alleges that on various dates covering the period January 26 through September 2006, the Respondent, acting through its supervisors and/or agents, violated Section 8(a)(1) and (3) of the Act by interrogating employees about their union activities and threatening employees with specified and unspecified promises, benefits, reprisals, and withdrawing benefits from employees because of their involvement with and support of the Union; promulgating, maintaining, and disparately enforcing a no-solicitation rule to discourage employees from supporting the Union or engaging in activities on its behalf; 15 requesting that employees provide the Respondent with copies of affidavits taken by the Board agent investigating the Union's charges; and issuing warnings to, suspending, and discharging employees because of their union activities.⁷

20 A. Preliminary Issue: The Supervisory/Agent Status of the Respondent's Employees, Brandon Meekin and Clements Clark

As noted earlier herein, the Respondent's onsite manager, Joseph Bergeron, performed unquestionably supervisory duties for the Respondent and is an admitted supervisor. However, 25 regarding two employees, Brandon Meekin and Clements Clark, there is an issue as to whether they are employees or statutory supervisors and/or agents.

Neither Meekin nor Clark testified at the hearing.⁸ However, several of the drivers who worked with Meekin, and who were familiar with Clark and the role he appeared to have played 30 during the organizing campaign, did testify at the hearing. Bergeron also testified but only about the duties and responsibilities of Meekin.

The General Counsel notes (correctly) that under Board law, employers may properly be held responsible for the conduct of an employee where, under the extant circumstances, 35 employees would reasonably believe that the employee was reflecting company policy and

⁵ See G.C. Exh. 2, a copy of the petition.

40 ⁶ See G. C. Exh. 3, a copy of an undated letter sent by the Respondent through Joe Bergeron to the employees, inter alia, acknowledging receipt by him of the petition and informing them that the Company opposed the Union and believed that the presence of the Union was "harmful to everyone involved."

45 ⁷ It should be noted that the incidents as alleged took place during the Union's organizing campaign. Sometime during the course of this litigation, an election was held at the Company, and the Union lost the election.

50 ⁸ According to the Respondent, Meekin is no longer employed by the Company. Clark was identified by witnesses during the hearing as being in the hearing room, but he was not called as a witness by the parties. It was not made clear whether Meekin was unavailable or his whereabouts unknown. Bergeron testified that Meekin simply walked off the job, quietly with no notice. Another alleged discriminatee, Conner, testified that he knew of Meekin's whereabouts but did not elaborate.

acting on its behalf.⁹ In short, by virtue of their apparent authority, employees not fitting the definition of supervisor under the Act may, nonetheless, satisfy the statutory definition of agent under Section 2(13) of the Act.

5 The General Counsel called as witnesses *two* of the Respondent's drivers who hauled refuse out of the Vincennes transfer station where Meekin was employed by the Respondent as an loader/operator—Dennis Conner and Stacey Thomas.¹⁰

10 Conner testified that he worked for the Respondent as a driver and part-time front-end loader for about 3 years and was familiar with Meekin, who operated a front-end loader at the Vincennes transfer station. According to Conner, Meekin interviewed new driver applicants, provided them with the pertinent paperwork, and supervised the road tests applicants were required to pass before being hired. On this latter point, Connor said that Meekin instructed him to take the prospective driver out for his road test. After the training runs were completed,
15 Connor stated that he would report to Meekin with the results and if he (Connor) determined that the applicant was a competent driver, Meekin would approve him for hire. Connor stated that he also witnessed Meekin on one occasion discipline an employee for tardiness and not taking an assigned load.

20 According to Conner, Meekin on occasion would assign him to pick up refuse from transfer stations other than Vincennes. Parenthetically, Conner noted that he received different wages for loads hauled from the various transfer stations. For example, a load hauled out of Vincennes paid \$40; out of Bloomington, \$50; Greencastle, \$45; and Indianapolis (CCR and 96th Street), \$67. Thus, Connor implied that Meekin's assignments to haul loads out of stations
25 other than Vincennes provided him additional pay opportunities.

 Conner testified that whenever he needed time off, he made his request through Meekin. Conner stated that Meekin also was the person to whom he gave the company paperwork to receive credit for the loads he hauled at the end of every day. Any problems with his pay,
30 according to Conner, were handled by and through Meekin. Conner also noted that any problems with the trucks or any other problems that arose on the job at Vincennes were handled by Meekin.

 Conner noted that while Meekin did the front-end loader work at Vincennes along with
35 these other duties, he recalled that Bergeron told him that Meekin was being groomed and trained for a supervisory position with the Company and, in that vein, Conner was to see Meekin for any job-related matter before calling him (Bergeron). Conner stated that this conversation occurred on the occasion of his first meeting Bergeron at Vincennes some time ago.¹¹

40 Stacey Thomas testified that he knew Meekin and considered him his "supervisor." Thomas explained that he would call Meekin with regard to any job-related problems at Vincennes where he received his loads and would turn in his daily paperwork to Meekin. According to Thomas, Meekin gave him his assignments for the day and if he needed time off,

45 ⁹ See *CNP Mechanical, Inc.*, 347 NLRB (No. 14, slip op. 15 (May 31, 2006)); *Kosher Plaza Supermarket*, 313 NLRB 74 (1993).

¹⁰ Conner and Thomas are alleged discriminates; neither man currently was employed by the Respondent at the time of the hearing. Both men voluntarily terminated their employment with the Respondent.

50 ¹¹ Conner did not give a date for this conversation. However, in context, I am presuming that he meant some time early in his tenure with the Respondent.

Meekin was the person he contacted for approval of his request. Meekin also handled any problems with pay, especially if there were errors in the amounts drivers were to receive. According to Thomas, Meekin corrected his pay amounts on two occasions.

5 Bergeron testified about Meekin's employment with the Company, acknowledging that he worked at the Vincennes transfer station at least from around January 1 until April 1, 2006, on which date he voluntarily quit. Bergeron also acknowledged that Meekin accepted applications for employment on behalf of the Company and even placed ads in local newspapers when driver vacancies occurred. Bergeron stated that Meekin was the designated company contact person for interested job applicants. Bergeron also conceded that Meekin submitted driver payroll records to the Company's headquarters in Chicago, at least for the drivers hauling out of the Vincennes, Jasper, and Bloomington transfer stations.

15 Bergeron noted that while Meekin did not have hire/fire authority, he was charged by the Company with hand delivery of disciplinary notices to affected employees; however, Meekin was not authorized to discipline an employee. According to Bergeron, Meekin did not direct the work of the drivers; that function was performed by him (Bergeron).

20 Bergeron steadfastly denied that Meekin held any supervisory authority at the Vincennes station. According to Bergeron, Meekin was a loader/operator who on occasion acted as a "conduit" for him (Bergeron).¹²

25 Regarding the matter of Clark's role with the Company, Bergeron testified that Clark was hired by the Company as a consultant to combat the Union's organizing drive around January 2006.¹³

30 The General Counsel urges on the strength of the foregoing that both Meekin and Clark be found statutory agents and that the Respondent as principal be held responsible for their statements and conduct made or done in furtherance of the Respondent's interest and within the scope of their apparent authority to represent the Company with respect to all pertinent employment-related issues and the union organization drive in particular.

35 The Respondent for its part denied Meekin's supervisory authority, but did not address the agency issue as to him in its brief or at trial. The Respondent, in likewise, did not address

40 ¹² Kenneth Drenth testified that Meekin, while carried officially on the company payroll as a loader/operator at Vincennes, was, nonetheless, Bergeron's eyes and ears out there. (Tr. 630.) Drenth noted that Vincennes was about 100 miles from the Indianapolis facility where Bergeron officed, and Meekin was a leadman who had the authority to report to Bergeron about the employees' behavior, conduct, and performance; he had to report to Joe as to what was happening at Vincennes. (Tr. 631.)

45 ¹³ Andrew Keck, currently employed by the Respondent as a driver and an alleged discriminatee herein, testified that Clark—whom he identified in open court as the advisor for the Company—asked employees at a meeting about their affidavits given to the Board and whether they would provide a copy to the Company. Keck stated that Clark was also present with Bergeron at various company sponsored meetings with the employees during the union campaign. Stacey Thomas, a former driver, testified that he knew Clark as "Clem" who acted as the Company's attorney or a consultant. According to Thomas, on one occasion, Bergeron called Clark to consult with him about a parking issue and the upcoming union election. This matter is the subject of an unfair labor practice charge herein and will be discussed in a separate section.

the agency status of Clark, although the Respondent opposed the General Counsel's motion to amend on the record at the hearing.

Section 2(13) of the Act provides:

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In determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently satisfied shall not be controlling.

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The Board applies common law principles of agency to determine whether an individual possesses actual or apparent authority to act for an employer, and the burden of proving an agency relationship is on the party who asserts its existence. See, e.g., *Pan-Oston Co.*, 336 NLRB 305, 305-306 (2001). "Apparent authority results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question." *Southern Bag Corp.*, 315 NLRB 725 (1994). The test is whether, under the circumstances, employees would reasonably believe that the alleged agent was reflecting company policy and speaking and acting for management. See, e.g., *Pan-Oston Co.*, supra, citing *Waterbed World*, 286 NLRB 425, 426-427 (1987), enfd. 974 F.2d 1329 (1st Cir. 1992).¹⁴

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A principal is responsible for its agents' conduct if such action is done in furtherance of the principal's interest and is within the general scope of authority attributed to the agent, even if the principal did not authorize the particular act. In other words, it is enough if the principal empowered the agent to represent the principal within the general area in which the agent has acted.¹⁵

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It seems abundantly clear on this record that the Respondent authorized Meekin to speak and act for the Company on a variety of issues touching on the drivers' terms and conditions of employment.¹⁶ In agreement with the General Counsel, I would find and conclude that Meekin was cloaked with actual and apparent authority to represent the Respondent in his dealings with the drivers and that authority created a reasonable basis for its employees to believe that the Company had authorized him to speak and act on its behalf in ways reflective of company policy. I would find and conclude that Meekin was a statutory agent.

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Regarding Clark, the Respondent's labor consultant, it is equally clear—and the Respondent seemingly concedes this point—that he also was its agent within the meaning of the Act. *Methodist Hospital of KY*, 318 NLRB No. 7 (1995).

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I will resolve the allegations implicating Clark and Meekin in any unfair labor practice alleged herein based on these findings.

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¹⁴ These principles are taken from *Ready Mix, Inc.*, 337 NLRB 1189 (2002).

¹⁵ *Bio-Medical Applications of Puerto Rico, Inc.*, 269 NLRB 827, 828 (1984).

¹⁶ I have credited the drivers who testified about Meekin's role vis a vis the drivers at Vincennes in this regard. Further, Bergeron and Drenth essentially corroborated the drivers' testimony regarding Meekin's duties and responsibilities on the job and his relationship with them.

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B. The Substantiative Charges

5 1. Paragraphs 5 and 6(c), (g), (h), and (i) of the complaint allege that the Respondent violated Section 8(a)(1) on numerous occasions covering the period January 26 through the middle of September 2006. These charges will be discussed in the same numerical order as they appear in the complaint.

1(a) Bergeron's alleged interrogation of the employees on or about January 26, 2006

10 The General Counsel called alleged discriminatee David Oberholtzer to establish this charge.

15 Oberholtzer testified that he was employed by the Respondent from around June 2004 through April 6, 2006, when he was terminated by Bergeron, his immediate supervisor during the time he was employed. Oberholtzer stated that he was mainly a driver of a refuse hauler, but on occasion served as a loader/operator working primarily out of the Circle City transfer station in Indianapolis.

20 Oberholtzer stated that he was actively involved in the union organizing drive in that he attended organizing meetings, hosted a party in support of the Union at his home, collected union authorization cards, and handbilled. During the course of the union drive, Oberholtzer said that he also contacted employees about the Union in person over his personal citizen band (CB) radio and over the company provided walkie-talkie (Nextel) communications system.¹⁷

25 Oberholtzer testified that on January 26, Bergeron called him to his Circle City office and, among other things, asked him if he had heard anything about the Union and from what sources had he heard anything. Oberholtzer stated that he responded by telling Bergeron that he had just heard some "grape vine stuff", that (people) were just talking about the Union. Oberholtzer testified that he told Bergeron that he was not going to identify the persons involved in the conversations when Bergeron asked from what "end" the union talk was coming. According to Oberholtzer, Bergeron then said that he knew the employees held secrets, but was the union talk coming from the "south" end or "north" end (presumably of the Respondent's operations). Oberholtzer said that he simply replied to Bergeron that the talk was "local."

35 1(b) Bergeron's alleged threat of job loss if employees selected the Union

As part of the same January 26 conversation according to Oberholtzer, in response to his (Oberholtzer's) reply that the union talk was local, Bergeron then said,

40 Okay, well, if you hear anybody talking about it just say no. Tell them if you do it we lose the contract. Think about everybody else you will put out of work. Everybody else, who even wants to do it is put out of work.

45 In response, Oberholtzer asked Bergeron if he had a copy of the (Republic) contract onsite. According to Oberholtzer, Bergeron then said (with a belligerent tone),

50 ¹⁷ Oberholtzer also stated that beginning around the middle of February 2006, he also started wearing a ball cap that was inscribed with "Vote Union," and also festooned his hardhat with Teamsters Local 135 decals or logos.

You know what, I don't have to give you guys nothing, you don't want to give me information; I don't have to give you guys nothing.

5 Oberholtzer said the meeting basically ended on this note, although he informed Bergeron in parting that it was a federal offense for Bergeron to ask him about his (or others') union activities and involvement. According to Oberholtzer, Bergeron, with a profane remark, invited Oberholtzer to sue him if he so desired.

10 Bergeron testified at the hearing and was queried by the General Counsel about his encounter with Oberholtzer on January 26. Bergeron admitted to meeting with Oberholtzer and asking him if he (Oberholtzer) had heard anything about the Union. According to Bergeron, he merely asked Oberholtzer whether he had heard any scuttlebutt about the Union. Bergeron denied that he mentioned to Oberholtzer that he (Bergeron) had heard talk about the Union in this conversation. Rather, Bergeron stated that he asked Oberholtzer what he had heard about
15 the Union. Bergeron also denied asking Oberholtzer where he (Oberholtzer) had heard about the Union, that he did not ask from what "end" he had heard it. Bergeron also denied telling Oberholtzer in this conversation that if the employees pursued unionization, they would lose the (Republic) contract and be out of work.

20 A preliminary issue is whether Bergeron made the allegedly unlawful statements attributed to him by Oberholtzer in an admittedly one-on-one situation. I would find and conclude that Bergeron indeed engaged in the conversation with Oberholtzer on January 26 and made the statements alleged to be violative of the Act.

25 It should be noted that Oberholtzer secretly recorded his encounter with Bergeron, and the statements set out in the discussion above reflect a verbatim transcript of the conversation between the two men.¹⁸ Accordingly, the pertinent statements of Bergeron quoted herein reflect Bergeron's own words in the conversation. Notably, Bergeron denied making these statements but, once confronted with the tape recording, did not deny that his voice was recorded on the
30 tape.¹⁹ Therefore, I would credit Oberholtzer's version of the meeting on January 26 with his supervisor, Bergeron. The legal effect, if any, of these statements will be discussed in a separate section of this decision.

35 1(c) Brandon Meekin's alleged interrogation and threats of unspecified reprisals on January 27, 2006

The General Counsel called former Drenth driver (and sometimes loader/operator) Dennis Conner as her witness to establish this charge. Conner said he began working for the Respondent around July 15, 2003.²⁰

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45 ¹⁸ See G.C. Exh. 11, a transcript of a tape made by David Oberholtzer. This tape recording was the subject of the General Counsel's appeal from one of my evidentiary rulings concerning the tape recording. (See G.C. Exh. 1(mm) dated October 12, 2006.) Based on the Board's Order, I audited the tapes and certified the accuracy of the transcript.

¹⁹ Pursuant to the Board's Order in the special appeal, the Respondent's counsel was given a copy of the tape recording in question in order to cross-examine Oberholtzer.

50 ²⁰ As noted earlier, Conner at the time of his appearance at the hearing was no longer employed by the Respondent as of May 23, 2006. He has been employed at another trucking concern since May 25, 2006. Conner testified that he voluntarily quit his job with Drenth.

Conner stated that he knew Meekin as the loader/operator assigned by the Respondent to the Vincennes transfer station, and worked with him daily regarding the loading of his truck and other matters previously discussed in the discussion about Meekin's agency status.

5 By way of background, Conner testified that he was familiar with the Union, having been contacted in January 2006 by fellow drivers Jason Rankin and Stacey Thomas who sought his opinion about forming a union at Drenth.²¹ Conner stated he subsequently became involved in the organizing drive and his activities included speaking with fellow drivers to ascertain their feelings about the Union and handing out and collecting union authorization cards for the
10 Union.²² Conner stated that he spoke to the drivers—in his words, very carefully—in person at the Sycamore Ridge Landfill and on his personal Nextel (walkie-talkie) telephone; Conner stated that some drivers were issued company Nextels with which he could communicate; other drivers had personal Nextels and would likewise communicate with him during the workday.

15 Conner said that he had two separate discussions with Meekin in which the Union was discussed.

Conner said the first occasion took place on January 27, 2006, in the early afternoon at the Vincennes transfer station as he and Meekin were purchasing a soda. According to Conner,
20 Meekin said he would like the two of them to talk privately. Conner said that he and Meekin left the job in Meekin's truck and Meekin asked him during the trip whether he was involved in any union activity. Conner said he told Meekin that he should not be asking him about the Union as this was unlawful. Conner said that, nonetheless, he told Meekin that he was up to his neck in it (union activity). According to Conner, Meekin then asked who else was involved. Conner said
25 he told Meekin that he would not divulge the names and further remonstrated Meekin, telling him again these questions were unlawful, that he should not be asking about these matters.

According to Conner, Meekin then suggested that they converse as friends, off the record. Conner said he did not immediately respond to this request, whereupon Meekin related
30 a call he had received from Mr. Drenth in Chicago. According to Conner, Meekin said that Drenth was very upset about a fax from the Union informing him that the Union was filing a representation petition, but that he had received no information about it from Bergeron; Drenth wanted to know what was going on.

35 Conner said that he told Meekin that he (Conner) was pleased with this because the union supporters had tried to keep their drive very quiet, although the union supporters had been notified of the filing.

40 According to Conner, Meekin responded, saying that he hoped that Conner had not stuck his neck out too far to where it gets chopped off. Conner said he merely responded that he was looking for a job when he took the job at Drenth, so be it (if he were fired).

45 Conner said the second conversation with Meekin took place on Saturday, February 18, 2006, at a Denny's Restaurant in Vincennes; again, just the two of them were present.

²¹ On cross-examination, Conner stated that the Union had also attempted to organize the Company in the summer of 2004 and mailed union materials to him.

50 ²² Conner identified G.C. Exh. 45 as a copy of his own signed authorization card dated January 20, 2006.

Conner explained that on that very cold day, the brakes on a trailer had frozen, making the conveyance immovable. Conner said that he informed Meekin of the situation, and Meekin and he decided to get something to eat. Meekin offered to buy the meal, so off they went in Meekin's vehicle to Denny's.

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Once they were seated at the restaurant, Conner said that after some small talk, Meekin stated that he hated the union "stuff" then ongoing because he had never seen the Company in such bad shape. Meekin said that he wished the union stuff had never taken place. According to Conner, Meekin told him that he had heard from a pretty reliable source that no matter what the outcome of the union organizing effort—voted in or out—his (Conner's) days with the Company were numbered.²³

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As I have noted earlier, Meekin did not testify at the hearing. I further note on this point that Conner testified that he knew of Meekin's whereabouts but did not say where.

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I found Conner to be a highly credible witness. He answered all questions posed to him with equanimity and confidence. He was very candid and even admitted that he would at some point have liked to return to work for the Company which suggests that he bore no ill will to it in spite of his evident dissatisfaction with working conditions there. Then, too, his testimony is un rebutted. Accordingly, I would credit his testimony regarding his conversations with Meekin, whom I have previously determined is a statutory agent. The legal effect of Meekin's statements will be discussed later herein.

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1(d) The Respondent's alleged posting, promulgation, maintenance, and selective and disparate enforcement of a no-solicitation rule on about February 27, 2006

Bergeron, who was called by the General Counsel, admitted that on about February 27, he posted two policy announcements—one at the Circle City transfer station and another at the Terre Haute Landfill—advising his employees as follows: NO SOLICITATION ON WORK TIME,²⁴ and NO SOLICITATION OR DIST[R]IBUTION [sic] OF MATERIALS ON REPUBLIC SERVICES PROPERTY AT ANY TIME.²⁵

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Bergeron stated further that a no-solicitation/ no-distribution policy sign was or had been posted at all Republic locations right outside the gate; however, the no-solicitation sign he put up had not been posted in this form prior to February 27. Bergeron admitted that he posted the no-solicitation/no distribution sign on his own volition.²⁶ Bergeron noted that the no-

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²³ On cross-examination, Conner admitted that he had quit working with the Respondent without giving notice to Bergeron, although he told Meekin that he was going to quit. Conner said that he left in this fashion because he was tired of not just "everything going on in regard to the union battle, just everything in general." Conner admitted that on one occasion after leaving the Respondent, he called Jason Rankin to inquire about getting his job back. Conner also admitted that on the day he testified at the hearing, he told Bergeron that he guessed that Bergeron could not convince Mr. Drenth to let him come back.

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²⁴ See G.C. Exh. 6, a copy of the posting.

²⁵ See G.C. Exh. 5, a copy of the posting. Bergeron testified that he copied this word for word from Republic signs but misspelled distribution leaving out the "r." Bergeron admitted that he posted this sign for the first time on February 27.

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²⁶ Bergeron conceded that the Company's employee handbook did not contain any prohibitions or restrictions on employee solicitation or distribution. (Tr. 50.)

solicitation/no-distribution sign reflected a standing rule of Republic Services, and one could observe similar notices posted on buildings as well as the fences surrounding their property. Bergeron admitted that there were no other rules of Drenth in effect that in any way restricted employee solicitations or distribution of materials at facilities operated by the Respondent.

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Oberholtzer testified that on about February 27, he was standing inside the mechanics bay at CCR around 5 p.m. and casually asked one of the mechanics, Mark (last name unknown), a new hire, how he was getting along, how the repairs to his (Oberholtzer's) truck were proceeding, and whether he was getting used to the shop. Oberholtzer said that he then mentioned that things around the shop would return to normal after the unionization effort (stuff) was over. According to Oberholtzer, the mechanic, Mark, said that he did not care for unions because based on his experience he thought unions were a hassle. Oberholtzer stated that the other mechanic nearby—an older man named Cecil—was a little more pointed and gruff and expressed his displeasure with unions. According to Oberholtzer, both employees had asked him about unions and sought his opinion previously about unions in general.

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In this February 27 conversation, Oberholtzer said that he told the two that if a company treats its employees properly there is no need for unions, but that if a company takes advantage of the employees then a union is the employees' only resource. Oberholtzer stated that he did not offer an authorization card to the mechanics nor in any other way query them about their willingness to sign a card. On this point, Oberholtzer noted that there had been a Board hearing several days before this conversation regarding the composition of the bargaining unit and the mechanics were not to be included. Oberholtzer also noted that prior to this February conversation, he had on a daily basis engaged in casual nonwork-related conversations with the mechanics, usually at the end of the day when he was turning in his paperwork for the loads he had hauled that day.

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Oberholtzer conceded that the mechanics usually were on worktime during these conversations but the conversations were brief. He also noted that to his knowledge there was no prohibition against employees speaking to one another while on the clock.

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Oberholtzer testified that on the next day (February 28), he was in Bergeron's office, around 8:30 a.m. and Bergeron told him that he was talking about union stuff with the mechanics, that this was forbidden. Oberholtzer stated that he responded to Bergeron with an "okay." Bergeron then said that this was a verbal warning for engaging in (impermissible) solicitation. Oberholtzer stated that he accepted the warning and left the area.²⁷

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Oberholtzer identified copies of the no-solicitation on worktime notice and the no-solicitation/no-distribution notice at the hearing and stated that he saw them posted on the bulletin board on the same day he received his verbal warning. Oberholtzer recalled that he saw them for the first time around 5:30 to 6:30 p.m. when he returned from making his runs on the 28th. According to Oberholtzer, he was not aware of any solicitation or distribution policy in effect at the Company prior to seeing the notices posted. In fact, Oberholtzer recalled that around August or September 2005, he solicited Bergeron to buy a coupon booklet offered as

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²⁷ Bergeron testified that a mechanic had approached him complaining about being bothered with all of this union b---s---. Bergeron admitted that on the same day, or perhaps the next day, he told Oberholtzer that he could not solicit on company property during working hours and while the mechanics were on duty.

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part of a fundraiser for his son's football team; Bergeron bought a book from him on company property (in Bergeron's office).²⁸

5 Oberholtzer also recalled that some time in mid-2005, an employee kept a motorcycle he was selling in the mechanics' area for 3 months until it was sold. Oberholtzer said that the motorcycle was observable from Bergeron's office, and there was no attempt to conceal the bike's being for sale.

10 Andrew Keck,²⁹ currently employed by the Respondent, testified that in January and February 2006, employees were not allowed to talk about the Union on company property or on company time. He noted, however, there were no prohibitions or restrictions on talking about other matters, including personal, family, or joking with other employees; employees could talk to each other in passing.

15 Keck stated that there was a sign posted at Circle City to inform what he viewed as the rule against not talking about the Union. Keck said that it was his view that this meant no talking about the Union whatsoever, but that employees were allowed to engage in casual conversation about other matters.

20 Keck noted that he had conversations with the mechanics but these were limited to casual greetings, as it was understood by the drivers not to interrupt them in their work. Keck said drivers understood that they were to keep their conversations with the mechanics "short"; but the conversations were both work-related and personal in nature.

25 Stacey Thomas³⁰ also testified that during the time he was employed by the Respondent there never was any rule or prohibition against employees speaking to each other, and they were free to converse with the mechanics (or other employees) at any time during the day. Thomas conceded that he only saw solicitation and sale of products—candy bars and cookies—by persons (family members) associated with Republic Services, but not at Drenth.

30 Jason Rankin³¹ testified that there was no prohibition against employees engaging in casual in-passing conversations among themselves, and that he spoke daily with the mechanics covering topics concerning the trucks and their problems but also nonwork-related matters. According to Rankin, these conversations usually occurred as he was parking his truck to go home for the day while the mechanics were still working. Rankin said that he had never been told by management that such conversations were prohibited during worktime

40 ²⁸ Bergeron admitted that Oberholtzer asked him to buy some discount coupons one of his children was selling and he did later buy a booklet for \$25. Bergeron believed that Oberholtzer either called him from his home but perhaps while at work, but stated that he told Oberholtzer to bring the coupons to work.

45 ²⁹ It may be recalled Keck was one of the three drivers who contacted the Union in January 2006. Keck testified that he has been employed as a driver by the Respondent since August 4, 2003. Keck stated that he was "just a little bit" concerned about testifying at the hearing because of job issues that may arise, and was not looking forward (to testifying) because he is still working there. (Tr. 264.)

50 ³⁰ Thomas, another of the drivers who was one of the original union supporters, no longer works for the Respondent. Thomas worked for the Company from March 6, 2005, until June 7, 2006, when he voluntarily quit; Thomas said he gave 2 weeks' notice and left on good terms.

³¹ Rankin is currently employed by the Respondent as a driver. Rankin was one of the original union supporters, as noted earlier.

Rankin noted that these casual conversations never included his or the mechanics' soliciting for items such as Girl Scout cookies or Tupperware; basically, Rankin said that the conversations were of the "chit chat" variety.

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Rankin also noted that he had seen—he was not specific as to when—signs on a Republic property that prohibited solicitation on its property and the signs were clearly posted and their meaning clear to him.

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1(e) Bergeron's alleged promise of unspecified benefits to employees in April 2006 to discourage support for the Union

The General Counsel called current employee David Wilbur, who testified that he was hired on September 1, 2003, as a driver and generally hauled refuse from Circle City to the Sycamore Ridge Landfill in Terre Haute; his direct supervisor was and is Bergeron, who offices at Circle City.

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Wilbur stated that he was familiar with the Union and its organizing efforts in late January 2006 and, in fact, attended one union meeting; Wilbur said he did not become further involved in the campaign.

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Wilbur recalled that he spoke to Bergeron about the ongoing union campaign on about six occasions, on dates he could not specifically recall in April 2006. According to Wilbur, these various conversations took place in Bergeron's office, and by telephone. Wilbur initially could not recall any particular conversation with Bergeron about what would happen after the union campaign ended. However (with some prompting by the General Counsel), he did recall a conversation with Bergeron that included perhaps a couple of other drivers present.

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According to Wilbur, he, Bergeron, and the other drivers were in Bergeron's outer office in the late afternoon and Bergeron said that he would be glad when things got back to normal. Wilbur said that Bergeron was talking about the union organizing effort. Wilbur said that he responded, saying that normal is what got us in this position in the first place. According to Wilbur, Bergeron agreed and said he was going to make it better than normal. Wilbur said he told Bergeron that he would not be holding his breath.

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I note that although Bergeron testified after Wilbur, he did not address this meeting or the alleged conversation(s) with Wilbur. Wilbur impressed me as a credible witness, although he admitted his memory for dates was not good. However, the Respondent's counsel did not cross-examine Wilbur on this aspect of his testimony, leaving his testimony on the matter essentially un rebutted. I would find and conclude that Wilbur's testimony regarding the alleged conversation with Bergeron occurred, and I would accept his version of the encounter as established fact.

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1(f) Clements Clark's alleged request that employees give copies of their Board affidavits to the Respondent in August and September 2006 during the investigation of the charges in question³²

5 Keck testified that around 3 to 4 weeks before the hearing at the CCR shop in the parts room, Clark—whom Keck identified in the hearing room and described as the “advisor”—said that if he (Keck) had a copy of his affidavit would he provide it to the Company. According to Keck, Clark, however, said that he was not required to do so. On this occasion, Keck stated that Clark did not inform him that he would not suffer any reprisals on the job if he decided not to
10 provide a copy of his affidavit. Keck acknowledged that he had given an affidavit to the Board agent and actually asked for and received a copy of it about a week before he testified.

Keck also recalled that about 4 weeks before the parts room conversation at a meeting convened by the Company and over which Clark and Bergeron presided, Clark said to the
15 assembled employees that if we (the employees) were willing, we could provide a copy of their affidavit, but we did not have to do so.

Keck said that in the meeting Clark was clearly referring to Board affidavits but Clark never directly asked him for a copy of his affidavit. Keck testified that Clark said that he could if
20 he wanted.³³

Jason Rankin testified that he gave two affidavits to the Board agent investigating the charges in this case. Rankin said that he could not be precise about the date but recalled in about mid-September 2006—about 2 days before the election and ballots were mailed out—that
25 he attended a meeting of the drivers; Bergeron and “Clem”³⁴ made a presentation to the employees on behalf of the Company.

Rankin said that Clark mentioned the Board affidavits in this meeting. According to Rankin, Clark said that the Company was going to court; some employees were going to be subpoenaed and that some employees had already provided affidavits to the Board; and that
30 some employees had already given their affidavits to the Company and that was “okay” (to do).³⁵ Rankin stated that he later voluntarily provided Bergeron with a copy of his affidavit.

As noted earlier herein, Clark did not testify at the hearing, and Bergeron did not address this matter in his testimony. I have credited the testimony of Keck and Rankin in terms of the
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³² These allegations are contained in paragraph 5(i) and 5(j) of the complaint as amended at the hearing. See G.C. 1(xx).

40 ³³ Keck's testimony on this topic came in seemingly out of chronological order. It seems the parts room conversation happened in perhaps September 2006 and the employee meeting request took place in August 2006. I would note that he appeared nervous or ill at ease in testifying about this and other topics concerning the charges. On cross-examination, Keck admitted that during the campaign he asked Bergeron if he should worry about his (Keck's) job. Keck said that Bergeron told him not to worry. (Tr. 306.)

45 ³⁴ Rankin identified Clark in open court while testifying about this matter. (Tr. 351.)

³⁵ Rankin stated that he provided affidavits to the Board, the first one at the Board's Regional Office and another at CCR. The Board agent gave him a copy of his affidavit on the first occasion, but not on the second. Rankin said he asked Bergeron how to get a copy and Bergeron suggested that he contact Pat McGruder, the Board agent. McGruder told Rankin that
50 his affidavit was confidential, but that he could disclose it or it may be disclosed at a Board hearing.

statements made by Clark requesting employees to provide the Company with copies of their affidavits given to the Board's investigator.

2. Paragraphs 6(a)–(e), (g), and (j) of the complaint essentially allege that the Respondent violated Section 8(a)(3) of the Act by engaging in certain conduct purporting to be unlawfully discriminatory in regard to the drivers' hire, tenure, and terms and conditions of their employment. Paragraphs 6(c), (g), (h), and (i) allege essentially that the Respondent also violated Section 8(a)(1) of the Act by engaging in certain conduct to discourage employees from engaging in concerted activities protected by the Act. The allegations will generally be discussed in the order in which they appear in the complaint.

2(a) The Respondent's alleged withdrawal of benefits on or about January 27, 2006; the Respondent's refusal to allow certain employees to park at the Terre Haute Landfill facility

Dennis Connor, Jason Rankin, and Stacey Thomas were called by the General Counsel to establish this charge.

Conner testified that he was familiar with the Union and early on became involved in the organizing drive. Conner stated that he spoke to other drivers to solicit their interest in the Union and distributed and collected union authorization cards. Conner said that he signed one such card on January 20, 2006,³⁶ Conner said that he proceeded very carefully, as he put it, in approaching the employees at Vincennes out of which he hauled refuse, as well as at the Sycamore Ridge Landfill.³⁷ Conner said he communicated with the drivers via his personal Nextel (walkie-talkie) and the drivers' personal and company-issued Nextel phones.³⁸

Conner stated that on January 27, he was called on the Nextel by Jason Rankin who asked him whether he had been called by management and told to park his tractor at a location other than the Terre Haute Landfill. Conner responded that he had not been so told at the time of this call. However, later that afternoon, he was notified by management—Brandon Meekin—to park his tractor at Vincennes.³⁹

By way of background, Conner explained that when he first started working for Drenth, he was living near the Vincennes transfer station, so he parked his personal vehicle there. In October 2004, he was considering purchasing a home near the Terre Haute Landfill. So Conner said that he spoke to then-supervisor Duane Potter about parking his tractor at the Terre Haute Landfill because he was considering the home purchase near the facility. According to Conner, Potter approved his request, so he purchased the home and was allowed from October 2004 to park his tractor at Terre Haute.

Conner noted that the Terre Haute (Sycamore Ridge) Landfill was about 40 miles each way from his residence; Vincennes was 90 miles each way from his residence.

³⁶ See G.C. Exh. 45, his application for membership in the Union dated January 20, 2006.

³⁷ Conner said that he did not want his management or that of Sycamore to know about the drivers' involvement with the Union.

³⁸ Conner stated that prior to the union drive, he communicated with his fellow drivers via the Nextels as there was no policy against such use.

³⁹ Conner said that Meekin actually called him on January 30, 2006, and said that Bergeron had ordered the change. Conner also noted that prior to January 27—he was not sure of the date—Rankin told him that David Oberholtzer had been ordered to turn in his company-issued Nextel by management.

Conner testified that he was aware of some vandalism at the Terre Haute parking area but he had suffered no personal losses. The vandalism had occurred about 3 weeks prior to January 30 and consisted of vehicles being broken into and some drivers having their citizen
5 band radios and other personal items taken.

Conner said that Bergeron called him on the Nextel and told him that he had good news for Conner; he had had a change of heart and that Conner could that very day resume parking his tractor at Terre Haute. Conner stated that he expressed his appreciation to Bergeron but
10 also told him that he might have had to quit if the parking situation had continued. Conner stated that Bergeron allowed him to resume parking at Terre Haute around March 29, 2006.

Conner was asked by the General Counsel about changes in security at Terre Haute and stated that he saw none. Conner noted that a tractor was stolen from the Vincennes facility
15 but no one to his knowledge was reassigned because of this incident.

Jason Rankin testified that he was actively involved in the union campaign and on January 20, 2006, signed a union authorization card.⁴⁰ Rankin said that he also assisted the union effort by handing out authorization cards, speaking with his fellow drivers about the
20 campaign and attending not only the start up meeting but a rally. Rankin said that he spoke of the Union to drivers at the Terre Haute Landfill occasionally and daily spoke with them over his personal Nextel radio during the middle to end of January 2006.⁴¹ Rankin said that he spoke to David Oberholtzer over the Nextel line.

Rankin could not recall the specific date that Oberholtzer informed him that Bergeron made him turn in his Nextel, but Rankin believed he turned in his phone on the same day
25 Oberholtzer told him his phone was taken. Rankin believed that he spoke to Oberholtzer within 24 hours of the turn-in order.⁴² Rankin said this information was also being spread among the drivers' "grapevine" with one telling the other about Oberholtzer's having to turn in his phone.

Turning to the parking issue, Rankin stated what when he started with Drenth, he was allowed to park his personal vehicle at the Victory Landfill in Terre Haute and from there pick up his assigned truck; the Victory Landfill was only about one-half mile from the Sycamore Ridge
30 Landfill.

On January 27, Rankin said that Bergeron, calling him on the Nextel around 4:30 p.m., told him that for security reasons, he was to park his vehicle at CCR in Indianapolis. The following Monday (January 30), Rankin said that Meekin called him on the Nextel to tell him that
35 he was to park at the Bloomington facility and pick up his truck there; that he should arrange with another driver for a ride back to Terre Haute. Rankin said that Meekin told him that he was to start his runs and finish them at the Bloomington facility each day.

⁴⁰ See G.C. Exh. 40.

⁴¹ Rankin stated he was aware that he was communicating with drivers on Nextels issued by
45 the Company.

⁴² Oberholtzer testified that Bergeron took his Nextel on January 28 or perhaps the 29th. Oberholtzer said he asked Bergeron to allow him to remove his personal numbers from the phone's memory. According to Oberholtzer, Bergeron reluctantly allowed him to remove the numbers but admonished him not to delete anything else. Oberholtzer said the Nextel phone
50 has memory features for stored phone numbers and recent calls. Oberholtzer said the last five to six persons he called were Conner, Thomas, Rankin, Keck, and David Wilbur.

Rankin said that he was able to get a ride back to Terre Haute that evening through means of another employee driving a company truck which was parked customarily at the Victory Landfill. Rankin noted that the Victory Landfill was 13 miles from his residence; the
5 Bloomington transfer station is 62 miles one way from his residence.

Rankin said that some time around March 2006, Bergeron informed him via Nextel that he would be allowed to pick up the company truck at the Victory Landfill as before and park his personal vehicle there. On that day, Bergeron said that he should coordinate with another
10 driver to park the company truck in Terre Haute and then coordinate with another driver to get to his duty station at Bloomington and to his residence. Then he should from that day forward start and finish at Terre Haute daily.

Rankin said that the change took place shortly after he and Bergeron had a one-on-one
15 conversation in his truck. Rankin said that some time in February/March 2006, Bergeron rode along with him on one of his runs. According to Rankin, the conversation consisted of small talk, politics, religion, their former employment, and family matters.

Thomas, one of the original union supporters as noted, said that he attended union
20 meetings and handed out authorization cards to fellow drivers. Thomas noted that his first meeting with Jeff Combs and Mike Henderson of the Union took place around January 12 or 13 at the Terre Haute union hall. By January 10, Thomas stated he had already signed a union authorization card⁴³ and his main activities on behalf of the Union included attending meetings, getting cards signed, and speaking to fellow employees, usually at the Terre Haute (Sycamore
25 Ridge Landfill) where he had the best opportunities to see the drivers, but also to a limited extent at other transfer stations and truck stops.

Thomas said he used his personal Nextel phone during worktime for company business but also engaged in "random" conversations with the drivers, some of whom he knew were
30 issued company Nextels. Thomas said he was never told by management not to contact other employees who were issued company phones; so he spoke to them over these phones every day.

Thomas said that he was told by another driver (Dustin Brentin) that Bergeron had taken
35 Oberholtzer's phone. According to Thomas, Brentin said he had spoken to Bergeron at CCR and Bergeron had said that this is the way you find out who started the union organizing effort, mainly by scrolling down the recent calls list on the phone. According to Thomas, Brentin said Bergeron had discovered Thomas', Rankin's, and Andy Keck's names on Oberholtzer's recent
40 call listing.⁴⁴

⁴³ See G.C. 44.

⁴⁴ Brentin did not testify at the hearing. I have not considered Brentin's alleged statement
45 necessarily for the truth of the matters asserted. On the other hand, I have received and considered these admittedly hearsay statements on the issues of knowledge, motive, and opportunity as these may pertain in this case. I note also that Conner testified that on the occasion of an earlier organizational effort by the Union, the Respondent impounded company-
50 issued phones. Thus, Brentin's alleged statements also suggest a modus operandi of the Respondent to thwart unionism and in that regard have some probative value in the context of this administrative hearing.

Thomas said that he also heard that Oberholtzer's phone had been taken from him by management from other drivers. Thomas noted that he had spoken to Oberholtzer over the Nextel phone the day before finding out that Oberholtzer's phone had been turned in.

5 Turning to the parking issue, Thomas stated that when he started with Drenth, he parked his personal vehicle at the Terre Haute Landfill and picked up his truck to start his workday.

10 On January 27, 2006, Thomas said that Bergeron called him and told him of the change in his parking situation. According to Thomas, Bergeron said that there had been some thefts from the company trucks in late November or early December (2005) and that he (Thomas) should park the company trucks at the Indianapolis facility (CCR) beginning January 30.

15 Thomas related that the Terre Haute Landfill was about 45 minutes from his residence; but CCR was about 1 hour and 45 minutes to 2 hours from his residence. Thomas said that prior to the change, he would leave home at 3 a.m. and arrive at the landfill by 4 a.m. to begin his four to five loads per day. Thomas said that he would end the day at 4-5 p.m.

20 After the change, Thomas said that he had to leave his home around 12:15 a.m. to drive to CCR in Indianapolis and arrive there by 3 a.m.; then he had to pick up the company truck at the landfill at around 4-4:30 a.m. to begin hauling refuse; then at the end of the day he had to return the truck to CCR around 4:30-5 p.m. and then commute home at which he arrived around 7-8 p.m.

25 Thomas said that this was very stressful on him and his family and his pocketbook over the 3 months he had to endure this schedule. Thomas said were it not for Oberholtzer's allowing him to stay at his residence occasionally, he would have quit before he did in June.

30 However, in April 2006, Thomas said that Bergeron again allowed him to park at the Terre Haute Landfill. He explained how this change came about.

35 Thomas testified that he knew in April 2006—he could not be exact about the date—Bergeron had taken a ride with Jason Rankin. Thomas said that he told Rankin to inform Bergeron that he was welcome to ride along with him (Thomas) if he so desired; the day after Rankin's ride-along, Bergeron accepted a ride with Thomas.

40 Thomas said on that day he picked up Bergeron at the Bloomington transfer station and began a conversation with him. Thomas said that he wanted to have an honest conversation and Bergeron responded, saying that he could speak to some but not all issues.

45 Thomas said he told Bergeron about several issues of concern to him, including the unfair treatment of the African-American drivers;⁴⁵ truck maintenance in general, even though the Company had recently hired some mechanics; and perceived favoritism among the drivers by management in terms of assignments.

50 On the way back to Terre Haute, Thomas said that he asked Bergeron if he had thought that he (Thomas) and Rankin would have held out as long as they had under the changed parking situation—forced to drive to Bloomington and Indianapolis every day. According to Thomas, Bergeron said he thought the two had a lot of character.

⁴⁵ Thomas said that he told Bergeron that he was driving a newer truck although he had less seniority than the black drivers.

Thomas said that he then broached the following offer to Bergeron: if he was allowed to resume parking at Terre Haute as before, Thomas would note “No” on the ballot and in front of him if Bergeron required this.⁴⁶

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According to Thomas, Joe then called “Clem” (Clark)⁴⁷ and discussed for a few minutes his (Thomas’) and Rankin’s being allowed to park again at the Terre Haute Landfill. After this conversation, Thomas said that Bergeron then called Rankin and, according to Thomas, told him that he (Thomas) was a better salesman and that both drivers would be allowed to park in Terre Haute. Thomas said that when he and Bergeron returned to the landfill, he waited for Rankin to arrive and then drove back to Bloomington with him.

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Thomas related that the idea to approach Bergeron about being returned to Terre Haute in exchange for his “No” vote emanated from a conversation with another driver at a truck stop who suggested the gambit to him. Thomas said that he, Rankin, Conner, and Keck all believed they were going to be terminated because the Company thought that they were the ringleaders of the organizing effort. According to Thomas, this unnamed driver suggested that the offer to vote “No” may be a way to save their jobs.

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Thomas stated that either at the end of the day or the day after the ride-along, Bergeron called him on his cell phone to tell him that he was allowed to park at the Terre Haute Landfill.

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Thomas admitted that at one point he tried to withdraw the unfair labor practice charges that related to him and contacted the Board agent about doing so. Thomas said that the Board agent said that this could not be done as the Union had filed the charges. Thomas said that he later spoke to Union Organizer Jeff Combs who asked him about his change of heart and whether he had ridden with Bergeron. Thomas said he told Combs that he had but did not tell him about the vote offer.⁴⁸

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Thomas stated that when he resumed parking at Terre Haute, he noticed that the lighting for the parking area had been changed—there was an increase. However, there was little else noticeably changed. Thomas volunteered that the gate to the parking area was never a security issue as it was always locked; the side fence area was not closed, it was always open. The north side gate had been closed and locked by Republic to keep other trash haulers from using it as an entrance and exit area. Actually, according to Thomas, Republic not only locked this gate but also placed a large rock or boulder in front of it to keep trucks from using it. Thomas said that on balance, in his view, the Company had merely installed some additional lights in the Terre Haute parking area.

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⁴⁶ Thomas recalled that the ballot was to be mailed in for purposes of voting in the election.

⁴⁷ Thomas testified that he did not know “Clem’s” last name, but he and the other drivers thought that he was a company-hired attorney or consultant.

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⁴⁸ Thomas admitted that the affidavit he provided to the Board agent also did not include the ride-along incident. Thomas said that at the time he was still employed at the Company and he omitted telling Combs or the other agent about this incident out of fear of being forced back to parking at Indianapolis or being terminated outright. Thomas said that he felt that the basic result he desired—being allowed to park at Terre Haute—was realized, so there was no need to continue with the charges.

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Thomas admitted that the Terre Haute parking area had been the scene of some theft and vandalism; that some CBs and tools of four or five drivers were taken and some of the trucks were tampered with but nothing taken from them.

5 2(b) The Respondent's transfer of Keck and the revocation of his use of a company truck

Keck recalled that on about January 27, 2006, Oberholtzer called him and told him that he had been instructed to turn in the Nextel phone. Keck said that he had spoken to Oberholtzer within 24 hours of receiving this information.

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Keck related that he had been issued a Nextel phone which is basically a walkie-talkie communications system. According to Keck, these phones did not have all the features of a regular telephone but did have caller identification and a recent call log for incoming and outgoing calls. Keck stated that management had never given him any instructions concerning restrictions on his use of the company phone. Accordingly, he made some personal calls but these were mainly driver-to-driver calls, which he admitted were not always work-related. In fact, Keck stated that prior to January 2006, he daily engaged in casual, nonwork-related as well as work-related conversations with other drivers on the Nextel. As he put it, "you name it, we talked about it."

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Keck said that on about January 31, 2006, management posted a notice to turn in the Nextels. According to Keck, Bergeron, who had assigned him the phone in the first place, reissued the phone to him in his office around the middle of February but said that the drivers could only contact him, the mechanics, and the loaders (eventually) but not each other; Bergeron had had the phones reprogrammed.

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Turning to the parking issue, Keck said that when he started working for Drenth in 2003, he was allowed to park his personal vehicle at CCR where he picked up his assigned truck to make his runs.

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Sometime in January 2005, Keck said he requested of then supervisor, Duane Potter, a transfer to the Anderson transfer station. Then around February 2005, Bergeron was hired and Keck said he asked Bergeron to be transferred to Indianapolis; Bergeron put in his request to upper management. Keck said that in September 2005, Bergeron asked him if he would like to transfer to Anderson. Keck said that he agreed to make the transfer and Bergeron allowed him to take the company truck home each day.

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Keck stated that on about January 27, 2006, Bergeron informed him that he would have to transfer back to CCR (in Indianapolis). Keck said that he told Bergeron that he could not do that because he did not have transportation, his wife worked, and they only had one vehicle. According to Keck, Bergeron said that this was his personal problem and that, furthermore, he was to leave the tractor he was permitted to take home at the Anderson facility where he was currently assigned. Keck said that he reported to CCR the following Monday, January 30. Keck stated that he was never given permission to take a company truck home from CCR.⁴⁹

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Keck stated that prior to January 27, 2006, he had never experienced changes in his duty station or assignments unless he made a formal request. So any transfers he had

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⁴⁹ Keck acknowledged that he never asked Bergeron for permission to take a company truck home from CCR.

experienced were made either at his request or occasionally because Bergeron had asked him and he agreed; no transfers had been forced upon him as was the case in January 2006.

5 Keck noted that the Anderson transfer station where he was assigned prior to January 2006 was only 20 minutes from his home. The CCR facility is 43 miles one way from his residence. Keck said that the transfer to CCR also was financially costly for him since he had only the one personal vehicle that he shared with his wife who had to take him back and forth to work.⁵⁰

10 Keck stated that he became involved in the union organizing drive and signed an authorization card on January 20, 2006.⁵¹ Keck said that he also spoke to his fellow drivers on behalf of the Union and attended two union meetings. Keck said his conversations with the drivers took place over the Nextel phones as well as face to face; he spoke to some drivers daily and some others less frequently.⁵²

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2(c) The Respondent's collecting and reprogramming of Oberholtzer's
(and other employees') company-issued phones

20 Oberholtzer testified that on or about January 28 or perhaps 29 (he was not sure of the exact date),⁵³ Bergeron collected his company-issued Nextel. Oberholtzer related the circumstances leading to his phone being taken by Bergeron.

25 According to Oberholtzer, Bergeron approached him in the CCR parking lot around 5-5:30 a.m. while he was conducting an inspection of his truck. According to Oberholtzer, Bergeron asked to see his Nextel. Oberholtzer said he complied and asked Bergeron if he intended to keep it. According to Oberholtzer, Bergeron said that he did because someone else needed it. Oberholtzer said that he asked Bergeron to be allowed to remove his wife's number from the phone's memory. Oberholtzer stated that Bergeron then became hesitant and he and
30 Bergeron had a 3-5 minute conversation about this. Eventually, Bergeron returned the phone but instructed him not to delete anything else. After deleting his wife's number, Oberholtzer said that he turned the phone over to Bergeron.⁵⁴

35 Oberholtzer recalled that the last five to six people he had spoken to within the last 24 hours were Conner, Thomas, Rankin, Keck, and David Wilbur; moreover, the Union was discussed in those conversations. Oberholtzer said he told Wilbur, Conner, Rankin, Keck, and Thomas about Bergeron's having confiscated his phone as soon as he could, to warn them in case they called him and started talking about the Union without knowing who might be on the
40 other end.

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⁵⁰ Keck said that the extra money and family logistics required by the extra commute led his wife to quit her job so that he could work.

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⁵¹ Keck identified his signed card which is contained in G.C. Exh. 39.

⁵² Keck identified Conner, Rankin, Thomas, Oberholtzer, and David Wilbur as the drivers he spoke to about the Union; he could not recall the names of other drivers with whom he discussed the Union.

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⁵³ It seems clear, as later events disclose, Oberholtzer met with Bergeron on January 27.

⁵⁴ Oberholtzer said the Nextel phones had essentially two memory features, one for stored phone numbers and another for recent calls.

Oberholtzer stated that around 2–3 days later, a notice was posted by management instructing drivers to turn in their phones.

5 However, Oberholtzer said that later, on the same day his phone was taken from him, he went to Bergeron's office and discussed this issue among others. Oberholtzer noted that the day before, he had met with Bergeron and again met with him with a secreted tape recorder and taped the meeting. Among other things, Oberholtzer said that he asked Bergeron if he had taken anyone else's Nextel and questioned whether he (Bergeron) was harassing (not Oberholtzer's word) him because of the meeting they had had the day before. Bergeron
10 responded that he had taken drivers Mark Nugent's and Conner's phones and that he was not harassing him.⁵⁵

15 Oberholtzer said that he was not issued another phone during the time he worked for the Respondent.⁵⁶

Oberholtzer admitted that he used the company phone to solicit fellow drivers on behalf of the Union and did so on company time.

20 Bergeron testified about the decision to take Oberholtzer's and other drivers' phones on about January 27. Bergeron stated that the decision came about after conversation with Ken Drenth regarding what the Company viewed as their abuse by the drivers. Bergeron said that the Nextel bills had been getting out of hand for some time and, moreover, he was having trouble contacting the drivers. Accordingly, Bergeron said he and Drenth decided to reprogram the phones so that they could only be used to contact him and the loader/operators.⁵⁷ Bergeron
25 noted that some of the drivers were logging an excessive amount of minutes on the phones, as much as 5000 minutes in any billing period. In his and Drenth's view, Bergeron said that this kind of phone usage presented a potential safety issue in terms of the drivers' requirement to pay full time and attention to driving the trucks safely.

30 Bergeron could not recall if Oberholtzer was the first or third driver to be requested to turn in his phone. However, on January 30, Bergeron said he posted a notice informing the employees to turn in their company-issued Nextel phones by January 31 or as soon as possible within the week.

35 Bergeron said that Oberholtzer was required to turn his phone in for the same reasons as the other employees—increased usage, associated costs, and the difficulty of reaching them. Bergeron admitted that he reissued the phones about 2 weeks later, but the phones were programmed to make calls to him, some of the mechanics, and (possibly) some operators (Tr. 73.). Bergeron admitted that he never reissued a phone to Oberholtzer but would communicate
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⁵⁵ A transcript of the taped meeting is contained in G.C. Exh. 42. Oberholtzer indicates that the date of this meeting is January 27, the day his phone was taken from him. Bergeron and Oberholtzer went back and forth about the Union, with Oberholtzer attempting to dissuade Bergeron from thinking that he was a prime mover in the union effort and that Bergeron was
45 mistaken in that regard. Bergeron is heard to say, among other things, that he was not after Oberholtzer. I have substituted the word harassing for the profanity used in this conversation.

⁵⁶ Oberholtzer said that he did have a personal Nextel but did not have Bergeron's number. However, Oberholtzer said that he did not want to use his phone for company business.

50 ⁵⁷ Bergeron said that he would also call the landfill and ask Bob to look for a driver and have him call in. Bergeron said that in this fashion, he could reach drivers who did not have phones. Bergeron said he often contacted drivers through Republic's employees.

with him by fax.⁵⁸ Bergeron denied examining Oberholtzer's phone to determine whom he had called. Bergeron stated that he allowed Oberholtzer to delete his wife's number but there was no way to determine what was said on a Nextel phone because it is basically a two-way radio that had no message preservation feature.

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Turning to the parking issue, Bergeron stated that as a matter of general practice but not policy—a distinction he drew—company trucks are assigned to drivers at a facility closest to their residences; that, in fact, the Company tries to hire drivers who live close to the transfer station out of which they will be hauling. Bergeron denied that this was a “benefit” but stated that he will permit a driver to park at a facility if it is closer to his residence.

10

Bergeron admitted that prior to January 27, 2006, drivers Conner, Rankin, Thomas, Jerry Ebersol, Timothy Wilson, Ron Sharpe, Darren Weddell, and Jim Reeves were allowed to park their company trucks at the shop located at the Old Victory Landfill in Terre Haute, but as a convenience to them as they lived in that area.

15

Bergeron also admitted that on January 27, he reassigned Conner to the Vincennes transfer station effective January 30; that effective January 30, he reassigned Thomas to park at CCR; and Rankin was reassigned to park at Bloomington. Bergeron stated that he made these reassignments because of theft and vandalism from and to the company trucks at the Terre Haute parking area about 2 weeks prior to the reassignment; Bergeron was “95–99” percent sure that the thefts—three CB radios belonging to the employees—and the vandalism—a broken truck headlight—did not occur 2 months prior to the reassignments.⁵⁹

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Bergeron conceded that he did not file any police reports or make any insurance claims for the incidents. Bergeron also admitted that the other drivers who parked at the Victory Landfill—Ebersol, Wilson, Sharpe, Weddell, and Reeves were not reassigned to other parking locations but continued to park at the nearby—within one-half mile—Victory Landfill.

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Bergeron explained that he selected Rankin, Thomas, and Conner for relocation only because he had just started the relocation, but planned to relocate all of the drivers until he could get new security lights installed and a security fence erected. Bergeron insisted there was no other reason for their reassignment.⁶⁰

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Bergeron went on to explain that the three were not relocated to the transfer stations from which they normally hauled but there was no space available to accommodate them at those stations.

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Bergeron acknowledged that Keck was assigned to haul from the Anderson transfer station when his personal vehicle broke down. According to Bergeron, Keck asked him if he

⁵⁸ Bergeron identified G.C. Exh. 22, faxes he sent for Oberholtzer through the scale operator, Bob, regarding this assignment for March 28 and 29, 2006. Bergeron noted if a driver had a Nextel, he would call him and direct him to haul out of a location different from their usual assignment. Bergeron noted that he reissued phones to some but not all drivers. He decided to issue phones to his “universal” drivers, those he could send to any place in the system as opposed to those who were less flexible.

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⁵⁹ Bergeron later testified the theft and vandalism occurred sometime in December (the first or second week) 2005.

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⁶⁰ Bergeron later testified that Thomas and Rankin had their CB radios stolen and complained to him about the loss, implying that this was another reason to reassign them.

could take the company truck home after work until he could get his personal vehicle repaired; Bergeron said he approved Keck's request. Bergeron said that Keck drove the truck home daily for about 1-1/2 to 3 months (not 6 months) but on January 27, 2006, he told Keck he was to report to CCR effective January 30 and that he could no longer take the truck home, that Keck's
5 wife would have to pick him up.

Bergeron said that ultimately the Company put in new security lights (bright, like a baseball diamond) and fixed the front gate. However, Bergeron said he discontinued having the drivers park their trucks elsewhere on advice of his attorney in light of the union petition. Acting
10 on this advice, Bergeron said that he then started moving drivers back to their original parking locations.

Bergeron stated that he reassigned Keck to CCR because business had picked up there and he needed extra help there. Bergeron said that the whole north end of the Company's operations was running heavier and he had to reassign drivers. Bergeron noted that this is not
15 uncommon and, in fact, Keck originally started working at CCR and then transferred to Anderson; Keck then came back to CCR and then returned to Anderson and, with the latest move, back to CCR.

Bergeron noted that he did not reassign another driver to take Keck's loads in Anderson because there was an employee—Bruce Most—already in place there; so he assigned Most
20 Keck's truck. Bergeron said he then assigned Most's truck to another driver. Bergeron conceded that he could not do without a driver in Anderson at the time he reassigned Keck.

Bergeron acknowledged that he and Stacey Thomas did ride together on one occasion and conversed. Bergeron stated that the two talked about their families—Thomas' wife was
25 ailing at the time—and just general talk. Bergeron adamantly denied that either he or Thomas discussed the Union.⁶¹

(3) Paragraph 2(6)—Between about February 27 and April 6, 2006, on which date he was discharged by the Respondent, the complaint alleges that Oberholtzer's rights under the Act were violated by the Company in violation of Section 8(a)(3) of the Act

3(a) The February 27, 2006 verbal warning issued to Oberholtzer

It is undisputed that the Respondent (Bergeron) issued Oberholtzer a verbal warning on February 27, 2006, for solicitation during company work hours and on company time and on
35 Republic property. Called by the General Counsel, Bergeron testified that at the time, he told Oberholtzer that he (Bergeron) was aware of his union activity because he wore a union ball cap and on his hardhat was affixed a union label or insignia.⁶²
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⁶¹ Bergeron did not address the ride-along with Rankin or Thomas' testimony that he (Bergeron) called Rankin while they were riding together and returned him to his former parking arrangement.
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⁶² Bergeron also identified a copy of a Board subpoena (G.C. Exh. 23) ad testificandum which issued to Oberholtzer on February 10, 2006, pursuant to a Board proceeding on February 13 in Case 25-RC-10328. Bergeron noted that Oberholtzer presented the subpoena to him in
50 support of his request to take that day off. Bergeron also stated that he (Bergeron) had also testified in a Board election proceeding and Oberholtzer was present at the time.

Bergeron related the circumstances of his issuance of this discipline. According to Bergeron, a CCR mechanic, Norman Mikes, using trucker language,⁶³ complained about “people” talking to him about the Union with which he claimed not to be involved and that he did not want to be bothered. Bergeron said that he spoke to Oberholtzer the next day and asked him not to bother the mechanics while they were working; told him he could not talk to them about the Union; and that the mechanics were on Republic property which prohibited soliciting. Bergeron went on to say that he told Oberholtzer he could not talk to the mechanics about anything except the (mechanics’ work-related) writeups during company work hours and on company time. Bergeron admitted that he specifically told Oberholtzer not to talk about the Union during worktime or company time and also told him that the mechanic who made a complaint about him (Oberholtzer) was Norman Mikes.⁶⁴

As noted earlier in this decision, Oberholtzer stated at the end of his shift on the 27th, he spoke to some of the mechanics while they were working and who, according to Oberholtzer, expressed their views about unionization. As previously noted, Oberholtzer said he did not solicit the mechanics regarding the union cause and, in fact, did not think at the time they would be included in the bargaining unit.

3(b) The March 30, 2006 written warning issued to Oberholtzer

Again, it is undisputed that Bergeron issued a written warning to Oberholtzer on March 30, 2006, for allegedly violating company rules on March 28, 2006. Bergeron identified the written warning⁶⁵ he issued to Oberholtzer and explained why it was issued to him.

Bergeron testified that on March 30, he discovered from his normal review of Oberholtzer’s weigh-out paperwork that he (Oberholtzer) had not complied with the Company’s policy of transporting loads no less than 76,000 pounds, but not more than 80,000 pounds. However, Oberholtzer, hauling out of Vincennes, had hauled one underweight load of 73,920 pounds and another of 80,960 pounds.

Bergeron said he decided to discipline Oberholtzer because he not only violated the 76,000–80,000 policy, but had done so without notifying management, especially of the overweight load. Bergeron stated that at this time, he was or had been personally contacted by the drivers where an under-over load situation presented itself.⁶⁶ Bergeron conceded that at the time, Oberholtzer did not have a company-issued Nextel. Bergeron also admitted that he kept no records or logs of the drivers who contacted him regarding their load weight; only the scale tickets exist for purposes of keeping track of the weight of individual loads hauled by the drivers.

Bergeron noted that the overweight load associated with the Oberholtzer discipline came to his attention by virtue of a ticket for hauling overweight issued by Indiana’s Department of

⁶³ It seems that truckers (at least those employed by the Respondent) use a great deal of profanity on the job and in casual and even serious communication with one another.

⁶⁴ Mikes did not testify at the hearing.

⁶⁵ See G.C. Exh. 24, an employee disciplinary report issued to Oberholtzer for insubordination and leaving without permission; boxes were checked for those violations in the Respondent’s disciplinary system. This discipline was considered a second offense, the first being the February 27 verbal warning.

⁶⁶ Bergeron said that if a truck was not in compliance with the weight rule, drivers were required to contact him to get permission to go ahead with the load. Bergeron said that he could be contacted through the transfer station operator or the Nextel phones.

Transportation (IDOT), which Oberholtzer submitted with the load-related paperwork. Bergeron also noted that while the Company's general policy was to pay the IDOT citations, he did not in Oberholtzer's case.

5 Bergeron conceded that the only other time he had issued a written discipline to a driver for hauling an overweight load was also on March 30, 2006, when he issued a driver, Eugene Wilcher, a written warning for leaving the 96th Street transfer station with a load weighing 84,540 pounds on March 29.⁶⁷

10 Bergeron also noted that while the 76,000/80,000 weight policy had been in place at the Company in the past—before his arrival—he reposted the policy around the middle of March 2006 because IDOT had issued a number of citations to drivers for overweight loads during the preceding 1 to 2 weeks.

15 Oberholtzer testified that around March 2006, for the first time he saw a posted notice⁶⁸ on the CCR bulletin board regarding the minimum and maximum weights drivers were to haul to the landfills and that they must weigh-out at the transfer stations before embarking on their runs. Oberholtzer said that prior to March 2006, he hauled daily over the 80,000-pound maximum and the Company had no specific procedure in place in such situations; he never was required to
20 seek approval from management to run an overweight load and if IDOT issued a citation, the Company simply paid the ticket.⁶⁹

 Oberholtzer identified his March 30 discipline (G.C. Exh. 24) and related the
25 circumstances surrounding its issuance. According to Oberholtzer, he was hauling out of Vincennes and Meekin loaded his trailer on the day in question. Meekin and he thought that the load might have exceeded the 86,000-pound limit, but the scales at Vincennes and those at CCR and the transfer stations vary in accuracy from those at the landfills, perhaps a 500-pound variance. Oberholtzer said that he personally had been relieved of his company phone so he
30 could not contact Bergeron for guidance. However, according to Oberholtzer, Meekin said the possible excess weight was no big deal and gave him permission to haul the load. Oberholtzer said that he was stopped by IDOT and cited for having excessive weight over axle and fined \$150 which he paid to protect his license. Oberholtzer said he turned the ticket in to Bergeron along with his customary paperwork at the end of the day.

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⁶⁷ See G.C. Exh. 26. Wilcher's discipline was noted to be a first-time infraction and, like Oberholtzer's, had boxes checked for insubordination and failure to follow instructions.

40 ⁶⁸ See G.C. Exh. 7. Oberholtzer was shown a copy of the notice posted at CCR and identified it as a copy of the notice he observed at CCR. Bergeron testified that he posted the notice at all the transfer stations and landfills in mid-March 2006, because IDOT at that time was actually monitoring the trailers and began issuing a number of citations to the drivers. Bergeron
45 conceded that before posting the notice, there was no signage alerting the drivers to the policy. He also acknowledged that the policy was not written in the company handbook.

⁶⁹ Bergeron identified company weight tickets for March 2006 and conceded that on a
substantial number of occasions, trucks hauling out of the various transfer stations carried loads
in excess of 80,000 pounds (see G.C. Exhs. 8-21). Notably, the Respondent adduced no
evidence that such drivers hauling overweight were disciplined. Bergeron implied that all other
50 drivers during under and overweight called in and received his permission to proceed with the load.

3(c) Bergeron's suspension of Oberholtzer on April 3, 2006

5 Bergeron admitted that he issued Oberholtzer a written discipline on April 3 for hauling a load weighing 75,320 pounds out of Vincennes on March 29 without first obtaining permission, in violation of the Company's minimum weight limit of 76,000 pounds. Bergeron stated that he penalized Oberholtzer with a 3-day suspension covering April 4 though 6 because this was considered at third offense under the Company's disciplinary scheme.⁷⁰ Bergeron agreed that the incident underlying this discipline preceded the incident for which he disciplined Oberholtzer on March 30.

10 Oberholtzer, when shown the suspension discipline by the General Counsel, explained that this load was also loaded by Meekin but the scales that day were not functioning. Oberholtzer said that he sought Meekin's advice on the situation. According to Oberholtzer, Meekin told him not to worry about the load; since the scales were down—being repaired at the time—he should proceed with the load. Oberholtzer stated that he had no phone to call Bergeron on that day also and relied on Meekin to approve the run below the minimum.

20 Oberholtzer went on to explain that once a trailer is loaded, there is actually no practical way to adjust the load, i.e., to lighten it. Oberholtzer noted that he occasionally performed the job of loader/operator at Vincennes, using the front-end loaders to load the trailers. Oberholtzer stated that the front-end loader could not be used to take material out of the trailer, at least not very easily because of the incompatibility of the angles and positions of the trailers and the front loader. In order to take material out of a trailer, one would need a machine with a claw device to extract the garbage. According to Oberholtzer, the Company did not have such a machine, and, in fact, although he had made between 30 and 50 runs out of Vincennes, he had never seen material removed from a trailer.⁷¹

30 Oberholtzer said that when he was ticketed by IDOT and Bergeron refused to pay it, telling him his (Oberholtzer's) excuses regarding adjusting the loads were not acceptable, he resubmitted the ticket and responded, writing on the back of the ticket, that there is no way to adjust a load at Vincennes; and if Bergeron was not going to pay tickets, he should provide a way to adjust loads.⁷² Oberholtzer said that Bergeron again returned the ticket unpaid; he ultimately paid the ticket himself.

40 ⁷⁰ See G.C. Exh. 25, a copy of the April 3 discipline which asserts that Oberholtzer was insubordinate and failed to follow instructions regarding his failure to meet the minimum poundage requirement.

45 ⁷¹ Oberholtzer described how a trailer was loaded at the transfer station. Essentially, the truck and trailer are backed into a pit next to but below the loading floor—which serves as an elevated platform. Then the truck, being below the floor level, is loaded by a front-end loader which scoops up refuse and drops it into the trailer. Oberholtzer said that he has never seen a front-end loader used to extract garbage and specifically never had seen Meekin do this. Notably, Bergeron confirmed the loading technique described by Oberholtzer but was of the opinion a load could be adjusted (lightened) with the front loader.

50 ⁷² See G.C. Exh. 43, a copy of the back of the IDOT ticket on which Oberholtzer responded to Bergeron. Oberholtzer also said that both loads were loaded and approved by Meekin who did not consult with him about the loads.

3(d) The Respondent's discharge of Oberholtzer on April 6, 2006

5 Bergeron admitted that he discharged Oberholtzer on April 6, 2006, and on April 12 by letter informed him of the reasons therefor. Bergeron stated that Oberholtzer was discharged because while on suspension, he entered private (Republic) property, disrupted traffic flow at the Sycamore Ridge Landfill, and hindered the performance of Drenth drivers. Bergeron stated in the letter that Oberholtzer's action caused Republic to file a complaint.⁷³ Bergeron admitted that he knew that Oberholtzer was handbilling, but that he was on Republic's property and obstructing the flow of business. (Tr. 103.) Bergeron noted that his decision to discharge 10 Oberholtzer was not based on any particular company policy but because he received a call on April 6 from Republic's general manager at Sycamore Ridge, Mike Calleja.

15 Bergeron testified about his decision to terminate Oberholtzer under examination by the General Counsel and the Respondent's counsel.

20 When examined by the General Counsel, Bergeron stated that early on the morning of April 6 while at his office at CCR, Mike Calleja, Republic's general manager at the Sycamore Ridge Landfill, called him complaining about one of Drenth's employees whom he claimed was disrupting the traffic flow in and out of the landfill and stating that he was not going to tolerate this action; Calleja demanded to know what Bergeron was going to do about the matter.

25 Bergeron said he investigated the incident and determined from the reports of a couple of drivers that Oberholtzer was standing in front of the scale house (at the landfill) inside the gate. According to Bergeron, the drivers reported this the first thing the same morning—April 6—that Calleja called.

30 The General Counsel produced an affidavit Bergeron identified as one he had provided to the Board agent investigating the charges in question. Bergeron agreed that in the affidavit he stated that he received Calleja's call while at the Terre Haute Landfill where Bergeron was conducting a company-sponsored meeting with the employees in the garage.

35 Bergeron insisted nonetheless that Calleja called him that morning—"first thing." Bergeron noted that he convened two meetings at the Terre Haute Landfill, one on April 4 and then on April 6. Bergeron said he received the initial call from Calleja at the employee meeting. According to Bergeron, Calleja called him a second time and said that one of the Republic supervisors had to remove Oberholtzer from inside Republic's property. Bergeron believed he received this second call around 7 a.m. at CCR.

40 Bergeron conceded that he had no personal knowledge of where Oberholtzer was actually handbilling at the time he decided to discharge him. Bergeron stated he believed Oberholtzer was hand billing on private (Republic) property based on Calleja's complaint and his decision was based on this complaint.⁷⁴ Bergeron admitted that he did not personally go out to the scene of the incident (about one-half mile) away to verify any of the complaints against Oberholtzer.

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⁷³ See G.C. Exh. 27, a copy of Bergeron's letter to Oberholtzer. Bergeron said that he had decided to discharge Oberholtzer on midday April 6 after consultation with the Company's attorney. Bergeron stated in the letter that he was responding to Oberholtzer's request for a reason for his discharge.

50 ⁷⁴ Bergeron admitted that aside from terminating Oberholtzer, he took no other action against him, and did not call the police out of any concern for safety on the roadway.

5 Upon cross-examination⁷⁵ by the Respondent's counsel, Bergeron stated that at the April 4 employee meeting, he received reports from some of the drivers that Oberholtzer was on Republic's property. Bergeron said that he called Calleja on his cell and reached him at his residence and reported the incident to him. According to Bergeron, Calleja said that he would take care of the matter.

10 Bergeron said that Calleja called him later that day and told him that the incident involved a union official and one of Drenth's drivers. According to Bergeron, Calleja said that Republic's management made the men move twice that morning—from one side of the street, and then down to the crossroads.

15 Bergeron said that on April 6, he again received calls from drivers who informed him that a similar activity was taking place. Bergeron stated that he again called Calleja who promised to investigate. According to Bergeron, Calleja told him that one of the Republic employees said that the (union) people were on the inside of Republic's property by the scale house and one of the "people" was a Drenth driver. Bergeron said Calleja asked him what he was going to do about the matter later that day—that the driver was obstructing and trespassing on private property as well as obstructing the business. Bergeron stated that he told Calleja that he would get back to him.

25 Bergeron was again called by the Respondent when the hearing was resumed in April 2007. Bergeron revisited the incident involving Oberholtzer's handbilling and his decision to terminate him on April 6. On this occasion, Bergeron stated that he received a call from the landfill—he could not recall whether the call came from scale operators "Bob" or "Pete"—that Oberholtzer was obstructing the landfill's flow of traffic. Bergeron said that he told the pertinent scale operator that he would immediately investigate the matter. Later, according to Bergeron, Calleja called him and said that (Republic) could not continue this "shit." At that point after investigating the matter, Bergeron said he decided to discharge Oberholtzer for obstructing traffic at the landfill.

30 The Respondent called Calleja who testified that he was employed by Republic Services as general manager of the Sycamore Ridge Landfill; his duties include the safe operation of the facility and ensuring that the company is in compliance with regulations applicable to a landfill operation.

35 Calleja stated that on April 4, he received a call from Bergeron early that morning. According to Calleja, Bergeron was concerned about some people holding up or stopping trucks at the landfill. Calleja said that he then called one of his operators at the landfill to verify what was going on. According to Calleja, he was told by the operator that there were a few people and a vehicle on Republic's property—the parking lot adjacent to the front gate—and they were stopping trucks.

40 Calleja said he instructed his employee politely and professionally to ask the persons to conduct their business elsewhere but not on Republic's property, and to cease holding up the trucks coming to the facility. Calleja said that he was told at some point that the persons and the vehicle had departed.

50 ⁷⁵ The General Counsel had requested to examine Bergeron as a 6(11)(c) hostile witness. I granted this request.

Calleja said that he called Bergeron and told him that the trucks subcontracted to Republic should be hauling waste and not conducting (other) business at its facility.

5 Calleja related that a couple of days later, he received another call from Bergeron who advised him that somebody was at Republic's facility and was stopping and talking to drivers. Calleja said that once again, he contacted one of his operators at Sycamore Ridge to verify Bergeron's claim.⁷⁶ According to Calleja, the operator said that he had asked the individual(s) to leave and he/they had complied. Calleja believed that on this second occasion, the individuals were parked on the west side of the scale house and could have been parked in the parking lot across the street from the station. Calleja said that he called Bergeron and told him that the person holding up trucks worked for Drenth and if this were the case, the employee should be hauling garbage during normal business hours or checked and signed in at the scale house to obtain permission to be onsite during non-operating hours.

15 Calleja admitted that the action he took was based on Bergeron's call to him; he did not initiate the action. He was merely enforcing Republic's parking policy. Calleja stated that he knew some handbilling had occurred on Cottom Road (the public road servicing the landfill) but not prior to April 4. Calleja testified that he did not know the identities of the persons reportedly stopping the trucks and relied entirely on the information he received from his employees who did not state where the individuals were actually engaging in any activity or how long the trucks were stopped. Calleja said that he did not call the police because the persons involved complied with his employee's instructions and left. Since there was no trouble caused by anyone, Calleja said that he made no record of the incidents.

25 Calleja said that Republic's policy required visitors to register and the obvious signage posted at the landfill so instructed. The persons involved had not registered, so were asked to leave. Calleja stated that the activity in which the persons were engaging—stopping trucks, congesting the entrance and exit to the landfill, and trucks even causing backups on Cottom Road—was another concern for him. He noted that Cottom Road⁷⁷ is a small two-lane county road (in the middle of nowhere according to Calleja) that, if the trucks are not kept moving well, becomes too congested which in his view posed safety issues. Calleja said that once he determined—he did not actually know—that the offending person was a Drenth driver, he told Bergeron that he (Bergeron) had to initiate some Drenth policy to deal with the matter.

35 Oberholtzer stated that he handbilled as part of his participation in the union organizing effort on only two occasions, and April 6 was the first date as well as the date on which he was terminated by Bergeron. He explained what transpired on that date.⁷⁸

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⁷⁶ Calleja said the operator's name was Herschell Byerly whose nickname is "Pappy" who did not testify at the hearing.

⁷⁷ The General Counsel called Jerry Netherlain to testify about the Cottom Road area. Netherlain is the county engineer for Vigo County through which Cottom Road traverses. Netherlain manages the County Road system and through his testimony, I would consider him an expert on the road system of Vigo County.

45 Netherlain was familiar with Cottom Road and the Sycamore Ridge Landfill. It is clear from his testimony that Cottom Road is a county road and not the property of Republic Services, which fact would not allow the Company to control its use.

50 ⁷⁸ Oberholtzer said that the other date was April 12. He identified a handbill (G.C. Exh. 35(e)) that he distributed on that date.

Oberholtzer noted that he was not working that day, as he was serving a 3-day suspension which began on April 4, and decided to assist the Union by distributing union notices along with two union representatives, Jeff Combs and Rudy Valadez, on Cottom Road near the Sycamore Ridge Landfill.

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On April 6 at about 4 a.m., Oberholtzer said that he and the two union representatives, Jeff Combs and Rudy Valadez, handed out pamphlets⁷⁹ to Drenth drivers, either as they were entering or exiting the landfill. According to Oberholtzer, the three of them at various times stood on the side of the road—either side—so as to be able to get a Drenth driver's attention, and if the driver elected to stop, give him a handbill. Oberholtzer said they gave the drivers plenty of space to maneuver their vehicles and trucks into or out of the landfill.⁸⁰ Oberholtzer said no truck was stopped more than 30 seconds and most for much less time; there were no traffic backups. Oberholtzer said that the three men never positioned themselves so as to block the landfill entrance; and he wore a reflective jacket like the one he produced at the hearing so as to make himself more visible in the darkness of the early morning. Oberholtzer stated that no one from Republic ever said anything to him about handbilling on April 6, nor did anyone from Drenth's management.

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Oberholtzer said that, nonetheless, that day, fellow driver Jim Lucas told him that Bergeron was contemplating firing him for being out at the landfill. Oberholtzer said he placed a call to Bergeron between 8 and 9 a.m. on April 6 to discuss the issue and asked Bergeron whether he had wanted to speak to him. According to Oberholtzer, Bergeron said that he had and went on to tell him that his (Oberholtzer's) services were no longer needed. Oberholtzer said he asked for a reason and Bergeron told him to put his request in writing within 7 days; Bergeron said he would respond to that request. Oberholtzer said that he told Bergeron that was not necessary, just tell him the reason. Bergeron refused and ended the discussion.

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Oberholtzer said that he wrote his request for an explanation on a single piece of paper on April 7 and received Bergeron's response on April 12.

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Oberholtzer related an incident that occurred on April 12, the other date he handbilled on Cottom Road with Combs of the Union, again between 4–7 a.m. According to Oberholtzer, after a couple of hours of passing out pamphlets, a Republic landfill employee informed him and Combs that they were on company property. Oberholtzer stated that although he had called the County Commissioner's office and was told Cottom Road—where they were set up—was a public road, he and Combs opted not to challenge the employee and moved down to the crossroads to handbill to avoid a confrontation. Oberholtzer noted that there was no back up of traffic or other safety-related issue, nor any disruption to the landfill operation at the time he handbilled.

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Oberholtzer admitted that he was aware that Republic had posted a no-trespassing sign at the landfill parking lot; the sign instructed visitors to check in at the office. However, according to Oberholtzer, in his view this sign was only posted after he handbilled on April 6; he

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⁷⁹ Oberholtzer identified G.C. Exh. 35(d), a copy of the handbill he distributed on April 6. Oberholtzer said he recalls this handbill with particularity as it was an invitation to a party he was having at his residence.

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⁸⁰ Oberholtzer was shown G.C. Exh. 38, a photograph purporting to be illustrative of where he and the union representatives were standing. Oberholtzer stated that Combs and Valadez were in the same vicinity as he on Cottom Drive, basically on either side of the road giving the trucks ample room to turn to go in and out of the landfill.

noticed it on April 12 as he was handbilling. Oberholtzer conceded that he did not check in with Republic on either of the two occasions he handbilled.

5 The General Counsel called Combs and Valadez to testify about the handbilling on Cottom Road in front of the entrance of the Sycamore Ridge Landfill.

10 Combs⁸¹ testified that pursuant to its efforts to organize the Drenth drivers, the Union passed out handbills to the drivers bringing their loads to the Sycamore Ridge Landfill on five occasions—January 31, February 9, March 2, April 6, and April 13, 2006.⁸² Combs stated that he chose the landfill site on Cottom Road because he knew that all of the Drenth drivers drop their loads at that location for at least 2–3 hours during the day; otherwise, the drivers are scattered throughout the State. Combs said that he was aware that this landfill was owned by Republic, but that when handbilling he and his supporters always stood on the side of Cottom Road so that trucks coming or going could stop and receive a handbill, but not block traffic or
15 cause any disruption to the landfill's business.⁸³

20 Combs said that he personally handbilled on four of the five occasions each time on Cottom Road and Drenth employee Oberholtzer assisted in the efforts on two occasions—April 6 and April 13. On April 6, Combs confirmed that Oberholtzer, Valadez, and he handbilled at the landfill from about 4 a.m. to 6:30 or 7 a.m.; each man stood on the side of Cottom Road, going back and forth on each side to give a driver the handbill announcing the meeting scheduled for Saturday, April 8. According to Combs, each man moved around walking along the roadway to where a driver had stopped to take a handbill. Combs said they never blocked traffic in and out of the landfill because they never stood in front of the entrance (marked in the
25 photos by two huge yellow boulders). Combs said they offered handbills solely to Drenth drivers, and no employee from Republic or Drenth spoke to him on April 6 regarding when they had positioned themselves to hand out the notices.

30 Combs confirmed that he and Oberholtzer also handbilled on April 13 around 4–7 a.m. at Sycamore Ridge on Cottom Road. Combs recalled that Drenth's management had convened a meeting at the Company's nearby garage facility on April 13 and the drivers were therefore not turning into the landfill until after the meeting. Combs said that Oberholtzer and he moved away from the landfill, closer to the garage and handbilled only Drenth drivers.

35 Combs also related that on April 13, a Republic employee named "Pappy" drove by in his truck to inform him and Oberholtzer that Republic owned that part of Cottom Road—the entire roadway or at least a half-mile portion, including the portion on which the telephone poles stood,⁸⁴ and that they would have to move to a point about a half-mile away. Combs said that he told "Pappy" that they were almost finished and would remove themselves down the road.
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⁸¹ Combs testified that he was employed by the Union as a business representative-organizer for about 3 years and he was one of the union representatives involved in the attempted organization of the Drenth drivers starting January 2006.

45 ⁸² Combs identified G.C. Exh. 35(a)–(e) as copies of the handbills which he said were always distributed on a Thursday in advance of the announced meeting which was to take place the following Saturday.

⁸³ Combs identified G.C. Exh. 38, photos taken on his instructions by one of the union representatives, Mike Gillespie, of the area where he and other supporters positioned themselves to handbill.

50 ⁸⁴ Combs identified the photos in G.C. Exh. 38 and referred to telephone poles lining the roadway near where they were standing to handbill.

Combs stated that he observed other nontruck traffic using the roadway at the time and questioned whether Republic actually owned the public roadway but he decided not to call the police. Combs conceded that at the time he did not actually know where Cottom Road ended and Republic's property began.

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Combs insisted he and Oberholtzer handbilled on the public roadway and never interfered in any meaningful way with the working drivers. Combs also conceded that it was dark at 4 a.m. but that the handbillers wore reflective gear. He also admitted that while he parked on the public side of the road on occasion while handbilling, he also parked his vehicle in the Republic parking lot and near its maintenance shed and in that sense he was trespassing on Republic's property.

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Valadez testified that he was employed by the Union as an organizer and believed the Union, as part of its organizing drive, handbilled Drenth's drivers at the Sycamore Ridge Landfill in Terre Haute about six times, usually at around 4 a.m. until 6:30 a.m. because the majority of the Drenth drivers could be accessed there. Valadez said that he wore reflective gear when handbilling.

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Valadez confirmed that Oberholtzer assisted him on only one occasion, which he believed was on April 6;⁸⁵ Jeff Combs was present also on that occasion. Like Combs, Valadez identified photos of the area where the three handbilled and stated he (and the others) stood on both sides of the road crossing back and forth, and some time standing in the middle of the road awaiting the trucks.

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Valadez, examining the photos, noted that Oberholtzer and he never approached the two boulders marking the entrance of the landfill, and in any case they did not block the entrance. Valadez admitted that the Drenth drivers, who stopped to receive a handbill near the entrance or exit where he and Oberholtzer stood, did so for about 20-30 seconds, but they had to slow down to enter or exit the landfill regardless of the handbilling. Valadez said there was not much chit-chatting when the drivers stopped; they greeted the Drenth drivers, handed them a notice if they wanted one, and the drivers then moved on.

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Valadez stated that no one from Republic or Drenth ever approached him, Oberholtzer, or Combs about their handbilling prior to or on April 6.

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Valadez stated that on September 7 while handbilling with Combs, as they were about to leave the landfill, a man in a pickup truck said something in the way of complaint to Combs and they left immediately. Valadez said that he did not hear all of what was said because he (Valadez) was on the other side of the road when Combs and the other man were talking.

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Valadez admitted that he did not know where the edge of Cottom Road ended and Republic's property began, but considered the telephone poles to be on an easement. Valadez also stated that he never saw any no-trespassing signs or any signs directing all visitors to report to Republic's office.

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⁸⁵ Valadez believed that on one occasion prior to April 6, he may have handbilled at the Sycamore Ridge Landfill on Cottom Road. He stated that since April 13, 2006, he has handbilled there two additional times.

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C. *The Applicable Law Regarding the 8(a)(1) and 8(a)(3) Allegations*

Employer interference, restraint, or coercion of employees who exercise their statutory right to form, join, or assist labor organizations are unlawful under Section 8(a)(1) of the Act.⁸⁶
 5 The test under Section 8(a)(1) does not turn on the employer's motive or whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which it may be reasonably said tends to interfere with the free exercise of employee rights under the Act. *Gissel Packing Co.*, 395 U.S. 575 (1969); *Almet, Inc.*, 305 NLRB 626 (1991); *American Freightways Co.*, 124 NLRB 146, 147 (1999). Thus, it is violative of the Act for the employer or
 10 its supervisor to engage in conduct, including speech, which is specifically intended to impede or discourage union involvement. *F. W. Woolworth Co.*, 310 NLRB 1197 (1993); *Williamhouse of California, Inc.*, 317 NLRB 699 (1995). The test of whether a statement or conduct would reasonably tend to coerce is an objective one, requiring an assessment of all the circumstances in which the statement is made as the conduct occurs. *Electrical Workers local 6 (San Francisco Electrical Contractors)*, 318 NLRB 109 (1995). *Rossmore House*, 269 NLRB 1166
 15 (1984), enfd. sub nom. *Hotel and Restaurant Employees Local 11 v. NLRB*, 706 F.2d 1006 (9th Cir. 1985). *Medcare Associates*, 330 NLRB 935. *Greenfield Die and Manufacturing Corp.*, 327 NLRB 237 (1998).

20 It is well settled that an employer's interrogation of employees concerning their union activities may be violative of the Act. *Hudson Neckwear, Inc.*, 302 NLRB 93 (1991). Among the circumstantial factors examined are the background of the interrogation, the nature of the information sought, the identity of the questioner, and the place and method of interrogation. *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985).⁸⁷ The Board has also considered
 25 other factors such as whether the questioning was by an immediate supervisor who worked closely with the employee, whether it was made in a joking tone, and whether the employee as an open, active union supporter, *Raytheon Co.*, 279 NLRB 245 (1986); *Action Auto Stores, Inc.*, 298 NLRB 875 (1990); *Dealers Mfg. Corp.*, 320 NLRB 947 (1996).

30 The Board has found that threats of job loss may violate Section 8(a)(1) because of the reasonable tendency to coerce employees in the exercise of their Section 7 rights. *Clinton Electronics Corp.*, 332 NLRB 479 (2000).

35 In likewise, the Board has found that Section 8(a)(1) may be violated by an employer's threats to employees of unspecified reprisals. *St. Margaret Mercy Health Care Centers*, 350 NLRB No. 20 (2007); *California Gas Transport, Inc.*, 347 NLRB No. 118 (2006). On the other hand, the Board has found that an employer may violate the Act by promising employees benefits of a specific or unspecific nature. *Mickey's Linen and Towel Supply*, 349 NLRB No. 76
 40 (2007); *Christopher Street Corp.*, 286 NLRB 253 (1987).

Regarding the issue of employee discussions about and solicitations on behalf of unions, the Board recently held and reaffirmed that:

45 It is well established that employees are entitled to discuss unions and solicit for unions on nonworking time, unless the employer can show that it needs to limit the exercise of that right in order to maintain production or discipline. *Republic Aviation*

⁸⁶ Sec. 29 U.S.C. §158(a)(1).

50 ⁸⁷ The Board, however, does not mechanically apply these factors in each case. Rather, it views these criteria as useful indicia that may serve as a starting point for assessing the totality of circumstances. *Perdue Farms, Inc. v. NLRB*, 144 F.3d 830 (D.C. Cir. 1998).

5 *Corporation v. NLRB*, 324 U.S. 793, 803 (1945), and *Peyton Packing Co.*, 49 NLRB 828, 843-844 (1943), enfd. 142 1009 (5th Cir.), cert. denied 323 U.S. 730 (1944). It is also well settled that an employer may forbid employees from talking about a union during periods when the employees are supposed to be actively working, if that prohibition also extends to other subjects not associated or connected with the employees' work tasks. However, an employer violates the Act when employees are forbidden to discuss unionization, but are free to discuss other subjects unrelated to work *Jensen Enterprises*, 339 NLRB 877, 878 (2003).⁸⁸

10 It is well settled in Board law that an employer is free to predict the economic consequences it foresees from unionization, so long as the prediction is:

15 carefully phrased on the basis of objective fact to convey [its] control. . . . If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation . . . without the protection of the First Amendment. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

20 Absent the necessary objective facts employer predicting adverse consequences arising from unionization are not protected by Section 8(c), rather they constitutes threats that violate Section 8(a)(1). *Homer Bronson Co.*, 349 NLRB No. 50 (2007).

25 On this score, while Section 8(a)(1) prohibits certain speech and conduct deemed coercive, employers are free under Section 8(c) of the Act to express their views, arguments, or opinions about and regarding unions as long as such expressions are unaccompanied by threats of reprisals, force, or promise of benefits. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).⁸⁹

30 Section 8(a)(1) of the Act also makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act, including the right to engage in concerted activities . . . for the purpose of mutual aid or protection." 29 U.S.C. §157.

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⁸⁸ *Sam's Club*, 349 NLRB No. 94 (2007). In *Sam's Club*, the Board also in fn. 11 noted as follows:

40 Conversely, it is clear that an employer may lawfully prohibit solicitation during working time. See *Our Way*, 268 NLRB 394 (1983). Further, retail employers, such as the Respondent, may lawfully prohibit employees from soliciting on the selling floor – even during the non-work time of employees – because active solicitation in a sales area may disrupt a retail store's business. See, e.g., *J.C. Penny Co.*, 266 NLRB 1223 (1983). *Marshall Field & Co.*, 98 NLRB 88 (1952), modified on other grounds and enfd. 200 F.2d 375 (7th Cir. 1958). The Board, however, has not allowed these restrictions on solicitation to be extended beyond that portion of the store that is used for selling purposes. See, e.g., *McBride's of Naylor Road*, 229 NLRB 795 (1977).

45 See, also, *Verizon Wireless*, 349 NLRB No. 62 (March 28, 2007), and *Valley Central Emergency Veterinarian Hospital*, 349 NLRB No. 107 (2007).

50 ⁸⁹ See *General Motors Corp.*, 347 NLRB No. 67 (2006), wherein the Board stated *Wright Line* applies to all 8(a)(3) and (1) allegations that turn on employer motivation.

In *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962), the Supreme Court affirmed that employees with no bargaining representative or established procedure for presenting their grievances may nonetheless take collective and concerted action to air their grievances regarding terms and conditions of employment.

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The Board has defined concerted activity. When an employee acts with or on the authority of other employees, the employee is engaged in concerted activity. *Meyers Industry*, 268 NLRB 493, 497 (1984) (*Meyers I*), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985) (*Meyers II*), cert. denied 487 U.S. 1205 (1968).

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As noted in the recent case, *Ashville School*,⁹⁰ in which the administrative law judge was upheld, the following summary of the Board's interpretation of concerted activity (taken from *Diva Ltd.*, 325 NLRB 822 (1998)) is instructive:

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Since *Meyers* [*Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), and *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986)], the Board has found an individual employee's activities to be concerted when they grew out of prior group activity, when the employee acts formally or informal, on behalf of the group, or when an individual employee solicits other employees to engage in group action, even where such solicitations are rejected. However, the Board has long held that for conversations between employees to be found protected concerted activity, they must look toward group actions and that mere "gripping" is not protected. See *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683 (3d Cir. 1964), and its progeny. *Id.* at 830.

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As the Board stated in *Holling Press, Inc.*, 343 NLRB 301 (2004):

In order for employee conduct to fall within the ambit of Section 7, it must be both concerted and engaged in for the purpose of "mutual aid or protection." These are related but separate elements that the General Counsel must establish in order to show a violation of Section 8(a)(1).

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Accordingly, employees who simply pursue a personal claim, even with the assistance of other employees, may not be extended the protection of the Act under *Holling Press, Inc.*, supra. In short, the employee must be shown to be seeking a collective goal and may not simply advance his or her personal claim.

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When the alleged 8(a)(1) violation turns, as in the instant case, on the employer's motive in taking an adverse action against an employee, the Board requires that the charge be analyzed under the framework set out in *Wright Line*, 251 NLRB 1083 (1968), *enfd.* 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The *Wright Line* analysis is, of course, to be applied in cases where violations of Section 8(a)(3) are alleged. The discussion to follow applies to both Section 8(a)(1) and 8(a)(3).

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Under *Wright Line*, the General Counsel must establish (1) that the employees engaged in protected concerted activity; (2) the employer has knowledge of that activity; (3) animus or hostility toward this activity was a motivating factor in the employer's decision to take the adverse action in question against the employee.

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⁹⁰ 347 NLRB No. 84 (2006).

Once the General Counsel establishes initially that the employee's protected activity was a motivating factor in the employer's decision, the burden of persuasion shifts to the employer to show that it would have taken the same action even in the absence of the protected activity. *Transportation Management Corp.*, 262 U.S. 393 (1983).

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It is also well settled, however, that when an employer's stated motives for its actions are found to be false, the circumstances may warrant an inference that the true motive is one that the employer desires to conceal. The motive may be inferred from the total circumstances provided. Moreover, under certain circumstances, the Board will infer animus in the absence of direct evidence. That finding may be inferred from the record as a whole. *Fluor Daniel, Inc.*, 304 NLRB 970 (1991).

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Inferences of animus and discriminatory motivation may be warranted under all the circumstances of a case, as noted even without direct evidence. Evidence of suspicious timing, false reasons given in defense, failure to adequately investigate alleged misconduct,⁹¹ departures from past practices, tolerance of behavior for which the alleged discriminatee was fired, disparate treatment of the discharged employees, and reassignments of union supporter from former duties isolating the employee, all support inferences of animus and discriminatory motivation. *Adco Electric*, 307 NLRB 1113, 1123 (1992), enfg. 6 F.3d 1110 (5th Cir. 1993); *Electronic Data Systems Corp.*, 305 NLRB 219 (1991); *Bryant & Cooper Steakhouse*, 304 NLRB 750 (1991); *Bourne Manor Extended Health Care Facility*, 332 NLRB 72 (2000); *Visador Co.*, 303 NLRB 1039, 1044 (1991); *In-Terminal Service Corp.*, 309 NLRB 23 (1992); *Nortech Waste*, 336 NLRB 554 (2001); *Bonta Catalog Group*, 342 NLRB No. 132 (2004); and *L.S.F. Transportation, Inc.*, 330 NLRB 1054 (2000).

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The employer's burden under *Wright Line* requires it "to establish its *Wright Line* defense only by a preponderance of evidence." The respondent's defense does not fail simply because not all of the evidence supports it, or even because some evidence tends to negate it. *Merillat Industries*, 307 NLRB 1301, 1303 (1992).

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To establish an affirmative defense, "[a]n employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity." *W. F. Bolin Co.*, 311 NLRB 1118, 1119 (1993), enfd. 99 F.3d 1139 (6th Cir. 1996).

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Notably, the test applies regardless of whether the case involves pretextual reasons or dual motivation. *Frank Black Mechanical Services*, 271 NLRB 1302 fn. 2 (1984). The Board has held that, "[A] finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not, in fact, relied upon, thereby leaving intact the inference of wrongful motive." *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). In short, a finding of pretext defeats any attempt by the employer to show that it would have discharged the discriminatee absent his union activities. *Golden State Foods Corp.*, 340 NLRB 382 (2003).

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⁹¹ The Board advises that the investigation should be full and fair. The Board has also noted, however, that while an employer's failure to conduct a full and fair investigation into alleged misconduct of an employee may constitute evidence of discriminatory intent, such failure will not always constitute evidence of such intent. *Hewlett Packard Co.*, 341 NLRB No. 62 (2004).

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The Board has determined that decisions affecting an employee's condition of employment may be based on its exercise of business judgment and that judges should not substitute their business judgment for that of an employer. *Lamar Advertising of Hartsford*, 343 NLRB No. 40 (2004); *Yellow Ambulance Service*, 342 NLRB No. 77 (2004).

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Moreover, the Board has emphasized that the crucial factor is not whether the business reason was good or bad, but whether it was honestly invoked and was in fact the cause of the action. *Framan Mechanical, Inc.*, 343 NLRB No. 53 (2004).

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D. Discussion and Conclusions Regarding the Charges

1. The Respondent's alleged interrogation of Oberholtzer; the alleged threat of job loss

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The General Counsel contends that Oberholtzer's testimony, corroborated by his recorded conversation with Bergeron on January 26, clearly establishes that Bergeron unlawfully interrogated him about his knowledge of the organizing campaign, including the identities of other employees who may have been involved. She also contends that Bergeron's statement to Oberholtzer that the driver employees would lose their jobs—through termination of the Republic contract—if they unionized, was under the circumstances clearly threatening to and coercive of the employees' Section 7 rights.

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The Respondent counters, contending that the conversation between Bergeron and Oberholtzer was merely a casual and non-intimidating conversation stemming from Bergeron's recently finding out about union activity at the Company and his curiosity about the matter. Oberholtzer, the Respondent asserts, immediately cut Bergeron's queries off, citing their possible illegality. The Respondent contends he could not have been coerced in the total context of the meeting because Bergeron immediately ceased his questioning. Regarding the alleged threat of job loss, the Respondent argues that Bergeron merely cited an economic fact of life—that Republic was Drenth's sole customer, and if Republic terminated (pulled) the contract, everyone would be out of work. The Respondent asserts that Bergeron was free to express his views about the Union as long as his statements did not contain threats of reprisal or were otherwise coercive. In short, Bergeron in a casual conversation with Oberholtzer simply made a prediction based on objective fact, and the possible action of Republic whose business decisions he could not control.

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Oberholtzer's taped recordings of his encounter provide in cases such as this an infrequent opportunity for the fact finder to hear firsthand the tone and tenor of the conversation in which the offending statements were uttered. In short, in an out of court setting, the fact finder can make something in the way of a demeanor assessment of the participants. Having listened to the taped conversation, I would note that contrary to the Respondent, they were not "casual."⁹² In my view, Bergeron's queries and their tone clearly were directed both to gathering information from Oberholtzer about the union organizing effort and then sending a message to the employees through him about the consequences of their choosing union representation. It seems clear that Bergeron in some unknown way had gotten wind of the union effort and also determined that Oberholtzer had some integral part therein and pulled him aside to gather information and deliver a dire warning based on nothing that one could describe as carefully

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⁹² I have rejected the Respondent's assertion that Bergeron's conversation with Oberholtzer was noncoercive, being casual and nonthreatening, and therefore fell without the coverage of Sec. 8(c) as protected speech.

phrased objective fact. Bergeron simply said in so many words, choose the union, lose your job.

5 Bergeron made the statements in the very beginning of the union campaign and in my view this reflects the Respondent's attempt to frustrate the employees' possible choice of the Union as soon as possible. Employees could reasonably come to this conclusion. Oberholtzer at the time was clearly thought by Bergeron to be a union supporter, but in point of fact, Oberholtzer did not begin to get "active" until later because the campaign was only in a nascent stage on January 26 and 27.

10 All in all, I would find and conclude that the Respondent in such circumstances, through Bergeron, unlawfully interrogated Oberholtzer and threatened him and the other drivers with loss of their jobs if they chose the Union to support them, all in violation of Section 8(a)(1) of the Act.

15 2. The Brandon Meekin allegations

As I have previously found, Meekin, as the Respondent's statutory agent, could and did bind it to the legal consequences of statements he made to employees, here the sole employee, Conner, who testified in support of the complaint allegations.

25 The General Counsel contends that on the same date—January 27—that the Union filed its recognition petition, Meekin told Conner that he had been contacted by Kenneth Drenth regarding the Union's anticipated filing and asked him about the employees' involvement (efforts) in the organization. She asserts that Meekin's follow-up questions to Conner about his (and other employees') possible involvement in the union drive constituted an unlawful interrogation.

30 The General Counsel also contends that Meekin's second conversation on about February 18, wherein Meekin communicated to Conner that he had never seen the Company in such bad shape since the organizing campaign and that no matter what the outcome of the Union (campaign) Conner's days with the Company were numbered, constituted an implied threat of unspecified reprisal for his involvement with the union effort.

35 The Respondent placed its defense to the Meekin allegations largely on its position that Meekin as a loader/operator was not a statutory supervisor and, therefore, any statements he may have made could not be attributable to and binding on the Company.

40 I have previously concluded that while acting as a statutory agent, Meekin made the statements attributed to him by Conner on the dates in question. The question, given the totality of the circumstances test, is whether an employee could reasonably construe Meekin's statements to be threatening or coercive.

45 This presents a close question in my view. It would appear that Meekin and Conner enjoyed a relationship that exceeded simply that of driver to loader/operator or vice versa. They seemed to have a good work-related friendship; e.g., cashing their checks and eating breakfast together. Conner and Meekin worked in tandem regarding the new driver training. Conner, it seems, knew the whereabouts of Meekin at the time of the hearing when the company management did not, which fact suggests something more than a work-related association.

50 Also, according to Conner, Meekin wanted their conversation to be between friends and off the record. Conner, under those "ground rules" as it were, told Meekin of his involvement,

that he had to keep the organization effort quiet. Meekin then expressed his concern to Conner about sticking his neck out too far to avoid having it chopped off. In the second conversation, Meekin also intimated to Conner at breakfast his hostility to the union stuff going on, wishing that it had never taken place, and again advising that he had heard Conner's days with Company were numbered.

In my view, Meekin's comments in both conversations and in a legal vacuum would constitute unlawful statements. However, the Board instructs that the totality of the circumstances be examined. Here, there were two employees, one a relatively low-level management employee and the other a driver, who enjoyed a mutually friendly working relationship and partook of a conversation. Conner told Meekin on the first occasion that his questions were unlawful but, nonetheless, acceded to an off-the-record discussion with Conner about the Union. In the second conversation equally amicable, Meekin volunteered his thoughts and basically set out to warn Conner that he was being targeted by the Company.

Taken as a whole, I cannot conclude that under these circumstances, an employee would reasonably construe Meekin's statements to be coercive or threatening. I would recommend dismissal of the Meekin allegations.

I note in passing, however, that Meekin's statements, along with those previously attributed to Bergeron in his conversations with Oberholtzer, evince early on a clear hostility on the Respondent's part to the Union, and to Oberholtzer and Conner for their at least perceived involvement with the organizing campaign.

3. The no-solicitation/distribution rule allegations

The General Counsel contends that the Respondent, through Bergeron, basically posted and promulgated its no-solicitation/no-distribution policy in response to Oberholtzer's February 27 conversation about the Union with a couple of mechanics after his shift ended; that in this conversation, each participant expressed his views on unionization. She notes that Bergeron admitted that prior to posting the notices on about February 27-28, the Respondent had no announced solicitation/distribution policy, least of all a posted notice indicating such a policy. Essentially, she asserts that as Bergeron testified, in the context of Oberholtzer's conversation with the mechanics, one of whom complained about the union conversation to Bergeron, Bergeron copied the wording of Republic's signs and posted his signs at Drenth's facilities. The General Counsel argues that inasmuch as the Respondent had never, prior to February 27, applied Republic's (or its own) solicitation/distribution policy to its employees and as Oberholtzer credibly testified, the Company had allowed other solicitations—coupon books and a motorcycle—on Republic's property at other times, the policy was clearly promulgated to interfere with the employees' Section 7 right as opposed to maintain production and discipline. The General Counsel also submits that under the extant circumstances, the Respondent promulgated the policy in response to Oberholtzer's union activity and disparately and selectively enforced the policy against him to discourage employees from engaging in protected union activity in violation of the Act.

The Respondent contends that, first, the no-solicitation policy in question was not Drenth's policy but Republic Services' policy; Drenth was required to follow this policy by contract. The Respondent asserts that this was longstanding policy as attested to by employees Thomas, and Wilbur who testified that they were not aware of any solicitation that had taken place on either Drenth or Republic property. The Respondent further asserts that the only other solicitation incident raised in this case related to Bergeron's purchase of some little league football coupons from Oberholtzer, and that as such this was a de minimus departure for

a charitable purpose from the solicitation policy. The Respondent contends this allegation should be dismissed.

5 First, it seems clear that Bergeron, by his own admission, posted the no-solicitation/no-distribution signs in response to what he claimed was a complaint of one of the mechanics with whom Oberholtzer spoke about unionization. Second, I note that the so-called complaining mechanic did not testify at the hearing, nor did Bergeron make any notes of the complaint. Bergeron stated that the mechanic did not want to be bothered with all this (expletive) about the Union. So he posted the notices for the first time, at least in his tenure with Drenth.

10 I am not convinced that Bergeron's reason—the complaint of the mechanic—for posting and promulgating the no-solicitation policy is bona fide. As I have previously noted, Bergeron's truthfulness in the context of his taped conversation with Oberholtzer in January is suspect. Accordingly, without some corroboration, I cannot credit his testimony in this regard.

15 Therefore, in agreement with the General Counsel, I believe that Bergeron posted the notice and promulgated the no-solicitation rule more in response to what he believed was Oberholtzer's union activity as opposed to a complaint from a fellow employee, or because of any concerns about production, discipline during working hours, or, as asserted, Republic's purported no-solicitation policy.

20 In terms of the Respondent's claim that it was contractually obligated to follow Republic's policy regarding solicitation on its property, I note that the Company did not produce any such contract incorporating this policy. Granted Calleja testified that his company had a policy that may touch on soliciting, yet there was no specific testimony that Republic required by contract subcontractors like Drenth to comply with its no-solicitation policy. Therefore, in my view, the Respondent's claim that it was enforcing Republic's policy over which it had no control is not established.

30 In agreement with the Respondent, however, I cannot conclude on this record that the no-solicitation policy was disparately and selectively applied. It seems that there was very little in the way of solicitation and distribution going on at the Respondent's facilities. I would credit Oberholtzer's testimony that on one occasion he sold coupons to Bergeron and on some occasion a for-sale motorcycle remained on the premises for a period of time. However, in my view, these are de minimus incidents and cannot support a charge of selective and disparate enforcement of the no-solicitation policy against the Respondent's employees to discourage membership.

40 Be that as it may, I would find and conclude that on February 27, the Respondent posted, promulgated, maintained, and enforced its no-solicitation/distribution rule in response to Oberholtzer's perceived union activity and the possible activities of its employees in violation of Section 8(a)(1) of the Act, and that this was done to discourage the employees' support of the Union.⁹³

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50 ⁹³ It is arguable that the Respondent's action here redounds to selective and disparate enforcement of the policy against Oberholtzer. However, on this record, in my view the Respondent's action was directed at all employees who might be of a mind to solicit on behalf of the Union, and this poses an unlawful interference with their rights.

4. The promise of unspecified benefits allegation

The General Counsel contends that Bergeron's statement—that he was going to make it better than normal—to a gathering of employees during the union campaign was unlawfully coercive because they could reasonably infer that if they put the union campaign behind them, he would make things better for them; that normal before the Union's advent was better for them. She contends that Bergeron's statements constituted a promise of unspecified benefits to the employees if they (by implication) did not choose the Union to represent them.

The Respondent first asserts that the complaint allegation was too vague and ambiguous to make a reply.⁹⁴ However, the Respondent, reckoning (correctly) that the allegation in question related to employee Wilbur's conversation with Bergeron in late April 2006, argues that Bergeron's statement was merely a generalized expression of his desire to make things better and constituted mere permissible campaign propaganda.

First, I would conclude that Wilbur's testimony was credible. He presented as a matter-of-fact witness with no axe to grind. He also was employed by the Respondent at the time he testified, and this added to his credibility in my view. By the same token, Bergeron did not deny making the statements attributed to him. In point of fact, the Respondent does not take issue with this point in its brief. Accordingly, I will credit Wilbur's version of the encounter in the mechanics' supply room in late April 2006.

In my view, Bergeron's statement was unlawfully coercive. Bergeron evidently voluntarily stopped to talk to a group of employees, including Wilbur, and without prompting initiated the conversation, expressing his unsolicited view that he could not wait for things (meaning the absence of a union campaign) to get back to normal. Wilbur, somewhat sarcastically (as I heard him relate the encounter) and unenthusiastically, said that normal was what got them (management) in this position in the first place. Bergeron could have left it at that but evidently felt, in view of Wilbur's doubt, a response was required for the gathered employees.

In agreement with the General Counsel, I would find and conclude that Bergeron's statement that he was going to make it better than normal constituted an unlawful promise of unspecified benefits to the employees if they elected not to choose the Union. In my view, the employees could reasonably view Bergeron's comments, given the context of the ongoing organizing campaign, to mean once the union is gone, they would be better off and further that Bergeron would see to it. Though Wilbur was evidently not convinced, the other employees could have reasonably believed that Bergeron, their immediate supervisor, could and would make good on his promise and thereby their votes against the Union would inure to their benefit.

In the total context of the conversation, Bergeron's comments went far beyond mere campaign propaganda. I would find a violation of Section 8(a)(1) in this case.

5. The Clements Clark allegation

The General Counsel asserts that Clark's request on the two occasions, that employees supply the Respondent with affidavits they may have given to Board investigators, poses a clear violation of the Act. She notes that Keck and Rankin, both current employees at the time of the hearing, testified credibly about Clark's requests of the employees gathered at an employee

⁹⁴ I would reject this defense.

meeting at the Victory Landfill in Terre Haute around the end of August 2006, and then later around mid-September when Clark, in the parts room alone with Keck, made a similar request. She further notes that the Respondent failed to call Clark who was certainly available, his being in the hearing room at various times when testimony covering his activities was adduced.

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The Respondent, I would note, opposed the General Counsel's proposed amendment of the complaint which included the Clark allegations. However, at the hearing, the Respondent did not in any measurable way deal with the allegations involving Clark, who I have determined was a statutory agent. The Respondent also did not deal with these allegations in its brief. I will treat this allegation as un rebutted by the Respondent.

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In agreement with the General Counsel, I would find and conclude first that Clark made the request of Rankin (and other gathered employees) and Keck for their affidavits during the union campaign and during the investigation of the charges herein. I would also find and conclude that Clark's requests were unlawfully coercive and also posed an unlawful interference with the employees' free exercise of their Section 7 rights. I note that the Board has found employer requests for affidavits inherently coercive. *Inter-Disciplinary Advantage, Inc.*, 349 NLRB No. 49 (2007); *Wire Products Mfg. Corp.*, 326 NLRB 625 (1998); *Astro Printing*, 300 NLRB 1028 (1990); *Frascona Buick, Inc.*, 266 NLRB 636 (1983).

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6. The withdrawal of benefits allegations

a. The Respondent's collection and reprogramming of the Nextel telephones

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The General Counsel submits that on the very day he was informed of the Union's certification petition—January 30—and a mere 4 days after he interrogated Oberholtzer about the extent and nature of union activity among the drivers—January 26—Bergeron posted a notice to the drivers to turn in their company-issued Nextel phones. She contends the Respondent took this action to prevent the drivers from speaking with one and the other about the union campaign.

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She notes that as proof of this intention, the Company had the phones reprogrammed so that upon their return to selected drivers, they were only able to communicate with the loader/operators, mechanics, and Bergeron himself. The General Counsel further notes that the only other occasion the Respondent collected company phones en masse was during an earlier (2004) attempt by the Union to organize the drivers. She asserts that the Respondent's sole motivation in collecting and reprogramming the phones during the beginning stages of the organizing drive was to limit employees, who it knew rarely saw each other on the job, from communicating with each other about the Union. She contends the Respondent violated Section 8(a)(3) in this regard.

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The Respondent asserts, first, that since the organizing period has ended, and further the Union lost the election, this charge is moot; the Respondent is now free to alter unilaterally the terms and conditions of the drivers' employment. I would reject this defense.

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The Respondent also contends that the drivers—and not all of them—were provided Nextels not as a benefit but as a business tool. The Respondent asserts that Bergeron and Kenneth Drenth were concerned that the drivers were abusing the phones so much so that Bergeron found himself having difficulty communicating for business purposes with the drivers who evidently were using the phones excessively for nonbusiness reasons. The Respondent also notes that Bergeron and Drenth also had a legitimate concern for the safe operation of the

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trucks and the drivers' excessive use of the phones while driving posed a distraction from driving issue.

5 The Respondent contends that it collected and reprogrammed the phones in a nondiscriminatory way—all company phones were collected and reprogrammed—with the result that all, not just union-related communications by the drivers, were restricted to management, the mechanics, and the loader/operators. Accordingly, the Respondent contends that it did not violate Section 8(a)(3) with regard to its collecting and reprogramming the company-issued phones.

10 In agreement with the Respondent, an employer has the clear right to restrict the use of its property, including the means of communicating in the workplace. *Guardian Industries Corp.*, 49 F.3d 317 (7th Cir. 1995). In further agreement with the Respondent, it is clear on this record that the Company issued the Nextels to its drivers because its operations were somewhat far flung and the drivers were on the road full time, making communications difficult. It is clear that having a communications system in place between the drivers and management and the mechanics and loaders was vital to the conduct of this business. In that regard, I cannot conclude that the Nextels were benefits as asserted by the General Counsel; I would liken the phones to tools of this particular trade. Accordingly, in my view, the drivers were not entitled to use the phones for any but a business-related purpose, irrespective of the Company's knowledge that the phones were evidently being used for some time for possibly nonbusiness purposes.

25 On this latter point, the Respondent satisfactorily demonstrated (through billing records) that the phones, in terms of minutes, were being used excessively. Bergeron testified credibly that he experienced difficulty in contacting drivers on occasions because of excessive usage. In my view, the Company acted within its rights in collecting the phones and reprogramming them so that they could be used in a way consistent with business purposes.

30 I note that in terms of timing, the Respondent's collecting and reprogramming the phones certainly support a finding that the Company reacted to the drivers' (suspected) union activity as it had in the past under similar circumstances. However, since the drivers were not entitled to use company property as they saw fit, even for purposes of exercising their statutory rights, they suffered no detriment regarding the terms and conditions of their employment.⁹⁵ Also, it seems clear to me that the Respondent, noting the excessive use of the phones, the expenses associated with such use as well as the potential for the unsafe operation of the heavy trucks, would have taken the action against all drivers irrespective of the union activity of the drivers.⁹⁶

40 I would recommend dismissal of this charge.

45 ⁹⁵ It should be recalled that many of the drivers had their own personal Nextels, cell phones, and citizen band radios, and were free to have contact with each other using their own equipment. In this light, the Respondent's actions had no bearing on their unrestricted use of their own communication modalities to discuss union or other nonbusiness matters.

50 ⁹⁶ I have employed the *Wright Line* analysis discussed earlier in this decision. I should note that I have concluded that the drivers did not suffer an adverse action in having their phones collected and reprogrammed. I have also concluded that even if they did suffer from such action in having their phones collected and reprogrammed, the Respondent would have taken the same action irrespective of the drivers' union activity, of which it was clearly aware and to which I have determined it was hostile during all times material to this action.

b. The alleged refusal to allow Connor, Rankin, and Thomas to park at the Terre Haute Landfill; Keck's transfer and loss of allowance of use of a company truck

5 The General Counsel asserts, first, that Bergeron was aware early on of his drivers' involvement in a nascent union organizing drive, as demonstrated by his interrogation of Oberholtzer on January 26, and his confiscation of Oberholtzer's Nextel on January 27 at which time Bergeron directed Oberholtzer not to delete any information from the phone.

10 The General Counsel submits that armed with Oberholtzer's phone, Bergeron was able to ascertain other drivers possibly involved in the organizing effort. She notes that Bergeron's confiscation of the phones constituted part of his modus operandi to ascertain union supporters. She submits that this was confirmed by Thomas who testified that a fellow driver told him that
15 Bergeron used the phone's recent call list feature to determine that Oberholtzer had spoken to Thomas, Keck, and Rankin in particular. Moreover, Oberholtzer testified that he had recently spoken to Connor at the time and his name would have appeared on the call list associated with his Nextel.

20 The General Counsel notes that at the time, Connor, Rankin and Thomas were certainly early supporters of the Union. Bergeron, as evidenced by his January 26 encounter with Oberholtzer, was desirous of determining who the unionists were. She argues that by confiscating Oberholtzer's phone, Bergeron learned that Connor, Rankin, and Thomas had been talking to Oberholtzer whom he clearly suspected was involved with the Union. The General Counsel submits that Bergeron deduced that the three were union supporters by virtue
25 of their recent communications with Oberholtzer.

30 The General Counsel argues that Bergeron's transfer of parking locations for the three came not coincidentally immediately after Bergeron obtained Oberholtzer's phone. She asserts this was an act of retaliation plain and simple against them for their support of the Union. She notes that as soon as Bergeron felt these employees would vote no in the election, he returned them to their original parking slots at the Terre Haute Landfill.

35 Regarding employee Keck, the General Counsel submits that Bergeron discovered his name on Oberholtzer's phone on January 27, and on the very same day reassigned him from the Anderson transfer station to CCR. Ultimately, when Keck objected to the transfer, Bergeron also told him that he could no longer drive the company truck home. Bergeron was fully aware that Keck had transportation problems at the time.

40 The General Counsel notes that Bergeron admitted that there was no lack of work at Anderson at the time and another employee was assigned immediately to replace Keck. She submits that Bergeron, before discovering Keck's perceived involvement with the Union, had been very accommodating of Keck, never having transferred him against his will and allowing him use of the company truck. Upon discovering Keck's support of the Union, the General Counsel contends Bergeron simply retaliated against him and sought to punish him in ways that
45 he knew would cause Keck the greatest hardship.

50 The General Counsel submits that the Respondent's stated reasons for the transfer of the four employees, including the disallowance of the use of the truck in Keck's case, are pretextual and false. She argues that the Respondent in each employee's case withdrew benefits conferred by the Company because of their involvement with the Union's organizing effort, all in violation of the Act.

The Respondent principally⁹⁷ contends that the General Counsel did not meet her *Wright Line* requirements in that she did not establish that the Company knew that the four employees had engaged or were engaging in protected activity; that the four suffered an adverse employee action; and that there was a link between the employees' protected activity and any adverse employment action, that is, the protected activities, was the motivating factor in the action taken against the employees.

The Respondent asserts that even if, arguendo, the General Counsel may have met her initial burden, the Company established that it had a legitimate basis for changing the parking arrangements of Conner, Rankin, and Thomas and transferring Keck as well as disallowing his use of the company vehicle—namely the vandalism and thefts at the Terre Haute Landfill.

As to Keck, the Respondent asserts simply that it was doing him a favor in trying to assist him with his transportation problems and acting on its business needs in transferring him from the Anderson facility to CCR in Indianapolis, a move Keck had made in the past without protest and in January 2006, in fact, allowed him to make more money.

The Respondent argues that the charges regarding the four employees should be dismissed.

Wright Line, of course, requires that an employer have knowledge of the union or other protected activity of the alleged discriminatees. The Respondent argues that to impute knowledge on this record requires a great leap in logic. I would disagree.

First, clearly, as was evident with Bergeron's early encounter with Oberholtzer in which he attempted to determine who the union adherents were, the Respondent clearly was making it its business to find out the identities of union supporters. Oberholtzer was clearly a prime suspect to Bergeron. Based on prior experience with the Union, the Company knew that the Nextel phones could be a good source of intelligence regarding the Union's possible supporters. So Bergeron, evidently suspecting that Oberholtzer was a leader, not only interrogated him about the Union and its supporters, but also immediately confiscated his Nextel which contained a recent call list. Within a very short time, Bergeron instituted the transfers of Conner, Rankin, Thomas, and Keck. The timing of all of these events clearly support an inference that the

⁹⁷ The Respondent contends that the allegations involving the withdrawal of benefits are internally contradictory and untrue inasmuch as the allegations refer to its employees as a group when in fact the allegation applies to only four employees and the benefits, if any, were withdrawn from these four as opposed to the Company's entire complement of employees. The Company argues for a dismissal of these charges on this ground, but cites no authority for its position. I would reject this defense.

The Respondent also asserts that the General Counsel, in preparing her witnesses for trial, allegedly informed alleged discriminatees Rankin and Thomas that they could receive a monetary award should they win at trial. The Respondent argues this "could only serve to have some impact on their testimony and constituted a promise of award that compromises the integrity of the Board's judicial process." I would also reject this defense.

Clearly, under the traditional Board remedies, 8(a)(3) discriminatees are entitled to be made whole for violations of the Act, and a financial award is often part of the remedy. If the General Counsel told the alleged discriminatees that they could be made whole as part of a successful result, she merely advised them of the possible legal remedy under Board law. In any case, I do not believe the integrity of the hearing in effect was compromised by any such representations by the General Counsel.

Respondent knew or certainly suspected that these individuals were involved in the organizing effort, in spite of these employees' efforts to keep the drive and their involvement therein below the Company's radar screen.

5 However, the Respondent is not a large company, and the record is clear that the drivers, not just union supporters, used the Nextels and other communication devices freely and frequently. Therefore, it was not merely an exercise in speculation that the Respondent knew of the activities of the four workers who undisputedly were active union supporters who spoke to fellow drivers over the airways. I note also in his conversations with Conner in February,
10 Meekin intimated that Conner's involvement with the Union was known by the Company and that his days with the Company were numbered.

 Then, too, the timing of Bergeron's confiscating Oberholtzer's phone, his transferring the four, and disallowing Keck's use of the company truck support an inference of knowledge of
15 their involvement with the Union.

 In agreement with the General Counsel, I would find and conclude that the actions taken against the four were in retaliation for their union activity. I note that while the Respondent's defense to the transfer of Conner, Rankin, and Thomas, mainly the theft and vandalism at the
20 Terre Haute parking lot, is plausible, it is in my view nonetheless pretextual.

 First, according to Bergeron, the thefts and vandalism took place about 3 or more weeks before he decided to transfer Conner, Thomas, and Rankin because of the thefts and vandalism. It is highly suspicious in my view that Bergeron would on practically the same day
25 he confiscated Oberholtzer's phone he would suddenly become concerned about the security issues at the Terre Haute lot and then announce the transfer of the three employees. It is evident to me that Bergeron was more motivated to make the transfers because of the employees' suspected involvement with the Union, as opposed to the security issues he claimed justified the transfers.
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 I note that the repairs and security measures (which were not clearly documented) were undertaken about 3 weeks or more after the vandalism/thefts occurred, specifically on the same day Bergeron confiscated Oberholtzer's Nextel and learned of their involvement with the Union. This supplies the necessary nexus between the Respondent's actions against the employees
35 and, in this case, their suspected in protected activity.

 Second, it would appear that the only drivers who were subject to the transfer were Conner, Rankin, and Thomas. Yet, the Terre Haute parking lot was certainly used by other drivers who were not transferred. Thus, in my view, the three—Conner, Rankin, and Thomas—
40 were clearly treated disparately.

 I would also find and conclude that the transfers of Conner, Rankin, and Thomas were tantamount to withdrawal of benefits and constituted an adverse action within the meaning of Section 8(a)(3). I will not repeat the hardships credibly testified to by the three discriminatees.
45 Certainly, in the context of the employer's type of business and the drivers' role in the conduct thereof, having a parking area convenient to home and where they could pick up their trucks was indeed a perquisite of employment, a benefit, to them and the Company as well. In this light, the Respondent's stated concern for the security of the trucks and the drivers' personal items as a justification for the transfers rings hollow, considering the punishing effect the
50 transfers visited upon the drivers.

Notably, it was only when Bergeron was assured that he had received “no” votes for the Union did he relieve the three of the burden of the transfer. In my estimate, the Respondent clearly retaliated against Rankin, Thomas, and Conner for their suspected support of and involvement with the union cause. I would also find and conclude that the Respondent’s
5 defense under the circumstances is pretextual. I would find a violation of the Act in this regard.

Regarding Keck, in likewise, in my view he was chosen for unlawful retaliation. However, his transfer to Anderson, though protested by him on January 27, was in keeping with his prior work experience with the Company. Moreover, in my view the Company was free to
10 transfer him as it deemed necessary. Accordingly, I do not find his transfer to be unlawful.

On the other hand, in disallowing Keck’s use of the company truck, Bergeron, in my view, sought to punish him for his union activities and, as Keck credibly testified indeed, cause him much hardship given his transportation difficulties of which Bergeron was fully aware. The
15 Respondent offered no reason for withdrawing this accommodation freely given before Bergeron concluded he was a union supporter.

In my mind, the Respondent’s action here was undertaken to punish a union supporter and to discourage other drivers who might be of a similar mind. I would find and conclude that the Respondent violated Section 8(a)(3) of the Act by retaliatorily disallowing Keck’s use of the
20 company truck because of his support of the Union.⁹⁸

7. The Oberholtzer allegations

The General Counsel contends essentially that once the Respondent, through Bergeron, fixed upon Oberholtzer early in the organizing campaign as a central figure therein and unlawfully, but unsuccessfully, interrogated him about the campaign and the identities of the drivers involved, the Company began its own campaign to retaliate against him (and other employees). The General Counsel submits that although Oberholtzer’s early involvement with
30 the Union was not necessarily clearly known to Bergeron, he certainly suspected him to be involved. She argues that Bergeron, beyond any doubt, shortly became fully aware of his union support by virtue of Oberholtzer’s wearing a “vote yes union” ball cap and a Teamster’s sticker in his hardhat.

She notes that from the beginning Oberholtzer requested to see a copy of the Drenth contract with Republic Services mainly in response to Bergeron’s threat that if the drivers selected the Union, Republic Services would terminate the contract. Furthermore, she notes that at the first employer meeting with the drivers in March 2006, Oberholtzer repeatedly, and to Bergeron’s chagrin, requested clarification of the contract. She argues that Oberholtzer’s
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⁹⁸ I would note in passing that in reaching this conclusion, by no means am I finding that Keck or any other driver was entitled to the use of the company truck. As in the case of the company-issued Nextels, employees are not free to use company property for their convenience or to vindicate statutory rights. Here, however, with regard to allowing Keck to use the company
45 truck, Bergeron did not act solely out of benevolence. He knew Keck had transportation problems. Also, evidently Keck was a good and reliable employee whom he wanted to accommodate for the benefit of the Company as well as Keck. As Bergeron testified, not everyone wants to haul garbage. Keck did not abuse the accommodation, as was the plausible case with the Nextels, and seemingly used the vehicle solely in a manner consistent with
50 Bergeron’s accommodation. Bergeron, in this light, conferred upon Keck a benefit and wrongfully withdrew it because of Keck’s involvement with the union drive.

unyielding support of the Union, coupled with his persistent demand for the production of the Republic contract, moved Bergeron to retaliate beyond that which had preceded this meeting.⁹⁹

5 The General Counsel submits that the Respondent also unlawfully retaliated against Oberholtzer for his support of and involvement with the Union cause by issuing Oberholtzer a written warning for speaking with the mechanics about the issue of unionization on February 27 in violation of the Company's no-solicitation/distribution policy; by issuing on March 30 a written warning for hauling overweight loads contrary to company policy and suspending him 3 days for violations of the weight policy on April 3; and ultimately discharging him for handbilling on 10 April 6.

15 Regarding the no-solicitation/distribution rule warning, the General Counsel notes that there is no dispute that the two mechanics in question, as well as Oberholtzer, all were discussing unionization and giving their respective opinions about the subject. She submits that Bergeron admitted that Oberholtzer was disciplined for engaging in this conversation. Therefore, by his own testimony, Bergeron issued the warning because of Oberholtzer's involvement with and continued support of the union campaign. However, she notes Bergeron only posted the no-solicitation/distribution policy notice for the first time because of Oberholtzer, while Bergeron, in fact, himself had at work participated in the solicitation of football coupons and knew or should have known of at least another previous solicitation (the motorcycle sale). 20

The General Counsel essentially contends that Bergeron issued the warning against him alone because he knew Oberholtzer supported the Union. She also submits that Bergeron knew based on the claimed complaints of one of the mechanics that Oberholtzer was not really soliciting for or distributing materials for the Union; he and the mechanics were merely discussing unionization. 25

The General Counsel notes that there was no rule in place to prevent such discussions among the employees who generally were at liberty to discuss any topics of their choosing as long as work was not impeded. She argues that were it not for Bergeron's hostility to Oberholtzer's continued support of the Union, he would not have issued him the warning in question. 30

35 As to the March 30 written warning and the April 3 suspension, the General Counsel essentially contends that the Respondent's under-overweight policy was not consistently followed or enforced by the Company inasmuch as the record evidence showed that the Respondent's trucks historically frequently hauled loads out of compliance with the minimum-maximum load requirements. She submits that Bergeron only reposted the admittedly 40

⁹⁹ The General Counsel contends that Bergeron unlawfully confiscated Oberholtzer's Nextel on January 27, along with the confiscation and reprogramming of other drivers' phones. I have previously concluded that the Respondent's collecting and reprogramming of the Nextels did not pose a violation of the Act. 45

I would likewise find and conclude that Bergeron's specific collection of Oberholtzer's phone was not violative of Section 8(a)(3) for the reasons I have stated earlier herein. I note that the record strongly suggests that Bergeron wanted Oberholtzer's phone to determine who the union supporters were. However, while Oberholtzer used the company phone to promote the union cause, there is no protection in my view under the Act for employees' using company property to advance the union cause or any of his Section 7 rights, especially where as here, 50 viable alternatives exist.

longstanding policy because the transportation police had issued numerous citations during March and April to the Company's drivers for hauling overweight.

5 On March 28, the General Counsel submits that Oberholtzer received permission from Meekin to haul loads later determined to be under- and overweight (for which Oberholtzer was ticketed). She notes because Bergeron had confiscated Oberholtzer's phone, he had no other means of contacting management except through Meekin. On March 29, Oberholtzer again received permission from Meekin to haul a load without weighing out—the scales at Vincennes were out of repair—and this load was under the minimum load weight policy.

10 The General Counsel contends that other drivers—Thomas and Keck in particular—testified they hauled under- and overweight loads without first obtaining Bergeron's permission and were not penalized; where tickets were issued, the Company paid them. She submits further that the Respondent in the past had similarly paid Oberholtzer's tickets, but only during the organizing drive and his involvement therein did the Company refuse to pay his tickets. Essentially, other drivers (with one exception) who did not strictly comply with the weight policy were not disciplined, as was Oberholtzer, the union supporter and, in Bergeron's mind, the putative ringleader of the campaign.

20 Turning to Oberholtzer's discharge on April 6, the General Counsel notes that it cannot be controverted that he was terminated on April 6 for handbilling at the Sycamore Ridge Landfill. She contends that this landfill was the only location at which the Union could effectively communicate with a majority of the Drenth drivers. More importantly, on April 6, Oberholtzer and the union supporters distributed handbills only to Drenth's drivers and in no way caused any disruption to or safety concerns for Republic or Drenth's business or the public at large, contrary to the testimony of Calleja, whom she asserts would not be credited because he was not an eyewitness and simply relied on the equally unreliable word of Bergeron.

30 On balance, the General Counsel essentially contends that Bergeron did not consult with any eyewitnesses to Oberholtzer's handbilling on April 6 or otherwise take any honest and sincere investigation of the matter to determine that it was Oberholtzer who was actually even handbilling, let alone trespassing on private property, disrupting the flow of business, and hindering the flow of traffic on Cottom Drive—a public road. She contends that Bergeron discharged Oberholtzer for unsubstantiated reasons. Furthermore, based on the credible testimony of Oberholtzer, Combs, and Valadez, the only witnesses who were on the scene, along with Wilbur and Conner who saw Oberholtzer handbilling during his suspension, the General Counsel submits that the Respondent's claim that Oberholtzer was disrupting traffic and trespassing is simply not made out and therefore is pretextual. The General Counsel argues that the Respondent terminated Oberholtzer because he engaged in lawful handbilling for the Union, a protected concerted activity, in violation of Section 8(a)(1) of the Act.

45 The Respondent concedes that the Company issued a verbal warning to Oberholtzer on February 27 for soliciting one of its mechanics (Norman Mikes) on behalf of the Union; issued Oberholtzer a written warning on March 30 for driving overweight without first obtaining Bergeron's permission, and receiving a citation for this; suspended Oberholtzer for driving underweight on April 3; and discharged him on April 6.

50 However, the Respondent asserts essentially that Oberholtzer's conduct from the beginning of the organizing campaign was part of a vendetta on his part to harm the Company and that it was justified in terminating him.

5 The Respondent contends that Oberholtzer's ignoring of company rules, e.g., the no-solicitation/distribution policy and the load weight policy; his insubordinate behavior toward Bergeron, including locking him in his office and persistently disrupting him during the employer's meeting with the drivers; making specious claims to government agencies which caused Drenth trucks to be targeted for enforcement; and finally, despite being on suspension, his trespassing on Republic Services' property while handbilling in a disrupting way, all combine to support Oberholtzer's termination.

10 The Respondent also contends that Oberholtzer's post discharge conduct—his verbal threat to physically assault Bergeron—was sufficiently egregious to bar his reinstatement and toll any backpay as of the date of Oberholtzer's threat.

15 Applying *Wright Line* to the Oberholtzer allegations as a whole, it is clear that the Respondent, while at first seemingly suspicious of his involvement with and support of the union campaign, clearly became aware of his sentiments and actions in support of the cause. The Respondent seems to concede this point, and I would so find and conclude, that the Respondent was aware of Oberholtzer's union activities during all material times.

20 The Respondent also concedes, and the record to a certainty establishes, that Oberholtzer suffered adverse actions regarding his employment status by dint of the warnings, verbal and written, issued him for purported violations of company policies, his suspension, and lastly his termination. All of these adverse actions were taken by the Respondent in the context of Oberholtzer's active and known involvement with and his actions taken on behalf of the Union.

25 In agreement with the General Counsel, I would find and conclude that the record evidence supports an inference that the verbal and written warnings issued to Oberholtzer, along with his suspension and discharge, were all connected to Oberholtzer's support of the Union and his having engaged in statutorily protected activity.

30 I note that contrary to the Respondent's view of Oberholtzer as a holder of a vendetta against the Company, the opposite obtains—the Company, in my view, identified him early on as a union adherent and targeted him for harassment and selective punishment. As I have previously found, Bergeron violated the Act in unlawfully interrogating Oberholtzer in January at the start of the union campaign, and threatening Oberholtzer and the other drivers with possible loss of their jobs if they selected the union. These early transgressions by Bergeron clearly demonstrate the Respondent's animus against the Union and Oberholtzer's connection with the campaign. Accordingly, as I see the issues associated with Oberholtzer, the Respondent's actions taken against him after January 2007 were tainted by its hostility to him and his activities on behalf of the Union.

45 Regarding the verbal warning on February 27, Bergeron testified that he issued the reprimand because Oberholtzer was soliciting, talking to the mechanics about unionization. At least this was the seeming essence of the alleged complaint by one of the two mechanics with whom Oberholtzer was conversing. While I am not sure there was an actual complaint, I note that Bergeron undertook no independent investigation of the complaint, which at a minimum would have reasonably included speaking with all of the participants in the purported conversation. Bergeron instead determined that Oberholtzer alone violated the no-solicitation policy.

50 Oberholtzer, it should be noted, credibly testified that he and the mechanics were discussing unionization conceptually, and that he was not soliciting on behalf of the Union

because the mechanics were not to be included in the drivers' unit. On this score, if Bergeron were not so motivated by animus toward the Union and Oberholtzer's known involvement therewith, he might have discovered the true nature of the conversation which it seems would not have posed a violation of the no-solicitation policy.¹⁰⁰ I would find and conclude that the Respondent's issuance of the verbal warning on February 27 to Oberholtzer violated Section 8(a)(3) of the Act.

Regarding the Respondent's issuance of the written warning and subsequently suspending Oberholtzer for basically violating the company policy which required that loads weigh a minimum of 76,000 pounds but no more than 80,000 pounds, I would agree with the General Counsel that these disciplines were substantially motivated by the Respondent's hostility to Oberholtzer's support of the Union, and that the Respondent failed to establish that it would have taken these actions against him irrespective of his support.

First, the evidence of record both testimonial and documentary disclose that the Respondent's load weight policy was not rigorously let alone consistently enforced. Perhaps in fairness, the minimum/maximum weight limits policy was very difficult to implement considering the vicissitudes of the business, including broken scales, inaccurate on-truck measures, the difficulty of taking excess trash off of trucks, sometimes inadequate communications, and the like. This situation could certainly account for the Respondent's practice of simply paying for the tickets incurred by drivers who hauled overweight, and perhaps even allowing drivers to haul overweight to make up for underweight loads. Thus, it would seem these factors and the vicissitudes of the garbage hauling business account of there being only two drivers penalized for weight load violations during the material times associated with the matter—Oberholtzer and Wilcher.

It is this history and practice that makes the Respondent's treatment of Oberholtzer stand out. He received two disciplines including a suspension within about a week for violating the weight policy, that is hauling under- and overweight. This was highly unusual.

These disciplines are in themselves suspect. Oberholtzer on both occasions was ordered by Bergeron to haul out of Vincennes without a Nextel phone. Meekin was the only effective management representative to advise drivers who did not have a company phone. Oberholtzer credibly testified that Meekin gave him permission to make the hauls and explained this to Bergeron. Again, Bergeron undertook no investigation of the situation with Meekin to determine whether there were mitigating circumstances or whether Meekin had actually approved the loads. Instead, Bergeron issued the written warnings which in effect conveniently imposed two strikes on Oberholtzer under the Company's progressive disciplinary scheme.

In agreement with the General Counsel, I would find and conclude that the March 30 written warning and the April 3 suspension were made in retaliation for Oberholtzer's union activity and support.¹⁰¹

¹⁰⁰ The Respondent did not adduce any evidence or otherwise advance an argument that Oberholtzer violated any company policy except the no-solicitation/distribution policy which was posted on the same day as Oberholtzer's alleged violation of said policy. Accordingly, it is arguable that on the day in question neither Oberholtzer nor the mechanics violated any of the Respondent's company rules in conversing about unionization.

¹⁰¹ In so finding and concluding, I have considered what appears to be the Respondent's defense to these charges—that Oberholtzer simply violated the weight policy and was properly disciplined. However, I have rejected this defense on grounds of pretext.

Regarding Oberholtzer's termination on August 6, I would find and conclude that the Respondent also violated the Act in this regard. First, Bergeron's testimony regarding his decision to terminate Oberholtzer was inconsistent and impossibly confusing. As I listened to him, in all candor, he seemed to be making up reasons as he went along. I find his testimony to be highly suspect. Second, irrespective of the general inconsistency of his record testimony, one salient point stands out—neither Bergeron himself nor any other company witness actually saw Oberholtzer handbilling in such a manner so as to block traffic, trespass on private property, cause safety concerns, or impede the business of Republic or the Drenth drivers except for a very short time when drivers stopped to take a proffered handbill. Notably, Calleja, called by the Respondent to buttress the discharge, did not personally see Oberholtzer handbilling but evidently relied on Bergeron's claim.

Essentially, here again, Bergeron did not undertake a reasonable investigation of the matter and, relying on vague hearsay from some of the drivers, decided to fire Oberholtzer for clearly unproven charges. Thus, in agreement with the General Counsel, Oberholtzer's discharge in my view was made in retaliation for his support of the Union and because he was engaging in protected activity.¹⁰²

I note in passing that the Respondent defends its termination of Oberholtzer on grounds of the combination of transgressions to include interrupting the employer's meeting, allegedly locking Bergeron in his office, and disloyally informing government agencies about the Company's possible violation of transportation regulations, anyone of which arguably could be grounds for discipline. However, I note that the Respondent did not discipline him for these actions.

In fact, although Bergeron told Oberholtzer to submit in writing a request for the reasons for his termination—a move to buy time in my estimate—Bergeron never indicated that these matters influenced his decision to let him go. I would also note that these matters were raised almost incidentally only in the hearing by the driver witnesses. Accordingly, I have rejected this aspect of the Respondent's defense to Oberholtzer's discharge.

8. The reinstatement issue

The Respondent contends that Oberholtzer lost his right to backpay and reinstatement because he threatened Bergeron with bodily harm on April 21 when he picked up his final paycheck after his discharge.

The General Counsel counters that Oberholtzer' conduct did not take him out of the protection of the Act.

The Respondent called a former employee, Lacy Adaway,¹⁰³ to testify about Oberholtzer's conduct on the occasion of his picking up his last paycheck on about April 21, 2006.

¹⁰² In so finding and concluding, I have credited Oberholtzer's version of how he conducted himself while handbilling on April 6, and the testimony of Combs and Valadez as well. I note that employees Conner and Wilbur observed Oberholtzer handbilling on Cottom Road and, on balance, corroborate Oberholtzer, Combs, and Valadez in terms of their conducting of the handbilling exercise.

¹⁰³ The Respondent denominates Adaway as Lacy Ray. I have relied on the transcript and
Continued

According to Adaway, he spoke to Oberholtzer on the day in question and that Oberholtzer said he was at the CCR shop to pick up his final check. Adaway noted that he had just completed his runs for the day and was talking to another new employee, Michael Johnson, when Bergeron came out of his office. Oberholtzer then told Bergeron he was there to retrieve his check and the two proceeded to Bergeron's office, and in less than a minute both emerged.

Adaway stated that as he was leaving, Oberholtzer said, "I'll see you in court, Joe." Bergeron responded, saying "Yes, I will David." Then Oberholtzer turned around and pointed at Bergeron and said, "If I catch you outside the gate, Joe, I'll beat your f--king ass."

Adaway said that he was in a state of disbelief, and recalled asking (rhetorically) of Johnson, "Did he really say that?" In any case, Adaway said that he accompanied Bergeron to his office where Bergeron called the police. According to Adaway, the police arrived after a time, but took no report from him.

Adaway stated that he could not hear what may have transpired between Bergeron and Oberholtzer in the office, although the doors were open. Adaway also said he did not hear Bergeron tell Oberholtzer to go f---k himself as they came out of the office.

Bergeron testified that Oberholtzer came to CCR to pick up his last paycheck and while they were in his office and as he was handing Oberholtzer his check, Oberholtzer said "you know, you are a m----f--king liar." Bergeron said that he told Oberholtzer that he was sorry he felt that way but that he (Oberholtzer) had to leave. Bergeron said that he was concerned that there was only one exit to the office so he asked Oberholtzer politely to leave.

Bergeron admitted that he responded to Oberholtzer's statement that he would see him in court by saying "I guess I'll see you in court, David." According to Bergeron, Oberholtzer then turned around, pointing his finger, and said, "If I ever catch you out of the gate, I am going to kick your f--king ass."

Bergeron, noting that Oberholtzer was a "big boy" (in size), said that he decided to call the police. According to Bergeron, when the police arrived, he filled out a report of the incident but did not receive a copy from the officers who advised that if Oberholtzer returned to the property to call them immediately and he would be arrested; but if he (Bergeron) left the property, he should defend himself. Bergeron said that he did not file formal charges against Oberholtzer.

Oberholtzer testified about his encounter within Bergeron on April 21. According to Oberholtzer, Bergeron had given him permission personally to pick up his final check at CCR, as opposed to having it mailed to him. Oberholtzer said that as Bergeron was handing him his check, he said "Thank you, you lying sack of s-it," to which Bergeron said "that wasn't very nice." Oberholtzer said that he told Bergeron that he (Bergeron) was not a very nice person.

According to Oberholtzer, as they were passing through the parts bay, Bergeron said that the Company was going to prosecute him, to which Oberholtzer said he asked for what offense. According to Oberholtzer, Bergeron said the Company was going to prosecute him for lost revenue. Oberholtzer said that again he called Bergeron a lying sack of s..t, and that he did not believe a word coming out of his (Bergeron's) mouth.

my notes in describing him as Lacy Adaway.

Oberholtzer stated that as he was leaving he passed Lacy Adaway¹⁰⁴ and told him, “You don’t know what the f--k you’re talking about either.” According to Oberholtzer, Adaway extended his middle finger and flipped him off, at which Oberholtzer said he merely laughed. Then Bergeron said, “I hear that ducks fart underwater, too.” Oberholtzer said that at that point he looked at Bergeron and said, “Well coming from you, I would check those references.” According to Oberholtzer, Bergeron told him to f--k himself. Oberholtzer testified that he responded, telling Bergeron, “Never let me catch [you] outside of here by [your]self.” The conversation ended on this note, and Oberholtzer said he left the premises.

The courts and the Board have long held that employees may lose the protection of the Act, that is, loss of their entitlement to reinstatement and/or backpay, if they engage in conduct including verbal threats deemed sufficiently flagrant or egregious, as of the date of the misconduct. *Alto-Shaam, Inc.*, 307 NLRB 1466 (1992); *Precision Window Mfg.*, 303 NLRB 946 (1991).

The General Counsel argues that Oberholtzer’s conduct, including his use of profane and vulgar language, was commonplace among the drivers and even Bergeron in the workplace—as one of the trucker witnesses observed, “after all we are truck drivers”. She contends that even if Oberholtzer’s comment could be interpreted to be a physical threat, it was provoked by Bergeron’s unlawful behavior toward Oberholtzer (and the other union supporters,), and Bergeron’s salt-in-the-wound threat to sue Oberholtzer for lost revenue.

As noted by the General Counsel, the Board traditionally looks at the nature of the misconduct and denies reinstatement in those flagrant cases in which the misconduct is violent or of such character as to render the employees unfit for further service. *C-Town*, 281 NLRB 458 (1986); and whether the misconduct was an “emotional reaction” to the employer’s own unlawful discrimination against the employee. *Blue Jeans Corp.*, 170 NLRB 1425 (1968), citing *NLRB v. M and B Headwear Co.*, 349 F.2d 170, 174 (4th Cir. 1965),

I have considered this issue, not just solely in the context of Oberholtzer and Bergeron’s final encounter on April 21, but in the full context of the record herein. Certain observations are in order. First, bad blood developed between Oberholtzer and Bergeron probably because of their respective positions on the Union. I have found that Bergeron, Oberholtzer’s main if not sole supervisor, took seriously unlawful actions against him exceeding that which he visited on the other discriminatees named in this case.

It seems that Oberholtzer did not take this assault lying down. While not entirely proven, but certainly not rebutted, it seems that Oberholtzer may have locked Bergeron in his office, may have alerted the regulators to possible violations by the Company of transportation, environmental, and workplace safety rules, and, at least in the Respondent’s view, rudely disrupted the employer’s meeting with the drivers in March.

If Oberholtzer’s conduct—post-discharge—had simply constituted name-calling, irrespective of the language used or the emotion evident, then the General Counsel’s argument in support of providing him the traditional remedies would be more compelling, in my view. However, considering the very bad feelings between Oberholtzer and Bergeron and Oberholtzer’s threat of physical violence upon his discharge, I would, in agreement with the Respondent, recommend that he not be reinstated to his former employment. The Respondent

¹⁰⁴ Oberholtzer also referred to Adaway as Lacy Ray.

rightly points out that workplace violence is regrettably a too real fact of life in the modern American workplace.

5 On the other hand, Oberholtzer clearly was provoked to anger by Bergeron's actions against him. However, in my mind, this does not justify resorting to threats of physical harm. It is trite but true, but it is for this reason we have the Act and the unfair labor practice adjudication process to ensure quite literally labor peace. In my view, returning Oberholtzer to work with Bergeron, the main supervisor of the Respondent's drivers, would not be conducive to promoting labor peace.

10 I would recommend that Oberholtzer be awarded backpay from the date of his discharge until the matter is finally resolved by the Board or the Courts, but that the Respondent not be ordered to make him an offer of reinstatement.

15 CONCLUSIONS OF LAW

1. The Respondent, KR Drenth Trucking, Inc. d/b/a TK Services, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

20 2. The Union, Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, Indianapolis, Indiana and Airline Employees in the State of Indiana, a/w International Brotherhood of Teamsters is a labor organization within the meaning of Section 2(5) of the Act.

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

(a) Interrogating its employees about their union membership, activities, sympathies, and support.

30 (b) Threatening employees with loss of their jobs if they selected the Union as their bargaining representative.

(c) Posting, promulgating, and maintaining a no-solicitation or no-distribution rule to discourage its employees from forming, supporting, and assisting the Union.

35 (d) Promising its employees unspecified benefits to dissuade them from supporting the Union.

40 (e) Requesting that employees provide copies of their affidavits given to agents of the National Labor Relations Board investigating unfair labor practices charges made by the Union.

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

45 (a) Refusing to allow employees Dennis Conner, Jason Rankin, and Stacey Thomas to park at the Respondent's Terre Haute, Indiana facility because of their support and activities on behalf of the Union.

50 (b) Disallowing employee Andrew Keck the use of a company truck to drive home after completing his work duties because of his support and activities on behalf of the union.

(c) Issuing verbal and written warnings to employee David Oberholtzer because of his support and activities on behalf of the Union.

5 (d) Issuing a 3-day suspension to employee David Oberholtzer because of his support and activities on behalf of the Union.

(e) Causing the termination of employee David Oberholtzer because of his support and activities on behalf of the Union and his engaging in protected concerted activities.

10 (f) Discriminatorily issuing a verbal warning to employee David Oberholtzer for violation of the Respondent's no-solicitation/distribution rule because of his support and activities on behalf of the Union.

15 5. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. The Respondent has not violated the Act in any other manner or respect.¹⁰⁵

20 REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

25 1. The Respondent having discriminatorily refused to allow employees Dennis Conner, Jason Rankin, and Stacey Thomas to park at the Respondent's Terre Haute, Indiana facility in violation of Section 8(a)(3) of the Act, I shall recommend that it be ordered to make them whole for any losses they may have suffered as a consequence of the action taken against them, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest shall be computed in
30 accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

35 2. The Respondent, having discriminatorily disallowed Andrew Keck the use of a company truck to drive to his residence after completion of his work duties in violation of Section 8(a)(3) of the Act, I shall recommend that the Respondent be ordered to offer to reinstate this benefit and make him whole for any losses he may have suffered as a consequence of the action taken against him.¹⁰⁶

40 ¹⁰⁵ The General Counsel in her brief argues for a finding that the Respondent also violated Section 8(a)(1) on April 21, 2006, on the occasion of Oberholtzer's picking up his final check and becoming embroiled in an incident with Bergeron. She contends that Bergeron's threat to sue Oberholtzer for loss of revenue poses a violation of the Act because of Oberholtzer's having engaged in protected union activity.

45 I decline to make this finding because, first, the General Counsel did not alert me or the Respondent of her intentions to amend the complaint, and did not do so at the hearing or even in her brief. Accordingly, on due process grounds, I would decline to make this finding.

50 Additionally, I would decline to make this finding because in my view the matter was not fully litigated. Clearly, the Respondent was not even on notice that this charge was forthcoming and the matter itself was merely tangential to other issues in this dispute. Notably, the alleged threat to sue only came up in the context of Oberholtzer's confrontation with Bergeron after his termination and had little to do with the main complaint allegations.

¹⁰⁶ The make-whole remedy provided in paragraph 1 above applies to the make-whole

Continued

3. The Respondent having discriminatorily issued verbal and written disciplinary warnings to David Oberholtzer in violation of Section 8(a)(3) of the Act, I shall recommend that it be ordered to rescind these disciplinary warnings and expunge all references thereto from its records.

4. The Respondent having discriminatorily suspended and terminated Avid Oberholtzer in violation of Section 8(a)(3) of the Act, I shall recommend that it be ordered to rescind the suspension and termination disciplines and expunge all references thereto in its records and make him whole for all loss he may have incurred as a result of the actions taken against him.¹⁰⁴

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰⁷

ORDER

The Respondent, KR Drenth Trucking, Inc., d/b/a TK Services Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees about their union membership, activities, sympathies, and support.

(b) Threatening employees with loss of their jobs if they selected the Union as their bargaining representative.

(c) Posting, promulgating, and maintaining a no-solicitation/distribution rule to discourage its employees from forming, supporting, and assisting the Union.

(d) Promising its employees unspecified benefits to dissuade them from supporting the Union.

(e) Requesting that employees provide copies of their affidavits given to agents of the National Labor Relations Board investigating unfair labor practice charges by the Union.

(f) Refusing to allow its employees to park at its facilities because of their support and activities on behalf of the Union.

(g) Disallowing employees use of company trucks to drive to their residences because of their support and activities on behalf of the Union.

(h) Issuing verbal and written disciplinary warnings to employees because of their support and activities on behalf of the Union.

provision of this paragraph also.

¹⁰⁷ 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.

(i) Issuing suspensions and terminations to employees because of their support and activities on behalf of the Union.

5 (j) Issuing warnings to employees for violations of its no-solicitation/distribution rule because of their support and activities on behalf of the Union.

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

10

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

(a) Make discriminatees Dennis Conner, Jason Rankin, and Stacey Thomas whole for any loss of earnings and other benefits they suffered as a result of the unlawful action taken against them, as computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

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(b) Make discriminatee David Oberholtzer whole for any loss of earnings and other benefits he suffered as a result of the unlawful action taken against him as set forth in (a) above.

20

(c) Make discriminatee Andrew Keck whole for any losses of earnings and other benefits he suffered as a result of the unlawful action taken against him, including offering within 14 days from the date of this Order to reinstate his use of a company vehicle to drive to his residence after work duties, as set forth in (a) above.

25

(d) Within 14 days from the date of this Order, expunge from its records all references to the unlawful actions taken against the discriminatees, including David Oberholtzer, and, within 3 days thereafter, advise them and him in writing that this has been done and that these actions shall not be used against them or him in any manner in the future.

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(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

35

(f) Within 14 days after service by the Region, post at its facility in Indianapolis, Indiana, copies of the attached notice marked "Appendix."¹⁰⁸ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility

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¹⁰⁸ 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."

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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 January 30, 2006.

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

Dated, Washington, D.C. September 28, 2007

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Ear E. Shamwell Jr.
Administrative Law Judge

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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 on your behalf with your employer.
Act together with other employees for your benefit and protection.
Choose not to engage in any of these protected activities.

WE WILL NOT interrogate our employees about their union membership, activities, sympathies, and support.

WE WILL NOT threaten our employees with loss of their jobs if they selected Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, Indianapolis, Indiana and Airline employees in the State of Indiana, a/w International Brotherhood of Teamsters as their bargaining representative.

WE WILL NOT post, promulgate, and maintain a no-solicitation/distribution rule to discourage our employees from forming, supporting, and assisting Teamsters Local 135.

WE WILL NOT promise our employees unspecified benefits to dissuade them from supporting Teamsters Local 135.

WE WILL NOT request that our employees provide copies of their affidavits they gave to agents of the National Labor Relations Board investigating unfair labor practice charges by Teamsters Local 135.

WE WILL NOT refuse to allow our employees to park at our facilities because of their support and activities on behalf of Teamsters Local 135.

WE WILL NOT disallow our employees the use of a company truck to drive home after completion of their work duties, because of their support and activities on behalf of Teamsters Local 135.

WE WILL NOT issue verbal and written disciplinary warnings to our employees because of their support and activities on behalf of Teamsters Local 135.

WE WILL NOT issue disciplinary suspensions and terminations to our employees because of their support and activities on behalf of Teamsters Local 135.

WE WILL NOT cause the termination of our employees because of their support and activities on behalf of Teamsters Local 135 and their engaging in concerted protected activities.

WE WILL NOT discriminatorily issue verbal warnings to our employees for violation of our no-solicitation/distribution rule because of their support and activities on behalf of Teamsters Local 135.

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

WE WILL make discriminatees Dennis Conner, Jason Rankin, and Stacey Thomas whole for any loss of earnings and other benefits they suffered as a result of our unlawful action against them, with interest.

WE WILL make discriminatee David Oberholtzer whole for any loss of earnings and other benefits he suffered as a result of our unlawful action against him, with interest.

WE WILL make discriminatee Andrew Keck whole for any losses of earnings and other benefits he suffered as a result of our unlawful action against him, with interest, including offering to reinstate his use of a company vehicle to drive to his residence after completion of work duties.

WE WILL expunge from our records all references to the unlawful actions taken against the discriminatees, including David Oberholtzer, and advise them and him in writing that this has been done and that these actions shall not be used against them or him in any manner in the future.

KR DRENTH TRUCKING, INC. d/b/a
TK SERVICES, 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.

575 North Pennsylvania Street, Federal Building, Room 238
Indianapolis, Indiana 46204-1577
Hours: 8:30 a.m. to 5 p.m.
317-226-7382.

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, 317-226-7413.

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

KR DRENTH TRUCKING, INC.
 d/b/a TK SERVICES, INC.

and

LOCAL UNION NO. 135, CHAUFFEURS,
 TEAMSTERS, WAREHOUSEMEN AND
 HELPERS, INDIANAPOLIS, INDIANA AND
 AIRLINE EMPLOYEES IN THE STATE
 OF INDIANA, a/w INTERNATIONAL
 BROTHERHOOD OF TEAMSTERS

Cases 25-CA-29863 Amended
 25-CA-29864 Amended
 25-CA-29921
 25-CA-29922 Amended
 25-CA-29930
 25-CA-29974

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