

Albertson's, Inc. and United Food & Commercial Workers Union, Local 373, a/w United Food and Commercial Workers International Union, AFL-CIO. Cases 20-CA-25393, 20-CA-25513, 20-CA-25530, and 20-CA-25742

September 29, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND TRUESDALE

On May 1, 1995, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and record in light of the exceptions¹ and brief and has decided to affirm the judge's rulings, findings, and conclusions,² and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Albertson's, Inc., Vacaville and Fairfield, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

¹ The Respondent only excepts to the judge's finding that the Respondent violated Sec. 8(a)(1) of the Act by instructing employees that they were no longer able to speak to the union representative on worktime and that they would be disciplined if they violated this directive.

² In its exceptions, the Respondent contends that the portion of the complaint regarding Supervisor John Hayward's directive to the employees, on July 29, that they could not speak to the business agent, should be deferred to the parties' grievance procedure pursuant to the collective-bargaining agreement. We reject the Respondent's argument because it was not raised in a timely manner in the Respondent's answer. *United Technologies Corp.*, 274 NLRB 504 (1985). In its exceptions to this violation, the Respondent also relies on *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992). The Board has found in circumstances similar to those here that *Lechmere* does not apply. See *CDK Contracting Co.*, 308 NLRB 1117 (1992). See also *Fabric Warehouse*, 294 NLRB 189 (1989), *enfd.* 902 F.2d 28 (4th Cir 1990).

³ We agree with the Respondent that the judge's recommended Order and notice should be modified to reflect the parties' agreement regarding union visitation. The Order and notice are modified to use the singular of "representative" and to add the following language: "provided that the business representative is not interfering with the duties of the employees." The Respondent also argues that the visitation language in the notice should only be posted at store 781, where the incident involving Hayward's directive occurred. We disagree. The Respondent continues to assert that Hayward's directive was a "plausible" interpretation of the parties' collective-bargaining agreement. In light of the fact that the same collective-bargaining agreement applies to all four stores involved in this case, we find that the visitation provision should be included in the notice posted at each store.

319 NLRB No. 18

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

"(e) Stating to, or in the presence of, employees that they are not allowed to speak to a representative of the Union on the clock; that they are only allowed to speak to a representative of the Union when off the clock or on breaks; and that they will be disciplined for violating such directives; provided, however, that the union representative is not interfering with the duties of employees."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT promulgate, maintain, and enforce any rule prohibiting the wearing at work of any pins, badges, and buttons not issued by us, including any pins, badges, and buttons indicating support for United Food & Commercial Workers Union, Local 373, affiliated with United Food and Commercial Workers International Union, AFL-CIO, the Union, which is the representative for purposes of collective bargaining of all employees covered in its March 1, 1991 through March 4, 1995 collective-bargaining agreement with us, and without affording prior notice to, and affording the Union an opportunity to bargain over, those rules.

WE WILL NOT promulgate, maintain, or enforce any overly broad rules prohibiting the wearing at work of any pins, badges, and buttons not issued by us, including any pins, badges, and buttons indicating support for the Union.

WE WILL NOT require our employees to cease wearing any pins, badges, or buttons indicating support for the Union when those orders are based on overly broad rules prohibiting the wearing at work of any pins, badges, or buttons not issued by us.

WE WILL NOT coerce our employees who file contractual grievances against us.

WE WILL NOT state to, or in the presence of, our employees that they are not allowed to speak to a business representative of the Union while on the clock; that they are only allowed to speak to a business representative while off the clock and on their breaks; and that they are subject to being disciplined for violating the above directives; provided, however, that the business representative is not interfering with the duties of the employees.

WE WILL NOT create among our employees the impression that we are engaging in surveillance of their activities in support of the Union.

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

WE WILL rescind any overly broad rules which prohibit our employees from wearing at work any pins, badges, or buttons not issued by us, including any pins, badges, and buttons indicating support for the Union.

ALBERTSON'S, INC.

Eugene Tom and Ivan Rodriguez, Esqs., for the General Counsel.

Robert L. Ford, Esq. (Seyfarth, Shaw, Fairweather & Geraldson), of San Francisco, California, and *Peter H. Anderson, Esq. (Bogle & Gates)*, of Seattle, Washington, for the Respondent.

Dennis Warde, of Vallejo, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. The original and first amended unfair labor practice charges in Case 20-CA-25393 were filed by United Food & Commercial Workers Union, Local 373, affiliated with Food and Commercial Workers International Union, AFL-CIO (the Union) on June 7 and July 8, 1993,¹ respectively, and, based on the unfair labor practice charges, on July 20, 1993, the Acting Regional Director of Region 20 of the National Labor Relations Board (the Board) issued a complaint, alleging that Albertson's, Inc., Respondent, had engaged in conduct violative of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The unfair labor practice charge in Case 20-CA-25513 was filed by the Union on July 22, 1993; the unfair labor practice charge in Case 20-CA-25530 was filed by the Union on July 30, 1993; and, on September 30, 1993, the Regional Director of Region 20 issued a consolidated complaint in these matters, alleging that Respondent had engaged in conduct violative of Section 8(a)(1) and (5) of the Act. The original and first amended unfair labor practice charges in Case 20-CA-25742 were filed by the Union on November 12 and December 28, 1993, respectively, and based on those unfair labor practice charges, the Regional Director of Region 20 issued a complaint, alleging that Respondent had engaged in conduct violative of Section 8(a)(1) of the Act. Respondent timely filed answers to the complaints, essentially denying the commission of any of the alleged unfair labor practices. The above-mentioned matters were consolidated for hearing,² and, as scheduled, they came to trial before me in San Francisco, California, on April 7, 8, and 18 and May 5, 1994. At the trial, all parties were afforded the right to

¹Unless stated otherwise, all events here occurred during 1993.

²These matters were originally consolidated for trial with four other cases; however, the parties arrived at a non-Board settlement of the other matters and the cases were severed from the instant proceeding.

examine and cross-examine all witnesses, to offer into the record any relevant evidence, to argue their legal positions orally, and to file posthearing briefs. The latter documents were filed by counsel for the General Counsel and by counsel for Respondent and have been carefully considered. Accordingly, based on the entire record, including the posthearing briefs and my observations of the testimonial demeanor of the several witnesses, I make the following

FINDINGS OF FACT³

I. ISSUES

It is alleged that Respondent engaged in conduct violative of Section 8(a)(1) of the Act by promulgating and maintaining a written rule for its northern California retail stores, including at its store 781 in Vacaville, California, prohibiting its employees from wearing, at work, any pins, badges, or buttons on their uniforms other than pins, badges, or buttons issued by Respondent; by promulgating, at its store 772 in Vacaville, California, a written and an rule, prohibiting its employees from wearing, at work, any pin, badge or button not issued by Respondent; by orally promulgating, at its store 750 in Napa, California, a rule, prohibiting its employees from wearing union pins at work; by orally promulgating, at its store 781 in Vacaville, California, rules, prohibiting its employees from speaking with the Union's business representatives unless the employees are off the clock and on their own time and providing for disciplinary action against employees who speak with the Union's business representatives while on the clock. It is also alleged that Respondent violated Section 8(a)(1) and (5) of the Act by implementing the aforementioned rules without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to those rules. It is further alleged that Respondent engaged in conduct, violative of Section 8(a)(1) of the Act, by interrogating employees about their union activity at its store 755 in Fairfield, California, and by creating the impression, amongst its employees at its store 781 in Vacaville, California, that their union activities were under surveillance by Respondent. Respondent denied that it engaged in any of the above-alleged unfair labor practices.

II. RESPONDENT'S ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Background

The record establishes that Respondent, a Delaware corporation with its headquarters in Boise, Idaho, is engaged in the retail sale of groceries at numerous locations in the western United States, including several retail food markets in the northern California area, and that the facilities, which are involved in this proceeding, are northern California stores located in Napa (store 750), Fairfield (store 755), and Vacaville (stores 772 and 781). The record further establishes that

³Respondent admitted the jurisdictional allegations of the three complaints, including that, at all times material herein, it has been an employer within the meaning of Sec. 2(2), (6), and (7) of the Act. Further, Respondent admitted that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

the Union is the representative for purposes of collective bargaining of all of Respondent's employees, working in the job classifications set forth in the most recent collective-bargaining agreement between the parties, which was effective from March 1, 1992, through March 4, 1995. Each of the retail markets, involved here, is under the direction and control of a store director, who is responsible for applying Respondent's personnel policies at his or her facility.⁴

2. Respondent's prohibition against unauthorized pins, buttons, and badges

The record reveals that Respondent's employees are required to wear uniforms while working. Thus, for example, male and female checkers, the individuals who are stationed at the cash registers at the checkout counters, wear navy or black slacks, a white shirt with Respondent's logo, a gray and blue apron with Respondent's logo, a tie, and a name badge with a ribbon attached. The record further reveals that for at least 13 years Respondent has maintained in effect a document, entitled "Company Personnel Policies," which sets forth each of Respondent's employee personnel policies, a copy of which is given to each new employee at the time of hire, and of which the new employees are required to acknowledge receipt by executing the document. Section 3 of the dress and appearance provision of the personnel policies states that "all store employees must wear uniforms or aprons as provided, with name badges on the left chest. No other badges shall be worn unless authorized by the store Director." Georgina Harwood, the customer service supervisor at store 772 in Vacaville and who, Respondent admits, is a supervisor within the meaning of the Act, testified that she explains each provision of the personnel policies to new hires and that, with regard to the above-quoted provision, tells them "that we don't allow any . . . pins other than pertaining to company business because customers could be offended if they come in and somebody had a political pin or a religious-type pin." However, notwithstanding Harwood's denial that she has ever witnessed employees, at her store, wearing religious pins, pro-life pins, or picture buttons, affixed to employee uniforms, as will be described infra, bargaining unit employees at store 772 and at Respondent's other stores involved here, testified that, prior to March 1993, Respondent did not enforce any practice prohibiting unauthorized pins and buttons, and that, if applied at all subsequent to the above date, Respondent's policy, regarding unauthorized buttons and pins seems to have only been enforced as to union-related pins.

In these regards, Dennis Warde, a business representative for the Union, testified that in early April during a normal visit to store 781 in Vacaville he was informed by an employee that she could no longer wear a union pin as employees were no longer permitted to do so. According to Warde, the employee mentioned a notice that had been posted on a bulletin board located next to the store director's office. Warde then went upstairs to where the employee had seen the notice and discovered the General Counsel's Exhibit 4 posted on the specified bulletin board. This "confidential" memorandum, dated March 26 and issued by Pat Shipley, Respondent's employee development manager for its north-

ern California division, is directed to the store directors in her division, and concerns Respondent's dress code and the wearing of nonauthorized pins and badges. It reads, in part, as follows:

I would like to address our dress code policy on employees wearing pins-badges-buttons that are not distributed to them by Albertson's. These are not part of our dress code. The only items of this type that are currently authorized as part of our uniform policy are items supplied by Albertson's, i.e.:

Name Badge
Ribbon
Fast, Friendly Service Pin/Award
Certified Checker Pin
A+ Award Pin
I Can—I Care Button
Hot French Bread Stickers/Hats

Pins issued in conjunction with OUR Sales Promotions only. Any pin from any other source is not authorized. Please see that this is in effect and in your store in all departments and that you personally handle.

Testifying that he regularly visited store 781 prior to and subsequent to discovering the above document, Warde stated that he had always observed employees wearing union buttons but that "there were many people, who had been wearing buttons prior to the posting of [the] notice that would no longer wear a Union pin."

Although not entirely clear from the record, Warde apparently discussed Shipley's memorandum with Frank Collard, who is Warde's superior in the Union's official hierarchy. Then, on or about April 7, Collard wrote to Jacqueline Wilson, a contract administrator in Respondent's labor relations department and the individual with whom the Union deals concerning contractual matters,⁵ regarding Shipley's memorandum and its effect on employees, who desired to wear union insignia items on their uniforms. Thereafter, on April 22, Wilson wrote to Collard and, after criticizing Collard's impudence for writing his letter, stated:

With regard to our policy concerning the wearing of union buttons, employees may wear union buttons in the non-selling areas of our stores only provided the buttons do not offend decency or hamper production. In 1984, we revised our policy concerning them wearing of union buttons at the direction of an administrative law judge of the NLRB. The judge held that we may prohibit union buttons in the selling areas of our stores. He stated: "Under the protection of Section 7 of the Act, employees may wear union buttons or other emblems at work to demonstrate union adherence. This employee right is balanced against an employer's right to operate its business, and an employer may restrict the wearing of union emblems for consideration such as production, discipline, or customer relations. . . . Accordingly, we are modifying the rule so that it prohibits the wearing of union buttons by employees only in selling areas of the store when employees are working.

⁴ Respondent admitted that the various store directors involved here were supervisors within the meaning of the Act.

⁵ Respondent conceded Wilson's status as an agent within the meaning of the Act.

Wearing of union buttons, which do not hamper production or offend decency, in the non-selling areas, such as the back room, lounge or restrooms, or on break time, is no longer prohibited.”

On or about May 26, an incident involving enforcement of Shipley’s March 26 directive occurred. Clifford Carneiro, who is a receiving and dairy clerk at store 750 in Napa and who was uncontroverted, testified that as a receiving clerk he works in the back room, receiving the products ordered from vendors and, as a dairy clerk, he spends, at least, half the workday on the sales floor, performing his dairy department job duties. Continuing, Carneiro stated that, on the above date, as was his “regular” habit, he wore a union pin, containing the initials UFCW in a straight line, on the strap of his uniform apron, that, at approximately 9:30 a.m., he was speaking to a vendor in the store’s receiving area when Mike App, the store director, approached them, and that App looked at his pin and said, “You can’t wear that any more.” According to the employee, he just stared at App but obeyed the latter’s instruction and removed the pin from his apron strap. Carneiro added that this was the first time any supervisor questioned his practice of wearing a union pin. Apparently in response to the Carneiro incident, on May 27, according to Warde, he visited Respondent’s store 750 in Napa in order to speak to App, regarding what had occurred. Confronting the store director outside of his office, Warde, who was likewise uncontroverted as to this conversation, asked if App had ordered the employee to remove his union pin. App confirmed the incident, and, after Warde asked why there had been a policy change, responded that he was “just enforcing Albertson’s dress code policy.”⁶ Warde further testified that, either the next day or later in that week, he placed a telephone call to Jacqueline Wilson, and, after some brief introductory conversation, asked what the problem was with union pins. Wilson replied that the policy was an upper management decision, that it was not directed at him, and that he should not vent his displeasure at the store directors.

On or about June 10, according to Business Representative Warde, he made a regular visit store 772 in Vacaville, and, as was his wont, went upstairs in order to read the employee notices, posted on the bulletin board. There, either next to or affixed to the timeclock, he found the General Counsel’s Exhibit 2, a handwritten notice signed by Georgina Harwood. The document reads, “Only company supplied pins & badges & ribbons may be worn on your uniform at work. Thanks for your cooperation.” Warde immediately photocopied the document, located Harwood in the store, and asked her about the notice. The latter replied that Store Director George Gaston had instructed her “to tell people to take their Union buttons off.”⁷ Warde added that at store

⁶As at store 781, during his visits to store 750 before and after his conversation with App, Warde observed employees wearing union pins but, subsequent to his conversation with App, “much fewer people.”

⁷Conceding that G.C. Exh. 2 was prepared pursuant to her instructions, Harwood asserted that it represented no change from existing company policy and that it had always been her policy to deny employees the right to wear any noncompany authorized pins or buttons. However, Harwood failed to explain why, if not a new policy, it was necessary to post G.C. Exh. 2. As to the conversation with Ward, regarding G.C. Exh. 2, Harwood recalled that the former

772 both prior to and subsequent to his discovery of the General Counsel’s Exhibit 2, he observed employees wearing union pins, but “there are much fewer people wearing Union pins . . . than before the posting of this notice.” Finally, Warde testified that prior to April 1993 Respondent had neither given the Union any notice of its intent to change its practice regarding the wearing of union pins nor afforded the Union an opportunity to bargain over the change from its prior practice.

The record discloses that in addition to posting General Counsel’s Exhibit 2 the managers of store 772 may have orally enforced its posted policy, banning unauthorized pins and buttons against two bargaining unit employees. Thus, Angela Borba, a general merchandise clerk at store 772, testified that one day in April 1993 while Winfred (Bud) Fanning was the store director she was working in the store’s customer service booth when Georgina Harwood entered the booth. At the time, Borba was wearing a rectangular shaped, 1-by 2-inch pin, with the notation “Union, yes” and a checkmark in a voting space, above her name tag. Harwood looked at the employee and “told me to remove my Union pin . . . and I took it off and put it in my pocket.” Harwood then commented that she had spoken to Borba about wearing the pin on previous occasions and left the booth.⁸ According to Borba, 5 minutes later Fanning entered the booth and asked her to come with him. “[H]e took me out of the booth and . . . he told me that I’ve been warned before, that if I wore it again that this would be my last verbal warning and disciplinary action would be taken against me.” Realizing that he was referring to her habit of wearing a Union pin on her uniform, Borba protested, saying “that the courts had said it was unfair practice for the store to discriminate between union pins and other pins.” Fanning replied that they were not in a court and reiterated that she was not allowed to wear her union pin.⁹

Tammy Lynn Cuveros, a current employee who worked at store 772 through October 1993 as an assistant manager in

asked if she had written it; that she denied it, saying she would put it on the wall; and that Ward replied that he would not put his name to such a document.

⁸According to Borba, she had been warned “more than once” during February and March about wearing a union pin on her uniform and, prior to 1993, “I would wear it until they told me to take it off. . . . I’d take it off . . . and then a few days later I would replace it on my uniform.”

⁹Fanning, who appeared on behalf of Respondent and who testified that he was the store director in store 772 only until February 1 when he was demoted to a nonsupervisory position, stated that he always interpreted the above-quoted provision of the personnel policies as not applying to employees who worked in the nonselling areas of his store as “they had absolutely no customer contact,” that, on one occasion, he did speak to Borba about a button on her uniform, that such occurred 6 months to 2 years prior to the end of his tenure as store director, and that, while denying threatening discipline on that occasion, he did request that Borba remove the button.

Harwood corroborated Fanning as to the date of the end of his tenure as store director and recalled speaking to Borba during the period June and July 1992—“she was wearing the union pin and I just asked her ‘please remove it because it’s not part of the dress code.’” Borba asked why, and Harwood reiterated that it was against the dress code and that “you don’t wear any pins other than the store pins.”

the service deli,¹⁰ testified that, on or about May 20, she had a conversation with Harwood by the water fountain in the service deli. Cuveros testified that, at the time, she was wearing a company-supplied "fast, friendly service" ribbon, her name badge, 1-and 2-year pins, and two union pins (a "Union, yes" pin and a small pin bearing the initials UFCW in copper letters);¹¹ that Harwood noticed the Union pins and "told me that I wasn't allowed to wear any type of pins that didn't pertain to Albertson's, that I needed to take off the pin." Notwithstanding Harwood's instruction, Cuveros continued to wear her union pins and observed that other employees also were wearing unauthorized pins and buttons, such as buttons with pictures of children in Little League uniforms and Lotto pins. Thereafter, according to Cuveros, on or about June 3, while in the service deli area by the water fountain, Harwood again noticed that the former was wearing the two union pins described above, pointed to them, and said, "I told you two weeks ago to take [those] off." This time, the employee removed the pins from her uniform and placed them in a pocket.¹²

In addition to the above-described instances during which Respondent's managers allegedly orally enforced its policy against the wearing of unauthorized pins and buttons against employees who wore union related pins at work, there is also record evidence that the policy was neither rigidly enforced against union pins nor ever enforced against other unauthorized pins and buttons. Thus, Angela Borba testified that subsequent to being told by Fanning to remove her union pin she has worn a different union pin on her uniform while working and has observed another bargaining unit employee wearing a large, round Marine World button, bearing pictures of her children, and other employees wearing pins with religious symbols, baseball pins, Christmas pins, and San Francisco 49er pins and that none of the buttons or pins were company supplied. Likewise, bargaining unit employee, Ruth Baumann, who worked in the customer service booth at store 781 in Vacaville until she transferred to store 772 in September 1993, testified that during the summer of 1993 she observed other store 781 bargaining unit employees, who had regular contact with the public, wearing religious symbols, guardian angel pins, union buttons and pins, holiday pins, and United Way pins on their uniforms on a daily basis. Further, bargaining unit employee Dollie Fleming who worked at store 781 until January 1994 and then transferred to store 750 in Napa, testified that, from August through December 1993 at store 781, she observed employees who have customer contact wearing pins and buttons, which were not issued by Respondent; that the pins and buttons included lottery pins, buttons with pictures of children, and religious pins; and that she regularly wore a pro-life pin, a guardian angel pin, and a union pin. Finally, in this regard, Business Representative Warde testified that in visits to stores 750, 772, and 781 after June 1993 he regularly observed courtesy clerks and general merchandise clerks, all of whom had contacts with customers, wearing pins and buttons not issued by

¹⁰ While in this position, she was a member of the bargaining unit represented by the Union.

¹¹ Cuveros testified that she had regularly worn union pins during the previous 2 years at store 772 and no supervisor had ever asked her to remove them.

¹² On or about this date was the first time Cuveros noticed G.C. Exh. 2, which had been posted by the employee timeclock.

Respondent and that besides union pins, such included Lotto pins, buttons containing pictures of children, and religious pins.¹³

3. The alleged unlawful interrogation of Tina Jimenez

The facts involving this alleged violation of the Act are not in dispute. Tina Jimenez, who is employed by Respondent as a clerk in the customer service booth at its store 755 in Fairfield, testified that, prior to June or July 1993, she had been a checker but suffered an injury, which forced her to take a medical leave of absence. After recovering, she returned to work and was placed in the customer service booth. A month later, Store Director Brian O'Connell informed Jimenez that her rate of pay would be reduced from \$15.13 to \$9.99 per hour, and she immediately placed a telephone call to the Union, speaking to Pete Rockwell and Dennis Warde, her union representatives. A few days later, she filed a grievance against Respondent over her reduction in wages. Jimenez further testified that, at approximately 11 a.m. on September 27, she walked into the customer service booth at the store and found O'Connell at the door of the safe. Seeing her, the store director asked, "So, Teen, did you call . . . Pete Wilson?" I said, "Who?" He said, "Pete from the Union." I go, "Oh, okay. Pete Rockwell?" "Yes, I did." And he goes, "What about?" And I said, "Well, you know what about, Brian." And he goes, "Well, you're not going to get your money back." And I said, "Well, why not?" And then he didn't say anything." They then discussed how she might return to her former position, with O'Connell remarking that she would need a full medical release and Jimenez saying she would not do so, and whether her injury was work related. Jimenez concluded, stating that no one else was present during the conversation, that it lasted "just a few minutes," and that, at the time of the conversation, she was aware that O'Connell knew about the grievance and had spoken with Dennis Warde about it. Respondent failed to call O'Connell as a witness in order to confirm or deny the foregoing testimony of Jimenez.

4. Respondent's rules prohibiting employees from speaking to union officials while on the clock and imposing discipline for doing so

Unlike the incident involving employee Jimenez, the incident, involving the alleged unfair labor practices which occurred on June 29, is a matter of substantial factual dispute. As background, section 16.1 of the parties' most recent collective-bargaining agreement provides that:

[T]he business representatives of the Union shall have the right . . . to visit any and all stores and shall have free access to the employees during such visits for the purpose of making inquiries from the employees relative to information concerning working conditions,

¹³ There is no dispute that, from time to time, Respondent requires its bargaining unit employees to wear special promotional pins, such as Visa pins. Moreover, on special occasions, including sporting events (the World Series and the Super Bowl), Halloween, and local festivals, Respondent encourages bargaining unit employees to wear appropriate attire rather than their normal uniforms and decorates its stores in accord with the theme. On these special dress occasions, Respondent does not dictate the exact attire to be worn.

complaints of members . . . and other matters . . . provided said investigation may be accomplished without interfering with the duties of the employees.

In accord with that provision, Dennis Warde testified that he would visit Respondent's four stores in the Union's geographic territory "at least twice a month, sometimes more so" if there is significant activity at a particular store. Also as background, the record establishes that during the spring and summer of 1993 Respondent and the Union were engaged in a dispute at store 781 in Vacaville involving the latter's assertion that the store 781 management had been violating the parties' collective-bargaining agreement by regularly assigning to the store's courtesy clerks work, which ostensibly should have been performed by employees in higher job classifications,¹⁴ and that, in conjunction with the dispute, during his spring and summer visits to store 781¹⁵ Warde often left courtesy clerk "citations"¹⁶ with Store Director Halbert¹⁷ and would regularly check the daily job assignment sheet for the courtesy clerks.¹⁸

As to the incidents which assertedly precipitated Respondent's alleged unfair labor practices, Warde testified that he visited store 781 during the late afternoon of June 28 in order to serve eight additional courtesy clerk citations, in-

¹⁴ Clearly, this was not an insignificant labor dispute. Thus, Dennis Warde testified that the Union alleged that no less than 83 contractually violative work assignments had been given to courtesy clerks during the spring and summer of 1993 and estimated that, as a result, Respondent was potentially liable for \$99,500 in contractual fines. Further, according to Thomas Halbert, who was Respondent's store director at store 781 during the above time period, he met repeatedly with Warde whenever the latter visited store 781 in order to demonstrate to him that the job assignments to the courtesy clerks were contractually valid.

¹⁵ The frequency of Warde's visits to store 781 during the spring of 1993 was a contentious issue at the trial. Warde testified that during his tenure as a business representative prior to June 1993 he visited store 781 between 35 and 40 times—the same number of visits he made to Respondent's other stores in the Union's geographical territory. The store's grocery manager, Wendy Welch, who was the immediate subordinate of Store Director Halbert and an admitted supervisor within the meaning of the Act, asserted that on two occasions during the 5-or 6-week period prior to the week of June 28 and 29 Warde visited store 781 "every day." Neither Halbert, who recalled Warde being in the store "once or twice a week" during April through June, nor John Hayward, who was a "key" person in the store and an admitted supervisor within the meaning of the Act and who recalled seeing Warde in the store "maybe average of once a week maybe a little less than that" during the 2-or 3-month period prior to June, corroborated Welch's assertion. Contrary to Welch, Warde recalled visiting store 781 no more than three times in April and in May and, perhaps, four times in June.

¹⁶ These were "notifications" to the store director that the section of the collective-bargaining agreement pertaining to courtesy clerks had allegedly been violated.

¹⁷ Warde testified that he personally handed these "citations" to Halbert, recalling that, on June 23, he handed several to Halbert and said that he should stop the violations. Halbert testified that, rather than handing the citations to him, Warde's normal practice was to slip them under his office door.

¹⁸ Welch denied any personal feelings regarding Warde's actions regarding the courtesy clerk citation. Halbert denied taking Warde's conduct personally but conceded that he was "agitated" not so much by the complaints themselves but more by Warde's manner of serving the citations on him—slipping them under the door.

volving 20 separate alleged contract violations, on Thomas Halbert. Entering the store between 5 and 6 p.m., he immediately went upstairs to the store director's office and found Halbert standing beside his desk. With the citations in his hand, Warde began by saying he had some good news and some bad news and continued, saying that he hoped someone had been "instructing" Halbert to have the courtesy clerks perform their duties as "here's a handful of citations for you. And . . . its going to very expensive." Halbert responded by asking the union business agent to leave. Warde complied with Halbert's order, went downstairs, and began speaking to Ruth Baumann by the customer service booth. Moments later, Halbert came downstairs and yelled "something about breaks or 'Don't you have something better to do.'"¹⁹

Warde testified that, the next day, June 29, at approximately 5:30 p.m., he returned to store 781 in order to check on the duties of the customer service clerks that afternoon and evening. He walked into the store, said hello to some employees, including Dollie Fleming, Ruth Baumann, and a deli clerk, went to the customer service booth, and began examining the courtesy clerk duties list, which was affixed to a clip board hanging on a wall of the booth.²⁰ As he did so, "Wendy Welch came over to me and [asked] 'what are you looking for?' And I said, 'I'm just checking the list to see if those duties have been removed.'" At that point, John Hayward joined them and asked if Warde was continuing to talk about "courtesy clerk stuff." Warde responded that he was just examining the list. According to Warde, Welch then gave Hayward "a look,"²¹ and the latter said he was a good union member and did not want to violate the collective-bargaining agreement. The conversation then ended, and Warde continued to examine the courtesy clerk job list. He finished and made a photocopy of the document.

Warde continued, as he was replacing the duties list onto the clipboard at the customer service booth, Hayward approached and, with what Warde described as a "very stern" demeanor, said, "'You can't talk to people anymore when they're on the clock. . . . I'm going to ask you to stop, or I'll have you arrested.'" And then [Hayward] turned and he

¹⁹ Ruth Baumann corroborated Warde, testifying that, at approximately 6 p.m. on June 28, she was inside the customer service booth and noticed Warde walking with Halbert and engaged in a conversation. Suddenly, "Halbert yelled at me in front of Dennis . . . have I taken a break today. . . . And I said no. And he told Dennis . . . maybe you ought to ask the booth girls about their break?" An hour later, according to Baumann, Halbert came downstairs from his office, approached the customer service booth, and said to Baumann, "Sorry about that. Thanks for being a good sport."

Halbert recalled that on that date, "I came downstairs from the office, and I walked out the door . . . next to the customer service booth . . . I noticed that [Dennis Warde] and Ruthie Baumann and two other employees were standing at the booth and . . . talking" while a customer was waiting to be served. "I walked up and said are all of you on a break . . . and get back to work and take care of customers." He denied complimenting Baumann for being a good sport.

²⁰ Warde testified that he did not follow his normal routine of walking through the store in a counterclockwise direction, conversing with bargaining unit employees. While conceding that he spoke to Fleming, Baumann, and a deli clerk, Warde denied saying anything more than hello or interfering with their work.

²¹ The "look" appeared to Warde as Welch's effort at "muffling" Hayward's speech.

walked toward the checkstand.”²² Moments later, after checking with both Baumann and Fleming, who were working nearby and overheard what Hayward said, Warde walked over to a checkstand at which Hayward was finishing with a customer. Warde asked him, “What’s the deal,” and Hayward replied that Welch had just “called” him, instructing him that no one was allowed to speak with Warde except on their own time and that he was to ask Warde to stop or he would call the police. Hayward added that if an employee to whom Warde was speaking did not stop he or she would be disciplined. Warde replied that he understood Hayward was just doing what he had been instructed to do and walked out of the store,²³ passing by Baumann or Fleming and stating that he would be back. Warde then went to his car, which was in the store’s parking lot, telephoned Frank Collard from his car, “reentered the store,” and, without interference from Hayward, spoke to each bargaining unit employee,²⁴ with whom he had not yet spoken that evening. After speaking to the employees, Warde departed from the store.

Warde further testified that he returned to store 781 the next evening (June 30) “to serve some more courtesy clerk citations” based on the copy of the duty list, which he had obtained the previous evening. The business representative added that he spoke to employees, that no employees were prohibited from speaking to him, and that no employees were disciplined for speaking to him. Further, Warde conceded that, notwithstanding being informed of Respondent’s policy changes regarding his contractual right to speak to bargaining unit employees during his visits to store 781, since June 30, he has been permitted to freely speak to employees at store 781, no employees have been prohibited from speaking to him, and no employees have been disciplined for doing so. However, he added, “I do notice a significant difference in people’s feeling comfortable speaking to me. Fewer people speak to me in the store now. If they do, they look around to make sure no supervisor is around.”

Counsel for the General Counsel offered the respective testimony of employees Ruth Baumann and Dollie Fleming as corroboration of Warde’s account of the events of June 29. Baumann, a night shift general merchandise clerk who was assigned to the customer service booth²⁵ in store 781 before transferring to store 772 in September, testified that at approximately 6 p.m. on June 29 she was inside the customer service booth looking “straight forward” through the windows towards the checkstands²⁶ and observed John Hayward and Wendy Welch standing “directly in-between [checkstands seven and eight] and the booth in the middle” and having a conversation. Stating that she had no difficulty

²² Warde conceded that he may have been speaking to Baumann as Hayward approached.

²³ Warde testified that this was the first time he had been informed of any change in the contractual access policy and that Respondent had never offered to bargain about it.

²⁴ Warde’s purpose was to ask each if he or she “had been instructed not to speak to me, and whether they had been threatened with discipline if they did speak to me.” According to Warde, each said, “No.”

²⁵ The customer service booth is a cubicle with open glass windows and is open at the top. Inside are the store safe, a telephone, a money order machine, and a computer.

²⁶ Describing business as “a little slow that night,” she observed seven or eight checkers working, waiting on customers.

overhearing what they said and describing Welch as “very upset” and loud, Baumann recalled Welch saying “that . . . she had spoken with Tom Halbert, and that Dennis was not allowed to talk to any employee unless they were off the clock or on their break. [Welch] also stated that the employees were on Albertson’s property.” According to Baumann, 10 to 15 minutes later, she observed Hayward approach Mike Thill, a customer service clerk who was standing by the door to the customer service booth, and instruct the clerk “not to talk to Dennis, that if he did talk to Dennis he’d be written up.” Then, Hayward entered the customer service booth and, after opening the door to the safe, said out loud “that no employees were allowed to talk to the Union representative while they were on the clock, unless they were off the clock or taking their breaks.”²⁷ Estimating the time as 30 minutes after Hayward left the customer service booth, Baumann, who remained in the booth, saw Dennis Warde, who had been walking around the store, and Hayward meet directly in front of the customer service booth and heard the latter “tell Dennis Warde that if he didn’t quit talking to the employees that he would have to call the police and have him arrested.”²⁸ Fleming, who worked as a checker at store 781 before transferring to store 750 in Napa in January 1994, testified that, one night about 2 months prior to an August confrontation with Wendy Welch, described *infra*, while she was “fixing up” the front of the store in order to make it “look pretty,” she observed Hayward and Ward in the middle of the floor between the last cash register and the customer service booth and overheard Hayward say that “he was told that Dennis was not allowed to talk to the employees while they’re on the clock about the union and that he was told that he could call the cops on Dennis.” Fleming added that this was the only time she saw Warde that night and that, notwithstanding what Hayward said to him, Warde continued to visit the store and speak to employees while they were working.

Respondent’s defense to the alleged unfair labor practices concentrates upon the activities of Warde, and, in particular, his proclivity for interrupting the work of bargaining unit employees during his visits to store 781. In this regard, Store Director Halbert testified that “sometime” in April, May, or June, he had a conversation with Warde about interrupting the work of employees and that this conversation resulted from the union representative’s habit of entering the store, walking over to the service deli, leaning on the counter, and conversing with employees, who were supposed to be working.²⁹ Then, according to Halbert, Warde would go into the “back room” and remain there for 15 to 20 minutes, speaking to the employees, who worked in there. Accordingly, when Halbert met with Warde, “I told Dennis that it was fine if he talked to the employees as long as he didn’t take

²⁷ Baumann stated that, while Hayward did not say her name, as no one else was in the booth, she assumed Hayward’s remarks were directed at her.

²⁸ During cross-examination, Baumann stated that Warde came back to the store the next evening and greeted her. She recalled telling him that she felt as though she was in a “Catch-22” position as “I was being harassed” because Welch and Hayward said we weren’t supposed to be speaking to union representatives while on the clock, and “I didn’t want to be in that position.”

²⁹ This bothered Halbert as employees would “ignore” customers while speaking to Warde.

them away from their work or interrupt their job duties. I said . . . if he wasn't able to do that . . . he should wait . . . and [talk] to them while they are on their break . . . or while they are at lunch." According to Halbert, Warde's response was that he knew the collective-bargaining agreement and would do whatever he wanted to do.³⁰ Based on Warde's conduct and attitude, Halbert devised a procedure for dealing with him—"I felt that if he interfered with the job duties of the employees . . . I would ask him to stop [and then] I would ask him again to stop or leave the store. . . . Then I would call the [police] and have him removed." He added that the foregoing "wasn't a known procedure. I didn't post . . . it on the board . . . but I did discuss it with my key people."³¹

Wendy Welch, the grocery manager at store 781, testified that, either on June 28 or 29, she observed Dennis Warde inside store 781 from approximately 4:30 until 5:45 p.m. and that, while she made no effort to stop him from speaking to bargaining unit employees, on one occasion, she observed him "speaking to a checker . . . while she was checking out a customer. And I asked him to please stop, because it was rude to the customer." Warde complied with her request, and later, at approximately 6 p.m., toward the end of her work shift, he approached Welch as she was working with a customer at the "butcher block." According to Welch, Warde said he wanted to discuss a grievance. She finished with the customer, and they spoke. Welch asked what she could do for him, and Warde handed her a grievance. Thereupon, "Dennis said to me that he heard that I was going to discipline my employees if they were caught talking to him. . . . I told him that was not true." Warde said he had heard it, and Welch replied that he had misunderstood and that what she told employees was "if Dennis came in and talked to them it could interfere with their job duties." Warde said that was not true, she was wrong, and "he can talk to the employees at any time he wanted to. Welch replied that she was not incorrect and did "what the contract read."³² The conversation ended, and Warde walked toward the front of the store. After completing some job tasks in the back of the store, Welch also walked toward the front of the store and, according to her, observed Warde speaking to John Hayward and, as a result, the latter failing to perform his job duties. Therefore, she interrupted the conversation between Warde and Hayward and said to Hayward that he wasn't doing his job and she needed him to do it. Warde then walked out of the store, and, a few minutes later, as she prepared to leave for the day, she observed Warde in the parking lot. She then sought to find Hayward, who was to be in charge of the store when she departed, in order "to let John know that Mr. Warde was out there and . . . I didn't want Dennis interfering with customer relations or job duties."³³ She found Hayward and told him that Warde was outside and might come

³⁰ Warde specifically denied the occurrence of such a conversation.

³¹ During cross-examination, Halbert said that the only person to whom he mentioned this strategy was Wendy Welch. Further, in denying that he took Warde's fixation with the asserted courtesy clerk violations personally, Halbert averred that the main difficulty with Warde was his continued interference with the work of the store's employees.

³² Warde specifically denied the occurrence of such a conversation.

³³ Welch stated that between 5 and 6 p.m. is the busiest time of the day at the market.

back inside. She then instructed Hayward that "if he did come back inside and if he was interfering with any employee's job duties, [he should] ask Mr. Warde to stop." Then, she instructed her subordinate to ask Warde to leave and, if he refused, "you either escort him out or you have the police escort him out."³⁴ Welch specifically denied telling Hayward to prohibit Warde from entering the building or disallowing Warde the opportunity to speak to employees.

John Hayward, who, while continuing in Respondent's employ at the time of the hearing, was no longer a "key" person,³⁵ testified, in Respondent's behalf, that between 4:30 and 5:30 p.m. on June 28 or 29, he had a conversation with Wendy Welch regarding Dennis Warde. "She said that Dennis had been in the store that day and there was some interference with employees performing their job duties and that she expected that he may be back in and ask me to watch and to make sure there was no interference with employees' duties."³⁶ He denied any instructions from Welch to tell Warde not to speak to employees or to tell employees not to speak to Warde. Later, at approximately 6 p.m., according to Hayward, he was by the entrance to the customer service booth when he noticed Warde approaching him. Stating that this was the first time he had seen the business representative that day, Hayward recalled Warde asking me "how things were going and if I had seen anything going on in the store.

. . . I responded that things were fine and that I hadn't seen anything but I really didn't have time to talk to him."³⁷ Warde walked away and over to a checkstand where he began speaking to a courtesy clerk, Mike Thill, who, Hayward observed, stopped bagging a customers' groceries while speaking to Warde. Believing that Warde had interrupted Thill's work, Hayward walked to that checkstand and told Thill to continue working and stop talking to Warde if doing so was interfering with his ability to work. He also told Thill he "could be written up" if such continues and "said something to Dennis at the same time to that effect."

Thereupon, according to Hayward, Warde walked over to the service deli, and he began speaking to a deli clerk notwithstanding that "there was a customer waiting to be helped." Warde went to the deli counter and told the employee that she should be working and not speaking to Warde and told Warde that he should not be talking to the employees and interfering with their work. Hayward turned and walked away, but observed Warde continuing to speak to the clerk. Hayward immediately returned to the service deli, and, "at that time, I asked [Dennis] to leave the store" as "his talking to these employees [at that busy time] was interfering with the job duties of the employees." He added that if Warde refused to leave he "could call the police and

³⁴ During cross-examination, Welch said that the instruction to Hayward, regarding calling the police, was her own idea.

³⁵ During cross-examination, he expressed a desire to once again work in that position.

³⁶ Later, during direct examination, asked if Welch said what he should do if Warde did not stop interfering with employees' job duties, Hayward said, "Well, the first time I was to ask him to stop; second time I was to ask him to leave, and [if he refused to do so] I was to tell him that I would have him removed from the store." During cross-examination, Hayward said this was his first conversation with Welch that day.

³⁷ Hayward stated that 6 p.m. is "a busy time of the day."

have [Warde] removed.”³⁸ According to Hayward, he did not see Warde³⁹ inside the store any longer that evening and believed Warde had departed. Finally, Hayward specifically denied saying, inside the customer service booth by the safe, what was attributed to him by Ruth Baumann and denied saying to anyone that employees were prohibited from speaking with a business representative unless off the clock or on his or her own time or threatening discipline in such a circumstance.

5. The confrontation between Wendy Welch and Dollie Fleming

Employee Dollie Fleming testified that on the evening of July 31 she observed Valerie Perez, a general merchandise clerk at store 781, working as a checker at a checkstand. Aware of the controversy at the store over courtesy clerks performing work outside their job classification and of the filing of grievances over this matter, Fleming approached Perez and asked why she was performing checking duties and what her job classification was. Perez responded that she did not know her classification. Nothing else was said, and, 2 days later (August 2) at approximately 7 p.m., as she was counting the money in her drawer prior to commencing her checking duties Wendy Welch telephoned her on the “com line” and requested that Fleming come upstairs to the manager’s office for a conversation. The latter went upstairs and, as she walked into the office, Welch closed the door. According to Fleming, to whom Welch appeared “very angry and upset,” she sat down, and “Welch asked me why I was talking to Valerie Perez.” Fleming responded that she wanted to know what had been going on that night as Perez was checking but was only a general merchandise clerk. “And she told me that she didn’t want me to talk to Valerie Perez.” Welch then asked Fleming why she had confronted Perez, and “I told her the reason is . . . because I wanted to find out why [Perez] was checking.” At this point, Welch, with whom Fleming had been friends, leaned forward and said, in an accusatory tone, “I thought we had it narrowed down who was . . . talking to the Union. We didn’t think it was you.” When Welch made this comment, according to Fleming, she became scared and said she wasn’t the only employee who ever called the Union. Fleming testified that the conversation then turned to other matters, lasting “probably about a half an hour.” During cross-examination, Fleming stated that she was the one who initially broached the subject of the Union, stating that what Valerie Perez had done violated the union contract and that, as a general merchandise clerk, Perez could not act as a checker as “it violates the Union contract.” She added that it was when she made the foregoing statement that Welch uttered her accusation. Also, during cross-examination, Fleming testified that as she wore a union button her support for the Union was well known in the store.

³⁸ Asked a leading question at this point, Hayward said that he also warned Warde that he would have to leave the store during their first confrontation at the service deli counter.

³⁹ Warde denied ever interfering with the work of any employee while he or she worked, but conceded being aware of complaints from at least two employees at store 781 that he had interrupted their work. Those individuals never testified at the instant hearing regarding those assertions.

While agreeing that they spoke on August 2 regarding Fleming’s conduct toward Valerie Perez, Wendy Welch testified to a different version of the conversation. According to the grocery manager,⁴⁰ she remained late on the above date in order to speak to Fleming about the Perez matter, and, at approximately 7 p.m., asked Fleming to report to her upstairs. Fleming entered the office, and, according to Welch, she “asked [Fleming] why she approached Valerie in the checkstand when Dollie refused the shift.” The employee replied that she had “every right” to do so as she was trying to ascertain if Perez had been “classified.” Welch replied that Perez was receiving “upscale wages” and that Fleming should have spoken to Welch rather than “interrogating” Perez at a checkstand. Welch denied initiating any conversation about the Union, saying Fleming first raised the subject when saying that she could have gone to the Union with questions but that “she was afraid to go to the Union because she felt that I can lay her off at any time if she went to the Union.” Welch replied that she would never do such a thing. Welch further denied accusing Fleming of being the one who was calling the Union and concluded by stating that Fleming apologized about causing the problem with Perez.

B. Analysis

Initially, I turn to the allegations that Respondent’s implementation of written and oral rules, pertaining to the wearing at work of unauthorized pins and buttons, were violative of Section 8(a)(1) and (5) of the Act. In this regard, counsel for the General Counsel argue that not only do these rules interfere with employees’ Section 7 rights so as to be violative of Section 8(a)(1) of the Act but also Respondent unilaterally implemented those rules, which constituted a change from its existing practice, without giving notice to the Union or affording the Union an opportunity to bargain over their implementation in violation of Section 8(a)(1) and (5) of the Act. At the outset, the uncontroverted record evidence establishes, and I find that for several years prior to March 1993, while maintaining in effect, as a provision of its personnel policies, a vaguely worded rule prohibiting the wearing of unauthorized “badges,” Respondent’s enforcement of the policy was, at best, sporadic and that employees at its northern California stores, located within the territorial jurisdiction of the Union (store 750 in Napa, store 755 in Fairfield, and stores 772 and 781 in Vacaville), generally wore buttons and pins, which exhibited support for the Union, on their uniforms without interference⁴¹ from Respondent; that, on or about March 26,

⁴⁰ Welch testified that, on July 31, she was having an extremely difficult time filling the shifts with enough checkers, and, after nearly panicking over not being able find anyone, asked Thomas Halbert for, and received, permission to “upscale” an available general merchandise clerk (Perez) to check groceries. Subsequently, she learned that Fleming had confronted Perez over performing those duties.

⁴¹ I recognize that Georgina Harwood testified that she has always enforced the personnel policy against unauthorized badges and that employee Angela Borba testified that prior to 1993 management at store 772 did occasionally ask her to remove a union button from her uniform; however, as Borba was able to violate Respondent’s practice with virtual impunity and as there is no evidence that the personnel policy was ever enforced at the remainder of Respondent’s stores involved here, Respondent’s enforcement of its personnel policy against unauthorized badges appears to have been nonexistent and haphazard at best.

Pat Shipley, Respondent's development manager for its northern California division, published a confidential memorandum, advising store managers that wearing any buttons, badges, and pins not distributed by Respondent "in all departments" of their stores was violative of Respondent's dress code and enumerating the specific buttons and pins, which could be worn by employees for compliance with the dress code; and that Shipley's memorandum itself was posted on the employees' bulletin board at store 781 in April; that, in June, Georgina Harwood, the customer service supervisor at store 772, posted a hand-printed sign, setting forth Shipley's directive that only "company supplied" pins, badges, and ribbons could be worn at work, on the employees' timeclock. Moreover, the testimony of employee Clifford Carneiro was uncontroverted that in the morning of May 27, while in the back of the store 772 speaking to a delivery truckdriver, he was approached by Store Director Mike App and that, on noticing Carneiro was wearing a pin, bearing the initials of the Union, affixed to his uniform apron, App said, "You can't wear that any more." And the testimony of employee Tammy Lynn Cuveros was uncontroverted that on or about May 20 and June 3 in the service deli of store 772, observing on each occasion that Cuveros was wearing two union pins on her uniform, Harwood informed her that she was not allowed to wear pins which did not pertain to Respondent and she had to remove the pins. Furthermore, on occasions, such as holidays, local festivals, or national sporting events, Respondent encourages its employees to dress in appropriate clothing. Finally, several employees and Union Business Representative Dennis Warde testified corroboratively that, notwithstanding the publication of the above-described written and the oral rules prohibiting the wearing of union pins, employees have continued to regularly wear religious and other unauthorized pins and buttons affixed to their uniforms.⁴²

The right of employees, while working, to wear union pins, buttons, and other insignia has long been held to be activity protected by Section 7 of the Act. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945); *Raley's, Inc.*, 311 NLRB 1244, 1246 (1993); *Mack's Supermarkets*, 288 NLRB 1082, 1098 (1988); and *Albertson's, Inc.*, 272 NLRB 865, 866 (1984). However, this employee right is balanced against an employer's right to operate its business, and an employer may limit or even prohibit the wearing of union pins or other insignia at work if so-called "special circumstances" exist. *Mack's Supermarkets*, supra; *Albertson's, Inc.*, supra. As noted by the administrative law judge in *Raley's, Inc.*, supra,

⁴² In light of the corroborative testimony of employees, who were testifying adversely to the interests of Respondent, I do not rely on the testimony of Georgina Harwood, who was comparatively less reliable, that she has never observed employees wearing religious and other unauthorized pins and buttons on their uniforms at store 772.

There is no dispute that, while employed at store 772, employee Angela Borba has been told more than once by store management to remove union pins from her uniform and that Borba has complied for a few days but then resumed wearing the same or like pins. What is in dispute is whether such an incident occurred in April 1993. The employee was sure that the incident occurred a week before Store Director Fanning was demoted from that position. Fanning testified that his demotion occurred in February, and, as I do not believe that Fanning had any real reason to fabricate such testimony, I believe Borba was confused as to the date of this particular instance of her being told not to wear a union button.

the Board has evolved a substantial body of case law on the matter of the existence of these special circumstances offered to justify restrictions or prohibitions upon the wearing of Union pins or other insignia, ranging from obscene or derogatory material to the existence of a business interest in preserving employees' uniformity of appearance when dealing with the public. In all cases, "the burden of proof respecting the existence of special circumstances which justify prohibition or limitation of union buttons is on the employer who seeks to justify the limitation of employees' Section 7 rights." Id.

Here, I believe that all of the allegedly unlawful conduct flows from the March publication of the Shipley memorandum, prohibiting the wearing at work of pins, badges, and buttons, which are not supplied by Respondent. Thus, it was that document, which was posted in store 781, and the hand-written notice, posted in store 772, is clearly a restatement of the prohibitions set forth in the Shipley document.⁴³ Moreover, I view Georgina Harwood's orders to employee Cuveros as a reiteration and enforcement of the latter notice, which bears her signature, and, given the location of the individuals, store 750 store director App's instruction to employee Carneiro likewise appears to be an act of enforcement of Shipley's policy directive, which applied to all departments of Respondent's stores. Careful analysis of the General Counsel's Exhibits 2 and 4 and Respondent's enforcement of the policies establishes that, in the absence of any qualifying or limiting language, Respondent's prohibition against the wearing of unauthorized pins and buttons at work unambiguously applies to all areas of its stores and not only to the times when employees are working but also to their breaktimes, and no reasonable reading of the rules would cause one to conclude that the prohibitions apply only to the selling areas of the stores and to times when employees are working. In these circumstances, the conclusion is mandated that Respondent's written and oral restriction on the wearing at work of unauthorized pins, buttons, and badges is unlawfully overbroad, constituting an "unreasonable impediment to employee union activity," violative of Section 8(a)(1) of the Act. *Raley's, Inc.*, supra at 1246; *Mack's Supermarkets*, supra at 1098; *Page Avjet Corp.*, 275 NLRB 773, 777 (1985); and *Albertson's, Inc.*, supra at 866.

Respondents' counsel argue that the restriction on pins, buttons, and badges did not apply to nonselling areas of the stores, involved here, and did not apply to nonworking time. In this regard, counsel cite to Jacqueline Wilson's April 22 letter to the Union, in which she states that employees may wear union buttons in the nonselling areas of the stores provided that the buttons do not offend decency or hamper production. However, I have previously concluded that nothing in the wording of either Shipley's memorandum or Harwood's version of the document would cause one to believe that those rules did not apply to nonselling areas or to break periods. Moreover, as Shipley's memorandum was posted on the employee bulletin board at store 781 and as Harwood's written restatement of the document was posted by the employee timeclock at store 772, it is clear that Respondent

⁴³ I do not believe Harwood that G.C. Exh. 2 was but a restatement of her normal practice. Thus, if such were the case, she did not explain the necessity for posting the document, and it obviously tracks what Shipley wrote in her March 26 memorandum.

meant that employees would read and be aware of Respondent's policy. In these circumstances, if Wilson's interpretation of the published rules was what Respondent intended, it was incumbent on Respondent to have replaced what had been posted at its stores with a corrected version, and Respondent's failure to do so establishes that what was published was, in fact, Respondent's intended policy regarding unauthorized pins, buttons, and insignia.⁴⁴

Counsel next argue that there is no record evidence, establishing that the wearing of union pins by Respondent's employees was in support of any protected concerted activities and that, therefore, the conduct was not privileged by Section 7 of the Act. On this point, they cite to the United States Court of Appeals for the Ninth Circuit's opinion in *NLRB v. Harrah's Club*, 337 F.2d 177 (1964), in which the court examined the Supreme Court's *Republic Aviation*, supra, conclusion that the wearing of union buttons comes within the ambit of Section 7 of the Act and held that "we do not think that the Supreme Court intended to erect this into a rule which makes the wearing of union buttons per se a guaranteed right. We think there must be evidence of a purpose protected by the act—i.e., collective bargaining or other mutual aid or protection." *Harrah's Club*, supra at 179. From this, counsel argue that, just as in *Harrah's Club*, there is no record evidence here of any collective bargaining or organizational basis for the wearing of union pins by the bargaining unit employees and that, therefore, restrictions on such conduct is permissible. While I agree that, other than as an obvious showing of support for the Union, there is no record evidence as to the reason the bargaining unit employees wore union pins at work and that there is no question that Respondent's counsel's view of the law in the Ninth Circuit is accurate, I am quite certain that they realize that the Ninth Circuit's view of what the Supreme Court meant in *Republic Aviation* is not the view of the Board, which, as stated above, views the wearing of union insignia as a right guaranteed by Section 7 of the Act unless the employer involved can establish the existence of "special considerations" justifying restrictions on the right. *Raley's, Inc.*, supra. Inasmuch as an administrative law judge is bound by established-Board precedent which has not been reversed by the Supreme Court or by the Board itself, I must find this aspect of Respondent's defense to be without merit.

Counsel for the General Counsel next argue that the aforementioned unlawful prohibitions, against unauthorized pins, buttons, and badges, constituted unilateral changes from past practice, implemented without affording the Union prior notice and an opportunity to bargain. I agree. At the outset, there can be no question that the Shipley memorandum and its progeny represented a significant change from past prac-

tice. Thus, contrary to counsel for Respondent, I have previously concluded that while Respondent maintained a vaguely worded prohibition against the wearing of unauthorized "badges" such was, at best, only sporadically enforced and, as the personnel policy provision seems to have been circumvented with impunity by bargaining unit employees who regularly wore union insignia, religious pins and symbols, and various types of buttons on their uniforms in the stores' selling and nonselling areas, one also may justifiably conclude that prior to March 26, Respondent's practice was to ignore the wearing of such pins, buttons, and badges, none of which were issued by it. Further, the very fact that Respondent found it necessary to issue the Shipley memorandum supports the view that it represented a change from the above-described past practice.⁴⁵ Moreover, there is no record evidence that the Union was afforded any notice or an opportunity to bargain over such by Respondent prior to its publication of Shipley's "confidential memorandum," announcing its prohibition of all but certain enumerated pins, buttons, and badges, the posting of the Shipley memorandum and of the Harwood handwritten notice, and its enforcement of those written rules. Accordingly, I find that Respondent's unilateral implementation of its prohibitions against the wearing of unauthorized pins, buttons, and other insignia without giving notice to the Union or affording it an opportunity to bargain was violative of Section 8(a)(1) and (5) of the Act. *Equitable Gas Co.*, 303 NLRB 925 (1991); and *Holladay Park Hospital*, 262 NLRB 278 (1982).

Next, I turn to the allegation that Respondent engaged in conduct, violative of Section 8(a)(1) of the Act, by interrogating employee Tina Jimenez who works at store 755, about her union activities. In this regard, Jimenez' testimony was uncontroverted, and I find that, upon returning to work after recovering from an injury she was given a different job and had her rate of pay reduced by in excess of \$5 an hour; that she spoke to Union Business Representatives Dennis Wade and Pete Rockwell regarding her reduced rate of pay; that a formal grievance was filed in her behalf by the Union; that Store Director Brian O'Connell spoke to union officials regarding the grievance; that, a few days later, O'Connell initiated a conversation with Jimenez with the comment, "So, Teen, did you call Pete Wilson"; that, after she, asked who, he said "Pete from the Union"; that, after Jimenez said she had, the store manager asked "what about"; and that, after she said he knew "what about," he responded that she would not be returned to her former rate of pay. In support of the allegation that the foregoing constitutes conduct violative of Section 8(a)(1) of the Act, counsel for the General Counsel argues that what occurred here is virtually identical to that which the Board found violative of the Act in *H.M.S. Machine Works*, 284 NLRB 1482 (1987). In the cited case, the collective-bargaining agreement between the union and the employer permitted the union access to the plant during working hours in order to discuss possible grievances. During a visit by a union business agent, an employee briefly discussed his eligibility for health benefits with the former, and, a short while later, a supervisor approached the em-

⁴⁴ Counsel for Respondent, citing an unpublished decision of the United States Court of Appeals for the Ninth Circuit, denying enforcement to *Albertson's, Inc.*, 300 NLRB 1013 (1990), argue that the General Counsel is "collaterally estopped" to the extent that he seeks to require Respondent to allow the wearing of union pins and buttons in the selling areas of Respondent's stores during working time. Contrary to counsel, inasmuch as the only rules before me prohibited employees from wearing unauthorized pins and buttons, including union pins and buttons, in any areas of the stores at any time, I need not consider the legality of a rule, restricting the wearing of union insignia in the selling areas of Respondent's stores. Simply stated, such is not before me.

⁴⁵ In these circumstances, I find without merit Respondent's counsels' contention that the existence of the personnel policy provision mandates a finding that the unfair labor practice charge in Case 20-CA-25393 was time-barred by Sec. 10(b) of the Act.

ployee and asked what the employee had been talking to the union about. The employee said his conversation with the union agent concerned hospitalization, and the supervisor responded that the employee was not eligible for such benefits and that the union could not help him. Then, 2 months later, the business agent again visited the plant and spoke to the employee, and, as on the earlier occasion, the supervisor approached the employee and asked if he had been discussing hospitalization with the business agent. Notwithstanding finding the subject of the interrogation to have been "innocuous," the Board found the supervisor's conduct unlawful as it "could reasonably tend to discourage employees from talking freely with the representatives in the future or, perhaps, from talking to them at all." *Id.* at 1483. Counsel for the General Counsel assert that "the identical result obtains here" as "O'Connell's questions . . . were of the very type that could reasonably tend to discourage employees from talking freely with their Union representatives." Further, counsel argue that O'Connell's conduct was coercive as there was no valid reason for him to have questioned Jimenez in the above manner and as the store director was, in effect, "singling out the unit member and questioning her behind the back of her bargaining representative." Inasmuch as O'Connell was well aware of Jimenez' grievance and what it entailed, I agree with counsel for Respondent that the exchange between the store director and the employee did not constitute unlawful interrogation; however, I, nevertheless, believe that, in the instant circumstances, the store director's comments were coercive and interfered with Jimenez' Section 7 rights and unlawful. Thus, I find counsel for the General Counsel's arguments persuasive that there could have been no purpose for the store director's conduct other than harassment of an employee who had engaged in a contractual right and an activity, privileged by Section 7 of the Act. Indeed, how else may one explain O'Connell's mocking introductory comment and his concluding remark? In these circumstances, I believe, and conclude, that O'Connell's conduct was coercive and interfered with Jimenez' Section 7 rights—in violation of Section 8(a)(1) of the Act.

In considering the complaint allegations that on or about June 29, Respondent promulgated rules, prohibiting its employees from speaking to the Union's business representative unless they are off the clock and on their own time and providing for disciplinary action against employees who speak to the business representative while on the clock, and that Respondent violated Section 8(a)(1) and (5) of the Act by implementing the rules, which are mandatory subjects of bargaining, unilaterally and without prior notice to the Union or affording the Union an opportunity to bargain with regard to the above rules, and Section 8(a)(1) of the Act by conveying the rules to the bargaining unit employees, I note that, in determining what occurred and the legal consequences of the conduct, credibility resolutions are required. In this regard, I have weighed the relative credibility of Union Business Representative Dennis Warde against that of Wendy Welch, John Hayward, and Thomas Halbert and believe that Warde's testimony was inherently more credible and, therefore, shall rely on his testimony as to what occurred in the early evening of June 29. Thus, while Warde's testimonial demeanor while did cause me to doubt his honesty, I note that, in significant aspects, his testimony was corroborated by current employees, Ruth Baumann and Dollie Fleming, each of

whom was testifying adversely to the interests of Respondent and appeared to be testifying candidly. In contrast to Warde, Welch appeared to be a disingenuous witness; in particular, her assertion that Warde visited store 781 every day during the 5-or 6-week period prior to June 29 was not corroborated by any other witness and was utterly incredible. Further, I note that John Hayward failed to corroborate Welch, regarding the "incident" at approximately 6 p.m. that evening when, according to the unreliable Welch, she assertedly observed Hayward and Warde engaged in conversation near a checkstand, approached them, and, in the presence of Warde, admonished Hayward that he should stop speaking to Warde and resume working. As to Hayward, he did not seem to be testifying candidly, impressing me as being a sycophant, whose intent was to regain Respondent's favor and a supervisory position, and an unreliable witness. Finally, as between Store Director Halbert and Warde, the latter appeared to be the much more straightforward witness; in particular, given the potential monetary liability, I found incredible Halbert's assertion that he was more bothered by the manner in which Warde served the courtesy clerk citations on him rather than the citations themselves, and I note that Halbert's assertion, that he gave Welch the idea of warning Warde that Respondent would have the police remove him from store 781 if he continued to interfere with employees' work, was not corroborated by Welch, who claimed responsibility for the idea.⁴⁶

Based on the foregoing credibility resolutions, I find that, in the spring of 1993, during his regular visits to store 781, inasmuch as Respondent and the Union were engaged in a dispute, concerning that store's management's alleged assignment of job duties, outside of their contractual job classification, to the store's courtesy clerks, besides speaking to bargaining unit employees, Union Business Representative Dennis Warde would regularly check the store's courtesy clerk job assignment sheets and present contract violation citations, alleging improper courtesy clerk job assignments, to Store Director Thomas Halbert, who, having met with Warde several times in order to convince the latter that the job assignments were contractually permissible and given the potential monetary liability, was "agitated" over the citations, and that, on June 28, Warde was at the store and presented Halbert with 8 courtesy clerk citations, involving 20 alleged instances of improper job assignments. I further find that, the next evening (June 29), Warde once again visited store 781; that, having observed the business representative examining the courtesy clerk assignment sheet, Wendy Welch and John Hayward approached him, with the former asking what he was looking for and the latter asking if Warde was continuing to talk about "courtesy clerk stuff;" that, as Warde photocopied the courtesy clerk assignment sheet, Welch spoke to Hayward in front of the courtesy clerk booth, saying that "she had spoken with Tom Halbert, and that Dennis was not allowed to talk to any employee unless they were off the clock or on their break"; that, a few minutes later, Halbert was overheard speaking to customer service clerk,

⁴⁶I specifically discredit Halbert, Welch, and Hayward that Warde continually interrupted or interfered with employees as they were working. Warde denied this, and I credit him, noting that, other than the above witnesses, Respondent presented no witnesses who claimed to have seen Warde interrupt employees in their work.

Mike Thill, telling the employee “not to talk to Dennis, that if he did talk to Dennis he’d be written up”; and that Hayward then entered the customer service booth and, in the presence of Ruth Baumann, said out loud “that no employees were allowed to talk to the Union representative . . . unless they were off the clock or taking their breaks.” Moreover, I find that, later, as Warde returned the original of the courtesy clerk job assignment sheet to a clipboard, which hangs from a wall of the customer service booth, Hayward approached and, sternly, said, “You can’t talk to people any more when they’re on the clock. . . . I’m going to ask you to stop, or I’ll have you arrested”; that, moments later, incredulous at what he had just been told, Warde walked over to Hayward, who was at a checkstand, and asked, “what’s the deal”; and that Hayward responded that he had just spoken to Welch, who had instructed him that no employees were allowed to speak to Warde except on their own time, that, if Warde was asked to stop and refused, Hayward should call the police, and that, if the employee refused to stop talking to Warde, he should be disciplined.

Counsel for the General Counsel argue that the foregoing orally promulgated rules represent unilateral modifications of the union-access provision of the collective-bargaining agreement between Respondent and the Union; that the subjects of the rules concern mandatory subjects of bargaining; that Respondent was obligated to have notified the Union of the unilateral changes prior to implementation and to have afforded the Union an opportunity to bargain about them; and that Respondent’s failure to do so was violative of Section 8(a)(1) and (5) of the Act. I disagree. Thus, I note that Halbert and, undoubtedly, his assistant Welch were “agitated” over Warde’s involvement in the ongoing courtesy clerk job assignment dispute. Moreover, while the credited evidence is that John Hayward, acting on behalf of his superiors at store 781, did, in fact, announce the existence of new business agent access policies for that store, there is no record evidence that said “rules” were actually implemented. To the contrary, as Dennis Warde conceded, later that evening and the next evening, he engaged in his normal practice of going around to the various areas of store 781 and speaking to bargaining unit employees while they worked; no supervisor stopped him from doing so; no supervisor stopped employees from speaking to him; and no employees were disciplined for speaking to him while on the clock. Warde further testified that, subsequently, there has been no change in the contractual union access policy—no supervisor has prevented him from speaking to bargaining unit employees as they worked; no supervisor has prohibited bargaining unit employees from speaking to him during their worktime; and no employees have been disciplined for speaking to him while on the clock. In these circumstances, noting that no such rules were ever announced for any store but store 781 and that what occurred, on the evening of June 29, appears to represent merely the store management’s over-reaction to Warde’s legitimate activities, and absent any record evidence that the “rules” were ever implemented, I do not believe that Respondent’s June 29 acts and conduct ever arose to the level of a unilateral change violative of Section 8(a)(1) and (5) of the Act, and I so find.⁴⁷ Accord-

⁴⁷ I find counsel for the General Counsel’s reliance on such cases as *Migali Industries*, 285 NLRB 820 (1987), misplaced. In the cited

ingly, I shall recommend dismissal of the applicable paragraphs of the consolidated complaint in Cases 20-CA-25513 and 20-CA-25530.

However, the consolidated complaint also alleges that Respondent’s above-described conduct was violative of Section 8(a)(1) of the Act, and, on this point, I agree. Thus, I have previously found that, in the presence of bargaining unit employees, John Hayward stated that employees would no longer be able to speak to Dennis Warde and that if they did speak to him they would be “written up” and, to other bargaining unit employees, that they would not be permitted to speak to union representatives unless they were off the clock or on breaks. Of course, Respondent’s employees not only have a Section 7 right to engage in union activities but also have a contractual right, while working, to speak to representatives of the Union, who are visiting their store. Hayward’s above directive to bargaining unit employees, coupled with the threat of discipline, clearly impinged on their right to speak to union representatives in violation of Section 8(a)(1) of the Act, and I so find. *Stroh Brewery Co.*, 290 NLRB 1025, 1027 (1988).

Regarding the remaining allegation of unlawful conduct, that Respondent created the impression of surveillance of their activities in support of the Union amongst its employees in violation of Section 8(a)(1) of the Act, I note that this involves the confrontation between Dollie Fleming and Wendy Welch in the evening of August 2 at store 781 and that there is no dispute that such a confrontation occurred. What is in dispute concerns what was said, and, in this regard, as between the bargaining unit employee and the grocery manager, I have previously found that, as a current employee, Fleming testified against the interests of her employer and that Welch’s demeanor was that of a most disingenuous witness. As Fleming impressed me with her candor, I shall credit her as to what occurred that evening. Accordingly, I find that, on the evening of July 31, Fleming confronted employee, Valerie Perez, who was performing the work of a checker, work which was outside of her contractual job classification, and asked why Perez was working as a checker, that Welch became aware of the Fleming-Perez incident; that, at approximately 7 p.m. on August 2, aware that the Union had been serving courtesy clerk citations, based on employees working outside of their job classifications, on Respondent on a regular basis, Welch directed Fleming to come to an upstairs office; and that Fleming did so and Welch closed the door. I further find, as to what was said between them, that, in an angry voice, Welch began by

decision, not only was a copy of the new progressive disciplinary system posted, with a notation that it would be effective immediately, but also the Union was provided with a copy of the new policy on a subsequent occasion—after implementation. Here, the announcement of the new “rules” was by a low level supervisor at just one of Respondent’s stores. While it is true that Respondent has never repudiated what Hayward announced on June 29, it is also true that there is no record evidence that Warde or any other union official spoke to the store director of store 781 regarding what Hayward announced or to Respondent’s management officials, in charge of labor relations policy, as to whether, in fact, a new policy had been implemented. I believe that the Union’s failure to do either suggests that it likewise believed that no new policy had been announced. What appears to have occurred was a reaction to Warde’s continued filing of the courtesy clerk citations rather than the intended implementation of a change in Respondent’s labor relations policy.

asking why Fleming had been speaking to Perez; that Fleming replied that she wanted to find out what had been going on that night because Perez was checking but was classified as a general merchandise clerk; that Welch then said that she did not want Fleming to speak to Perez and asked why she had done so; that Fleming replied she wanted to find out why Perez had been checking as such was a violation of the union contract because a general merchandise clerk can not check; and that, at this point, Welch leaned forward in her chair and said accusingly, "I thought we had it narrowed down who was . . . talking to the Union. We didn't think it was you."

Counsel for the General Counsel argue "that, in these circumstances, such statements by the employer unlawfully create the impression that employees' protected concerted activities [are] under surveillance by management." Counsel cite several Board decisions in support. One such cited decision, *Emerson Electric Co.*, 287 NLRB 1065 (1988), involved a conversation between a plant manager and an employee during which the plant manager informed the employee that he was aware that the latter had attended union meetings and had expressed interest in the union but that he did not consider the employee "a pusher." The Board concluded that the plant manager's statements "reasonably suggest[ed]" that he was closely monitoring the union involvement of the employee and, therefore, had unlawfully created the impression of surveillance. In contrast, counsel for Respondent cite to several Board decisions in which the Board concluded that employer statements did not constitute creation of the impression of surveillance of protected concerted activities. In one such decision, *Raytheon Co.*, 279 NLRB 245 (1986), an administrative law judge found that, during a conversation between the plant's quality assurance manager and other supervisors near an employee's work station, the plant turned toward the employee, the they knew who had started the union thing, and then pointed at the employee, saying it had been another employee and him. In finding that said comment did not arise to creation of the impression of surveillance, the administrative law judge based his conclusion on an examination of the circumstances, surrounding the comment—finding that the employee's union activities were "notorious," that the comment was made in a noncoercive atmosphere, and that the comment was unaccompanied by any unlawful threats. *Id.* at 260–261.⁴⁸ In relying on the decision, counsel for Respondent note that Fleming was a known supporter of the Union, she and Welch had a friendly relationship, and the conversation ended amicably. On balance, I believe that Welch's comment was coercive and did create the unlawful impression that Respondent was engaging in surveillance of the employees' union activities. In this regard, I note that there is no record evidence that Welch had any "legitimate basis" for making her comment to Fleming. *United Charter Service*, 306 NLRB 150, 151 (1992). Moreover, while Welch did not accompany her statement with other unlawful statements, I have previously concluded that, just 1 month earlier, in Fleming's presence, Supervisor John Hayward, pursuant to Welch's instructions, unlawfully stated that employees would no longer be allowed to speak to Dennis Warde while on the clock and were subject to discipline for doing so. Finally, the clear implication,

⁴⁸No exceptions were taken to this finding.

to be drawn from Welch's statement, was that Respondent was clearly concerned with the number of citations, which had been filed involving employees being assigned work outside of their job classifications, to the extent that it was "closely monitoring" its employees in an effort to discover which one was supplying damaging information to the Union. *Emerson Electric Co.*, supra. In these circumstances, I believe that Welch's comment did create the impression that Respondent was engaging in surveillance of its bargaining unit employees' union activities and find that it was violative of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. At all times material, the Union has been the representative for purposes of collective bargaining of Respondent's employees in the following appropriate unit:

All employees who are covered by the terms of the collective-bargaining agreement between Respondent and the Union, which was effective from March 1, 1992 through March 4, 1995.

4. Since on or about March 26, 1993, by promulgating and placing into effect new written and oral rules, prohibiting its employees from wearing at work any pins, badges, or buttons not issued by Respondent, including those indicating support for the Union, without prior notice to the Union or affording the Union an opportunity to bargain over the rules, Respondent has engaged in conduct violative of Section 8(a)(1) and (5) of the Act.

5. Since on or about March 26, 1993, by promulgating and placing into effect overly broad written and oral rules prohibiting its employees from wearing at work any pins, badges, or buttons not issued by Respondent, including those indicating support for the Union, Respondent has engaged in conduct violative of Section 8(a)(1) of the Act.

6. By coercing an employee because she filed a grievance against it, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

7. By stating to, and in the presence of, bargaining unit employees that they were not allowed to speak to representatives of the Union while on the clock, were only allowed to do so when off the clock or on breaks, and would be disciplined if they violated the above directives, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

8. By creating amongst its employees the impression that it was engaging in surveillance of their activities in support of the Union, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

9. The above-described unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

10. Unless specified above, Respondent engaged in no other unfair labor practices.

REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease

and desist therefrom and to take certain affirmative action designed to effectuate the purposes and policies of the Act. Specifically, I shall recommend that Respondent be ordered to rescind the directive contained in the March 26 Shipley dress code memorandum and all subsequent rules, pertaining to the wearing at work of any pins, badges, and buttons not issued by Respondent, based on the memorandum. Further, consistent with *Raley's Inc.*, supra, the instant remedy shall be coextensive with Respondent's application of any rules, which were instituted pursuant to the March 26 Shipley memorandum.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴⁹

ORDER

The Respondent, Albertson's, Inc., Vacaville and Fairfield, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating, maintaining, and enforcing any rules, prohibiting the wearing at work of any pins, badges, or buttons not issued by Respondent, including any pins, badges, and buttons indicating support for the Union, without giving prior notice to and bargaining with the Union as the representative for purposes of collective bargaining of all employees who are covered under the March 1, 1991, through March 4, 1995 collective-bargaining agreement between Respondent and the Union.

(b) Promulgating, maintaining, and enforcing any overly broad rules, prohibiting the wearing at work of any pins, badges, or buttons not issued by Respondent, including any pins, badges, and buttons indicating support for the Union.

(c) Requiring employees to remove union pins or buttons pursuant to any overly broad rules, prohibiting the wearing at work of any pins, badges, and buttons not issued by Respondent.

(d) Coercing employees because they file contract grievances against Respondent.

(e) Stating to, or in the presence of, employees that they are not allowed to speak to representatives of the Union while on the clock; that they are only allowed to speak to representatives of the Union when off the clock or on breaks; and that they will be disciplined for violating the directives.

⁴⁹ 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.

(f) Creating amongst its employees the impression that it is engaging in surveillance of their activities in support of the Union.

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

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

(a) Rescind the March 26, 1993 Shipley memorandum, pertaining to the wearing at work of any pins, badges, and buttons not issued by Respondent and all subsequent written and oral rules, which were promulgated and placed into effect and which pertain to the March 26 Shipley memorandum.

(b) Distribute and publicize the removal of the overly broad limitations on the wearing of any pins, badges, and buttons not distributed by Respondent, including pins, badges, and buttons indicating support for the Union, to the same extent that any such overly broad rules have been publicized and distributed at any of Respondent's facilities where the rules have been applied.

(c) Post at its store 750 in Napa, store 755 in Fairfield, and stores 772 and 781 in Vacaville, California, copies of the attached notice marked "Appendix."⁵⁰ Copies of the notice, on forms provided by the Regional Director of Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained by 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.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that, insofar as the consolidated complaint in Cases 20-CA-25513 and 20-CA-25530 alleges that Respondent violated Section 8(a)(1) and (5) of the Act by promulgating certain rules without notifying the Union and without affording the Union an opportunity to bargain, the paragraphs shall be, and the same are, dismissed.

⁵⁰ 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."