Acme Bus Corp., Brookset Bus Corp., Baumann & Sons Buses, Inc., Alert Coach Lines, Inc., a Single Employer *and* Local 868, International Brotherhood of Teamsters, AFL–CIO *and* Garth Anthony Campbell *and* Theresa Cafaro. Cases 29–CA–17613, 29–CA–17622, 29–CA–17648, 29–CA–17653, 29–CA–17658, 29–CA–17802, 29–CA–17858, 29–CA–17888, 29–CA–17788, and 29–CA–17839

December 22, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

On November 9, 1994, Administrative Law Judge Steven Davis 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 the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

In adopting the judge's finding that the Respondent unlawfully implemented a wage and benefits package on September 7, 1993, in order to induce employees to abandon the Union, we note that while the timing of the announcement of the enhanced wage and benefits package was in keeping with the Respondent's established past practice, i.e., at the beginning of the school year, the surrounding circumstances make clear that the implementation was done with an eye toward achieving union disaffection. As the judge found, the cover letter accompanying the wage/benefits announcement directly tied the improvements to the fact that the Respondent had ''heard'' its employees' needs and concerns—a reference to its earlier unlawful solicitation of grievances; stated that the only way its business could move forward was to keep the Union out; noted that union mistakes could cost employees their jobs; and mentioned that money employees would have spent on union dues could be used instead to offset the cost of health insurance. Thus, by its own words, the Respondent expressly linked its unlawful solicitation of employee grievances with its effort to remedy them through better wages and benefits, and contrasted its own beneficence with the dangers of unionization. The statements amount to a declaration to employees that the Respondent's actions were a direct product of the dissatisfaction expressed at the outset of the Union's organizational effort and that the best way to ensure the continuation of such improvements was to support the Respondent rather than the Union. In sum, the Respondent's mere adherence to an established timetable does not immunize its unlawfully motivated implementation of benefits.[2]

Further, in adopting the judge's findings that the Respondent, through its dispatcher Campbell, unlawfully interrogated employees, we note that neither Campbell's relatively friendly relationships with certain drivers nor his purported sympathy with their efforts to unionize diminish the coerciveness of his actions. In fact, Campbell's closeness with the drivers increases the likelihood that they would get the message of the Respondent's opposition to the Union because they would understand his comments as accurately reflecting the Respondent's resolve. Campbell's constant presence among the employees and his ongoing solicitation of information served merely to amplify the effects of the Respondent's widespread effort to identify union supporters and solicit grievances that impelled the organizing campaign.

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

[2] We note that although the Respondent unilaterally announced and implemented these changes after the date of the election in which the Union prevailed, the complaint does not allege a violation of Sec. 8(a)(5).

No exceptions were filed to the judge's dismissal of various allegations of Sec. 8(a)(3) and (1), nor to his determinations that Charging Parties Theresa Cafaro and Garth Anthony Campbell were supervisors.

We note that the Respondent failed specifically to except to the judge's conclusion that it violated Sec. 8(a)(1) by soliciting grievances from employees and implying that it would remedy them. Rather, its exceptions allude generally to the recommended Order and remedy relating to that violation.

We find it unnecessary to pass on the judge's finding that the Respondent, through its Vice President Connie Baumann-Gilman, unlawfully interrogated employee Neri Van Syckle concerning why she wanted a union. This alleged violation is cumulative and would not affect the Order and remedy.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Acme Bus Corp., Brookset Bus Corp., Baumann & Sons Buses, Inc., Alert Coach Lines, Inc., a Single Employer, Ronkonkoma, New York, its officers, agents, successors and assigns, shall take the action set forth in the Order.

James Kearns and *Thomas Maher, Esqs.*, for the General Counsel.
Alan Pearl, Esq., (Portnoy, Messinger, Pearl & Associates), of Westbury, New York, for Respondents.
Daniel Campbell, Esq., of Floral Park, New York, for Local 868.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on charges filed by Local 868, International Brotherhood of Teamsters, AFL–CIO (Union or Local 868) in Cases 29–CA–17613, 29–CA–17622, 29–CA–17648, 29–CA–17653, 29–CA–17658, 29–CA–17802, 29–CA–17858, and 29–CA–17888 on August 26; September 2, 21, 22, and 24; November 5 and 29; and December 13, 1993, respectively, and based on a charge filed in Case 29–CA–17788 on November 1, 1993, by Garth Anthony Campbell, an Individual (Campbell), and based on a charge filed in Case 29–CA–17839 on November 19, 1993, by Theresa Cafaro, an Individual (Cafaro), complaints were issued against Acme Bus Corp., Brookset Bus Corp., Baumann & Sons Buses, Inc., Alert Coach Lines, Inc., a Single Employer (Respondent) on November 30, 1993, and January 24, 1994. The complaints were consolidated on April 5, 1994.

The complaints allege essentially that during the course of a campaign by the Union to organize the employees of Respondent, Respondent unlawfully discharged eight employees because of their activities in behalf of the Union, and interfered with its employees' Section 7 rights in numerous instances, including: (a) directing its employees to keep the union activities of its employees under surveillance, and to report to it concerning such activities; (b) soliciting the grievances of its employees and implying that it would remedy such grievances; (c) interrogating its employees concerning their union activities and the union activities of other employees; (d) requiring its employees to sign a letter stating that they opposed the Union, and threatening to discharge them if they did not sign such letter; (e) threatening to close Respondent if the Union was selected by the employees; (f) creating the impression among its employees that their Union activities were being kept under surveillance; (g) directing its employees to order the Union's agents to discontinue campaigning in front of its facility; (h) directing its employees to provide it with literature that they had obtained from the Union; (i) directing its employees to wear ''vote no'' buttons, and to distribute such buttons to other employees; (j) directing its employees to find out where the Union was holding a meeting and to disrupt such meeting, if possible; (k) threatening to discharge its employees or change their working conditions to cause them to quit because of theirunion activities; (l) by its agent, interrogating employees concerning their union sentiments and reporting this information to Respondent; (m) threatening to more closely watch certain employees with the object of discharging them because of their support for the Union; (n) promising employees benefits to induce them to abandon their support for the Union; (o) directing its employees to campaign against the Union and promising them benefits if they did so; (p) introducing a harsher, more stringent, written disciplinary system to be used to retaliate against employees who were union supporters, and to be used to discharge such supporters; and (q) implementing a wage and benefits package which included increases in vacation and sick time benefits.

Respondent's answers denied the material allegations of the complaints, and on August 8 through 11, and August 15 and 16, 1994, a hearing was held before me in Brooklyn, New York.

On the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the briefs filed by General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, comprised of Acme Bus Corp., Brookset Bus Corp., Baumann & Sons Buses, Inc., and Alert Coach Lines, Inc., each of which are New York corporations, having their principal office and place of business collectively located at 3355 Veterans Memorial Highway, Ronkonkoma, New York, and having bus yards in Bohemia, Jericho, Northport, and Westhampton, New York, has been engaged in providing bus transportation services for various school districts, private organizations, and the general public.

During the past year, Respondent purchased and received at its Ronkonkoma facility products, goods, and materials valued in excess of $50,000 directly from other enterprises located outside New York State. Respondent admits that the companies set forth above have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of said operations; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise.

Respondent further admits that its companies collectively constitute a single integrated business enterprise and a single employer within the meaning of the Act, Respondent also admits, and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Respondent's Operation*

The Respondent, a family-owned business, has as its principals Ronald Baumann, president,[1] Richard Baumann Jr., vice president, Richard Baumann III, terminal manager at its Bohemia facility, and Connie Baumann-Gilman, vice president. In addition, Edward Lynch is its vice president of operations, and Steven Schneider is its terminal manager at its Jericho facility.

At each terminal, Respondent employs one or more dispatchers, drivers, drivers' assistants,[2] and mechanics. The drivers, who are required to possess Commercial Drivers' Licenses (CDL), operate minivans, large schoolbuses, or coach buses.

B. *The Union Campaign*

I find that the following facts, relating to the campaign, occurred as testified by Cafaro and Campbell, inasmuch as their testimony was uncontradicted. Numerous events which they testified about were not challenged by Respondent's witnesses who were present thereat, and in addition, Gilman, Portnoy and Walsh did not testify. I will specify when Respondent's witnesses challenged General Counsel's witnesses' versions of events.

Bohemia dispatcher Theresa Cafaro testified that the Union began its organizing campaign in late March or early April 1993.[3] At that time she noticed a van with a union insignia, and observed union representatives distributing literature to drivers at the entrance to the Bohemia facility. Other employees similarly testified that union representatives spoke to them at the entrance to the Jericho facility, and that they signed cards in behalf of the Union.

Cafaro stated that in April, Respondent held a meeting attended by all its dispatchers. Present were Company Officials Ronald Baumann, Richard Baumann III, Lynch, and Respondent's labor consultants Murray Portnoy and Kathleen Walsh.[4]

At the meeting, Portnoy told the dispatchers that the Union sought to organize the employees, and that it was their ''responsibility'' to keep the drivers together as a ''family.'' He directed them to go out and listen to the drivers' complaints and perhaps the Company could ''overcome'' their complaints so they would ''stay'' with the employer. He further told them to: (a) identify five drivers who they believed were ''strictly company people''; (b) ask them what they wanted, and inquire of them to ask the drivers they associated with, what kinds of benefits they ''really'' wanted, including what they believed the Union would obtain for them; and (c) bring the five drivers with them to the next meeting, and the Company would ''go over them and see what they can do about them.''

Portnoy also told them to go into the yards, speak to the drivers, and see what their views were about the Union, including who was in favor of the Union and who opposed it.

Following the meeting, Cafaro selected five drivers, asked them to learn what benefits other drivers wanted, and attend the next company meeting the following month, at which time they could discuss their suggestions, which might include hospitalization, sick pay, and vacation pay.

On May 19, Local 868 filed a petition for representation in Case 29–RC–8162, in which it sought to represent the Respondent's drivers and drivers' assistants. Local 144, Service Employees International Union, AFL–CIO (Local 144) filed a petition in Case 29–RC–8167.

Cafaro brought her 5 drivers to a company meeting in May, which was attended by about 50 people, including the dispatchers and the drivers they selected. The same persons were present in behalf of Respondent.

Baumann began the discussion by asking Cafaro what she believed the drivers most desired. She replied ''hospitalization.'' He then asked the others present the same question. Nearly all the drivers mentioned what benefits they were interested in, many of whom said they wanted a hospitalization plan with less expensive contributions by the employees. Baumann said that the Company would review all of the requests, and that it would ''try to do something about hospitalization and things like that.'' Baumann also mentioned that the employer was searching for a better, less expensive hospitalization plan from various companies. Baumann said that at the next meeting he would give the drivers the results of that search.

Portnoy told those assembled that Respondent wanted to keep its operation ''together, as a family,'' and that the employees did not need a union, adding that the Company would attempt to resolve ''all these problems for the drivers.'' He warned that if the Union got in, Respondent would ''close down.''

Cafaro did not attend the June meeting, but her coworkers told her what occurred. Shortly after that meeting, Portnoy asked her to speak to the drivers and ''see what they are saying.'' She replied that she was asking questions of the drivers, but they refused to speak to her. Portnoy answered that other dispatchers were having the same experience, adding that she should keep trying and asking, and that ''eventually, maybe somebody will say something.''

At about this time, Respondent enlisted the aid of Garth Campbell, its dispatcher in Jericho. He first became aware of the Union's campaign in June, when Jericho driver Rupert McIntosh, who was present with employees David Benijian, Gilbert O'Connor, George Ward, and Lorenzo Ward, told him that the Union and Local 144 were trying to organize the employees.

That evening, Campbell was called into Vice President Lynch's office, in which Terminal Manager Schneider was present. Lynch asked Campbell if he was aware of the Union's campaign. Campbell said he was. Lynch asked him how he learned about it, and Campbell mentioned the names of the five employees. Lynch asked Campbell whether he was in favor of the union campaign, and Campbell replied that he was neutral.

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[1] Ronald Baumann will be referred to hereafter as Baumann.

[2] The drivers' assistants were also referred to as matrons.

[3] All references to dates and months are in 1993, unless otherwise stated.

[4] Respondent denied that Portnoy or Walsh are its agents. They are associated with the firm of Portnoy, Messinger, Pearl & Associates, which represented Respondent in the investigation and hearing of this case, and in the related representation case. I find that Portnoy and Walsh are agents of Respondent. When they spoke at meetings, Respondent's high officials, who were present, did not contradict them; they met with Respondent's dispatchers at will on and off company property. *Allegany Aggregates*, 311 NLRB 1165 (1993).

Lynch then told Campbell that they had to do some ''ground work'' in order to ''head this thing off before it gets blown out of proportion more or less.'' Lynch told him that he could help by mingling with the drivers and obtaining information from them. He instructed Campbell to try to ''find out definitely what's happening and who is involved in this thing,'' and to keep him informed of any information he acquired. Lynch specifically told Campbell that he wanted him to find out from his friends what was happening. Campbell then asked his friends certain questions concerning the Union.

Shortly thereafter, Campbell was summoned to Lynch's office. Present were Lynch, Richard Baumann III, Maureen McCabe Kours, Respondent's director of human resources, Schneider, Walsh, and dispatcher Denise. Lynch told Campbell that he learned that the Union was seeking to organize the employees. Lynch showed Campbell a letter which stated that the dispatchers and office staff believed that the Company should be given an opportunity to address the employees' problems, and that if the Union was successful, the employer would close its operation.

Lynch told Campbell that he should sign the letter as a ''good career move'' in order to ''head off'' the campaign, adding that if the Union organized the Jericho employees, Respondent would close the Jericho terminal, because it was the newest of its facilities, and the Company was able to operate successfully without it. Lynch added that if Campbell did not sign the letter, there would be no jobs. Campbell signed the letter. Copies were made and it was brought to the garage so that the drivers and drivers' assistants could take a copy.

Campbell further stated that in late June or early July, Lynch asked him to attend a meeting at which Portnoy would advise the Company as to what action it should take, adding that the employer would not make any promises during the campaign.

Present at the meeting were Baumann, Lynch, McCabe Kours, Portnoy, and Walsh. Portnoy asked Campbell for his position on the union drive. Campbell replied that he was for management. Portnoy announced that he must learn three things by Friday: (a) whether Local 868 or Local 144 was trying to organize the employees; (b) who the ''key players'' were; and (c) the nature of the employees' grievances. Lynch asked Campbell to reply to Portnoy's question about the key players, and Campbell identified McIntosh and O'Connor. Portnoy answered that he had been hearing a lot about O'Connor, and asked to see his file, which Lynch presented to him. Portnoy then said that he wanted to do a ''Social Security check'' on O'Connor. Portnoy then said to ''document'' everything those employees did.

Campbell first testified that, at this meeting, Portnoy directed him to ''remove'' union organizers who were assembled at the gate to its facility. Campbell later testified, however, that Portnoy requested that he ask them to leave the premises if they were, in fact, on Respondent's property. Campbell then went to the area, determined that the Union's agents were not on the premises, and reported this to Portnoy. I credit his later testimony as it contained more details, and described the actions he took in this regard.

That day, Campbell was given a union card by McIntosh, which Campbell put, unsigned, in his pocket.

Campbell further testified that later that day, Lynch called him into his office, at which Baumann, Schneider, McCabe Kours, and Walsh were present. Lynch told him that he observed many drivers speaking to union agents across the street. Lynch told Campbell that they had to try to stop the organizing effort because ''if the union gets in here [Lynch has] seen a lot of companies . . . destroyed.''[5] Lynch asked Campbell to attend a union meeting which he heard would take place that evening at the home of a driver. Lynch asked him to obtain and give him any communication he was able to get, including leaflets and buttons. Lynch then asked Campbell for the union card he was given earlier that day. Campbell gave it to him.

Campbell testified that following the meeting with Portnoy, Lynch told him that he should begin ''moving around'' when he had the time to do so and obtaining information from employees concerning the support the Union had among the workers, and who was in favor of union representation. Campbell thereafter spoke to employees in the garage, asking them questions as to the progress of the Union's campaign and the employees' thoughts on the matter. He stated that in July, he asked about 100 employees whether they supported the Union, and reported to Lynch the names of those who wanted and those who did not want the Union. Employee Pedro Pozo testified that whenever he spoke to a union agent with other workers, Campbell was ''running back and forth'' within the group.

Campbell further testified that in June and July, he was away from his desk quite often obtaining information concerning the Union, such as which employees supported it, where union meetings were scheduled to be held, and removing union agents from the Respondent's premises at the gate. During those months, he spent about 45 minutes of every 2 hours in the garage speaking to employees regarding the Union. He spoke to drivers when they were in the facility in between their runs.

Campbell stated that, thereafter, he obtained flyers and other information from his friend, McIntosh. On one occasion in mid-June, shortly after McIntosh gave some literature to Campbell in the office, Lynch asked Campbell for the literature he had received. Campbell gave him the documents. Later, Walsh asked Campbell to bring any union literature to her. Campbell noted that McIntosh spoke to him voluntarily about the Union because they were members of the same fraternal lodge, but other employees spoke to him about the Union because he acted sympathetic and concerned, inquiring ''what's going on,'' ''are you guys getting anywhere?'' Campbell was also more direct, asking them whether they were having a union meeting shortly. They gave him information as to upcoming meetings, who supported the Union, and where meetings would take place. He did not threaten to discharge them if they did not talk to him concerning the Union.

Thereafter, Lynch and Walsh asked Campbell whether he believed that dispatchers Audrey and Denise supported the Union. Campbell reported that Denise was ''neutral.'' Walsh replied that she suspected Denise of taking Respondent's confidential information and giving it to a driver.

[5] On another occasion in July, Lynch told Campbell that if the Union won the election, Respondent would close the Jericho facility, and no one would have a job.

Lynch and Portnoy also asked Campbell to make a count of the number of employees he believed would vote for and against the Union. Campbell did so. Cafaro stated that prior to the election, Walsh and Maureen gave her cards containing drivers' names and asked her to tell them who she believed supported the Union. Cafaro did so.

Lynch gave Campbell a box of ''vote no'' buttons, telling him to distribute them, and that all the office employees should wear them. Campbell gave one to Denise, who pinned it on. Audrey put hers in a drawer. The buttons were placed at the front of the office near the entry door. When drivers entered, Campbell told them to take a button. He stated that after his first few requests, drivers laughed at him, apparently refusing to take a button. He stated that he never insisted that anyone wear a button. One day, Campbell gave driver Pedro Pozo a button. He threw it across the room into the garbage can, and removed one from Denise's blouse, and threw it into the garbage.

On July 1, 1993, the Regional Office issued a Decision and Direction of Election, in which an election was directed in a unit of drivers and drivers' assistants at Respondent's Bohemia, Northport, Westbury/Jericho, and Westhampton locations.

Campbell testified that in July, Walsh, whose office was near the Jericho facility, called him and told him that she needed a ride to a railroad station, and also wanted to speak with him in private. During their meeting, Walsh asked him if he heard anything new recently. Campbell said that he did not. Walsh said that she heard that a union meeting would be held shortly. She asked him to find out the meeting's location, and the lawful capacity of the meeting place. She asked him to report this information, including the date of the meeting, to her. Walsh gave him her business card and told him to call her with that information, and if he heard anything concerning the Union. She also told Campbell to monitor the activities of the five drivers, set forth above. Thereafter, Campbell learned the location of the meeting, but could not find out the legal capacity thereof. He reported that information to Walsh. Lynch testified that he knew that Campbell and Walsh had met for the purpose of giving her information.

1. The alleged increased discipline of employees

In early July, following the setting of the election date, Lynch told Campbell to ''step up our pressure on the workers.'' Lynch told him that if Benijian, McIntosh, or O'Connor ''step out of line or spit'' they should be written up, and denied their midday runs, adding that if they were written up they would be fired. Campbell stated that he ignored Lynch's instruction to deny midday runs to the drivers, and added that he did not fire anyone or recommend the discharge of any worker following Lynch's orders. Further, Campbell did not know of any worker who was discharged because of this increase in pressure.

Campbell stated that in July, Maureen Oulette, Respondent's assistant human resources coordinator, told him that they had to work harder to try to put a stop to the campaign, and asked him to begin documenting, in writing, workers' violations of company rules, such as being out of uniform, and to ''start putting some pressure on these people.'' In this connection, she said that such documentation was necessary because the employer wanted to discharge workers and replace them with new hires, adding that Respondent had been advertising for drivers and drivers' assistants for the Jericho facility. Campbell later testified, however, that such hiring would be effected if the workers' struck. Campbell did not know whether any employee was hired pursuant to the advertising campaign. However, he did quote Oulette as saying that Respondent ''wanted to get rid of people in Jericho because they were actively involved in the campaigning.''

In this connection, Campbell testified that Lynch told him that he had seen employees Frances Barker, Kim Birdsong, Val Mead, McIntosh, and O'Connor exchanging union literature in a bus which was parked in front of Lynch's office window. He told Campbell to watch Birdsong closely, adding that she was supposed to have a union meeting at her house, and Lynch wanted him to attend the meeting or have someone else attend. Lynch and Schneider told Campbell to document each instance that Birdsong was absent, and he did. Campbell was told by Respondent's human resource department that he should begin issuing violations for drivers being out of uniform, and Campbell stated that he warned Birdsong for being out of uniform.

Campbell testified, however, that this emphasis on documentation was instituted when Respondent experienced too much absenteeism, and Hudson General levied monetary penalties against Respondent for drivers' lateness. Campbell conceded that absenteeism is a major concern to a bus company which transports students. Further, Campbell stated that Respondent had documented employee infractions of its policies before the start of the union campaign, but added that such documentation increased during the Union's drive. Campbell explained that employees had not been cited for violations which were considered minor prior to the Union's advent, but the same activities were written up during the campaign. An example given was where a driver took a bus to have coffee. Such activity was ignored prior to the Union's campaign, but during the organizing, Campbell was asked if the driver had permission to do so. Campbell noted that the reason for the inquiry was that Hudson General was monitoring the gasoline consumed by Respondent's vehicles. He conceded, however, that it was possible that more violations of company rules were occurring at that time which necessitated the increased number of disciplinary notices.

Campbell stated that following his meeting with Oulette, he began documenting employee violations of company rules at the instruction of Lynch, Schneider, and Walsh, who told him the names of who to write up, such as Benijian and McIntosh. He was also asked to keep an eye on Pozo for destroying the ''vote no'' button, and on the others who indicated an interest in the Union.

2. Further instructions to the dispatchers

Sometime in July, Lynch asked Campbell to obtain information about an upcoming union meeting on a Friday, and suggested that he ask one of his carpool companions, Charles Nixon, a drivers' assistant, to tape record the meeting. Campbell asked him to record the meeting, and he agreed. Lynch warned Campbell that he should not drive Nixon to the meeting, because he did not want Campbell to be seen with Nixon.

Nixon changed his mind and decided, on short notice, not to undertake this assignment, and did not attend the meeting. That weekend, Lynch asked Campbell for the tapes, and

Campbell told him that Nixon refused the mission. Lynch replied that Campbell should have ''padded'' Nixon to persuade him to make the recording. Campbell stated that he understood ''padding'' to mean add extra time to his card. Campbell told Lynch that he would not do that. Lynch denied having any conversation with Campbell regarding padding an employee's hours of work.

In July, a meeting was held at a restaurant. Present were Portnoy, Walsh, Baumann, Gilman, Lynch, Schneider, and all the dispatchers. Portnoy told those present that he would not allow a union to organize Respondent, particularly the Jericho facility, which was the newest location, and that if necessary, he would recommend that Jericho be closed, as an alternative to union representation.

Portnoy then requested that each dispatcher speak to about 50 employees, and assure them that the Company was developing a benefit package which would address their needs, and that they should have Gilman speak to them as a group. Portnoy warned that if this was not done, they should look for a job since he would advise Baumann to close the Jericho facility. Portnoy then asked those present about their feelings concerning the Union, whether they believed the employees have legitimate complaints, and what course of action the employer should take.

Portnoy asked Campbell for his opinion about the union campaign, and asked him how he would help Respondent try to ''stop the Union.'' Campbell answered that he would do what he could.

Gilman closed the meeting by telling those present that she was in the process of developing a benefits package which would address the employees' needs, and which she hoped to present prior to the election.

Several meetings were held shortly before the election. Campbell attended a meeting with about 50 drivers and drivers' assistants. Gilman told those assembled that she was implementing a new benefits package. She asked them to trust her and give her a chance.

Another regular staff meeting was held at which Portnoy, Gilman, Lynch, the dispatchers, and about 50 employees were present. Orlando Pozo, the brother of Pedro, asked Gilman why the money she was paying Portnoy could not be better spent by infusing the Company with such funds. Gilman replied that she would have preferred to have used the money for the Company, but that she was not familiar with labor law and needed guidance in this area. Orlando[6] then asked Portnoy why so many ''inflammatory'' booklets were issued against the Union. Portnoy did not respond. Pozo then said that he would ask that question three times, and if there was no answer, everyone should leave. Orlando then asked the question three times, no response was given and the employees left.

Pozo testified that at that meeting, he asked Gilman questions about vacations, raises, and what health plan she was offering the employees. Gilman replied that she could not say anything about the matter because the Company was in ''litigation'' with the Union, and only the Company's attorney could speak about it. According to Pedro, Orlando asked what the Company was offering that they could not obtain from the Union, such as raises, health benefits, and vacations. No response was made and the company representatives made no offers. After asking those questions three times, and receiving no response, the employees left.

Cafaro testified that a few days before the election a meeting was held in a restaurant at which all the dispatchers were present, but no drivers or drivers' assistants. They were given a paper which represented a ''package'' developed by Gilman. The package stated that drivers would be receiving more vacation benefits, a better and less expensive hospitalization plan, and pay for time taken when the employee was sick.

At the meeting, Portnoy asked the dispatchers to show the package to the drivers, discuss it with them, and see what they thought about it. He said that if each of them could get one driver to change his vote from the Union to Respondent, the Company ''would be ahead.''

The following day, Cafaro spoke to about 50 drivers about the package as they were leaving the premises in their buses. Cafaro first asked the driver if he was voting for the Union, and described the package to all the drivers she spoke to. She told them if they wanted to give Gilman a ''chance'' they should not vote for the Union, but that it could take 6 months to get the package ''together,'' but it was ''on its way.''

On July 30, the election was held off the premises of Respondent. Employees were driven by company bus to the election site. On the day of the election Portnoy asked Campbell to ride in a bus and campaign against the Union, and count how many Jericho employees were at the election. Campbell replied that he did not want to do that. Portnoy responded that it would be ''advisable and a good career move for you to go on the bus.'' Campbell asked him to check with Lynch, and Portnoy said that he already had. Campbell rode on the bus with about 40 potential voters, but did not campaign thereon or take a count of employees at the voting site. Those riding with him asked him what he was doing there, told him that he was part of management, and asked him to get off the bus.

The Union won the election. Respondent filed objections to the election, and on October 8, the Regional Director sustained one objection, set aside the election, and directed that a second election be conducted. Thereafter, the Union and another petitioner filed a request for review which was granted by the Board on March 2, 1994. The Board remanded the case for a hearing on the objection. On June 1, 1994, the hearing officer, following a hearing, issued a report in which she recommended that the objection be overruled, and that the Union be certified. The Employer has filed exceptions to the hearing officer's report.

C. *The Alleged Supervisory Status of Theresa Cafaro and Garth Campbell*

1. Facts

The complaint alleges that Cafaro and Campbell are employees who were unlawfully discharged on August 17 and September 30, respectively. The complaint further alleges that they were agents and conduits of Respondent, acting on its behalf. Respondent denied that allegation, and asserts that they are statutory supervisors.

Cafaro and Campbell were employed as dispatchers at different terminals. Each worked at a desk in an office. Their duties were essentially the same. Basically, the drivers and

[6] All references hereafter to Pozo are to Pedro Pozo.

matrons had the same bus runs each day, which they picked, pursuant to seniority, at the start of the school year.

In the evening, the dispatchers prepared a sheet with drivers' names and routes. On that sheet they listed the ''open'' routes, those which needed to be covered because the drivers or drivers' assistants had informed them that they would not be at work the next day. They also listed employees to ''watch'' because they had not been at work the previous day.

2. *Theresa Cafaro*

Theresa Cafaro was a long-term employee. She began work for Respondent in 1978, starting as a driver. She was a dispatcher at Smithtown, where she was in charge of the entire operation, including hiring and firing, and then went to Bohemia, where she dispatched schoolbuses. At the Bohemia terminal, Cafaro worked with dispatchers Barbara Lawrence, who dispatched vans, and Irene Miller. Cafaro, who said her title was head dispatcher, trained Lawrence, and ''oversaw'' the dispatch of vans. Terminal Manager Richard Baumann III had an office in that terminal, but he was primarily involved with supervising the mechanics in the garage, and, according to Cafaro, everything but the mechanics and their work was left to the dispatcher's discretion.

Cafaro dispatched the regular school runs, which basically were handled by the same drivers on their regular, assigned routes, and she also assigned drivers to charter coach runs.

Cafaro did not suspend or discharge anyone, nor recommend the hire or fire of any employee at Bohemia. However, she asked that certain relatives be hired, but did not recommend that they be hired. Regarding lesser forms of discipline, Cafaro issued written disciplinary warnings to drivers and drivers' assistants without asking for permission from her superiors. She exercised her discretion in not writing them up ''for every little thing.'' If a driver had not called or appeared after 3 days, Cafaro wrote a disciplinary report, reassigned his run, and sent the driver to the office. If the driver returned before a report was written, she gave him back his run if it had not yet been reassigned. If the driver returned on the fourth day, she returned his run, at her discretion. Cafaro did not consult with anyone concerning the issuance of a disciplinary warning. Occasionally she asked Richard Baumann III for advice concerning a driver, and he told her to do what she wanted. In addition, she wrote disciplinary reports for other forms of misconduct, such as drivers' use of inappropriate language to dispatchers, and on the vehicle's two-way radio.

Following her writing such a disciplinary report, a copy was put in the employee's file. When Cafaro issued a third reprimand, she sent the employee and the report to the office, which decided on suspensions of drivers. Cafaro would later be notified that the driver was suspended.

Cafaro also utilized less formal means of disciplining the employees. She occasionally spoke to them in an effort to have them stop using loud, abusive language, and in one instance, asked a driver to improve his personal hygiene.

Cafaro interviewed drivers for hire, assembled their application papers, and sent them to the office, which decided on the hire of the applicant. She made no recommendations concerning the hire of the interviewees.

Cafaro verified the time the drivers put on their timecards as the time they actually worked, and signed the cards. In other words, she counted the hours the drivers worked, totaled it, and sent the papers to the payroll department. She had no authority to change the time on a card, even if she found that an incorrect entry was made. She performed this work for all the employees, even those who drove the vans, although she did not dispatch the vans. However, she had no authority to permit employees to leave work early or arrive late.

In this connection, Baumann testified that Cafaro decided, with the school district, how much time a run should consume, and then computed when the driver had to be at the terminal, and then at his first stop. The driver was then paid based on that estimate. Cafaro stated that if a driver complained that he needed 5 minutes more time for his run than the time allotted, Cafaro checked the matter, and if true, she permitted the driver the extra time. Cafaro also changed a run if children were added or deleted, or if a problem developed with the driver or passengers. This change in runs caused drivers to get more or less pay. She also approved the payment of drivers who completed ''dry runs,'' in which the driver practiced his run prior to the start of the school year.

Cafaro and the other dispatchers had the keys to the premises. They stayed late, until the last bus was accounted for.

Regarding time off, on days when the weather forced the closing of schools, drivers called Cafaro and asked if they had to report. She told them that they did not.

Cafaro received cash from drivers which they obtained from trips they ran. She sent the money to the office. Another dispatcher was in charge of petty cash.

Prior to the start of each school year, Cafaro assembled the bus runs, based on the addresses of the students. During the school year she made such changes in the makeup of the buses as necessary. She sent reports of the numbers of buses and drivers used, and passengers serviced, to Baumann. Occasionally, Baumann questioned her routing, and asked her to change certain aspects of the assignments.

Lynch testified that, as Cafaro's immediate supervisor, he knew that she recommended the hire and fire of employees, imposed discipline, and approved requests for time off for vacations, and leaves of absence. In April 1989, Cafaro approved, as ''supervisor,'' Lawrence's summer vacation request. The request form was also approved by the personnel manager. At one time, Lawrence requested the same vacation as Cafaro. Cafaro refused to approve it, and called Baumann, who agreed that Cafaro had the first choice of vacation time because of her seniority.

Baumann testified that Cafaro was the head dispatcher in Bohemia, with more seniority and a higher salary than anyone in her office.

Baumann testified that prior to his announcing wage and benefits packages, he asked for input from Cafaro, and she gave him certain ideas, such as the ''3 for 5'' policy, whereby employees who work 3 days in a 5-day week during which school is closed, are paid for the entire week. Such a policy was implemented by Respondent.

Baumann stated that when a worker left Respondent's employ, Cafaro completed a termination report in which she would indicate whether the employee should be rehired. Baumann testified that if the recommendation was not to rehire an employee he would not, based on that recommendation, and he did no independent investigation into the matter.

Driver Neri Van Syckle testified that she followed the dispatcher's instructions when given. She stated that she asked Cafaro for time off, for permission to leave early from work, or for part of a day off, and that Cafaro did not deny her such time off if another driver was available to cover her run.

3. Garth Campbell

Garth Campbell worked with another dispatcher at the Jericho terminal. They both dispatched 300 to 400 drivers each day. Also present at that terminal were Company Officials Richard Baumann Jr. and Lynch, Terminal Manager Schneider, and Safety Director Billy Erickson. Campbell stated that Schneider was in the office as often as his other responsibilities, including supervision of the maintenance of the vehicles, would permit. Indeed, Schneider testified that he was in the dispatch office a good part of the morning each day as drivers arrived to begin their assignments. Schneider removed drivers from routes, replaced them with other drivers, and also hired and fired employees. Schneider oversees all dispatchers and the daily operations, and is responsible for all drivers and assistants at the terminal.

Schneider testified that he hired Campbell as a dispatcher/manager to assign the runs and vehicles, and ''run the operation,'' overseeing 450 employees and 196 vehicles. His responsibilities included ensuring that all the routes left the terminal on time. Regarding discipline, Schneider told Campbell not to take any ''crap'' from anyone, and that he should write up anyone who violated company rules, and discipline them in accordance with such policy.

Lynch testified that he hired Campbell to dispatch, supervise, and discipline the drivers and their assistants. He also was given the authority to approve their time off, and to permit them time off to attend to personal business. Lynch could not cite any specific examples of his having granted such time off. Lynch further stated that Campbell had the authority to and did discipline employees, and did not need Schneider's permission to do so.

The dispatchers checked in the drivers as they arrived in the morning to take their vehicles. If a driver was late or absent, Campbell notified Schneider, and then listed the route as being available, and assigned a ''floater'' or standby driver to take the route. He selected a replacement from a list of drivers prepared by Schneider, and he had to check with Schneider, who sat opposite him in the office, when he needed to assign a replacement driver. If a driver was late, and his bus had been reassigned, the dispatcher could assign him to another run, or Schneider would decide that the driver should wait to see if another run became available.

Replacement or ''shape'' drivers generally waited at the office for an assignment. After all the runs were filled, Campbell told Schneider how many drivers were waiting, and Schneider directed him to have them wait, or ask one or two to perform routine messenger duties, and then dismiss the rest. In the afternoon, if Schneider was unavailable, Campbell dismissed the waiting replacement drivers himself after seeing that all the routes were covered. Cafaro stated that she asked drivers to wait 1-1/2 hours in the morning in case they were needed, for which they received standby pay.

Campbell's pretrial affidavit stated that if a driver was absent for 1 or more days, he assigned another driver to the route. At hearing, however, Campbell altered that to state that he assigned a route to a driver only after consulting with Schneider. Regarding a driver's return to work after an absence, his testimony, consistent with his affidavit, was that he asked Schneider for instructions, and Schneider would decide whether to return the regular route to the driver, or assign him a different run.

Campbell kept in close communication with Hudson General, which administered the schoolbus contract. Parents called Hudson General with complaints including late arriving buses, and instructions, for example, that a student should not be picked up. A Hudson General representative would then call or fax the dispatcher for information. Campbell would then call the driver on the vehicle's radio, and then reply to Hudson General, or call the parent.

Drivers are required to ''check in'' with the dispatcher. This ensures that the dispatcher knows that the driver has arrived, permits the dispatcher to relay current instructions, such as not to pick up a particular child, and also permits the dispatcher to have a ''face to face'' look at the driver in order to determine whether he appears fit to drive. There was no instance where Campbell found a driver to be so unfit.

Regarding the discipline of employees, 15 disciplinary notices were received in evidence, dated from April 20 through August 11, all of which were signed by Campbell as supervisor. The infractions included lateness, failure to wear a proper uniform, and failure to perform DOT checks on the vehicle. He also wrote notices for drivers engaged in the following: cursing on the vehicle radio; being loud and insulting to the payroll clerk; not in uniform after receiving three verbal warnings; and to drivers who were late on 3 or 4 consecutive days. Disciplinary notices led to suspension and discharge.

Campbell stated flatly that he never wrote a disciplinary notice to an employee without being directed to do so by various company officials who learned of the incidents by being informed by Campbell or other dispatchers. He further stated that when a company official was not a witness to an incident that he issued a written warning for, such as an improper uniform, Schneider or Lynch would check the facts which led to the issuance of the warning.

In contrast, Schneider denied instructing Campbell to write a disciplinary notice for any worker. He conceded, however, that he may have given Campbell ''guidance'' in telling him what discipline should be given, according to company policy. However, according to Schneider, the writing up of the employee and the decision to do so rested solely with Campbell, as the supervisor and the person ''in charge'' of the drivers and assistants. Schneider conceded that Campbell came to him for advice, told him the facts of the alleged violation, and Schneider then told him to write up the employee. Schneider further admitted that Campbell asked him ''numerous times'' how to write an incident report, and what action he should take concerning an incident, and Schneider advised him.

As to a driver who cursed on the vehicle radio, and also cursed Schneider in Campbell's presence, Campbell stated that he was asked for his opinion regarding the discipline of that employee, but he gave no recommendation. Schneider suspended the worker for 3 days.

Campbell stated that employee Nahim Burden called Campbell and asked that his run not be sent until he arrived.

He was then 10 minutes late. Campbell decided to assign another driver. Burden arrived and cursed Campbell for giving his route to someone else. The safety director made a written report and directed Campbell to issue a disciplinary report to Burden. Schneider testified that Campbell wrote the report, and that Campbell fired Burden. Two written disciplinary notices received in evidence are signed by Campbell only. One, a first notice issued in May, stated that his conduct was very nasty and loud, and that he failed to wear his uniform. The notice further stated that ''this has been the second time he has been told to wear his uniform and refused to do so.'' The second involved Burden's failure to report on time, as set forth above.

In addition, Campbell gave several written warnings to Daniel Mondesir for being out of uniform, and a warning to Judmice Smalls for the same reason. Schneider testified that Campbell suspended Mondesir for violations which included failure to wear his uniform, lateness, and failure to return his keys. He also gave a written warning to Elaine Peterson. Schneider told him to give her a warning because she parked her bus in the wrong place and garbage was strewn inside it. In that instance, he told Schneider about the matter and brought Schneider to the bus to view its condition. Schneider denied seeing the bus.

Campbell testified that when an employee cursed him and clerical employee Lorna, Campbell told the worker that she was fired and ordered her to leave the premises. The employee protested, and Schneider was called. Schneider told Campbell that he did not have the authority to discharge the employee.

As set forth above, Lynch told Campbell that he saw Kim Birdsong in her bus, which was parked in front of Lynch's window, distributing union literature with employees Frances Barker, Val Mead, McIntosh, and O'Connor. Lynch and Schneider told Campbell that he should document every instance of Birdsong's absence. He did so, and also issued warnings to her for being out of uniform. Upon Schneider's instruction to issue warnings to Birdsong for being late, he did so.

Campbell further testified, as set forth above, that he was told that Pozo should be written up whenever he had an opportunity to do so. Campbell stated that he did not write up Pozo for throwing the ''vote no'' button into the garbage or for taking the button from Denise's blouse because Campbell did not consider those actions to be violations of company policy. Respondent argues that this demonstrates that he used independent judgment in deciding not to issue a disciplinary notice to Pozo.

The switchboard operator is responsible to ensure that the drivers submit the ''Daily Vehicle Check'' and ''Defect Reports'' to her. If they do not, the operator tells Campbell. Campbell investigates by searching the slips to see if the particular document was submitted. If it was not, he asks the driver why it has not been submitted. Ordinarily, the driver has the slips in the bus, and he then submits them. If not, Campbell sends the driver to Schneider for appropriate action. Campbell never wrote a warning letter to a driver for not having submitted those records.

Campbell testified that he did not review or sign the drivers' timecards. However, the card of Richard Greene, dated August 2, bears Campbell's initials. Further, Lynch testified that Campbell checked the validity of the times entered on the cards in order to ensure that the employee actually worked the times set forth. He then approved the cards. Campbell stated that other office employees were responsible for calculating their hours and pay, and he never authorized anyone to work overtime.

Schneider testified that Campbell recommended two nephews for hire. Schneider accepted his recommendation without investigating further. However, the two relatives met all the requirements for hire, and were hired. Schneider conceded that many employees are hired on the recommendation of current employees.

Campbell first testified that he possessed a coded supervisor's key which he used to pump gasoline for the vehicles. Later he testified that he did not have such a key, but that when he needed the key he obtained one from Schneider.

The dispatchers, who are salaried and do not receive overtime pay, are paid from the Brookset payroll, in which the company officials, mechanics, and office staff are also paid. The dispatchers also received a fully paid medical plan which included major medical benefits. In contrast, the drivers and drivers' assistants, who are paid from a different payroll, earn an hourly wage, with overtime. They had an HMO plan to which they had to make contributions.

Campbell attended monthly staff meetings, at which Schneider, Walsh, the human resources directors, the safety director, and senior drivers were present. They discussed the Company's baseball team, uniforms for employees, a health benefits package, and everyday operations of the employer. At one meeting, they discussed the necessity of having two different radio communications systems. Neither business conditions, driver qualifications, nor safety was discussed at the meetings. Cafaro stated that company policies were discussed at such meetings.

D. *Analysis*

Section 2(11) of the Act defines a supervisor as one who has authority to perform certain acts, including the responsible direction of employees, the assignment of work, and the discipline of employees, or effectively to recommend such action, if the exercise of such authority requires the use of independent judgment.

The burden of establishing that an employee is a supervisor rests with the party, here Respondent, which asserts the supervisory status of the employee. *Express Messenger Systems*, 301 NLRB 651, 654 (1991).

The evidence is clear that Cafaro is a supervisor. By her own testimony, she exercised discretion over all matters relating to her responsibilities as dispatcher. She issued written disciplinary notices without consultation with her supervisors, and such notices led to discipline, including suspensions. Although the suspensions were handled by her superiors, her actions in issuing the notices caused the suspensions of workers.

Cafaro exercised her discretion in not writing up offenses which she could have. She decided whether to return a driver to his original route if he had not called or appeared for 3 or 4 days, rather than assign it to another driver. She also orally reprimanded employees for using foul language, and having poor personal habits.

Cafaro's issuance of discipline to employees warrants a finding that she is a supervisor. *Vanguard Tours*, 300 NLRB

250, 261 (1990); *Pacemaker Driver Service*, 269 NLRB 971, 976 (1984).

Cafaro reassigned drivers as needed, if there was a change in passenger loads or if a problem arose with the children or a driver. *Hillside Bus Corp.*, 262 NLRB 1254, 1270 (1982).

Cafaro had the ability to affect drivers' pay by investigating, and if warranted, agreeing that a driver be paid more time, if he needed more time to complete his route. *Vanguard Tours*, supra.

She approved vacation requests for other dispatchers, and disapproved one where it conflicted with her own.

Baumann accepted her opinion in determining whether to rehire a terminated employee, and as to company policies.

Drivers apparently regarded her as a supervisor, in that one testified that she followed the dispatcher's instructions, and asked for, and received permission to leave work early.

I accordingly find and conclude that Cafaro is a supervisor within the meaning of Section 2(11) of the Act.

The evidence is less clear regarding Campbell. Although Campbell testified that he worked in close coordination with Schneider, that alone is not sufficient to warrant a finding that he is not a supervisor. *Polynesian Hospitality Tours*, 297 NLRB 228, 239 (1989).

It is clear that Campbell assigned drivers to routes which were open, and that he issued disciplinary notices to employees. I have analyzed the conflicting testimony of Campbell and Schneider concerning the issuance of disciplinary notices as follows: Upon Campbell's becoming aware of a violation of the Company's rules, he informed Schneider of the infraction, and his decision to write up the employee. Schneider then advised him of the proper language to be used in the report.

I find it hard to believe, as testified by Campbell, that on being asked by Schneider his opinion regarding an employee who cursed on the vehicle radio and at Schneider in his presence, Campbell gave no recommendation.

The fact that all the disciplinary notices were written in Campbell's hand and signed by him, and no notice was offered in evidence which was allegedly written by the safety director and not by Campbell, despite the fact that Campbell denied writing such a report, leads me to believe that Campbell exercised his authority in writing disciplinary notices on his own.

I am aware that the only instance in which Campbell's attempt to discharge an employee was met with Schneider's telling him that he did not have that authority, but nevertheless, the evidence, particularly the written disciplinary notices signed by Campbell as ''supervisor'' lead to the conclusion that he exercised the authority, on his own, to discipline employees for infractions of company rules. He may have asked Schneider for guidance in what to write, and even whether a particular incident warranted a disciplinary notice, but it appears that the decision to issue a notice was Campbell's, based on his becoming aware of the violation. He exercised discretion in determining that Pozo should not be disciplined for removing a ''vote no'' from a dispatcher's blouse, or for throwing the button across the room since, as he stated, those were not violations of company policy.

Campbell also handles problems with parents and Hudson General. *Hillside Bus*, supra. Employees regarded Campbell as a supervisor, telling him on the election bus to get off since he was management.

In *Superior Bakery*, 294 NLRB 256, 262 (1989), the Board found that an employee was a supervisor where, in part, he was told to issue warnings by a higher supervisor, and where all warnings had to be countersigned by admitted supervisors.

The dispatchers' different rate of pay, salaried with no overtime rather than hourly paid, and the fact that they receive a paid, extensive medical plan, are further indicia of their supervisory status. *Superior Bakery*, supra.

Based on the above, I find that Campbell is a supervisor within the meaning of Section 2(11) of the Act.

E. *The Discharges*

1. Cafaro and Campbell

Inasmuch as I have found that Cafaro and Campbell are statutory supervisors, their discharges are not protected by the Act. The General Counsel argues however, that even assuming that they are supervisors, they were unlawfully discharged because Respondent believed that they would no longer commit unfair labor practices. *Parker-Robb Chevrolet*, 262 NLRB 402, 404 (1982). There is no evidence to support such a finding on the part of Cafaro.

As to Campbell, as set forth infra, in July he complained to Schneider and Lynch that he did not like being used, and played as a ''patsie'' and did not want to be ''involved'' any more. Indeed, thereafter, he did not question employees about their union support, did not report on employees' union activities, and did not provide Lynch with union literature. Nevertheless, thereafter, he told Portnoy at a meeting with high company officials that he would do what he could to thwart the Union's campaign, and later agreed to ride on the election bus and campaign against the Union. Accordingly, although Campbell may have had misgivings about continuing his antiunion efforts, he told company officials that he would do what he could, and acquiesced in following company orders in that regard. Accordingly, I cannot find that Campbell was discharged because he refused to commit unfair labor practices.

In the event that it is ultimately found that Cafaro and Campbell are not supervisors, I have included a discussion of the merits of their discharges.

2. Cafaro

Cafaro's activities undertaken at the behest of Respondent, are set forth above. However, Cafaro also testified concerning her support of the Union. She stated that she never discussed the Union with the other dispatchers, and in fact never told anyone that she supported the Union. Nevertheless, she stated that in July, she told driver Neri Van Syckle that she believed that unions were a good thing. In addition, on two or three occasions, the last being the day before she was fired, she commented on the poor condition of the bathroom, telling dispatchers Lawrence and Miller ''and they say this company doesn't need a union.'' Cafaro wore no buttons during the Union's campaign, although the other dispatchers wore a ''vote no'' button. She testified that she never told anyone to vote for the Union, but her pretrial affidavit stated that she told several drivers that they should do so in order to improve their conditions.

Cafaro returned from vacation on September 20. On September 30, Portnoy asked her what she thought of the new wage and benefits package that was being offered to the employees. She replied that much of the language was a little misleading. Portnoy said that he would correct the wording, and asked her what the drivers thought of it. Cafaro answered that she did not have time to speak with them about it.

That day, Lynch called her into his office and discharged her, explaining that he told her 1 year before to rotate the charter assignments, and she had not done so. Cafaro replied that she had, and that she sent a copy of the assignment sheet to Baumann, listing the dates that employees performed charter work, and the names of drivers who refused to do charters.

Lynch then said that her ''loyalty'' to the Company was being questioned, and that Respondent no longer needed a schoolbus dispatcher. Cafaro asked him why her loyalty was in question since she never sought another job. Lynch answered that she (Cafaro) knew what he meant. Cafaro stated that she believed that he was referring to the Union.

A memo authored by Lynch, and dated September 30 lists the reasons for her termination:

> 1. Refusing to follow direct orders regarding seniority with respect to assigning charters.
> 2. Not considered to be a loyal company employee.
> 3. Economics do not necessitate a dispatcher for the big bus division.
> 4. Numerous complaints from employees and management regarding repeated favoritism.

Cafaro's responsibilities included the assignment of drivers to charter work. Such work involves transporting school children to and from off-school activities such as sports events and trips to cultural activities. In addition, charter work also involves transporting nonschool groups or organizations to various locations. Drivers seek such assignments because additional income, including overtime, may be earned in the evening or on weekends, after the driver completes his regular assignments. Much charter work was available. There were six to seven charters per day during the school year involved herein.

Cafaro conceded that in January, Lynch told her that he received complaints from drivers that she was not assigning charters properly, in order of seniority, and that she should do so. According to Cafaro, that was the only time she was spoken to by a management official about her assignment of charters. However, she also testified that following that conversation, between January and February, the human resources director told her that drivers Barbara Clark and Carol Tamburo complained that they were not being given a fair share of charter assignments. Cafaro admitted that, prior to her conversation with Lynch, she made the assignments based on those drivers who were available, and not pursuant to seniority.

Cafaro stated that prior to her conversation with Lynch, she was not told that charters had to be assigned by seniority, but following their talk, she made such assignments by seniority, and posted the seniority list in the driver's room. Lynch admitted seeing the posted list in late January or early February. In making such assignments, she called the drivers in seniority order. She recorded the dates they did the assignment, and if they could not take the assignment, she wrote ''refused'' next to their name, and asked the next person on the list. When she completed the list, she began again from the top.

Baumann testified that the main reason for Cafaro's discharge was economic. She was the highest paid dispatcher who was responsible for the least amount of work. Prior to her work at Bohemia, Cafaro had been the dispatcher and person in charge of a contract with the Smithtown school district. That contract ended in 1985 or 1986, and she was then transferred to Bohemia. In the school year of 1992–1993, Respondent had a large contract with BOCES, providing for about 300 employees, and over 200 van runs. Respondent lost its contract, and with it $5 million in income, and 200 employees. When the BOCES contract was lost, Respondent had to make reductions in its expenses.

Cafaro was chosen because she was the highest paid dispatcher, did not want to dispatch vans, and had made certain mistakes, by not billing a camp for $4500 for certain work performed.

Baumann explained that Cafaro was involved with the administration of the BOCES contract only indirectly, since she did not dispatch the vans which were the vehicles used in the contract, but nevertheless since she was the most experienced dispatcher, she ''oversaw'' the program, although she was not ''actively involved.''

Lynch testified that Cafaro was chosen for discharge because she handled only 12 to 14 buses, and perhaps a couple of vans, while the 2 other dispatchers dispatched at least 100 vehicles. Cafaro told him that he assisted the others, but they told him that she was little help. Lynch then reevaluated her responsibilities, and considered whether to discharge her. In such an evaluation, Respondent's concern was that it had to reduce its expenses due to the loss of the BOCES contract. He heard about such loss in June, but in mid-July, following a court challenge, he learned that Respondent had definitely lost the contract, and with it about 200 vans and drivers. It therefore no longer needed three dispatchers. Lynch cited other reasons for her discharge. She assigned charter work to her favorite group of employees, including her son, a girl dating her son, and to driver John Murphy, despite being told, in 1991 or 1992, not to assign Murphy charter work due to misbehavior on previous charters. Also Clark and Tamburo complained that they were not being given charter work.

Lynch stated that on several occasions between January and June 1993, he told Cafaro that she must assign charter work by seniority. He stated that after first being warned, she made the proper assignments, but then, following a couple of weeks, she reverted to her previous practice of favoritism. At that point, Lynch again received complaints. He again confronted Cafaro, and told her that he would not tolerate her failure to assign charter work fairly, and that she should make such assignments properly or not at all. Cafaro replied that she attempted to assign the work to certain people, but they refused the work. She therefore called the drivers who she knew would accept the jobs.

Lynch conceded that he did not check any records in order to determine whether any specific person was given a charter during the period from January to September. However, in April, May, or June, he reviewed the timecards of charter drivers, such as Ula Szobonya and Lisa Fornaratto, in order

to see if they received repeated assignments, and found that to be the case.

Cafaro's original seniority list with her notations shows that Szobonya was first on the seniority list, and received charter assignments on January 15 and in April, May, and June. Fornaratto, third on the list, received such assignments on January 16 and in April, and it was noted that she does ''seniors too.'' Murphy was noted as doing ''drops only.'' Clark and Tamburo, numbers four and five, performed assignments on January 16 and in March, May, and June.

Lynch explained that Cafaro was not considered loyal because she made ''inappropriate'' remarks to certain people regarding Respondent's owners and its family, for example telling employees that the Company is ''lousy,'' and that she disliked the Baumann family, calling them ''cheap.'' He heard these comments over time, and up to about June. She was also considered disloyal because she was found to have charged personal arts and crafts purchases in the amount of $400 to $500 to the business in December 1992, which was discovered in April or May.

Driver Clark testified that in the summer of 1993, following the election, she complained to Gilman that Cafaro unfairly assigned charter work to only certain people. She received no charter work that summer. Gilman replied that the Company was checking into the situation, and that Cafaro had been told that such assignments must be made in seniority order.

About 1 week before Cafaro was terminated, Clark and Tamburo approached Baumann and told him about the unfair assignments, mentioning the names of those who they believed were given preferential treatment. Baumann was aware of the situation.

Tamburo testified that in 1992 and 1993, she spoke with Baumann, Lynch, and Gilman concerning the assignment of charters. Her last discussion was with Gilman before the summer of 1993. She made the same complaint as Clark and Gilman made the same reply. Tamburo complained to Lynch in the winter of 1993. She stated that following the posting of the seniority list in January, assignments were made in a fair manner for only 1 week, but then they were made out of seniority.

On this record, I cannot find that the General Counsel has made a prima facie showing that Cafaro's discharge was motivated by her union activities. Cafaro's testimony, set forth above, was severely brought into question concerning the extent of such activities. Her hearing testimony contrasted sharply with her pretrial affidavit on important points concerning whether she told employees to vote for the Union, and her mentioning the Union to the other dispatchers. Based on the above, and the fact that her undisputed activities were all in support of the Respondent's antiunion campaign, the evidence supports a finding, which I make, that no prima facie case has been proven. *Wright Line*, 251 NLRB 1083 (1980).

3. Campbell

In July, on seeing Campbell in the Jericho facility's garage, Schneider asked him what he was doing there and not at his desk. Campbell replied that he was instructed by Lynch and Walsh to obtain information about the union campaign. Campbell further said that he felt that he was being ''used'' by the employer, and that if he did not continue these activities, his job was at risk. Campbell responded to Schneider's question about why he was absent by explaining that he did not like being ''played,'' but he was told to do what he was doing, and he did not feel good about it. Campbell told Schneider to check with Lynch if he had any questions about his activities. Campbell then told Schneider that he believed that he was entitled to overtime payments. Schneider said that he would look into the matter.

Schneider then told Campbell that it appeared that he was ''for the Union.'' Campbell denied that, but said that he was for ''betterment of people's welfare, anything to better people's lives and welfare.''

That day, Lynch confronted Campbell, telling him that he heard he was asking for overtime, and was having second thoughts about ''bringing information to us about [the Union] and the workers.'' Campbell replied that he believed that he was being ''played as a patsie'' and did not want to be ''involved'' any longer. Lynch replied that he wanted Campbell to ''play ball.'' He accused Campbell of not being a ''team player,'' and urged him to cooperate because no one would have a job if the Union came in. Lynch also said that he heard that Campbell was complaining about overtime—''so you're for the Union.'' Campbell replied ''yes, that anything that was for the betterment of the workers and people in general I am for it.''

Following that conversation, Campbell did not inquire of employees whether they supported the Union, did not deliver any union literature to Lynch, and did not distribute ''vote no'' buttons.

Campbell stated that on August 17, he was told by Schneider that he was terminated because Respondent was not pleased with his performance because he was absent too many times from his desk, and did not pay enough attention to his job.

Campbell explained that his frequent absence was due to his responding to numerous requests for information from Lynch, Portnoy, and Walsh regarding the drivers' union activities. He estimated that in June and July, he spent about 45 minutes every 2 hours away from his desk speaking to employees concerning the Union. Campbell conceded that Schneider told him in early July that he was away from his desk too often, and Schneider wanted him to be more ''focused'' on his responsibilities. At that time, he told Schneider that he should check with Lynch, since he was instructed to obtain information concerning the Union.

Campbell testified that the ''incessant'' requests for information interfered with and prevented him from performing his work.

Lynch testified that he was not satisfied with Campbell's performance, citing instances where he recorded the same driver for three separate runs leaving at the same time, and forgot to assign drivers and matrons for runs. Lynch stated that he spoke to Campbell about these problems. After repeated instances of Campbell's malfeasance, he recommended to Schneider that he be discharged.

Schneider testified similarly, and identified instances of the above in various work sheets. Incidents in which runs are late result in fines to the Company. The amount of fines assessed in July was over $25,000, compared to $6000 in June. Respondent was notified in the first week in August of the July fines. It has not been proven to what extent Campbell was responsible for any or all of those fines. Schneider stated

that he counseled Campbell numerous times concerning his improper completion of the route sheets, and at his discharge explained in detail his inadequate performance. Campbell protested, claiming that he did his job.

Campbell testified that prior to his discharge he was never warned by company officials that he was spending too much time away from his desk, except that in early July, he was told by Schneider that he should keep more focused on his responsibilities.

I find that the General Counsel has made a prima facie showing that Respondent was motivated by antiunion considerations in discharging Campbell. Both Lynch and Schneider accused him of supporting the Union, and he agreed with their accusations. *Wright Line*, supra.

I further find that Respondent has not met its burden of proving that Campbell would have been discharged even in the absence of his union activities. Although Respondent has pointed to numerous errors in Campbell's completion of his route sheets, and Schneider allegedly counseled him numerous times concerning these, his allegedly poor conduct was apparently condoned throughout the course of his employment, until he admitted supporting the Union. Apparently Respondent believed that his support of its antiunion program was too valuable to be lost, but when he openly supported the Union's efforts, these alleged errors became too much to tolerate. I accordingly would find that Campbell's discharge violated Section 8(a)(3) and (1) of the Act.

4. Joseph Anderson and Tommy Edmond

Joseph Anderson, a driver, became employed by Respondent in 1986. He and Tommy Edmond, who started work for Respondent in 1981, left in about 1987, and returned in 1989, were first employed in Bohemia. They were both transferred to Jericho in 1992, when it opened, in order to train the new drivers who were being hired to work at that location. This training ceased in August, when Basile told them that they had to be certified, which they were not, in order to train other drivers. Anderson received certificates of appreciation for ''outstanding performance,'' in December 1991, and both he and Edmond received another in September 1992.

Anderson participated in the union campaign by distributing literature to 15 to 20 employees in the garage and lunchroom, asking other employees to sign cards for the Union, and signing a card for the Union. He attended union meetings, and wore a union button.

Edmond stated that he did not speak to the union agents who were at the Respondent's gate. Anderson and Edmond regularly ate lunch with the Pozo brothers and others in the garage or on a company bus.

Dispatcher Cafaro testified that in May or early June, Gilman told her that Anderson and Edmond were seen in their bus in the Jericho yard having lunch, speaking to other people there, and holding a union meeting in the bus.[7] Gilman said that she believed that they were the ''two big union people.''

In August, Anderson and Edmond were told by Gilman that they would be transferred back to Bohemia, because they had a right to pick a run for the new school year, and they were high on the Bohemia seniority list. They told her that they preferred to stay in Jericho, and she asked them to sign a waiver of their right to return to Bohemia, and they did.

During that conversation, Gilman told them that she heard that they were ''unhappy'' at the Company, and asked whether that was true. They both denied it. She asked them if they were involved in the Union. Anderson admitted distributing literature. She told Edmond that she heard that he was ''instigating'' employees to sign for the Union. Edmond denied that. She further told him that she heard his name mentioned frequently concerning the Union. She then asked them whether they would cross a picket line if the Union struck. Both said that they would not cross a picket line. Gilman then told them that she was happy that they were staying in Jericho.

On August 23, Anderson submitted a request for 6 days' vacation, with his last day of vacation listed as Tuesday, September 7. He testified that he was supposed to return to work on September 9. On September 9, Respondent sent a mailgram to his home, which stated ''due to abandonment of your job, your services are no longer required.''

During his vacation in North Carolina, Anderson had mechanical problems with his car. He returned home on September 10 or 11, and reported to work on September 13. He did not contact Respondent concerning his extended absence. Upon his return, he was told by Official Lynch that he was terminated for abandonment of his job since he did not notify the Company.

Schneider made a decision to terminate Anderson before he spoke with him. Schneider testified that Anderson told him that he did not think it was necessary for him to phone the Company because he was employed for such a long period of time, adding that he said that he bought a coach and a van and would operate his own bus company. Schneider concluded that he did not care about his job, and told him that he was terminated for not calling and not appearing for 2 consecutive days.

Lynch testified that on the day of Anderson's discharge, Anderson admitted to him that he was aware of the Company's policy of ''2 days no call/no show,'' but that he did not believe that he had to call because his vehicle was broken down in North Carolina. Lynch testified similarly to Schneider that he did not give employees another chance if they returned after being out without calling for 2 days.

Edmond testified that on Monday, August 30, due to a change in plans, he was required to take his son to college. He was away from work the following day, also. He stated that he tried to call the Company with this information but there was a delay in getting through, and was kept on hold.

Edmond returned to work on September 1. He signed a disciplinary notice which stated that he failed to call in on August 30 and 31. The form, which did not have first notice or final notice checked off, said that ''a final notice shall result in immediate dismissal or suspension.''

Thereafter, Edmond worked continuously until September 17. At that time, Manager Schneider told him that he was terminated for not calling in and not appearing for 2 days.

Anderson and Edmond denied any knowledge about a company policy permitting discharge if the employee did not call in or appear for 2 consecutive days. However, Anderson

[7] Cafaro conceded not mentioning the phrase ''union meeting'' in her pretrial affidavit.

conceded that he was aware of his obligation to call Respondent in the morning if he could not come to work.

Edmond stated that prior to these incidents, he had never failed to appear at work without notification, or not called to report that he would be absent. Anderson stated that he was never absent or late.

Respondent's employee handbook, issued in 1979, states that immediate dismissal or immediate indefinite suspension pending review will result from ''failure to report to work three (3) days in succession without notification to the company.'' Dispatcher Cafaro testified that the 3-day rule was in effect throughout her employ with Respondent. She further stated that if the driver did not call or appear for 3 days, but came to work on the fourth day, and had not yet been written up for this infraction, he would be assigned to the same run, at her discretion. In addition, Cafaro stated that she was unaware of any employee at her facility who was disciplined or terminated for two instances of ''no call/no show.''

Similarly, dispatcher Campbell testified that five or six drivers were no call/no show each day. There have been instances where a driver did not call or appear for 3 or 4 days, and the route was filled by a replacement driver, and on his return, he was given his original route. In contrast, Campbell also stated that there had been an instance where an employee did not call and did not appear for 1 day, and his route was taken away. Campbell further testified that employees were discharged for not calling and not appearing for 2 or 3 days. He also testified that, prior to June, no one was discharged for violating the no call/no show policy.

Baumann testified that the 3-day policy was changed in the early 1980's, and a written policy change was made by memo of January 9, 1990, sent to all dispatchers, which gave instructions concerning details to be put on termination reports. An example given was ''when an employee is terminated for two (2) days no call/now show, both dates MUST be written on the Termination Report.''

Schneider stated that Respondent's policy, since at least December 1992 when he was hired, was that when an employee does not call and does not appear for 2 consecutive days, the supervisor or dispatcher informs Schneider and a mailgram or call is made to him, advising him to see Schneider. He then discharges the employee. Schneider further testified that, in his experience, no one had come in on the third day with an excuse that warranted his retention. He further stated, however, that if an employee was involved in a car wreck and could not call in for 3 days, he would not implement this policy.

Lynch testified that employees who do not call or appear receive a disciplinary notice. The first infraction calls for a verbal warning, then a first written warning, then a final warning, and after the second time they are terminated. This apparently refers to an employee who has been no call/no show for only 1 day at a time, on different occasions, since Lynch further testified that if an employee is a no call/no show for 2 consecutive days he is terminated, and sent a mailgram.

Termination reports of eight employees who were discharged for being absent without calling for 2 days, were received in evidence.[8] Three involved terminations of employees prior to the advent of the Union.

However, the General Counsel offered documents which cast some doubt on the uniform enforcement of this alleged policy. Thus, a disciplinary notice for Suzanne Schramm, signed by Schramm and dispatcher Lawrence stated that she was no call/no show on March 29, 30 and 31, and April 1. However, her termination report showed that she was terminated on March 9, 1993, and stated that she was no show/no call on ''3/8/93 & 3/8/94,'' and Respondent's witness testified that Schramm did not work between March 9 and 29, 1993. There is no record that Respondent sent her a mailgram informing her of her termination. As to other employees who were discharged for two instances of no call/no show, there was similarly no evidence that they were sent telegrams terminating them.[9]

Kathleen Clarke received disciplinary notices which stated that she was no call/no show on November 16 and 17, 1992. Respondent's records reflect that Clarke quit on March 11, 1993. There was thus no evidence that she was discharged.

Disciplinary notices dated November 9 and 10, 1992, for Patricia Widman state that she failed to call in. Respondent's records indicate that she quit on November 20. This evidence does not appear, at first blush, to support the General Counsel, since she was not charged with being absent on those dates—only failing to call in. However, it must be noted that the disciplinary notices issued to Alfred Johnson, who was discharged, similarly noted only that he had failed to call in on two consecutive occasions for which he was fired. Thus, Widman may have, in fact, also failed to appear on November 9 and 10, and therefore this would be further evidence of an individual who had two no call/no shows but was not discharged.

5. Frances Barker

Frances Barker became employed in September 1992, and worked as a van driver. She signed a card for the Union, and attended union meetings.

In October, following the election, she distributed union leaflets to all 18 parents on her route, either in the company vehicle or in her own car. The leaflets stated, in part, that the employees did not have medical coverage, dental plan, life insurance, sick days, or paid vacation, and that the working conditions were ''poor and deplorable.''

On November 9, Respondent issued the following rules to its employees:

> 1. There will be no distribution of literature of ANY kind during working hours in working areas.
>
> 2. Any employee who jeopardizes the jobs of all of us by spreading false information to the public will be dealt with appropriately.
>
> 3. EMPLOYEES SHALL NOT MAKE ANY STATEMENTS to customers or clients which are disparaging or derogatory towards the company since that can jeopardize all of our jobs. Violation of this rule will

[8] Babai, Castaneda, Davidson, De Feo, Golden, Marter, Moreno, and Schramm.

[9] Moreno, Babai, DeFeo, and Golden, who were terminated during the period January to April 27, 1993.

result in disciplinary action, up to and including discharge.

4. You may distribute literature during non-working hours in non-working areas.

Barker admitted giving a leaflet to Betty Andreadis, the mother of a child she drove, in October.[10] Andreadis asked her if she was the steady driver. Barker said that she was. Andreadis answered that she was happy at that because the Company assigned different drivers to transport her child.

Barker stated that the adult babysitter for a child she drove, Baker, asked her about employee benefits. Barker told either her or Mrs. Baker that Respondent does not provide vacations to its employees, and only pays 1/2 day for time taken when the employee is sick. Barker admitted having read the above rules when she made these comments. In September, Respondent implemented benefits such as vacations and sick days.

Barker stated in her pretrial affidavit that Mrs. Andreadis asked her about the Company's benefits, and she replied that they ''stink,'' in that there was no accidental death benefit, no vacations other than days on which school was closed, and 1/2 day for sick time.

Barker denied saying anything to any parent about vacation or insurance. That of course is contradicted by her testimony above, and by her pretrial affidavit which stated that she told the Baker parent or babysitter, in answer to a question about Respondent's benefits, that there was no life insurance, no vacations, and 1/2 day for sick days.

At hearing, Barker admitted that her statement that Respondent offered no paid vacations was false.

On November 30, a letter was sent by the Massapequa Public Schools to Baumann, which stated that it had received a letter from the Andreadis in which they expressed a concern about the high turnover of drivers on their child's route, and sought to keep a regular driver employed thereon. Baumann caused an investigation to be conducted, and it was determined that Barker spoke to Andreadis concerning company benefits and working conditions.

On December 9, Schneider discharged Barker for violating paragraph 3 of the Company's rules, above. Schneider testified that at the discharge interview, at which Lynch was present, Barker admitted telling a parent that the Company ''sucked,'' did not care whether they died, and that the employees had no benefits, and working conditions were terrible. Schneider determined that Barker had violated paragraph 3 by her remarks to a parent that the Company ''sucked,'' and that they had no benefits, which was a false statement.

Interestingly, Lynch testified that at that meeting that Barker did not admit telling a parent that the Company ''sucked,'' but conceded telling a parent that Respondent did not provide any insurance, which was a false statement since health insurance benefits were available. This is supported by Barker's testimony that at her discharge interview, Schneider told her that she had opted not to contribute toward the employer's health benefits plan. That statement would logically have been made on Barker's telling him that she told a parent that Respondent did not provide insurance, as testified by Lynch.

[10] This must be contrasted with her testimony at a NYS Unemployment Insurance hearing that she did not give any literature to anyone.

6. Alfred Johnson

Alfred Johnson became employed in April 1993. He worked primarily as a coach driver for charter trips, but when such work was not available he accepted assignments as a schoolbus driver.

He conceded participating in the union campaign in a ''minor way.'' He signed a card for the Union, spoke to union representatives who stood outside the company gates, wore a union button at all times on his shirt or bag, and spoke to other drivers about the Union. Campbell testified that Johnson spoke with him and others about the Union, and that he saw Johnson wearing a union button.

Johnson testified that on September 7, he had just returned from an assignment in Virginia, and was called at home by Charter Supervisor Eileen Meyer. She said she had a charter run for him at 5:30 the following morning. Johnson stated that he replied that he wanted 1 week's leave of absence, if possible, but if that request would be a ''problem'' he did not need the time off. According to Johnson, Meyer said that she would have to check with Lynch, and she would call him later. On cross-examination, Johnson conceded that Meyer told him to report at 5:30 the following morning, and in a second conversation, he asked her for a leave of absence.

Johnson further stated that later that day, Sue Martines, a clerical employee who worked with Meyer, called him and told him that his leave was approved, and he had to sign a form.

Accordingly, Johnson believed that he was on leave beginning immediately, and did not report to work the following morning to operate the charter. On September 9, Respondent sent a mailgram which stated, in part, that ''due to job abandonment your services are no longer required.'' He did not sign a leave of absence form prior to his termination.

A few days later, he met with Lynch, who told him that he was fired because he abandoned his job, and did not appear for work. He told Lynch that he had asked for a leave of absence. Lynch replied that Martines had no authority to grant such a leave. Johnson answered that he did not think that Martines was granting the leave, but was simply relaying a message that the leave was approved, and that he would have expected the Company to call to inquire why he did not appear for work. Lynch replied that Meyer said she called him at 6 a.m. the day he was supposed to take the charter. Johnson denied receiving the call.

Meyer testified that Johnson agreed to take an Atlantic City charter the following day, and also requested a 1 week's leave of absence. Her testimony was confused as to which matter was discussed first, but nevertheless the import of her testimony was that he agreed to take the run, and he requested the leave.

Meyer told him that if he completed the proper paperwork she could approve the leave of absence. She said that she would put the leave of absence form in an envelope containing materials for the next day's charter.

Later that day, she told Lynch that Johnson wanted a leave of absence. Lynch said that if Meyer could spare him, he should be granted the leave. Meyer then prepared the paperwork for the leave of absence and charter run, and asked Martines to call Johnson and confirm that she (Meyer) would

be at the terminal at 5:30 the next morning to present the leave of absence paperwork to Johnson so that he could sign it, return it to her, and she would have it processed.

Interestingly, Martines first testified that Meyer instructed her to call Johnson only to confirm his reporting time for the next day's charter, and nothing about the leave of absence request. However, Martines later testified that Meyer told her that Meyer would meet Johnson the following morning to receive the leave form.

Martines testified that she phoned Johnson and confirmed his reporting time. Johnson agreed with the time, and said that he wanted a leave of absence. Martines replied that she did not handle that and could not authorize it, and that he had to speak with Meyer or Lynch concerning the leave. She then told Johnson that Meyer would meet him at the terminal the following morning to receive a leave of absence form that would be in the charter's envelope. Johnson agreed.

Martines denied telling Johnson that his leave of absence had been approved, and Meyer denied instructing her to tell Johnson that the leave was approved.

Respondent's 1979 employee manual provides that leaves of absence will be granted for ''sickness or accident impairing health'' for up to 30 days, and that a leave of absence form must be filled out. Although a new manual was effective in August 1993, it was not offered in evidence, and there was no evidence that this provision was modified.

Disciplinary notices were issued on September 8 and 9 to Johnson for failing to call in. The notices did not indicate that he failed to appear.

7. Pedro Pozo

Pedro Pozo became employed by Respondent in October 1992 as a driver's assistant. In December 1992, on receiving a CDL, he worked as a driver. At the time of his discharge, he transported mentally handicapped adults to work programs pursuant to a Community Support Service (CSS) contract.

Pozo first spoke to union representatives in the spring of 1993, and he conversed with them at the gate to the Jericho facility. He attended a few union meetings. At one of them he received union authorization cards which he distributed to 40 or 50 employees at the Jericho facility in the company of his brother Orlando, Rupert McIntosh, and another employee. He also distributed union leaflets to other drivers, as did Orlando, Joseph Anderson, and McIntosh. Pozo wore a union button every day. Baumann testified that during his conversations with Pozo, discussed below, he did not see a union button on Pozo's person.

During Pozo's daily 4-hour break, in between driving assignments, he associated with Orlando, Anderson, and Tommy Edmond. During the breaks, they spoke about union matters and solicited other drivers to sign cards for the Union.

Pozo was given a ''vote no'' button by Campbell which he immediately threw into the garbage, and as set forth above, Campbell was asked to watch Pozo because he destroyed the button, and also, Lynch told Campbell that he heard about Pozo removing Denise's button. Lynch further told Campbell that Pozo was an employee who should be written up when the opportunity arose. Nevertheless, Campbell did not write him up for the button incidents because he did not consider that a violation of company rules. Lynch also told Campbell that he did not like Pozo because they had an altercation that almost led to blows, and he advised Campbell to ''watch him.''

On August 4, a man who was a regular passenger on Pozo's bus offered to sell him a small, hospital-type television for $10, which Pozo purchased. The man's residence home informed Respondent. Baumann testified that he spoke to Pozo about the incident, suggesting that Pozo took advantage of the man because the television was worth more than $10, and telling him that it was not a good idea to become involved with a bus client, and suggested that he should report any such solicitations to his dispatcher or the customer. Baumann asked him to return the television and Pozo did. Pozo denied that, prior to his discharge, he was spoken to by any company representative regarding something he did wrong, but he conceded being asked to return the television.

In late July, while driving a bus with passengers, Pozo experienced difficulty with the brakes. He testified that he called his dispatcher, and told her the problem. She directed him to continue his run because it was difficult to obtain a relief driver so late in the day. Pozo refused, citing the unsafe condition of the vehicle. He discharged all the riders at one location, instead of driving them to their designated stops, and did not make a pick up at another stop. He then returned to the Jericho garage.

On his return, he told the mechanics to check his brakes. The brakes were repaired and Pozo used the same bus the following day.

Shortly thereafter, Baumann met with officials of the Nassau County Department of Mental Health which oversees the CSS program, during which they criticized the Employer's performance of its contract, and threatened to cancel its $10 to $12 million contract. Baumann was given a letter from the Peninsula Counseling Center dated August 8 which complained that the bus did not pick up its clients on the day in question, and other matters regarding the driver.

Baumann went to the Jericho facility and learned that the driver in question was Pozo. Baumann testified that at a meeting with Pozo and Orlando, Pozo explained that the bus' brakes were smoking at the Atlantic Motel. He called the dispatcher who told him to stand by. After 30 minutes, he left the passengers at the Atlantic Motel, whereas they were supposed to be taken to their regular stops. Pozo told him that he could not get a clear answer from the dispatcher whether to leave or not, and decided himself to discharge the passengers and leave. Baumann told him that he should have phoned if he could not communicate with the dispatcher through the bus' radio.

Pozo then told Baumann that on his return to the terminal he wrote on the vehicle's Daily Vehicle Pre-Check Report and Defect Report that the bus' brakes were defective. Baumann then requested the report from the receptionist and showed Pozo that no defect had been noted. Pozo's explanation was that mechanic Mike Mireider told him not to report the defect because Mireider would be discharged. Baumann then told Pozo that he falsified company records and was in violation of state law. Pozo agreed, but said that he did that in order to save Mireider's job. Baumann said that this error was considered very serious by the New York State Department of Transportation, and the employer could have received a stiff fine.

According to Baumann, Pozo then threatened that if someone sought to fire him, he would shoot or kill them. Pozo denied arguing or threatening any company official.

Pozo conceded forgetting to write that the bus was defective on his return to the terminal that day. Instead he filled out the form prior to this run, at which time he routinely checked the box which said ''no defects.'' He stated that he was aware that it was his responsibility to note any defects encountered during the course of his operation of the vehicle.

Baumann then spoke to Mireider who denied telling Pozo to conceal the bus' defects. A recommendation was then made to discharge Pozo and that was done. Pozo stated that on August 13, Schneider told him that he was terminated for falsifying Department of Transportation documents. Baumann stated that the discharge occurred either that day, or within the next 2 days.

Dispatcher Campbell testified that around the time of the July 30 election, he overheard Walsh asking Lynch what could they ''find on'' Pozo, noting that his attendance was excellent. Walsh then said that the only thing they could ''look into'' were the Department of Transportation papers. Campbell estimated that this conversation occurred 2 days before Pozo's discharge. Campbell further stated that 2 days before Pozo's discharge, which was 2 weeks after the election, the receptionist complained to him that she was directed to look through Pozo's DOT slips.[11] Campbell further stated that Lynch told him that Pozo was discharged due to problems caused by Pozo's DOT papers not being ''up to date,'' and because he falsified those papers.

Pozo testified that he and his brother Orlando engaged in their union activities together, such as distributing fliers and buttons and speaking to other employees. Orlando remained employed following Pedro's discharge, and was still employed at the time of the hearing.

8. Neri Van Syckle

Neri Van Syckle began work for Respondent in 1983 as a van driver, but left in 1984. She returned in 1991, and was employed by it thereafter. At the time of her discharge she drove schoolbuses from the Bohemia terminal.

Van Syckle's initial union activities included accepting a flyer, attending union meetings, and signing a card for the Union. Immediately following a union meeting she attended in May, she distributed union leaflets and union membership cards, made phone calls to 40 to 100 workers in behalf of the Union in which she asked employees whether they supported the Union, and asked them to attend union meetings. She also spoke to other workers about the Union. She distributed union leaflets on and off the company premises and at a restaurant one block from the terminal. She stated that she distributed more than 100 flyers and authorization cards from May to the election on July 30. She also helped organize recruitment meetings, and wore a union button.

Van Syckle testified that Gilman asked her why she wanted a union. Van Syckle replied that Respondent was ''unfair'' to the drivers concerning seniority, hours of work, medical benefits, and sick time. Gilman told her that she just returned to the business following the recent death of her father, who was the owner of Respondent, and was being ''hit'' by all the unions. Gilman asked for a chance to work with her. Van Syckle asked why drivers could not earn 1/2 sick day per month. Gilman answered that her father never awarded sick days because he believed that employees would abuse them, and that she (Gilman) would never do so either. Van Syckle replied ''that's why this company needs a union.''

In late June or July, Van Syckle posted a union notice of meetings on a bulletin board near the Bohemia dispatch office. Dispatcher Barbara Lawrence removed it, threw it into the wastebasket and told her to take her union garbage outside.

Dispatcher Cafaro testified that in early July, Gilman told her that she saw Van Syckle distributing union leaflets, and that she (Gilman) could not ''believe it,'' adding that we have to ''find some way to get rid of her.'' Respondent asserts that that statement should not be credited because it was not contained in Cafaro's pretrial affidavit. I credit Cafaro. She stated in her affidavit that several times, Gilman reported to her that she observed Van Syckle distributing union cards and speaking to other employees about the Union, and that ''we really can't have this.'' In addition, Gilman did not testify, and thus Cafaro's testimony stands uncontradicted.

Thereafter, Gilman told Cafaro that Van Syckle had everyone's phone number, and asked her whether Van Syckle looked through Cafaro's rolodex. Cafaro denied that she had done so.

Apparently learning about this inquiry, Van Syckle asked Gilman whether she was being investigated for taking phone numbers from the office rolodex. Gilman replied that she was, because about 43 drivers had told her that Van Syckle called them, and Gilman assumed that their phone numbers were obtained from office records. Van Syckle denied using the rolodex, and Gilman asked how she got their phone numbers. Van Syckle replied that she obtained them from the telephone Company's information service, the union cards the employees completed, and from workers who knew the phone numbers of other employees.

Van Syckle also told Gilman that she heard that Gilman believed that Van Syckle had called in the Union to organize the employees, and that was not true. Van Syckle added that she would have called a ''meat cutters union'' to represent the workers. Gilman replied that that was the ''rumor mill and we had to put a stop to it.''

On August 30, Van Syckle was discharged following a traffic accident while driving a bus. The reason for discharge was that this accident, which occurred on August 26, was the second ''preventable'' accident she was involved in. The first accident occurred on January 13, 1992. She was discharged for having two preventable accidents. Safety Director Bennett Basile defined a preventable accident as one which could have been avoided if the driver was paying attention, not following too closely, not speeding, or did not do everything in her power to prevent the accident.

Van Syckle conceded to having being told, in late 1991, that two preventable accidents are grounds for termination at

[11] Campbell's testimony that the receptionist was searching for Pozo's defect slips 2 days prior to his discharge does not show that Respondent sought to uncover evidence of wrongdoing that did not exist. Rather, it supports Respondent's chronology of events, that when this matter came to Baumann's attention he investigated its circumstances, and requested the slips from the receptionist. Baumann stated that Pozo may have been discharged 2 days after their conversation, thus supporting Baumann's testimony that the request for the slips occurred during their meeting, 2 days earlier.

Respondent's discretion, and acknowledged at an unemployment hearing, that she could be discharged for that reason.

Van Syckle claims, however, that the January 1992 accident was not preventable, and was not viewed by Respondent as being preventable. On that occasion, her bus hit a vehicle in the rear at a stop sign. Her police report statement taken at the time indicated that she believed that the other driver backed into her, but another accident statement noted that the other driver pulled into traffic, she pulled up to the sign, and looked away from the front of her vehicle, and was then struck. At the time of that accident, Van Syckle was notified that she would be suspended for having a preventable accident, but the following day, the suspension was rescinded pending receipt of the police accident report.

Thereafter, in March 1992, the report was received. The officer stated that the driver of the other vehicle stated that he was stopped, waiting to enter the roadway safely, when struck in the rear by the bus. He reported Van Syckle as saying that she ''stopped staring forward and believes she wasn't moving. She thinks [the other driver] put car in reverse and struck her.'' The officer also noted, by code, that Van Syckle's actions were an apparent contributing factor to the accident. No such notation was made for the other driver. It was noted in a company memo that the report ''faulted'' her for the accident, but due to the length of time involved, the suspension would not be enforced, and no disciplinary action was taken.

Thereafter, on August 26, Van Syckle's bus was in an improper lane, and struck a vehicle on the bus' left side. This was determined to be Van Syckle's second preventable accident and she was discharged.

Van Syckle disputes that the 1992 accident was preventable, and that it was treated as such by Respondent. She testified that following receiving a letter of suspension, she was told by Assistant Safety Director Erickson that ''everything is fine and clear, you are okay,'' and that Basile permitted her to continue to drive. However, it appears, based on Basile's testimony, and the memo written at the time, that the suspension was immediately lifted pending receipt of the police report, not because she was cleared of any fault in that accident. Basile further testified that, on receiving the police report, his opinion that the accident was preventable remained, especially since it was a rear end collision.

Van Syckle further claims that a letter she received from Respondent on June 7 shows that the 1992 accident was not her fault. In about June 1993, her personal insurance company raised her rates due to the two accidents on her record. When she protested to the insurance company, she was told to obtain a letter from Respondent stating that the accidents occurred while she was driving company vehicles, and not her personal vehicle. Van Syckle then asked Basile for a letter stating that she was driving company vehicles at the time of the accidents. Basile wrote her a letter which stated that the 1992 accident was ''not her fault. Occurred while she was performing her duties as a bus driver for Acme Bus Corp.''

Van Syckle argues that this proves that Respondent believed that the 1992 accident was not preventable. However, Basile testified that he wrote the letter as a favor, and that she insisted that he write that the accident was not her fault. Van Syckle denied asking him to write anything about fault. I need not resolve this controversy. The evidence is sufficient to support a finding that Respondent believed, at the time of the January 1992 accident, that this rear end accident was preventable. The police report, taken together with Van Syckle's statement, led Basile to believe that the accident was preventable. Further, reports were received in evidence of six drivers who were terminated during the period July 1989 through September 1993, (five of such discharges occurring prior to the Union's advent) for having two preventable accidents.

F. *Implementation of a Wage and Benefits Package*

The complaint alleges that on about September 7, Respondent unlawfully implemented a wage and benefits package which included increases in vacation and sick time benefits.

The General Counsel relies on Cafaro's testimony, set forth above, to support this allegation. Cafaro testified that, beginning in April, she and other dispatchers were directed by Respondent to find out what kinds of benefits they wanted, which they believed that the Union would obtain for them. At a meeting in May, the drivers stated what benefits they sought, and Portnoy offered to resolve the drivers' problems. In July, a new wage and benefits package was shown to the dispatchers, with instructions that they discuss it with the drivers in an effort to persuade them to change their vote from the Union to Respondent.

On September 6, the status of the representation matter was that the Union had won the election, and the Employer's objections thereto were pending. On that day, Respondent issued its wage and benefits package for 1993–1994 with the following letter, in relevant part, signed by Gilman:

> As you know, in the beginning of each school year we review our wages and fringe benefits and make changes if we feel we are able to. This year is no different.
>
> I have heard you. I know your needs and concerns. This is part of my effort to address them and to help us achieve our objectives. Of course, the schoolbus business is highly competitive and in order to maintain jobs we must move ahead with caution. There is no quick fix solution for all of the things we must achieve together. It is going to take some time. We must educate our customers who in turn must educate the taxpayers so that the bids can include enough money to maintain decent wages and decent conditions.
>
> Teamsters Local 868 has no knowledge of the bus industry. They want you to pay for their training. Let's not let them learn here where mistakes could cost us our company and you your jobs. There is only one way to make sure that we continue to move forward: without a strike—by keeping the Union outside. If we fail you, you know how to reach them. The money that you would have spent for dues can now be used to offset the cost of health insurance.
>
> I will continue to meet with small groups to get input and work towards making all of us part of the solution and not the problem. Anyone who wishes to serve on a committee, should give your name to a dispatcher.

Vacation benefits were increased in the September 1993 package, over what had been given the employees in the package implemented in September 1992. The new benefit provides that employees having 1 year or more of employment were entitled to a 5-day vacation, and those having 3 or more years of employment were entitled to a 10-day vacation.

The 1992 vacation benefit provided that employees employed for 1 year were entitled to a 2-1/2 day vacation, and those employed for 2 years were entitled to a 5-day vacation. Those employed for 5 and 8 years were entitled to 6 and 7 days, respectively.

The 1993 package increased the wages of employees: for busdrivers newly hired, employed for 90 days, and employed for 1 year, the rates were $10.25, $10.40, and $10.55, respectively, compared to the 1992 rates of $10, $10.15, and $10.30. The 1992 rates contained a 5-year wage rate of $10.65 which was not included in the 1993 schedule. In addition, in 1993, all busdrivers were scheduled to receive a 25-cent-per-hour raise or the rate in their progression, whichever was greater. That provision was not contained in the 1992 schedule.

For 1993, the van drivers' rates were: $8.20, $8.30 and $8.40 for those newly hired, employed 90 days, and employed 1 year, respectively. Those with 2 years of service, would receive 20 cents per hour or $8.60, whichever was greater. In addition, all van drivers would receive a 20-cent-per-hour increase or the rate in their progression, whichever was greater. In 1992, the rates were $8 for those newly hired, and $8.10 for those employed for 90 days. There was no enumerated wage rate for those employed for 1 year, but those employed 2 years and 5 years had a rate of $8.40 and $8.65.

In 1993, drivers' assistants would receive $6.15 to start, $6.30 after 90 days, $6.35 after 9 months, and $6.40 after 1 year. They were to receive a 15-cent-per-hour increase or the wages set forth above, whichever was greater. In addition, drivers and drivers' assistants who regularly handle wheelchair students are to be paid 25 cents per hour above the regular pay rate for wheelchair runs only. In 1992, the drivers' assistants received $6 per hour to start, and $6.15 after 3 years.

In 1993, Respondent implemented a sick day policy which replaced the ''bonus'' policy included in the 1992 package. Eligible employees were those employed for at least 6 months, and employed 5 days per week. The new sick day program provided that employees with perfect attendance records shall receive 1/2 sick day for every 30 days worked up to a maximum of 6 days per year.

The 1992 bonus plan provided for 6 days' incentive pay for those hired before September 1992, and for 5 days' pay for those hired after September 1992, but before March 1993. There is a sliding scale for such employees depending on the date of hire. In addition to perfect attendance, the employee must not have had any ''preventative, comparable or negligent accidents'' and work both the morning and afternoon shifts.

Baumann testified that he reviewed the employees' benefits annually, and normally issues a new wage and benefits package in September of each year, as that time coincides with the new school calendar, and additional school contracts that Respondent secured. Employee witnesses confirmed that new wage and benefits packages are distributed in September of each year. Dispatcher Cafaro testified that, in the past, meetings were held with the dispatchers to announce the new package of wages and benefits.

The health benefit plan offered to employees in 1993 was in response to employees' complaints that their weekly contributions to the plan were too high. Accordingly, in 1993, the Respondent made a greater contribution to the employees' health benefits, and the employees paid a lower amount than in 1993, resulting in a savings of at least $14.75 in their weekly pay.

G. *Analysis and Discussion*

1. The alleged violations of Section 8(a)(1) of the Act

a. *The implementation of increased wages and benefits*

The complaint alleges that on September 7, Respondent unlawfully implemented a wage and benefits package which included increases in vacation and sick time benefits.

Respondent annually reviews its wages and benefits at the start of each school year and based on its contracts determines the package to offer its employees.

Accompanying the introduction of the new wage and benefits package was Gilman's letter, set forth in full above, in which she stated, in part, ''I have heard you. I know your needs and concerns. This is part of my effort to address them and to help us achieve our objectives.'' At this point in time, the Union had won the election and the Employer's objections thereto were pending.

An employer's grant of benefits in order to dissuade them from supporting a union violates Section 8(a)(1) of the Act. *Capitol EMI Music*, 311 NLRB 997, 1012 (1993). However, the grant of such increases is legally permissible ''if it can be shown that an employer was following its past practice regarding such increases or that the increases were planned and settled upon before the advent of union activity.'' Id.

Respondent has clearly established that it has a history of granting increases in September of each year. These increases were not made hastily, immediately on the advent of the Union. Rather, they were made pursuant to its past practice of reviewing its contracts at the beginning of the school year, and then deciding what increases to offer. *Stanton Industries*, 313 NLRB 838, 857 (1994).

I am troubled, however, by the context in which the new wage and benefits package was presented. They were introduced with Gilman's letter, set forth above, which also included a plea to ''keep the Union outside,'' with a reference that the ''only way to make sure that we continue to move forward without a strike'' is by ''keeping the Union outside.'' The letter also mentioned that the Union's lack of knowledge of the bus industry could cause ''mistakes'' which ''could cost us our company and you your jobs.''

The letter also informs the workers that this new package represents Gilman's ''effort'' to address their needs and concerns, and would help them achieve their ''objectives.'' In this context, the announcement thus ties Respondent's objective of remaining union-free with the increases given. Further, her reference to having ''heard'' the employees is a direct reference to their attempt to unionize. Even if it is considered a reference to having heard their need for hospitalization benefits, such information was obtained through its ille-

gal solicitation of employee grievances, as found herein. *Den-Tal-EZ, Inc.*, 303 NLRB 968, 970 (1991).

Under all these circumstances, I find that the wage and benefits increases had as their effect the influence of employees to abandon their support for the Union. Although the Union had won the election, the Employer's objections were pending, and Gilman's letter urged its employees not to support it. I accordingly find and conclude that the implementation of the wage and benefits package violated Section 8(a)(1) of the Act.

b. *Solicitation of grievances*

The evidence is clear that Respondent solicited its employees grievances and implied that it would remedy them.

As set forth above, Portnoy told the dispatchers to learn what benefits the drivers wanted and said that it would see what it could do about them. At a meeting thereafter in May, Baumann asked the drivers what they wanted. Most frequently mentioned was hospitalization and Baumann said he would try to do something about it. At the same meeting, Portnoy said Respondent would try to resolve ''all these problems.'' Thereafter, a package of benefits was distributed to the dispatchers, which included a hospitalization plan sought by the employees. Portnoy asked them to show it to the drivers, and that if each could get one driver to change his vote to the Company, the Respondent would be ''ahead.''

In *Valley Community Services*, 314 NLRB 903, 904 (1994), the Board stated:

> When an employer, who has not previously had a practice of soliciting employee grievances or complaints, suddenly embarks on such a course during an organizational campaign, the Board may find that the employer is implicitly promising to correct those inequities discovered as a result of the inquiries, thereby leading employees to believe that the combined program of inquiry and correction will make collective action unnecessary. [Footnote omitted.]

In that case, following the onset of a union organizational campaign, the employer asked its employees what problems they were having, including problems with health insurance. The employer promised to look into the complaints. At subsequent meetings, the employer made progress reports on the topics previously discussed, and asked if their problems had been resolved. The Board, in finding that respondent unlawfully solicited grievances and promised benefits to its employees to undermine their support for the union, found that the employer had no previous practice of holding such meetings and soliciting grievances.

Here, Respondent had its dispatchers ask drivers what they wanted, and had them bring the drivers to a meeting for the specific purpose of learning what they wanted. Respondent solicited their grievances and promised to remedy them, suggesting that if the drivers were convinced that these were significant benefits, the Respondent would be successful in the upcoming election.

I accordingly find and conclude that Respondent solicited its employees grievances and impliedly promised to remedy them, as alleged in the complaint.

c. *Other instances of interference with employees' Section 7 rights*

I find, as set forth above, that the conduct of officials of Respondent, and its agents Portnoy and Walsh, directed to employees, violated the Act as set forth below. However, I cannot find that their actions violated the Act with respect to statements to Cafaro and Campbell since I have found that they were supervisors within the meaning of the Act.

Inasmuch as I have found Campbell and Cafaro to be supervisors, I find that their statements to employees, set forth above, and summarized below, are attributable to Respondent. Under Section 2(13) of the Act, an employer is bound by the acts and statements of its supervisors whether specifically authorized or not.'' *Ideal Elevator Corp.*, 295 NLRB 347 fn. 2 (1989).

Even assuming that Cafaro and Campbell were not supervisors, they were clearly agents of Respondent within the meaning of Section 2(13) of the Act. As to all the instances described below, they acted pursuant to specific instructions by Respondent's officials. They were asked to interrogate employees about their union activities, obtain other union-related information, and report back to management on what they learned. Thus, Cafaro and Campbell were agents with actual, specific authority and direction to engage in the conduct described. Respondent is therefore directly responsible for their conduct. *Albertson's Inc.*, 307 NLRB 787 (1992); *Jacobo Marti & Sons*, 264 NLRB 30, 33 (1982).

Portnoy's statement to employees at a meeting in May, that if the Union got in, Respondent would close constitutes an unlawful threat of plant closure. *American Wire Products*, 313 NLRB 989, 993 (1994).

Gilman's questioning of Van Syckle in about July as to why she wanted a union, and her questions to Anderson and Edmond as to whether they were involved in the Union, and whether they would cross a picket line if the Union struck constitutes unlawful interrogation.

Gilman's question to Van Syckle in July as to how she obtained phone numbers of employees, and her acknowledgment to Van Syckle in that month that she believed that Van Syckle had called in the Union to organize the employees constitutes unlawful interrogation and the creation of the impression of surveillance.

Gilman's statement to Edmond that she heard that he was ''instigating'' employees to sign for the Union, and that she heard his name mentioned frequently concerning the Union constitutes the creation of the impression of surveillance.

The test for determining whether an employer has created an impression of surveillance is whether the employee would reasonably assume from the statement that his union activities had been placed under surveillance. The idea in such violation is that employees should be free to participate in union organizing campaigns without the fear that members of management are watching them. An employer creates an impression of surveillance by indicating that it is closely monitoring the degree of an employee's union involvement. *Flexsteel Industries*, 311 NLRB 257 (1993).

Gilman's comments to Anderson and Edmond, when combined with her prior statement to Cafaro that they were seen in their bus having a union meeting, and that she (Gilman) believed that they were the ''two big union people'' strongly supports a finding that she created the impression of surveillance in her remarks to them.

Campbell's inquiry of his friends in June as to matters concerning the Union is unlawful interrogation. The fact that Campbell may have asked his friends does not make the interrogations lawful. *Flexsteel*, id. at 258 fn. 5. (1993).

Campbell's questioning of employees in June or July, asking them questions regarding the progress of the Union's campaign, the employees' thoughts on the Union, whether they supported the Union, where union meetings would be held, and obtaining information and flyers from employees, and his reporting to Lynch of the names of employees who were in favor of the Union, and information concerning the locations of union meetings, and giving flyers to Lynch, constitute unlawful interrogations of employees. *Midland Transportation Co.*, 304 NLRB 4, 6–7 (1991); *Vemco, Inc.*, 304 NLRB 911, 922 (1991).

Campbell's direction to employees that they wear ''vote no'' buttons constitutes unlawful interrogation. Campbell told the drivers to take a button. The refusals of some drivers to take a button does not negate the violation. The drivers did not ask for the button, and they were not merely made available to the drivers to take if they wished. Rather, they were asked by a supervisor to take a button. These actions constituted interrogation since ''by agreeing or refusing to wear the button the employee is forced into an open declaration either for or against the Union.'' *Kurz-Kasch*, 239 NLRB 1044 (1978).

Campbell's ascertaining the location of a July union meeting at Walsh's request, attempting to learn the legal capacity of the meeting place, and reporting this information to Walsh. This was clearly an attempt to obtain information in order to disrupt the meeting, as alleged in the complaint, and constitutes unlawful interference with employees' Section 7 rights in violation of Section 8(a)(1) of the Act.

Campbell's request to employee Nixon in July that he tape record a union meeting and give the tape to Campbell constitutes an unlawful request that employees conduct surveillance of a union meeting. *Douglas & Lomason Co.*, 304 NLRB 322, 327 (1991); *Fontaine Body & Hoist Co.*, 302 NLRB 863, 866 (1991).

Cafaro's questioning of employees on July 28 as to whether they were voting for the Union, and her promise of benefits to the drivers, in the form of an increased benefit package, if they voted against the Union constitutes interference with their Section 7 rights in violation of Section 8(a)(1) of the Act.

I find no violation in the allegation concerning Campbell's determining that union agents were not on Respondent's property, and therefore not removing them. I further find no violation in Campbell's riding in Respondent's bus with voters on the way to the election. Although he was instructed to campaign against the Union during the trip, he did not do so, and he stayed only a short time at the polling place.

2. The alleged violations of Section 8(a)(3) of the Act

a. *The discharges*

I find that the General Counsel has made a prima facie showing, in each case, that Respondent was motivated by antiunion considerations in discharging Anderson, Barker, Edmond, Johnson, Pozo, and Van Syckle.

Thus, each engaged in union activities, which came to the knowledge of Respondent.

Regarding Anderson and Edmond, Cafaro gave uncontradicted testimony that Gilman told her that Anderson and Edmond were conducting a union meeting in their bus, and that she (Gilman) believed that they were the ''two big union people.'' In addition, Anderson and Edmond gave uncontradicted testimony that Gilman told them that she heard that Edmond instigated employees to sign for the Union. They both told her that they would cross a picket line if the Union struck.

Barker admitted to Respondent that she distributed union leaflets to parents on her route. Campbell gave uncontradicted testimony that Lynch told him that he saw Barker and others exchanging union literature in a bus in the terminal.

Johnson signed a union card and credibly testified that he wore a union button at all times. His wearing a button was corroborated by Campbell, who spoke to him about the Union. I do not credit Respondent's witnesses who stated that they did not see the button.

Pozo distributed union cards to 40 to 50 employees at the terminal. Campbell gave uncontradicted testimony that Lynch told him to watch Pozo because of his destruction of the ''vote no'' button, and to write him up at every opportunity.

Van Syckle distributed union documents to employees and made numerous phone calls to workers. She gave uncontradicted testimony that she told Gilman that the workers needed a union, and Cafaro gave uncontradicted testimony that Gilman told her she saw Van Syckle distributing union leaflets, and she had to find some way to get rid of her, and ''we can't have this.'' Gilman also accused her of obtaining employee phone numbers from company records, and of being the person who called the Union in.

Respondent's union animus is well demonstrated in the fact that on the Union's advent, a well-coordinated campaign was undertaken to thwart the Union's efforts. I have found, above, that Respondent, committed numerous violations of the Act by its high level officials, supervisors, and agents, including the interrogation of employees concerning their union activities, directing its agents to spy on union meetings and attempting to disrupt them, directing its agents to report on the union activities of its employees, implementing a wage and benefits package to induce employees to abandon the Union, soliciting grievances from its employees, threatening to close its facility, creating the impression of surveillance of the union activities of its employees, and promising benefits to employees if they voted against the Union.

I accordingly find that the General Counsel has made a prima facie showing that the union activities of Anderson, Barker, Edmond, Johnson, Pozo, and Van Syckle were motivating factors in Respondent's decision to discharge them. *Wright Line*, 251 NLRB 1083 (1980).

Having found a prima facie case of unlawful motivation in the discharges, the burden shifts to Respondent to prove that it would have discharged them even in the absence of their union activities. *Wright Line*, supra.

The General Counsel argues that the discharges were pretextual, the events precipitating them ''seized upon'' by Respondent in order to effectuate its plan to terminate those employees who expressed interest in the Union. The General Counsel's other theory, that the discharges were made to instill fear in the unit prior to a rerun election is not supported by the evidence, since all the discharges, except for Barker,

occurred before October 8, the date a rerun election was directed.

Respondent argues that, notwithstanding the union campaign, it had a right to operate its business, terminating those employees who it believed had violated its policies. It denies that the discharges were motivated by union considerations.

(1) Joseph Anderson and Tommy Edmond

As set forth above, Anderson and Edmond were discharged for failing to call in or appear for work for 2 consecutive days. Both were absent without calling.

The General Counsel argues that either there was no established rule requiring discharge after 2 days without calling or appearing, or the rule was not enforced.

Cafaro credibly testified that the only rule she was aware of, which was in effect, was a 3-day rule, which she did not enforce routinely. That written rule was in an employee manual which was not reissued, in modified form, until after the Union's advent. Supervisor Eileen Meyer testified that she discharged employee Jackie Foster following his being absent for 3 or 4 days.

Cafaro and Campbell, Respondent's supervisors, gave consistent, credible testimony that there were occasions that drivers were not present and did not call for 3 or 4 days, but nevertheless were assigned to their regular run with no discipline given. No documentary evidence was offered as to such variations in the policy, and none could be offered if the driver was not written up for those alleged infractions.

Certainly, termination reports were received which showed that employees were discharged for two instances of no call/no show, and three of the eight reports occurred prior to the Union's campaign. However, doubt was cast on the rigid enforcement of the rule, as testified by Respondent's officials. Thus, the circumstances surrounding Schramm's termination are suspicious. She was terminated on March 9, 1993, for being no call/no show on March 8, 1993, and ''March 8, 1994.'' Nevertheless, she and a supervisor signed a disciplinary notice stating that she was no call/no show on March 29 through April 1, 1993. If she was terminated on March 9, how could she have been no call/no show 3 weeks later, especially in view of McCabe Kours' testimony that she did not work between March 9 and 29.

Further, Clarke received a disciplinary notice for being no call/no show for November 16 and 17, 1992, yet quit on March 11, 1993. It thus appears that she was not terminated on November 17, but permitted to remain at work for nearly 4 months until she quit. In addition, as noted above, Widman, too, may have been permitted to work notwithstanding two no call/no shows.

Accordingly, the application of the rule against Anderson and Edmond appears to have been disparately enforced, especially where it appears that Clarke was not discharged for a similar offense, and Schramm may have also continued in her employ. *Stoody Co.*, 312 NLRB 1175, 1182 (1983); *Sealectro Corp.*, 280 NLRB 151, 160 fn. 22 (1986). Respondent's alleged policy of automatic discharge for two no call/no shows was not supported by the evidence. *Hyatt Regency Memphis*, 296 NLRB 259, 262-263 (1989).

Thus, I find that Respondent has not met its burden of proving that it would have discharged Anderson and Edmond, long-term employees, entrusted by Respondent with the responsibility of training new drivers, and awardees of certificates for outstanding performance 1 year before their discharges, in the absence of their union activities.

(2) Frances Barker

Respondent first argues that Barker, in acting alone, was not engaged in concerted activity. The Board has held that, even though an employee may be acting alone, a worker attempting to form, join, or assist a union is nevertheless protected by Section 7 of the Act, and an employee's action in publicizing her labor dispute is within the scope of activities protected by that Section. *Carpenters Local 925*, 279 NLRB 1051, 1055 fn. 40 (1986); *Cincinnati Suburban Press*, 289 NLRB 966, 967 (1988).

Respondent's rules may be ''facially invalid and unlawful to the extent that they prohibit inadvertent or unknowingly false statements which are protected when uttered in the context of concerted activity.'' *Bell Halter, Inc.*, 276 NLRB 1208, 1220 fn. 12 (1985). However, the rules were not alleged as unlawful.

> [E]mployees may communicate with third parties in circumstances where the communication is related to an ongoing labor dispute where the communication is not so disloyal, reckless, or maliciously untrue as to lose the Act's protection. [*Cincinnati*, supra at 967.]

Respondent's rule 3 prohibits making ''disparaging or derogatory'' statements concerning the Company, violation of which will result in disciplinary action up to and including discharge.

I find that Barker admitted, as set forth in her pretrial affidavit, that she falsely told a parent, in answer to a question, that Respondent provides no vacations. I cannot find, in view of the contradictions between the testimony of Schneider and Lynch, that Barker admitted telling a parent that the Company ''sucked'' and had no benefits. I do find, however, based on the testimony of Lynch, set forth above, which was impliedly supported by Barker, that Barker admitted to the two men that she told the parent that Respondent did not provide insurance, which was also false since health insurance benefits were available.

The result of these falsehoods to parent Andreadis was that Andreadis sent a letter to the school district which expressed concern about the high turnover of drivers, and in which she sought to keep a regular driver employed on her route. Andreadis, who was told that Barker was the regular driver for her child, was clearly prompted to write the letter, in part, by Barker's false statements to her concerning the lack of benefits provided by Respondent. The implication being, of course, that Respondent's poor benefits would cause Barker's resignation, a consequence which Andreadis sought to avoid.

The types of customers to whom these false statements were made must also be taken into consideration. These were not purchasers of products who could take their business elsewhere if they believed that Respondent was not treating its workers fairly. Rather, these were parents of preschool age Down Syndrome children, who entrusted the safety and welfare of their children to the drivers. The parents could thus be expected to be extremely concerned that the employees be treated properly and therefore satisfied with their working conditions. Unlike commercial purchasers, the par-

ents were committed to the bus company chosen by the school district.

Under these circumstances, I believe that Barker's comments that Respondent provided no vacations and no insurance were knowingly false, and by their dissemination to these customers of Respondent were designed to do more than merely obtain support among those customers for the Union's cause. They were meant to cause, and had the effect of causing, customers to lose faith in Respondent's business since it allegedly failed to provide important benefits to its employees, and at the same time create a belief that the children would not be properly taken care of by dissatisfied employees. Barker's comments therefore sought to impair Respondent's relations with its customers. Cf. *GHR Energy Corp.*, 284 NLRB 1011, 1028 (1989), where the Board, finding that an employee's discharge was unlawful, noted that his statements were not knowingly false, and did not seek to impair the employer's relations with its customers.

Each parent of the hundreds of school children Respondent transports represents a powerful force if false complaints by workers are complained about to government authorities which can affect its contracts. The effect of these statements on Respondent's business is clearly seen in copies of the school district's letter being sent to the County Executive of Nassau County.[12]

Under these circumstances, I find that Respondent properly believed that Barker's remarks were disparaging and derogatory within the meaning of its rule. I accordingly find and conclude that Respondent has met its burden of showing that it would have discharged Barker even in the absence of her union activities. *Troxel Co.*, 301 NLRB 270, 282 (1991); *Bell Halter*, supra at 1223.

(3) Alfred Johnson

It is undisputed that Meyer made a charter assignment to Johnson for September 8, and that Johnson accepted it. Johnson conceded on cross-examination that he was told to report the next morning, and then only in a second conversation, denied by Meyer, did he request a leave of absence.

The question is whether the leave of absence was granted, thereby obviating the need for him to report for the charter. I credit the testimony of Meyer and Martines who testified consistently that the only matter discussed with Johnson was that a leave of absence would be granted on his completing the appropriate papers which would be presented to him when he appeared for the next morning's charter. In fact, Johnson conceded that he was required to complete a leave of absence form, which he did not do.

It appears clear that Meyer acted on the belief that Johnson would be at the terminal to operate the charter. She arrived there in time to give him the leave of absence papers, but he did not appear. Lynch served to corroborate her presence through Johnson's testimony that Lynch told him that Meyer phoned him (Johnson) at 6 a.m. when he did not appear for the charter. Clearly, if Meyer had believed that Johnson was not assigned to the charter, she would not have called to learn where he was. I do not credit Johnson's denial that he received the call.

The General Counsel's argument that Johnson was improperly discharged because a no call/no show form was issued for the second day of his absence, September 9, although he was not due to report that day, is irrelevant because he was discharged for ''job abandonment''—not appearing for his agreed-on scheduled charter on September 8.

In finding that Respondent has met its burden of proving that it would have discharged Johnson even in the absence of his union activities, I note that his union activities, which were minimal, did not come to the knowledge of high officials of Respondent, and he was not spoken to by them about such activities.

(4) Pedro Pozo

As set forth above, Pozo was discharged for falsifying a DOT form, by not stating thereon that the bus' brakes were defective. Baumann testified that Pozo sought to place the blame on the mechanic. The General Counsel argues that this is a minor offense.

Respondent's uncontradicted evidence supports a finding that the DOT forms are of critical importance in keeping track of a vehicle's maintenance. The incident which precipitated Baumann's investigation into the defect records was not manufactured. It came to Baumann's attention through criticism of a driver's failure to discharge and pick up passengers. When he looked into the matter, Baumann learned that Pozo was the driver on that occasion, and that the reason for the aborted run was that the bus' brakes were not operating properly.

Upon further investigation, Baumann found that he had improperly noted on the DOT form that the bus had no defects. Such an improper notation could result in penalties to Respondent.

I accordingly find and conclude that Respondent has met its burden of proving that it would have discharged Pozo in the absence of his union activities. There was no evidence of disparate treatment. I further note that Pozo's brother, Orlando, engaged in the same union activities and was quite outspoken at a meeting with Employer officials, and was not the subject of discriminatory treatment.

(5) Neri Van Syckle

As set forth above, Van Syckle was discharged for having two preventable accidents. She conceded that such conduct is grounds for discharge; however, she disputes that the accident of January 1992 was preventable. Her uncontradicted testimony that Safety Director Erickson told her that ''everything is fine and clear, you are okay'' is credited. The fact that she was permitted to continue to drive, and not suspended, is consistent with Respondent's contemporaneous memos which lifted the suspension pending receipt of the police report, and not because she was cleared of fault in the crash. Indeed, on receipt of the report, a memo correctly stated that the accident was deemed to be her fault, but the suspension would not be enforced due to the length of time involved, 2 months, in obtaining the report.

Respondent's evidence that six other drivers were terminated for having two preventable accidents, five such terminations occurring prior to the Union's advent, and in the ab-

[12] I am aware that the school district to which Andreadis sent the letter had nothing to do with the contract administered by Respondent. However, this strengthens rather than detracts from the finding I make, by showing the willingness of an unrelated authority to become involved in this issue.

sence of any evidence of disparate treatment, I find that Respondent has met its burden of proof that it would have discharged Van Syckle even in the absence of her union activities. *Wright Line*, supra.

Even if ''it is fair to assume that the Respondent entertained a desire to get rid of [Van Syckle], whose union activities it resented, and was pleased to have an opportunity for doing so . . . that alone is not enough to establish that the discharge was in violation of Section 8(a)(3).'' *Opelika Welding*, 303 NLRB 1051 (1991).

b. The alleged introduction of a harsher disciplinary system

The complaint alleges that in July, Respondent introduced a harsher, more stringent written disciplinary system to be used to retaliate against employees who are union supporters, including to discharge union supporters.

As set forth above, Lynch told Campbell to write up certain employees who were identified as being union supporters, and after being written up they would be fired. Campbell for the most part ignored Lynch's instructions, and no disciplinary notices concerning those employees were offered in evidence. He could not identify any worker discharged because of this alleged increase in discipline. Oulette also told Campbell to start documenting employee wrongdoing in order to fire workers, and replace them with new hires. But this harmful testimony was undercut by Campbell's concession that such hiring would be made if the workers struck. Campbell further undercut the alleged unlawful motivation for the increased discipline by stating that the emphasis on increased documentation was made necessary when absenteeism had become rampant, and Respondent was fined for drivers' latenesses. Although Campbell said that documentation of employee wrongdoing had been made before the Union's advent, it increased after the campaign began, but once more stated that it was possible than company rules were being violated more often following the start of the union campaign.

I cannot find, based on the above, that the General Counsel has made a prima facie showing that Section 8(a)(3) of the Act has been violated, as alleged. At most, there were vague suggestions that employees be written up for their union activities, which were not followed up. Explanations were given by Campbell which minimized these suggestions. Indeed, there was no showing that, as alleged in the complaint, that Respondent introduced a harsher, more stringent disciplinary system. I, accordingly, find no violation of the Act in this respect.

CONCLUSIONS OF LAW

1. Respondent, Acme Bus Corp., Brookset Bus Corp., Baumann & Sons Buses, Inc., and Alert Coach Lines, Inc., a single employer, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 868, International Brotherhood of Teamsters, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Joseph Anderson and Tommy Edmond, Respondent violated Section 8(a)(3) and (1) of the Act.

4. By implementing a wage and benefits package, in order to induce employees to abandon the Union, Respondent violated Section 8(a)(1) of the Act.

5. By soliciting grievances from its employees and implying that it would remedy said grievances, Respondent violated Section 8(a)(1) of the Act.

6. By threatening its employees that if the Union organized its employees Respondent would close, Respondent violated Section 8(a)(1) of the Act.

7. By interrogating its employees concerning: why they wanted a Union; whether they were involved in the Union; whether they would cross a picket line if the Union struck; how they obtained phone numbers of employees; the Union generally; the progress of the Union's campaign; the employees' thoughts about the Union; whether they supported the Union; the locations of union meetings; whether they were voting for the Union; and by directing its employees to wear ''vote no'' buttons, Respondent violated Section 8(a)(1) of the Act.

8. By interrogating an employee and creating the impression of surveillance by telling an employee that Respondent believed that the employee had called in the Union to organize the employees, Respondent violated Section 8(a)(1) of the Act.

9. By creating the impression of surveillance by telling an employee that Respondent heard that he was ''instigating'' employees to sign for the Union, and that it had heard his name mentioned frequently concerning the Union, Respondent violated Section 8(a)(1) of the Act.

10. By ascertaining the location of a union meeting, and by attempting to learn the legal capacity of the meeting place, Respondent violated Section 8(a)(1) of the Act.

11. By requesting that an employee tape record a union meeting, Respondent violated Section 8(a)(1) of the Act.

12. By promising benefits to employees if they voted against the Union, Respondent violated Section 8(a)(1) of the Act.

13. Theresa Cafaro and Garth Anthony Campbell are supervisors within the meaning of Section 2(11) of the Act.

14. Respondent has not committed any violations of the Act not found herein.

THE REMEDY

Having found that Respondent has 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 policies of the Act.

I shall recommend that Respondent offer full and immediate reinstatement to Joseph Anderson and to Tommy Edmond to their former jobs or. if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority and any other rights and privileges enjoyed, and to make each of them whole for any loss of earnings and benefits suffered because of their unlawful discharges, less any interim earnings, to be computed in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950, with interest as computed in *New Horizons for the Retarded*, 233 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, Acme Bus Corp., Brookset Bus Corp., Baumann & Sons Buses, Inc., and Alert Coach Lines, Inc., a Single Employer, Ronkonkoma, New York, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees in order to discourage them from joining or supporting Local 868, International Brotherhood of Teamsters, AFL–CIO.

(b) Implementing a wage and benefits package in order to induce employees to abandon the Union.

(c) Soliciting grievances from its employees and implying that it would remedy the grievances.

(d) Threatening its employees that if the Union organized its employees, Respondent would close.

(e) Interrogating its employees concerning: why they wanted a Union; whether they were involved in the Union; whether they would cross a picket line if the Union struck; how they obtained phone numbers of employees; the Union generally; the progress of the Union's campaign; the employees' thoughts about the Union; whether they supported the Union; the locations of union meetings; whether they were voting for the Union, and by directing its employees to wear ''vote no'' buttons.

(f) Interrogating employees and creating the impression of surveillance by telling employees that Respondent believed that employees had called in the Union to organize the employees.

(g) Creating the impression of surveillance by telling employees that Respondent heard that they were ''instigating'' employees to sign for the Union, and that it had heard their names mentioned frequently concerning the Union.

(h) Ascertaining the location of union meetings, and attempting to learn the legal capacity of the union's meeting place.

(i) Requesting that an employee tape record a union meeting.

(j) Promising benefits to employees if they voted against the Union.

(k) 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) Offer to Joseph Anderson and Tommy Edmond immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make each of them whole, with interest, for any loss of earnings and benefits each of them may have suffered as a result of its unlawful discharges of them on about September 9 and 17, 1993, respectively, as set forth in the remedy section of this decision.

(b) Remove from its files any memoranda, records, or other references to the unlawful discharges of Joseph Anderson and Tommy Edmond, as set forth above, and notify each of them, in writing, that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(d) Post at its Ronkonkoma and Jericho/Westbury facilities copies of the attached notice marked ''Appendix.''[14] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

[13] 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.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

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

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

WE WILL NOT discharge or otherwise discriminate against our employees in order to discourage them from joining or supporting Local 868, International Brotherhood of Teamsters, AFL–CIO.

WE WILL NOT implement wage and benefits packages in order to induce employees to abandon the Union.

WE WILL NOT solicit grievances from our employees and imply that we will remedy those grievances.

WE WILL NOT threaten our employees that if the Union organized our employees, we would close.

WE WILL NOT interrogate our employees concerning: why they wanted a Union; whether they were involved in the Union; whether they would cross a picket line if the Union struck; how they obtained phone numbers of employees; the Union generally; the progress of the Union's campaign; the employees' thoughts about the Union; whether they supported the Union; the locations of union meetings; whether they were voting for the Union, or by directing our employees to wear ''vote no'' buttons.

WE WILL NOT interrogate our employees and create the impression of surveillance by telling our employees that we

believed that our employees had called in the Union to organize them.

WE WILL NOT create the impression of surveillance by telling our employees that we heard that they were ''instigating'' employees to sign for the Union, and that we had heard their names mentioned frequently concerning the Union.

WE WILL NOT ascertain the location of union meetings, and attempt to learn the legal capacity of the union's meeting places.

WE WILL NOT request that employees tape record union meetings.

WE WILL NOT promise benefits to employees if they voted against the Union.

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

WE WILL offer to Joseph Anderson and Tommy Edmond immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make each of them whole, with interest, for any loss of earnings and benefits each of them may have suffered as a result of our unlawful discharges of them.

WE WILL remove from our files any memoranda, records, or other references to the unlawful discharges of Joseph Anderson and Tommy Edmond, as set forth above, and notify each of them, in writing, that this has been done and that the discharges will not be used against them in any way.

ACME BUS CORP., BROOKSET BUS CORP., BAUMANN & SONS BUSES, INC., ALERT COACH LINES, INC., A SINGLE EMPLOYER